TEMPLATE FOR APPLYING FOI SECTION 40(2)

DOF/2026-0099

The lawfulness, fairness and transparency test

Business areas are required to carry out a "lawfulness, fairness and transparency test" when considering the disclosure of third party personal data falling within the scope of a FOI or EIR request. **In most cases**, neither of the lawful basis outlined below will apply, however the business area must complete the test as evidence as having considered.

The steps are as follows:-

1. **Consider the Personal Data falling within the scope of the request**

   ICO guidance 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.

   The request is for:

Can I please request all electronic notes and records from all panel members relating to the sift of this matter?

   Brief description:
   The data held is in relation to where people could be identified which is considered personal, third party, special category data.

   Release of the requested information risks direct identification of individuals. As Data Controller, The Department cannot assume that the requester or the wider public does not hold other information which could be used in conjunction with this to further identify individuals.

2. **Lawfulness**

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

   ☐ **Consent:** We do not have the consent of individual(s) to share their information. Therefore, to release the requested information would risk identifying the individuals and would therefore contravene the data protection principles.

   ☐ **Legitimate interests:** Disclosure is not 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. The data subjects involved would have a reasonable expectation that this information would not be shared with the public at large.

The DoF Privacy notice states that we may process personal information for the purposes of detection and investigation of suspected or actual fraud, loss or crime, data matching under the National Fraud Initiative, staff monitoring and as required by other legislation. This request is based solely on the requester's private concerns as opposed to a pressing public interest that would necessitate transparency and disclosure of the information.

Consequently, if NICSHR was to comply with the request, it would, in effect, be making an unrestricted disclosure of personal data to the general public on the strength of the requester's private interests. This could constitute a disproportionate and unwarranted level of interference with the individuals' rights and freedoms – particularly their right to privacy and family life under the Human Rights Act 1998.

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 relating to the remaining panel members falling within the scope of the request (of which the requester is not the data subject).