

Employment of Family Member

23 July 2018

Request for Information.



Thank you for your request received on 26 June in which you asked:

According to the register of interests, Andrew RT Davies employs a member of his family as his PA and has done since 2007. I would like to request the following items of information under the FOI Act in relation to this individual:

- 1. How many emails are in this employee's Sent Items folder of their Microsoft Outlook account?*
- 2. When was the last time this individual logged in to their Assembly IT profile?*
- 3. How many unread emails currently sit in this employee's Microsoft Outlook account.*
- 4. How many times has this employee swiped their pass to enter the Assembly estate in the past two years?*

Please find our responses to your request below.

- Under section 3(2) of the Freedom of Information Act 2000 (FOIA) 'information is held by a public authority if— (a) it is held by the authority, otherwise than on behalf of another person'.
The National Assembly for Wales ('the Assembly') holds information relating to email traffic e.g. sent items from Members' staff's accounts on behalf of Assembly Members (AMs). So, information held by the Assembly on behalf of another person (in this case on behalf of the AMs) is not regarded as 'held' by the Assembly for the purposes of the FOIA. In the circumstances, the Assembly is unable to disclose this information.

It may be helpful for you to note that AMs are not regarded as 'public authorities' for the purposes of the Act, and so they are not obliged to

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disclose this information but you are more than welcome to contact Andrew RT Davies using the contact details [published](#).

2. Please see our response to question 1.
3. Please see our response to question 1.
4. The requested information constitutes personal data. It is, therefore, subject to the 'personal information' exemption under Section 40 of the FOIA. 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 FOIA. Further reasoning for this is in the [annex](#) to this letter.

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 information requested, which relates to the number of times AMs’ support staff have used their security pass to enter the Assembly buildings is 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 principle relevant on this occasion is set out below.

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 are subject to a vetting process before a building pass is issued to them. They are answerable to the AM who employs them.

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.

We have given careful consideration to the relevant interests which include: the Assembly’s obligations under the Act; your right, under the Act, to access this information; the nature of the individuals’ roles and their right to privacy; and the public interest in this information being disclosed.

The individual staff members concerned would not have a reasonable expectation that this information would be released and they do not have a public facing role (unlike that of, say, an elected representative).

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.