



Non-disclosure agreements

26 January 2022

Request for Information.

Thank you for your request received on 10 December in which you asked:

- 1. I would like to know how many non-disclosure agreements have been concluded by Members of the Senedd (previously Assembly Members) with former members of their staff since 2011.*
- 2. Could you please break the information down by the employing Members political group affiliation and include any amounts by year.*

Please find our response to your questions below.

- 1. I would like to know how many non-disclosure agreements have been concluded by Members of the Senedd (previously Assembly Members) with former members of their staff since 2011.*

14 support staff have entered into non-disclosure agreements (which are now referred to as settlement agreements) since 2011. Please note that our records only go back as far as 2013.

- 2. Could you please break the information down by the employing Members political group affiliation and include any amounts by year.*

I can confirm that we hold the information requested. However, a full disclosure will not be made because the information held is exempt from disclosure under the Freedom of Information Act 2000 (FOIA). Two exemptions apply which, in brief, are as follows:

Senedd Cymru
Bae Caerdydd
Caerdydd, CF99 1SN

Welsh Parliament
Cardiff Bay
Cardiff, CF99 1SN
Ffôn/Tel: 0300 200 6224

E-bost/Email: Ceisiadau-gwybodaeth@senedd.cymru
Information-request@senedd.wales

- section 40 - disclosure of personal data would be in breach of the United Kingdom General Data Protection Regulation (UK GDPR); and
- section 41 - the information includes confidential information.

Fuller details of the exemptions which have been applied, and the reasons for their application, are set out in the **Annex** to this letter.

In order to meet our obligations under FOIA, we have provided you with globalised figures for the period that information is held, broken down per Senedd group affiliation. We have been unable to provide you with the total paid in relation to Independent Members, as to do so would leave individuals identifiable and disclose confidential information.

Period	Senedd Group	Total Amount Paid (*)
2013-2022	Labour	£63,949.83
2013-2022	Conservatives	£ 9,388.80
2013-2022	Plaid Cymru	£35,585.00
2013-2022	UKIP	£22,859.00

* Figures include all contractual payments such as holiday pay accrued but not taken and payment in lieu of notice.

Yours sincerely

Buddug Saer
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

Annex

Section 40 FOIA: disclosure of personal data would be in breach of the UK GDPR

The definition of personal data is set out in Article 4 of the UK 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”.

Some of the information requested is captured by this definition. This is because to disclose the information in the manner requested would leave some individuals identifiable. By rendering them identifiable, it would lead to the disclosure of specific personal information relating to any agreement they have entered into.

Personal information is exempt from disclosure under section 40(2) and section 40(3A)(a) of the FOIA where disclosure would contravene one or more of the data protection principles set out in the UK 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 UK 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 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 disclosure would be unfair.

Support staff are employed directly by the Member of the Senedd and dismissals are dealt with by the individual Member unless advice is sought from the Senedd Commission's Members' Business Support team. Employment issues, especially dismissals, can be extremely sensitive and distressing for those involved. As such, they are inherently private by nature.

Where a settlement agreement is negotiated, information is processed on the basis of confidentiality and non-disclosure. As such, there is no reasonable expectation on the part of the individuals involved that their personal information will be made public. This includes the detail of their remuneration as part of signing such an agreement. To disclose information by way of the breakdown requested would lead to the disclosure of personal data, particularly specific details relating to individual settlement agreements which, when coupled with other information, would be used to identify specific individuals.

Notwithstanding my view as to fairness, I went on to consider Article 6 of the UK 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 legitimate public interest in transparency and accountability in general. However, in our view it is not necessary to disclose personal information in order to meet that legitimate interest. That interest is met in this particular instance by the disclosure of globalised figures, broken down per Senedd group affiliation.

In considering the balancing exercise, it is also our view that the legitimate interest in disclosure does not outweigh the interests or fundamental rights and freedoms of the data subjects involved. As outlined above in regard to fairness, there is no reasonable expectation on the part of data subjects that their personal data will be made publicly available, in particular due to the non-public facing nature of their role and the basis of confidentiality on which settlement agreements are negotiated. To disclose information in contrary to that expectation could lead to unnecessary or unjustified distress on their

part, as well as damage the trust they are able to place in the Senedd Commission when we handle their personal data.

Unlike their employer, support staff to Members of the Senedd do not hold a public facing role. They do not, therefore, have the same expectation of public scrutiny and accountability. In any case, they are employed directly by the Member of the Senedd and would not expect their information to be disclosed by the Senedd Commission. Whilst Members of the Senedd, as elected representatives, must expect a higher level of scrutiny, it is not considered that this outweighs the public interest in protecting the interests or fundamental rights and freedoms of other data subjects involved.

Therefore, our conclusion is that the lawful basis under Article 6(1)(f) of the UK GDPR is not available to us to disclose personal information. However, in order to provide you with information relating to your request and aid accountability, we have provided you with globalised figures broken down per group affiliation.

Section 41 FOIA: information provided in confidence

Section 41 exempts information from disclosure where release would be an actionable breach of confidence. It says:

“Information is exempt information if—

- a) it was obtained by the public authority from any other person (including another public authority), and
- b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person...”

This exemption qualifies the right of access under FOIA by reference to the common law action for ‘breach of confidence’. According to that action, if a person who holds information is under a duty to keep that information confidential (a ‘duty of confidence’), there will be a breach of confidence if that person makes an unauthorised disclosure of the information, which includes a disclosure under FOIA.

A duty of confidence can arise due to the confidential nature of the information itself or the circumstances in which it was obtained. Some of the information held was provided in confidence by external third parties. Settlement agreements are negotiated and agreed

on the basis of confidentiality and non-disclosure. To disclose specific details relating to the terms of those agreements would constitute a breach of confidence that is actionable.

The terms of this exemption are such that it is necessary to determine whether there would be a public interest defence to a breach of confidence. We have done so and consider that the public interest in maintaining confidentiality should prevail. Our consideration included the following points:

- There is a general public interest in ensuring transparency and accountability;
- However, there is also a wider public interest in preserving the principle of confidentiality, as well as taking into account the impact of disclosure on the confider and other affected parties;
- Any disclosure would be likely to undermine the trust between the Senedd Commission and those third parties who provide information to it. Maintaining trust and preserving the free flow of information is necessary to enable the Senedd Commission to perform its statutory duty of providing the property, staff and services required for the Senedd's purposes, including providing advice where appropriate.