

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 24 October 2022

**Public Authority:** Public Services Ombudsman for Wales  
**Address:** 1 Ffordd yr Hen Gae  
Pencoed  
CF35 5LJ

**Decision (including any steps ordered)**

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1. The complainant has requested for information from the Public Services Ombudsman for Wales ("PSOW") relating to PSOW case reference 201900276. The PSOW refused the request under section 44 of FOIA.
2. The Commissioner's decision is that PSOW has correctly applied section 44 of FOIA.
3. The Commissioner does not require the public authority to take any steps.

**Request and response**

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4. On 24 July 2022, the complainant wrote to PSOW and requested information in the following terms:
5. "Could you provide please all Correspondence Between [sic] ("name redacted"), ("name redacted") and BCUHB re PSOW Case Ref 201900276".
6. PSOW refused to comply with the request on the basis of section 44(1) (a) of FOIA because another Act prevents its disclosure. PSOW stated that disclosing the information would breach section 69(2) of Public Services Ombudsman (Wales) Act 2019 ("PSOWA").
7. The complainant requested an internal review in their letters of 19 and 30 August 2022, in which they provided the scope of their information

request to cover information obtained during the investigation process up to the point PSOW issued a draft report. Following an internal review PSOW upheld its original decision to withhold the information under section 44(1)(a) of FOIA.

8. PSOW also considered the complainant's request under the provisions of the Data Protection Act 2018. However, for the purposes of this decision notice, the Commissioner's investigation is focused on the public authority's refusal to comply with the information request under the FOIA only.

### **Reasons for decision**

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9. The following analysis sets out why the Commissioner has concluded that the public authority was entitled to rely on section 44 of FOIA in this particular case.
10. Section 44 of FOIA allows a public authority to withhold information whose disclosure, otherwise than under FOIA, would breach another piece of legislation.
11. PSOW have explained in their response to the complainant's information request and the internal review that, section 69(2) of PSOWA is engaged because, in accordance with section 6 of PSOWA, section 6(3) require PSOW's investigations or actions to resolve the complaint to be carried out in private, and the disclosure of any information PSOW obtains is only allowed if one of the provisions set out in 69(2) is satisfied. The provisions do not include disclosure in response to a request under FOIA and hence the information cannot be disclosed.
12. PSOW have explained that disclosure of the information is prohibited by section 69(2) of PSOWA as the complainant's request was not seeking access to information relating to the settlement. Instead, their request was for access to information obtained during the investigation process prior to PSOW's final decision.
13. The Commissioner has noted the impact of disclosure on PSOW and their ability to settle matters in future, and accepts that disclosing the withheld information would prejudice the public authority's ability to perform its functions.
14. The Commissioner therefore finds that PSOW was entitled to rely on section 44(1)(a) of FOIA as a basis for not disclosing the withheld information. The exemption is absolute. This means that there is no requirement to consider whether the public interest in maintaining the

exemption outweighs the public interest in disclosing the requested information.

## Right of appeal

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15. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

16. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
17. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Esi Mensah**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**