



Stonewall

17 February 2021

Request for Information.

Further to the response that we sent to you on 27 January, please find attached our response to your second question.

- 2. Also please send copies of all the information which was sent to Stonewall enabling that organisation to rate the National Assembly for Wales at eighth place in their top 100 employers list for 2020. Thanks.*

Attached are the documents that we submitted to Stonewall. (Please email information-request@senedd.wales to receive this information). Some of the information you have requested has been redacted because it contains personal data that is exempt from disclosure under the 'personal information' exemption in section 40(2) of the Freedom of Information Act 2000 (FOIA). This exemption applies where the requested information constitutes personal data and disclosure would contravene any of the data protection principles set out in the United Kingdom General Data Protection Regulation (UK GDPR).

We have also removed access details to the Employee Assistance Programme that Senedd Commission employees, Members of the Senedd and their support staff and onsite contractors have access to. To release this information, we believe would prejudice our commercial interests and is therefore exempt from disclosure under section 43(2) of the Freedom of Information Act (FOIA).

Further reasoning to both exemptions is included in the **Annex** to this letter.

Yours sincerely,

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

**Freedom of Information Manager
Welsh Parliament**

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 Senedd'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

Senedd
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

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

The definition of personal data is set out in Article 4 of the UK 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 submission documents captured by your request contains the names, job titles, email addresses, telephone numbers and personal experiences of Senedd Commission (“the Commission”) employees and Stonewall employees.

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 set out in 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 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 disclosure would be unfair. Individuals, including Commission staff, shared their details and personal experiences with Commission staff responsible for writing news page articles and other internal communications, with the expectation that the information would be used for limited purposes. The ‘LGBT ally’ initiative, for example, was a Senedd wide campaign to encourage staff at all levels to become an ‘ally’. Members of the LGBT network expressed their feelings and opinions of the importance of these allies across all level of the organisation, which again, was meant for limited use.

The redacted information also includes other personal data relating to individuals that do not carry an expectation of disclosure to other third parties. In any case, our view is that

this information does not add to the substance of our response to your request as the main bulk of our submissions are being disclosed to you.

Notwithstanding my view as to fairness, I went on to consider Article 6 of the UK 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 Commission’s obligations under the UK GDPR and the Data Protection Act 2018; your right to access this information; the individuals’ concerned and their right to privacy; and the public interest in this information being disclosed.

Our ranking in the Stonewall top 100 employers list for 2020 was an immense achievement for the Commission. We appreciate the public interest in the activities of a public sector organisation to promote equality and inclusiveness, as well as any associated expenditure and use of staff resource, but that shouldn’t put at risk the individuals who have contributed to its success, being identified.

In our view, the information provided in its redacted form is a balanced way of meeting the public interest, whilst ensuring the interests, fundamental rights or freedoms of individuals are not jeopardised.

Section 43 FOIA: disclosure would, or would be likely to, prejudice our commercial interests

Section 43(2) FOIA exempts from disclosure any information which “would, or would be likely, to prejudice the commercial interests of any person (including the public authority holding it)”.

The intention behind the exemption is to prevent the disclosure of information that could cause harm to the commercial interest of any organisation, such as its ability to participate competitively in a commercial activity.

The information which has been exempted from disclosure are the means by which the Employee Assistance Programme can be accessed by Commission staff, Members of the Senedd, support staff and onsite contractors. By releasing the details specific to the Commission of how to access this service, the provider could be subject to malicious queries that appear to originate from the Commission. I also believe that this information is not necessary for you to understand the submission document as a whole.

I am also of the view that a disclosure would be likely to damage our reputation when we seek to renew this contract. This, in turn, may reduce the willingness of the third parties in question and others to choose to work with us in the future which may reduce our ability to obtain best value in other commercial projects and undertakings.

Section 43(2) is subject to consideration of the public interest test. In order to withhold the information requested, I must be satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

We are mindful of the need, where appropriate, to be open and transparent. However, there is a strong public interest in protecting the commercial interests of the Commission in order to ensure value of money in terms of public expenditure. The Commission’s ability to ensure value for money is inherently linked to its reputation within commercial spheres. Our view is that the public interest is met by providing the submission document to you with commercially sensitive information redacted.