

# Long term sickness

22 August 2016

## Request for Information.

Thank you for your request received 22 July in which you asked:

*Please can you tell me how many staff you have, at time of writing, that are on long term sick due to stress.*

I can confirm that we hold the information requested. However, it comprises personal data for the purposes of the Data Protection Act 1998. A disclosure of the number of staff on long term sickness due to stress, in our view, contravenes the first data protection principle of the Data Protection Act 1998. As such, it is exempt from disclosure under section 40(2) and section 40(3)(a)(i) of the Freedom of Information Act 2000 ('the Act'). Further reasoning for this conclusion is set out 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](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**

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## Annex

The information sought (being how many staff are on long term sick due to stress) 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 FOIA because disclosure would contravene one or more 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 DPA 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 and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met”

Disclosure of the actual figure would, in our view, constitute an unfair processing of personal data.

In addressing whether a disclosure would be fair we have considered the consequences of disclosure, the employees' reasonable expectations and the balance between the employees' rights and any legitimate interest in disclosure. Our conclusion is that a disclosure would be unfair. A summary of our consideration follows.

A disclosure of the actual figure would leave the individuals identifiable. This would be information about their personal lives, specifically their physical or mental health or condition and classed as sensitive personal information. The employees concerned would have no expectation of information relating to their sickness record being released. Disclosure would have a prejudicial effect on the individuals as there was no prior expectation for their personal details to be placed into the public domain. Disclosure would therefore be unwarranted because the interest in disclosure does not outweigh the

prejudice to their rights, freedoms and legitimate interests, and would in our view, represent an unjustified intrusion into the employees' privacy.

We of course recognise that there is a legitimate interest knowing that public bodies spend public money both wisely and appropriately. However, it is our view that providing you with this information would not meet any such public interest.

Notwithstanding our view as to fairness, we went on to consider Schedule 2 to the Data Protection Act 1998. One of the conditions in Schedule 2 is condition 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:

1. There must be a legitimate public interest in disclosing the information;
2. The disclosure must be necessary to meet that public interest; and
3. The disclosure must not cause unwarranted interference with the rights, freedoms and legitimate interest of the employee.

As indicated above, whilst we recognise the public interest in knowing that public funds are used prudently, we do not accept that the disclosure is necessary to meet the public interest. Our conclusion would, therefore, be that it would not be possible to meet a Schedule 2 condition. This being the case, I have not gone on to consider Schedule 3.

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