Sexual Misconduct

10 June 2020

Request for Information.

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

*A full count and disclosure of any complaints of sexual misconduct towards any woman or transgender woman by the organisation or any of its male or trans male members between 1/1/2010-1/1/2020 that may have been raised by any person whatsoever.*

*The organisation may and should exclude any complaints raised by the requestor, if any.*

We can confirm that we hold the information requested. However, it constitutes personal data for the purposes of the General Data Protection Regulation (GDPR).

A full disclosure of the nature of the complaints would, in our view, contravene the first data protection principle as set out in Article 5 of the 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.

However, in an effort to provide you with information, whilst complying with our duties under the GDPR, we are able to tell you that the number of sexual misconduct complaints raised was less than 5.

Yours sincerely

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 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 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 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 the disclosure of this information 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. The withheld information is private in nature and there is no expectation that this information would be made public. To disclose the exact figure of sexual misconduct complaints, where that figure is small, could inadvertently lead to individuals becoming identifiable. There is no expectation that the details of each complaint, or the identity of those involved, would be made public.

Notwithstanding our view as to fairness, we went on to consider Article 6 of the 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 recognise that there is a legitimate public interest in transparency in general, and knowing that there is a policy in place to protect individuals who wish to make a complaint of sexual misconduct. We also recognise the legitimate public interest in understanding the number of complaints of this nature made at any institution. However, we consider this interest is met by disclosing an anonymised range. We do not consider it necessary to release the details of each complaint as, in our view, the interests, fundamental rights and freedoms of the data subjects involved are not overridden by a legitimate public interest in disclosure.

In the circumstances, the disclosure of the withheld information is not necessary to meet the public interest.