

Compromise Agreements

12 July 2018

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Request for Information.

Thank you for your request received on 15 June in which you asked:

*I wish to know the number of AM support staff given compromise agreements to end their employment in each of the last 3 years.
I also want the total amount paid each year. (Not per agreement)
I only want the number of staff employed by AMs and not those who worked for the wider Commission.
I also want to know how many of these agreements included non-disclosure agreements.*

Between 5 and 10 Assembly Member Support Staff (“AMSS”) were given compromise agreements (which are now referred to as settlement agreements) in the last 3 years. A full disclosure will not be made because the information held is exempt from disclosure under section 40 – disclosure of personal data would be in breach of the General Data Protection Regulation (GDPR) and the Freedom of Information Act 2000 (“FOIA”). We are not able, therefore, to provide you with the actual number of individuals in each of the last 3 years. Further reasoning for this is in the [annex](#) to this letter.

A total of £44,454 was paid out as terms of the settlement agreements within the last three years. This figure includes all contractual payments such as holiday pay accrued but not taken and payment in lieu of notice. Although a breakdown of this information was requested, an annual breakdown will not be made available because the information held is exempt from disclosure under section 40 – disclosure of personal data would be in breach of the GDPR and the FOIA. We are not able, therefore, to provide you with the breakdown. Further reasoning for this is in the [annex](#) to this letter.

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In terms of whether these agreements included non-disclosure agreements, they do routinely include a phrase that preclude the parties from disclosing the details of the agreement.

Your request has been considered according to the principles set out in the Code of Practice on Public Access to Information. The code is published on our website at http://www.assemblywales.org/abthome/about_us-commission_assembly_administration/abt-foi/abt-foi-cop-pub.htm

If you have any questions regarding this response please contact me. If you feel you have cause for complaint, please follow the guidance at the end of this letter.

Yours sincerely

**Freedom of Information Manager
National Assembly for Wales**

Cause for concern or complaint with your FOI response?

If you believe that I have not applied the Code correctly or have not followed the relevant laws, you may make a formal complaint to the Chief Executive and Clerk at the National Assembly for Wales, Cardiff Bay. Details of the Assembly's complaints principles are set out in the Code of Practice on Complaints available on the Internet at <http://www.assembly.wales/en/help/contact-the-assembly/con-complaint/Pages/con-complaint-procedure.aspx>. Please advise me if you wish to receive a printed copy.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Section 40 FOIA: disclosure of personal data would be in breach of the GDPR

The definition of personal data in the GDPR, being:

“any information relating to an identified or identifiable person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person”.

The number of settlement agreements given to AMSS is so specific to a group of individuals that it could leave them identifiable.

Personal information is exempt from disclosure under section 40(2) and section 40(3A)(a) of the FOIA where disclosure would contravene one or more of the data protection principles within the GDPR. The principle relevant on this occasion is the first data protection principle.

The first data protection principle as set out in Article 5 of the GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’).”

In addressing whether a disclosure would be fair we have considered the consequences of disclosure, the reasonable expectations of the persons concerned and the balance between their rights and any legitimate interest in disclosure. Our conclusion is that a disclosure would be unfair. AMSS are employed directly by the Assembly Member (“AM”) and dismissals are dealt with by the individual AM unless advice is sought from the Members’ Business Support team. Employment issues, especially dismissals, can be extremely sensitive and distressing for those involved, which is why we have provided you an anonymised figure in order to protect the individuals.

Settlement agreements create a confidential relationship between the parties to protect any confidential information being shared. The staff have no expectation that information relating to the detail of their remuneration as

part of signing such an agreement will be made public and providing a breakdown per financial year would leave those individuals identifiable.

Notwithstanding my view as to fairness, I went on to consider Article 6 of the GDPR. None of the legal bases in Article 6 is relevant other than Article 6(1)(f), which allows the processing of personal data if:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.”

This condition involves a three-part test:

- there must be a legitimate public interest in disclosing the information;
- the disclosure must be necessary to meet that public interest; and
- the disclosure must not override the interests, fundamental rights or freedoms of the data subjects.

As regards the first part of the test, there is a public interest in transparency in general, and in particular in knowing the amount of public money spent on settlement agreements. In our view, the public interest is met in this particular instance by the disclosure of a globalised figure i.e. not broken down to the level requested. There is not, therefore, a legitimate interest in providing information other than that set out in the body of our letter to you.

We did not, therefore, consider the remaining two parts of the tests. Our conclusion is that it would not be possible to meet a Schedule 2 condition.