08 November 2019

Request for Information.

Thank you for your request received on 11 October in which you asked:

Many thanks for your response. Under the FOI act, can I also request the following?

1. Can you confirm the reasons behind the settlement agreements?
2. Was each case related to bullying complaints?
3. And how much money did the Assembly spend in coming to these agreements?

Please see the response below.

1. The information sought constitutes personal data for the purposes of the General Data Protection Regulation (GDPR). As such, the disclosure is exempt from disclosure under section 40(2) and 40(3A)(a) of the Freedom of Information Act 2000. Further reasoning for the conclusion reached in relation to this information is set out in the annex to this letter.

2. The information sought constitutes personal data for the purposes of the General Data Protection Regulation (GDPR). As such, the request is exempt from disclosure under section 40(2) and 40(3A)(a) of the Freedom of Information Act 2000. Further reasoning for the conclusion reached in relation to this information is set out in the annex to this letter.
3. A total of £274,818.48 was paid out in terms of settlement agreements to Commission staff within the last five years.

Yours sincerely

Freedom of Information Manager
National Assembly for 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 Assembly'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@assembly.wales or in writing to
The National Assembly for Wales
Governance and Assurance
Cardiff Bay
Cardiff
CF99 1NA

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 Assembly Commission staff is small and providing additional detail could, inadvertently, identify the individuals concerned.

Personal information is exempt from disclosure under section 40(2) and section 40(3A)(a) of the Freedom of information Act 2000 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. Employment issues are often extremely sensitive. For this reason, we have provided you with anonymised information in order to protect the identity of the individuals.

Settlement agreements create a confidential relationship between the parties in order to ensure that sensitive information is restricted in its circulation. The staff have no expectation that information relating to the termination of their employment will be made public.
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 the operation of the Assembly Commission in a general sense. There is not, however, a public interest in knowing the specific details which you have requested. I did not, therefore, consider the remaining two parts of the tests. My conclusion is that the test is not satisfied.