

Appendix B

Section 40(2): Personal information

The 'GWRG Minutes' and 'Trans work update for Board' documents contain the names of Commission employees which amount to personal data.

Section 40(2) of the Freedom of Information Act (as modified by Schedule 19 Part 1 Paragraphs 55-64 of the DPA2018) provides that any information to which a request for information relates is exempt information if it constitutes personal data relating to an individual that is not the requestor, and disclosure would:

- breach any of the data protection principles,
- contravene the right to object to processing, or
- be in conflict with the exemptions applicable to subject access requests

It is considered that disclosure of some of the personal data described above, to the world at large, could breach the first data protection principle. The first principle provides that personal data shall be processed lawfully, fairly and transparently.

Lawful, fair and transparent

In considering whether it would be lawful, fair and transparent to disclose information which can identify other individuals, we have carried out a balancing test, taking into account the following factors:

Factors that support disclosure

- The overriding FOIA principle of transparency and accountability is widely understood and accepted within public authorities.
- The most senior staff have an expectation that their names may be shared publically.

Factors that support withholding

- Less senior staff have a reasonable expectation that their personal data would not be disclosed to the world at large.

- Disclosing this information may cause harm or distress given the nature and context of the information.

We have considered whether it is necessary to disclose the requested information into the public domain in order to meet the identified legitimate interest of understanding the functioning of the Gender Reassignment Working Group and have determined that:

- It **would** be fair, lawful and transparent to disclose:
 - Names of Directors
- It **would not** be fair, lawful and transparent to disclose:
 - Names of junior staff and junior managers

Where we have determined that disclosure would not be fair, lawful and transparent, we are engaging section 40(2). Section 40(2) is an absolute exemption and there is therefore no requirement to conduct a public interest test. Accordingly this information is withheld.