

TEMPLATE FOR APPLYING FOI SECTION 40(2) OR EIR 12(3) 13(1)

DOF/2023-0262

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.

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:

“Please could you supply me with information for the period of the last 5 years (by year), for each government department, split by male/female

- *The number of absences due to work related stress for a period of less than 3 months*
- *The number of absences due to work related stress for a period of 3-6 months*
- *The number of absences due to work related stress for a period of longer than 6 months*

As well as for all the above how many of these absences resulted in a written warning and how many of those written warnings were appealed; and the number of those appeals that were successful. Again I would like these broken down by male and female.

If this response is too lengthy and exceeds the time limit specification I will accept the information for Department of Health alone.”

- Work related stress figures considerations across all NICS Departments, Annex B refers.

Due to the work activities involved, Department for Education (DE), Department of Health (DOH), Public Prosecution Service (PPS) & The Executive Office (TEO) have significantly less staff than some other

departments. As a result, the likelihood of staff in those four departments being identified (when combined with their staff absence figures) is greater. To provide this information as requested, could risk identifying an individual or group of individuals. Figures of less than 5 within the specific categories requested across those four departments have been recorded as <5 (to indicate there are less than 5 staff within the specific category requested), mitigating the risk of identifying the individuals involved.

- **Written Warnings considerations- DOH cases**
The number of written warnings within the scope of the request in DOH was 7. Due to the small numbers involved, a further breakdown of this figure by *male* and *female* could risk identifying an individual.
- **Appeals considerations- DOH cases**
The number of appeals within the scope of the request in DOH was < 5 (less than 5). Due to the small numbers involved, to provide more specific details on appeals related considerations could risk identifying an individual.

As Data Controller, The Department cannot assume that the requester does not hold other information, which could be used in conjunction with this to re-identify individuals.

ICO Guidance advises The DPA does not require anonymisation to be completely risk free – but the authority must be able to mitigate the risk of identification until it is remote, which it is not in this case. The risk of identification is reasonably likely therefore this information is being regarded as personal data.

The ICO has also previously agreed to this decision not to release personal information, which has the possibility of identifying individuals given the small scale of Northern Ireland and because the individuals concerned are internal.

Brief description:

The data held is personal, third party data but does not constitute special category data.

2. Lawfulness

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

- **Consent:** We do not have the consent of the colleagues to share details regarding their attendance management/appeal outcomes. Releasing the requested information in full 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.