

Refusal Notice – Section 40(2) Freedom of Information Act 2000

Section 40(2) of the Freedom of Information Act 2000 provides that:

- “(2) Any information to which a request for information relates is also exempt information if—*
- (a) it constitutes personal data which do not fall within subsection (1), and*
 - (b) either the first or the second condition below is satisfied.*
- (3) The first condition is—*
- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—*
 - (i) any of the data protection principles, or...*”

In this case we believe that disclosure of the information would result in a breach of the first data protection principle, as stated in the Data Protection Act 1998 (the DPA):

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”.*

The information that you have requested is sensitive personal data, therefore, for the processing to be fair and lawful it must meet at least one of the conditions in Schedule 2 and one of the conditions in Schedule 3 of the DPA. In this case, we do not believe that any of the Schedule 3 conditions are applicable to the processing (i.e. the disclosure) of the sensitive personal data in question, which leads us to conclude that it would be unlawful to disclose the information requested.

As a result, we are refusing the elements of your request relating to naming the schools where claims of disability discrimination have been registered with The Special Educational Needs Tribunal of Wales (SENTW) against, under Section 40(2) of the Freedom of Information Act 2000.

This exemption is not subject to the public interest test.

You have the right to request an internal review of our decision to apply this exemption; details of how to do this are provided in the letter that accompanies this refusal notice.

2nd October 2017