



By email

Eich cyf . Your ref - 328  
Ein cyf . Our ref

27 April 2011

Dear

**Request for Information.**

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

*I'm interested in finding out the position of Black and Ethnic Minorities staff employed by the National Assembly for Wales.*

*Under the Freedom of Information Act, can you please let me know the following information;*

- 1 The total number of people employed by the National Assembly for Wales?*
- 2 How many of the total employed are of Black and Ethnic Minority origin?*
- 3 The grades of these Black and Ethnic Minorities?*
- 4 Promotion success rate of Black and Ethnic Minorities compared to the non-ethnic minority staff?*
- 5 Specifically in Cardiff, how many staff are from Black and Ethnic Minority background?*
- 6 A break down by grade, of Black and Ethnic Minorities compared to non-ethnic minorities?*

1. I will answer each of your questions in order: As at the time of your request the National Assembly for Wales Commission employed 343 staff.
2. Of these 343 staff, 4.4% (15 staff) have identified themselves as of Black and Ethnic Minority origin. A further 5% (17 staff) have chosen not to identify themselves against any specific group. The benchmark

Bae Caerdydd  
Caerdydd  
CF99 1NA  
Cardiff Bay  
Cardiff  
CF99 1NA

Ffôn/Tel: 029 20 821813

E-bost/Email: Alison.Rutherford@wales.gov.uk

Croesewir gohebiaeth yn y Gymraeg a'r Saesneg/We welcome correspondence in both English and Welsh

comparator for staff of Black and Ethnic Minority origin in the Civil Service is 4%.

3. There are 11 staff of Black and Ethnic Minority origin in our Team Support grade. The remaining four staff of Black and Ethnic Minority origin fall across more senior grades but, as the information in question constitutes sensitive personal data under the Data Protection Act 1998 ('DPA'), I am unable to identify these grades as the disclosure of this information could lead to the staff in question being identified. A full explanation of the reasoning behind this decision can be found below in response to question 6.
4. During the period 1 April 2010 to the time of your request, 13 staff were promoted in the Assembly, with one (7%) of those being of Black and Ethnic Minority origin.
5. The 15 staff that have identified themselves as of Black and Ethnic Minority origin are all based in Cardiff.

Turning to question 6 of your request, I am unable to provide a breakdown of Black and Ethnic Minority origin staff by grade beyond the information I have disclosed in response to question 3 above. The information is exempt from disclosure under section 40 of the Freedom of Information Act which is the exemption for personal data. The reason for this decision is set out in Appendix A.

The National Assembly for Wales Commission publishes an Annual Equality Report and this is scrutinised by the Assembly's Equality of Opportunity Committee. The Commission's Annual Equality Report for 2010, and other useful equalities information in relation to Assembly Commission activity, can be found via the following link:

[National Assembly for Wales | About Us | Equalities](#)

Page 56 of the Annual Equality Report for 2010 (available via the above link) sets out equality statistics in relation to Assembly recruitment during that year.

The Commissioner for the Sustainable Assembly, Lorraine Barrett, with the Commission's Chief Executive, Claire Clancy, and Equalities Manager, Holly Pembridge, gave evidence to the Equality of Opportunity Committee on 1 February 2011 in relation to the 2010 Report. The papers for the meeting and transcript can be found via the following link:

[Assembly | Business | Equality of Opportunity Committee](#)

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/abt-foi/abt-foi-cop-pub.htm> If you have any questions regarding this response please contact me.

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.assemblywales.org/conhome/con-complaint.htm> - 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

Yours sincerely

Alison Rutherford  
Access to Information Coordinator  
National Assembly for Wales

## Appendix A

The reason for this decision is set out as follows.

Section 40 of the Freedom of Information Act 2000 ('FOIA') sets out an exemption from the right to receive requested information if that information is personal data otherwise protected by the DPA. I have considered whether your request for information, in question 6, contains information that amounts to the personal data of a third party, and whether releasing it would be in breach of the DPA.

Personal data is defined in Section 1(1) of the DPA as:

“personal data” means data which relates 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.

I have concluded that, in this instance, the information requested contains third party personal data in that the nature of the information, taken with other easily accessible information, would serve to identify individual data subjects. Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles. Schedule 1 of the DPA sets out these principles, and I consider the principle being most relevant in this instance is the first:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and.

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

Section 2 of the DPA defines sensitive personal data as personal data consisting of, in this case, information as to:

(a) the racial or ethnic origin of the data subject.

In assessing whether the proposed processing would be fair, consideration must be given to the reasonable expectation of the data subject in relation to the use of the data, including any specific statements as to the manner and purpose of the processing. The sensitive personal data in question was captured via the Assembly's internal equality and diversity staff monitoring system. This is administered via the staff intranet, and the relevant homepage contains the following statement:

**“The information provided will be treated in the strictest confidence, and will not be passed on to anyone in such a way that it is associated with, or identifies, you or any other individuals.**

Only a very small number of staff in HR can access your personal information in order to run off statistical reports. An individual’s personal information cannot be seen by their line manager, colleagues or members of the Management Board.”

It is clear, in my opinion, that the data subjects, whose sensitive personal data falls to be considered under the above request, had a reasonable expectation that the data would not be disclosed, nor would their identities be revealed. Additionally, a strong expectation of confidence attaches to the information, due to the wording of the above statement, and its disclosure could amount to an actionable breach of confidence, which would render the processing, by way of disclosure, unlawful in this context.

Notwithstanding that the processing is likely to breach the first principle, in that it would be both unfair and unlawful, it is also instructive to consider the application of Schedules 2 and 3. As the information in question constitutes sensitive personal data, it is first necessary to establish if any condition in Schedule 3 is met, since failure to apply a condition in this regard would render a consideration of the conditions in Schedule 2 redundant.

The first and ninth conditions of Schedule 3 would, in my opinion, be most relevant in this instance:

1 The data subject has given his explicit consent to the processing of the personal data.

And,

9(1) The processing—

(a) is of sensitive personal data consisting of information as to racial or ethnic origin,

(b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and

(c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.

The act of approaching the relevant data subjects to obtain explicit consent in line with condition 1 above would, in itself, be classed as ‘processing’ under the DPA. Since the monitoring information in question is sensitive personal data, and was provided by the data subjects in confidence and with the clear expectation they would not be approached about their responses,

such processing would have to be justified under one of the other relevant conditions, in this case under condition 9 above. However, approaching the data subjects for permission to disclose their sensitive personal data to a third party is not likely to be classed as fair (or lawful), and is not in furtherance of condition 9(1)(b). Thus, in my judgment, such consent cannot be sought in this instance.

Turning to the application of condition 9 as grounds for disclosing the sensitive personal data without explicit consent, I reiterate my opinion that such processing is not in furtherance of condition 9(1)(b), in that such disclosure is not “necessary” to enable the National Assembly to achieve the aim of promoting and maintaining equality. Such an activity, in this instance, relates to the internal monitoring and other activities the Assembly would undertake to achieve the stated aim, and the disclosure of sensitive personal data to a third party is not otherwise necessary to achieve this aim.

As I have set out above, due to the fact the data in question constitutes sensitive personal data, the failure to meet any of the conditions in Schedule 3 renders a consideration of the conditions in Schedule 2 redundant and, for this reason, I will not set out any such consideration here.

Having given this part of your request very careful consideration, and for the reasons stated above, I believe that processing the requested data, by way of disclosure, would breach the first data protection principle. Accordingly, I am withholding the information relevant to question 6, under section 40 of the FOIA.