

Date: 2 March 2021

Ref: 024_rowlands_stonewall

Dear Sir/Madam

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at Section 1(1)(a) is to confirm or deny whether the information specified in the request is held. The second duty at Section 1(1)(b) is to disclose information that has been confirmed as being held.

Your request for information received on 7 February 2021 has now been considered and I can confirm that Glyndŵr University does hold the information that you have requested in part but we will not be providing it all to you as some is exempt from disclosure.

Where exemptions are relied upon, Section 17 of Freedom of Information Act requires that we provide the applicant with a notice which:

- A) States that fact
- B) Specifies the exemption(s) in question; and
- C) State (if that would not otherwise be apparent) why the exemption applies

Section S40 – Personal Information

We are not obliged, under section 40(2) of the Act, to provide information that is the personal information of another person if releasing would contravene any of the provisions in the Data Protection Act 2018 and/or the General Data Protection Regulations. In coming to this decision, the University has had regard to the following guidance from the Information Commissioners Office:

- The guide to Freedom of Information
- Personal information (section 40 and regulation 13) Freedom of Information Act
- ICO guidance relating to the UK General Data Protection Regulations (UKGDPR)
- The UK General Data Protection Regulations (UKGDPR)
- The Data Protection Act 2018
- The FOIA 2000

Reasons

For information, applications made under the FOI Act are totally independent from any other process operated by a public authority and any disclosure of recorded information under this Act is deemed as a disclosure to the world and cannot be a disclosure of information to any single individual or company such as yourselves. This means that once information has been released under the Act it becomes a matter of public record and we have to make that information available to any member of the public who may wish to view it. This means that the University must consider the consequences of disclosure to the world at large, and not just the impact of providing the documentation to the applicant and as such must consider whether the information requested is suitable for disclosure to anyone and everyone.

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Personal data of a third party is exempt from disclosure under Section 40(2) of the Freedom of Information Act 2000 if its disclosure to a member of the public would contravene any of the Data Protection Principles.

The information which is subject of this exemption is the names, contact details and visuals contained within the documents requested.

The University considers that disclosure would breach the first Data Protection Principle which requires personal data to be "processed lawfully, fairly and in a transparent manner".

Article 5(1) of the UKGDPR says:

1. Personal data shall be:
 1. Processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness, transparency')

Recital 39 of the UKGDPR states, in relation to the data protection principles:

1. *Any processing of personal data should be lawful and fair.*
2. *It should be transparent to natural person that personal data concerning them are collected, used, consulted or otherwise processed and to what extent the personal data are or will be processed*
3. *The principle of transparency requires that any information and communication relating to the processing of those personal data be easily accessible and easy to understand, and that clear and plain language is used.*
4. *That principles concerns, in particular, information to the data subjects on the identity of the controller and the purposes of the processing and further information to ensure fair and transparent processing in respect of the natural persons concerned and their right to obtain confirmation and communication of personal data concerning them which are being processed.*
5. *Natural persons should be made aware of risks, rules, safeguards and rights in relation to the processing of personal data and how to exercise their rights in relation to such processing*
6. *In particular, the specific purposes for which personal data are processed should be explicit and legitimate and determined at the time of collection of the personal data*
7. *The personal data should be adequate, relevant and limited to what is necessary for the purposes for which they are processed.*
8. *This requires, in particular, ensuring that the period for which the personal data are stored is limited to a strict minimum*
9. *Personal data should be processed only if the purpose of the processing could not reasonable be fulfilled by other means*
10. *In order to ensure that the personal data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review*
11. *Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted.*
12. *Personal data should be processed in a manner that ensures appropriate security and confidentiality of the personal data, including for preventing unauthorised access to or use of personal data and the equipment used for the processing.*

The ICO's guidance on Article 5(1) of the UKGDPR states:

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Processing of personal data must always be fair as well as lawful. If any aspect of your processing is unfair you will be in breach of this principle- even if you can show that you have a lawful basis for the processing.

In general, fairness means that you should only handle personal data in ways that people would reasonably expect and not use it in ways that have unjustified adverse effects on them, You need to stop and think not just about how you can use the personal data, but also about whether you should.

As stated above, in this case the personal data which the University considers exempt is the names, contact details and visuals contained within the documents requested.

The University considers that the staff and students can reasonably expect that their identities should not be disclosed into the public domain.

The balance between the legitimate public interest in disclosure and the rights and freedoms of the individuals concerned in this particular case supports a conclusion that disclosure would not be fair or lawful in this case on the basis of the grounds set out above.

The University believes that disclosure of the personal information of the withheld information redacted would give rise to actionable breach of the first data protection principle, which states that personal information must be processed lawfully, fairly and in a transparent manner. The conditions for processing personal information are largely based on the 'necessity' to process the personal information and the University does not consider the disclosure of the information to be necessary. Neither does the University have the consent of the individuals concerned to release their personal data into the public domain.

Section S43 – Commercial Interests

The Information Commissioner's guidance explains that organisations compete by offering something different to their rivals.

Placing the requested information into the public domain would reveal the University's inclusive practices and processes which may give another organisation an advantage within the Workplace Equality Index if disclosed or shared. The University's future competitive edge would be jeopardised. As such the University considers that the release of the information would have a real and significant potential to detrimentally impact its ability to operate in a competitive market, prejudice its current and future planning and could consequently cause irreparable damage to its future business.

The Information Commissioner's guidance explains that very often, in a commercial environment, the timing of the disclosure will be of critical importance. The application of any exemption has to be considered in the circumstances that exist at the time the request is made, and circumstances (for example market conditions) will change over time, and through this passage of time information generally becomes less commercially sensitive. The University recognises the justification for this argument, however in this instance the University believes that the information would be valuable commercially as it would give a rival an insight which would assist with informing and formulating their own business plans.

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The University is satisfied that the information requested would be likely to prejudice its commercial interests, however the exemption can only be maintained if the University believes the public interest in withholding the information outweighs the public interest in disclosing it.

Please see details of the public interest test below.

The University recognises that the release of such information would facilitate University transparency and demonstrate the use of, and accountability of resources; therefore enabling the public to have an increased understanding of the University (and is therefore of benefit to the community), which in turn would generate confidence in the integrity of the procedures involved in decision making. Instances that strengthen the argument for release are situations where there is evidence or suspicion of wrongdoing, however in this instance there is no wrongdoing (or suspicion). The release of raw information can also provide the public with details which would allow for scrutiny and removes the potential for spin and manipulation of facts.

The University however believes that there is also a strong public interest in ensuring the University is able to operate effectively and in a fair environment, and that there is a level playing field for all parties and that there is fair competition for public sector operations; as this in turn has an effect on how the University operates.

To summarise the public interest test: The University has considered all the relevant factors in the public interest test and has reached the conclusion that the benefit to the public in applying the exemption outweighs the public interest in releasing the information requested, as a result of the prejudices and losses that would potentially affect the University.

Therefore in conclusion, the University has reached the decision that the release of the information requested would be likely to be prejudicial to the commercial interests of the University, and that the public interest in withholding the information is greater than the public interest in releasing the information, and as such the information would be withheld under section 43 of the Freedom of Information Act.

- 1. Any application you made in 2019 or 2020 to be a “Stonewall Diversity Champion” or to be included on Stonewall’s “Workplace Equality Index,” including any attachments or appendices to those applications. Please redact personal details if necessary.**

Please find attached a redacted (with extractions of totally redacted pages) version of our submission - submitted in 2019. We did not make a submission in 2020. See Exemption S40 above for justification.

- 2. Any feedback you received in 2019 or 2020 from Stonewall in relation to either application or programme.**

Information withheld – see Exemption S43 above for justification.

- 3. Any other communication you have received from Stonewall in 2019 or 2020 unless privileged or otherwise exempt from disclosure (but if you claim privilege or exemption in relation to any material, please say in broad terms what the material is and the basis on which you claim to be entitled to withhold it).**

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Please find attached relevant emails (redacted). See Exemption S40 for justification.

- 4. Full details of any equality impact assessment you carried out connected with any of these applications (including any equality impact assessment carried out prior to an earlier application of the same kind, if no further assessment was done).**

Information not held.

- 5. Details of the total amount of money you paid to Stonewall (i) in 2019; (ii) in 2020, whether or not as payment for goods or services.**

2019 = £2,734

2020 = £2,500

- 6. Whether you intend to continue your membership of any Stonewall scheme in the future, and if so which.**

Yes - WEI

If you are dissatisfied with the handling of your request or wish to request an internal review please contact the Freedom of Information Officer at foi@glyndwr.ac.uk within 40 days of receiving the University's response.

A senior member of staff, who has not been involved with the request, will undertake an internal review to ensure that due process has been followed and to determine whether or not sound reasoning in line with the FOIA or EIR has been followed. You may raise a complaint where you believe we have:

- Failed to respond to your request within the time limits (normally 20 working days)
- Failed to tell you whether or not we hold the information
- Failed to provide the information you have requested
- Failed to explain the reasons for refusing a request
- Failed to correctly apply an exemption or exception

You will be informed of the outcome of the internal review within 40 working days, in line with the Information Commissioner's guidance. The Review will either uphold the original decision, provide additional explanation of the exemption/exception applied or release further information, if it is considered appropriate to do so.

You can also complain to the Information Commissioner at:

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF www.ico.org.uk

Yours sincerely

Freedom of Information
Glyndŵr University

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