

## **LAWFULNESS, FAIRNESS AND TRANSPARENCY TEST**

### **Application of FOI exemption Section 40(2) and EIR exception 12(3) 13(1)**

#### **DOF/2025-0693 ANNEX C**

A Lawfulness, Fairness and Transparency Test must be carried out by the Department of Finance when considering disclosure of third-party personal data which falls within the scope of an FOI or EIR request.

#### **FOI / EIR request**

For each of the Department of Justice four directorates, i.e. Access to Justice, Safer Communities, Justice Delivery, Reducing Offending, please identify the average days lost per staff year due to sickness for each of the previous three reported years.

Please provide a further breakdown to identify the average days lost per staff year due to sickness for each of the previous three reported years for each of the business areas within each of the four directorates.

Please provide the information in electronic format using my email to respond. I respectfully request that any fees associated with this Freedom of Information request be waived because the information sought is in the public interest. I believe the disclosure of this information will contribute to public understanding of government operations and promote transparency.

#### **Consideration of the personal data falling within the scope of the request**

Guidance from the Information Commissioner's office states that personal data only includes information relating to natural persons who:

- can be identified or who are identifiable, directly from the information in question; or
- who can be indirectly identified from that information in combination with other information.

#### **Description of personal data/issue(s) under consideration:**

In some areas the number of cases on which the analysis is based is too small to publish due to risk of identifying individuals (e.g. fewer than five members of staff with a sickness absence).

#### **Lawfulness**

Do either of the two lawful basis below, which allow for the disclosure of personal data, apply? **No**

- Consent:** This applies when the data subject(s) clear consent exists, allowing the department to disclose personal data falling within the scope of this request.
  
- Legitimate interests:** This applies when disclosure is necessary for the department's legitimate interests or the legitimate interests of a third party that overrides the data subject(s) rights and freedoms, particularly their right to privacy.

## **Conclusion**

Having considered all the information contained within the Lawfulness, Fairness and Transparency Test, the department has established that, on balance, there is no lawful basis for the disclosure of third-party personal data falling within the scope of the request (of which the requester is not the data subject).