

U Winfield

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Ref: 11674 / 14872

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Date: 14 June 2021

Dear U Winfield

**Subject: Freedom of information request**

I have now completed your request for an internal review of the way in which your request for information was handled.

Your request was as follows:

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.
2. Any feedback you received in 2019 or 2020 from Stonewall in relation to either application or programme.
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).
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).
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.
6. Whether you intend to continue your membership of any Stonewall scheme in the future, and if so which.'

On 8 March 2021 you clarified your request as follows:

*'You are hinting that there has been a lot of communication with Stonewall.*

*Q1: Can you please send me the original application form(s) for 2019 and/or 2020 for the Stonewall Diversity Champion or the Workplace Equality Index? These may be long document(s)! If you cannot, then can you please just tell me whether you made an application for one or either or both scheme(s) and what year(s), please?*

*Q2 and Q3: Again, the feedback may be extensive. Can you please say in broad terms what the feedback is about?*

*You seem to have "condensed" Q2, Q3 and Q4 in my original Fol request. You have not copied Q2, Q3 and Q4 correctly from my request. Q3 is missing in your copy.*

*Q4: Did you carry out an Equality Impact Assessment for the application(s)?*

*Q6: I am interested in the two Stonewall schemes mentioned in Q1, please.'*

In your request for an internal review, you stated:

*I am sorry, but I would like an internal review of this decision. I want the head of Fol requests to look carefully at my request and the reasons given for refusing it.*

I have carefully and objectively reviewed the steps followed in processing your request for information and I have concluded that these did not meet the steps required by the NHS Business Services Authority's procedures at the time of your request.

I have decided that the request was not vexatious.

The request does have some vexatious factors:

- It is seeking to undermine the role of NHSBSA as an Equality Champion.
- It forms part of a wider campaign to disrupt many public authorities' relationship with Stonewall.
- It is a misuse of Freedom of Information legislation to target Stonewall.

However, these factors need to be balanced against the following considerations. At the time the original FOI response was issued there was:

- No disproportionate burden on the NHSBSA in responding to the request.
- A public interest purpose to the request.
- A lack of evidence of a history of inappropriate requests to the NHSBSA.
- No abusive or aggressive language used in the request.

It is concluded on balance that this exemption does not apply.

Consequently, a revised response is being provided.

## **Application to be Stonewall Diversity Champion (SDC)**

Please note that becoming a SDC does not involve/require an application to be submitted, and therefore this information is not held. The NHSBSA submitted an application in 2019 to be included in the Workplace Equality Index (WEI).

## **WEI 2020 Submission/Application**

I am writing to advise you that due to the ongoing pandemic, the NHSBSA did not submit an application to the WEI in 2020. Please see <https://stonewallsubmit.fluidreview.com> for further details.

The remaining response to this request therefore relates only to the 2019 WEI application.

### **Question 1**

The information you requested is being withheld as it falls under the following exemptions in the Freedom of Information Act:

#### **a) Personal Information**

Please be aware that I have decided not to release personal data and special category personal data relating to NHSBSA staff as this information falls under the exemption in section 40 subsections 2 and 3 (a) of the Freedom of Information Act. This is because it would breach the first data protection principle as:

- a) it is not fair to disclose NHSBSA staff special category personal details to the world and is likely to cause damage or distress.
- b) these details are not of sufficient interest to the public to warrant an intrusion into the privacy of NHSBSA staff.

Annex A to this letter sets out the exemption in full.

#### **b) Commercial Interests**

The remainder of the requested information is commercially sensitive information about Stonewall's assessment of NHSBSA's progress against the LGBTQ agenda. The exemption under FOI section 43(2) is engaged because disclosure would likely damage Stonewall's commercial interests as the information could give other organisations entering the WEI a competitive advantage.

In applying this exemption, NHSBSA has had to balance the public interest in withholding the information against the public interest in disclosure. Annex B of this letter sets out the exemption in full, as well as the factors considered when deciding that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Question 2**

Feedback supplied by Stonewall was received in confidence under the terms of the Stonewall data protection and privacy policy. The NHSBSA agreed to abide by this when submitting the WEI application. Such information is therefore being withheld as it falls

under the exemption in section 41(1) 'Information provided in confidence' of the Freedom of Information Act. Annex C of this letter sets out the exemption in full.

### **Question 3 and 4**

I am writing to advise you that this information is not held.

### **Question 5**

- (i) Annual subscription payment of £3,000.00 including VAT  
Conference attendance £380.70 including VAT
- (ii) Annual subscription payment of £3,000.00 including VAT

### **Question 6**

An annual subscription payment of £3,000.00 including VAT as been paid this year for continued membership of Stonewall's Diversity Champions programme.

The information supplied to you continues to be protected by the Copyright, Designs and Patents Act 1988 and is subject to NHSBSA copyright. This information is licenced under the terms of the Open Government Licence detailed at:

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The Information Commissioner can be contacted at:-

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Tel: 01625 545 745  
Fax: 01625 524 510

Email: [enquiries@ico.gsi.gov.uk](mailto:enquiries@ico.gsi.gov.uk)

If you have any queries about this letter, please contact me. Please quote the reference number above in any future.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Chris Gooday', is centered within a light blue rectangular box.

**Chris Gooday**  
**Information Governance Manager**

cc     Marc Compton, Head of Security and Information Governance

## Annex A

### Section 40 - Personal information

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if -

- a. it constitutes personal data which does not fall within subsection (1), and
- b. the first, second or third condition below is satisfied.

(3A)

The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

- (a) would contravene any of the data protection principles, or
- (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

(3B) The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).

(4A) The third condition is that—

- (a) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or
- (b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.

(5A) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(5B) The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—

(a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—

(i) would (apart from this Act) contravene any of the data protection principles, or

(ii) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded;

(b) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene Article 21 of the GDPR (general processing: right to object to processing);

(c) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for confirmation of whether personal data is being processed, the information would be withheld in reliance on a provision listed in subsection (4A)(a);

(d) on a request under section 45(1)(a) of the Data Protection Act 2018 (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section

(6) In this section—

“the data protection principles” means the principles set out in—

(a) Article 5(1) of the GDPR, and

(b) section 34(1) of the Data Protection Act 2018;

“data subject” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“the GDPR”, “personal data”, “processing” and references to a provision of Chapter 2 of Part 2 of the Data Protection Act 2018 have the same meaning as in Parts 5 to 7 of that Act (see section 3(2), (4), (10), (11) and (14) of that Act).

(7) In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.”

## Annex B

### Section 43 - Commercial interests

- (1) Information is exempt information if it constitutes a trade secret.
- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"><li>public interest in disclosure of information concerning NHSBSA's progress against LGBTQ and inclusivity</li></ul>	<ul style="list-style-type: none"><li>Disclosure would weaken Stonewall's ability to participate competitively in any future commercial activity as organisations would be less willing to engage with its services if detailed submission and feedback information were shown to be subject to disclosure and so would lead to a loss of income for Stonewall.</li><li>Disclosure of this information would prejudice Stonewall's commercial interests, by disclosing sensitive information would likely be used by other organisations making a WEI submission to gain a competitive advantage and undermine confidence in the WEI</li></ul>

### Reasons why public interest favours withholding information

- I consider that the public accountability in releasing this information is outweighed by the potential detrimental effect on Stonewall.



## **Annex C**

### **Section 41 – Information provided in confidence**

(1) Information is exempt information if-

(a) it is 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 the Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

(2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1) (a) would (apart from this Act) constitute an actionable breach of confidence.