

Non-Disclosure Agreements

13 April 2018

Request for Information

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

- 1. How many AMSS have been dismissed since the establishment of the NAFW?*
- 2. How many of those AMSS appealed the decisions?*
- 3. How many of those appeals were successful?*
- 4. How many AMSS have resigned from role and signed non disclosure agreements since the establishment of the NAFW?*
- 5. How much money was paid out as terms of those NDA's?*

Could you also break the data down into financial year? For example in 2016/17 2 AMSS dismissed, 1 appealed, 0 successful. 2 AMSS resigned and £12,000 was paid as part of their NDA's.

1. We are unable to provide you with information since the establishment of the Assembly, but we do hold information from 2013 onwards. Between 5 and 10 Assembly Member Support Staff ("AMSS") have been dismissed since 2013. The information sought comprises personal data for the purposes of the Data Protection Act 1998 and falls within the scope of the "personal information" exemption in section 40 of the Freedom of Information Act 2000 (the Act). We are not able, therefore, to provide you with the actual number. Further reasoning for this is in the [annex](#) to this letter.
2. Fewer than 5 AMSS have appealed against the decisions. Again, as above, the number of persons affected is so few that disclosure of the information sought comprises personal data for the purposes of the Data Protection Act 1998 and falls within the scope of the "personal information" exemption in section 40 of the Act. We are not able,

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therefore, to provide you with the actual number. Further reasoning for this is in the [annex](#) to this letter.

3. The information sought comprises personal data for the purposes of the Data Protection Act 1998 and falls within the scope of the “personal information” exemption in section 40 of the Act. We are not able, therefore, to provide you with any information in response to this request. Further reasoning for this is in the [annex](#) to this letter.
4. 8 AMSS have resigned from role and signed non-disclosure agreements since 2013.
5. A total of £59,090 was paid out as terms of the signed non-disclosure agreements. 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, the information sought comprises personal data for the purposes of the Data Protection Act 1998 and falls within the scope of the “personal information” exemption in section 40 of the Act. We are not able, therefore, to provide you with a breakdown. 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

The information sought falls within the definition of personal data in the Data Protection Act 1998, being:

“data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller”.

It is therefore information which is exempt from disclosure under section 40(2) and section 40(3)(a)(i) of the Act where disclosure would contravene any of the data protection principles. The principle relevant on this occasion is the first data protection principle.

The first data protection principle as set out in Schedule 1 to the Data Protection Act 1998 states that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met...”

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 with anonymised information in order to protect the individuals.

Non-disclosure 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 our view as to fairness, we went on to consider Schedule 2 to the Data Protection Act 1998. None of the conditions in Schedule 2 are

relevant other than paragraph 6, which allows the processing of personal data if:

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”

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 cause unwarranted interference with the rights, freedoms and legitimate interest 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 non-disclosure 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.