

Andrew RT Davies

17 February 2021

Request for Information.

Thank you for your request received on 27 January in which you asked:

I am writing to request the following under the Freedom of Information Act:

- Any correspondence concerning the employment Julia Davies, PA/Research for Andrew RT Davies

I can confirm that we hold the requested information, however, it constitutes personal data for the purposes of the United Kingdom General Data Protection Regulation (UK GDPR).

A disclosure of the correspondence captured by your request would, in our view, contravene the first data protection principle as set out in Article 5 of the UK GDPR. As such, it is exempt from disclosure under section 40(2) and section 40(3A)(a) of the Freedom of Information Act 2000 ("FOIA 2000"). Further reasoning for this conclusion is set out in the **annex** to this letter.

Yours sincerely

**Freedom of Information Manager
Welsh Parliament**

Senedd Cymru
Bae Caerdydd
Caerdydd, CF99 1SN

Welsh Parliament
Cardiff Bay
Cardiff, CF99 1SN

Ffôn/Tel: 0300 200 6224

E-bost/Email: Ceisiadau-gwybodaeth@senedd.cymru
Information-request@senedd.wales

Your request has been considered according to the principles set out in the **Code of Practice on Public Access to Information**. If you have any questions regarding this response please contact me. If you feel you have cause for complaint, please follow the guidance below.

Cause for concern or complaint with your FOI response?

If you are dissatisfied with the Welsh Parliament's handling of your request, you can request an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Freedom of Information Manager at:

Information-request@senedd.wales or in writing to

Welsh Parliament
Governance and Assurance
Cardiff Bay
Cardiff
CF99 1SN

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

The information sought falls within the definition of personal data as set out in Article 4 of the UK GDPR, being:

“any information relating to an identified or identifiable natural 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, psychological, genetic, mental, economic, cultural or social identity of that natural person”.

Personal information is exempt from disclosure under section 40(2) and 40(3A)(a) of FOIA 2000 where disclosure would contravene one or more of the data protection principles within the UK 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 UK 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 person concerned and the balance between their rights and any legitimate interest in disclosure. Relatives employed by Senedd Members are a specific and small group of support staff whose names, job descriptions and hours worked per week are already published on the **Register of Members' Interests**. Members' support staff are employed directly by the Member of the Senedd (MS).

The Senedd Commission (the Commission) provides advice to and corresponds with MS and their staff on a range of issues, including on staffing matters. In some instances, this correspondence has an assumption of confidentiality as they are discussing personal matters. Support staff are answerable to the MS who employs them and would not have a reasonable expectation that personal data relating to their employment would be disclosed by the Commission.

Our conclusion is that a disclosure would be unfair. The member of staff, although classed as a family member, has no expectation that information relating to them personally and their employment will be made public.

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

"Processing is necessary for the purposes of legitimate interests pursued by the controller or by the 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 subject.

We have given careful consideration to the relevant interests which include: the Commission's obligations under the UK GDPR and the Data Protection Act 2018; your right 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 member concerned would not have a reasonable expectation that this information would be released. Whilst we accept that there is a stronger public interest in disclosure where the staff member in question is a relative of the MS, they do not have a public facing role (unlike that of, say, an elected representative) and should be allowed to work for their employer without the scrutiny of such requests harming any future employment opportunities.

Since April 2019, the Commission has published the **annual staffing expenditure** of each MS and our view is that this, coupled with the information already available on the Register of Members' Interests, is a balanced way of meeting the public interest whilst ensuring the interests, fundamental rights or freedoms of those involved are not jeopardised.