

Complaints to Commissioner for Standards

23 March 2018

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Request for Information.

Thank you for your request received on 26 February in which you asked:

Under the freedom of information act, could you please supply the following information for the period from May 2007 up until the latest available records? Could you please break the information down by calendar year (2007, 2008, 2009 etc).

- 1. The number of reports to the Assembly standards commissioner or the National Assembly of Wales of alleged sexual harassment by Welsh Assembly Members*
- 2. The number of standards commissioner/Welsh Assembly investigations arising from reports of alleged sexual harassment by Welsh Assembly Members*
- 3. The number and type of sanctions/disciplinary actions imposed by the standards commissioner/Welsh Assembly as a result of alleged sexual harassment by Welsh Assembly Members*
- 4. The number of current, active investigations by the standards commissioner into alleged sexual harassment by Welsh Assembly Members*

If there is a possibility the request exceeds the Section 12 limits of the act, can you please advise how I might narrow my request to make it practicable within the limits.

Due to the manner in which complaints are handled, I have split your request into what the Commissioner for Standards deals with and what the National Assembly for Wales (“the Assembly”) handles. Our response is detailed below.

Questions 1-4 in relation to the Commissioner for Standards

The Assembly holds information relating to complaints received by the Commissioner for Standards on behalf of the Commissioner. This is because

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the secretariat to the Commissioner for Standards is comprised of staff employed by the National Assembly for Wales Commission.

Under section 3(2)(a) of the Freedom of Information Act 2000 (“the Act”), “information is held by a public authority if ... it is held by the authority, otherwise than on behalf of another person”. So, the information held by the Assembly on behalf of another person (in this case on behalf of the Commissioner for Standards) is not regarded as “held” by the Assembly for the purposes of the Act. In the circumstances, the Assembly is unable to disclose the information.

Whilst the Assembly is a public authority under the Act, the Commissioner for Standards is not. As such, he is under no legal obligation to provide the information. However, you may be interested in the [Annual Reports](#) which are available on the Commissioner’s website.

Questions 1-3 in relation to the Assembly

The information sought about the number of reports of alleged sexual harassment by Assembly Members since May 2007 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 Act.

The number of persons affected is so few that disclosure of the information sought could, either from the data itself, or from that data in addition to other information requested, identify the persons concerned. In the circumstances we cannot satisfy ourselves that the disclosure sought would be fair. As such we consider the information to be exempt under section 40(2) of the Act.

However, we are able to tell you that the number of reports of alleged sexual harassment by Assembly Members since May 2007 was fewer than three. 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

This information falls within the definition of personal data in the Data Protection Act 1998 (“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) of the Freedom of Information Act 2000 where disclosure would contravene any of the data protection principles. The principle relevant on this occasion is set out below.

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 individuals’ reasonable expectations and the balance between their 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 number of allegations made could not only identify the complainant and the subject of the allegation but it could also deter individuals from making such allegations in the future. A disclosure would, in our view, jeopardise the policy in place to protect staff against such behaviour in the work place.

We recognise that there is a legitimate interest in knowing that we record these allegations and that there is a process in place for them to be investigated, but we consider this interest is met by the fact that we are providing you with an anonymised figure.

Having concluded that disclosure is unfair there is no requirement for us to give further consideration to other processing conditions set out in Schedules 2 and 3 of the Act.