

**Freedom of Information Act 2000 – Request Reference FoI/24/115**  
**Stonewall**

**1. Please send me your latest submission to the Stonewall Workplace Equality Index? Could you also provide the Stonewall response to your submission?**

Please see the attached PDF for the workplace equality index (WEI) of Cardiff and Vale University Health Board (the UHB).

The UHB believes that section 21 of the Freedom of Information Act 2000 applies for certain supporting documents of its WEI submission and is therefore refusing your request for these. Under section 21 of the Act, a public authority does not have to respond to a request if the information being sought is reasonably accessible to the applicant by other means. The UHB has applied this exemption to your request as the information you are seeking is available in the public domain. The supporting documents not available in the public domain have been included and can be found within the attached PDF. Under our section 16 obligation to advise and assist, I can confirm that the supporting documents omitted from this response can be found at the following weblinks:

- [Supporting Trans Staff Procedure 2019](#)
- [All Wales Special Leave Policy](#)
- [Equality, Inclusion and Human Rights Policy 2021](#)
- [Respect and Resolution Policy](#)
- [Strategic Quality Plan: Caring about Inclusion 2020–24](#)
- [Annual Report 2021–22](#)
- [Gender.Wales](#)
- [Cardiff and Vale University Health Board: News](#)

In respect of the feedback document issued by Stonewall in response to the UHB's WEI submission, the UHB owes a duty of confidence under common law to Stonewall. Disclosure under the Freedom of Information Act 2000 represents the release of information into the public domain. It follows that such disclosure of this feedback document may constitute an actionable breach of confidence in proceedings initiated by any person. Accordingly, the UHB will not be disclosing the WEI feedback provided by Stonewall, relying on section 41(1) of the Freedom of Information Act 2000 ('Information provided in confidence'). Section 41 of the Act constitutes an absolute exemption and so no public interest test is required.

Moreover, the UHB considers Stonewall's WEI feedback document to be exempt from disclosure under section 43 of the Freedom of Information Act 2000 ('Commercial interests'). This section of the Act sets out an exemption from the right to know if:

- the information requested is a trade secret, or
- release of the information is likely to prejudice the commercial interests of any person. (A person may be an individual, a company, the public authority itself or any other legal entity.)

This exemption was considered by the UHB when deciding whether to disclose information because it considered that in doing so there could be a significant risk in prejudicing the commercial interests of both the supplier and the UHB. As this is a qualified exemption, the UHB is required to complete a public interest test in deciding whether it is in the public's interest to withhold or disclose the information.

### **In favour of disclosure**

There is a public interest in transparency and in the accountability of spending of public funds. Furthermore, it is in the public's interest that public funds be used effectively and that public sector bodies obtain the best value for money when contracting for the provision of services.

### **Against disclosure**

It has been established that releasing the information sought under the Freedom of Information Act 2000 will give an unfair advantage to the UHB's competitors. There is a risk of disclosure prejudicing the commercial interests of the UHB by affecting its bargaining position with other employers. The WEI ranks organisations on the basis of its LGBTQ+ inclusivity as an employer. This enables the UHB to be competitive in the employment market for talent amongst those who value an inclusive employer, particularly those from the LGBTQ+ community. In disclosing the UHB's practices and feedback, the UHB is disadvantaging itself by revealing its good practices and weaknesses to other employers who are competing in the same employment market.

In releasing the feedback document into the public domain, the UHB would also be revealing the practices of Stonewall, an organisation with whom the UHB works to ensure workplace inclusivity. Providing details about Stonewall's expertise in promoting an LGBTQ+ friendly environment would likely have the effect of negatively impacting its commercial interests; Stonewall offers a paid-for service and could become commercially prejudiced should their competitors learn of the methods and practices used to encourage an inclusive and welcoming workplace environment, including offering a bespoke feedback report for assessing an organisation's policies and procedures relating to the LGBTQ+ community and beyond.

### **Decision**

The UHB considers that the public interest in withholding the information is greater than the interest in disclosing it and thereby giving an unfair commercial advantage to competitors of the UHB and of Stonewall. The UHB believes that disclosure of information in a manner which fails to protect the interests and relationships arising in a commercial context could have the effect of reducing the UHB's standing in a competitive employment market. The UHB anticipates prejudice to the pool of talent available to it by reason of its inclusivity practices being disclosed to its competitors in the employment market which would in turn damage the UHB commercially. The UHB further anticipates prejudice to Stonewall's commercial interests as a provider of expert knowledge of promoting an inclusive workplace. It was therefore decided that it is not in the public's interest to disclose this information.

## **2. Please send me all emails between your staff and Stonewall from 1 Jan 2023 to 1 Jan 2024?**

In completing a search for the information requested, the UHB has confirmed that this information is not centrally recorded or collated. To retrieve the information requested would require a manual search through individual records and the UHB considers that this would exceed the limit set within Regulations for responding to a request. The UHB has therefore relied upon the section 12 exemption of the Freedom of Information Act 2000 ('Exemption where cost of compliance exceeds appropriate limit') and is refusing your request.

The UHB has estimated that to complete the work needed to respond to this request would exceed the time limit as set within Regulations to respond to a Freedom of Information Act request. Under the Act there is an allowance of two and a half days, or 18 hours, to comply with a request and the cost limit set within the Fees Regulations for this amount of work (18 hours) is £450 for the UHB. The Fees Regulations specify that the cost of complying with a request must be calculated at the rate of £25 per hour.

## **3. Please could you send me a summary of all payments made to Stonewall from 1 Jan 2022 to 1 Jan 2024?**

After considering your request, the UHB considers this information to be exempt from disclosure under section 43 of the Freedom of Information Act 2000. This section of the Act sets out an exemption from the right to know if:

- the information requested is a trade secret, or
- release of the information is likely to prejudice the commercial interests of any person. (A person may be an individual, a company, the public authority itself or any other legal entity.)

This exemption was considered by the UHB when deciding whether to disclose information because it considered that in doing so there could be a significant risk in prejudicing the commercial interests of both Stonewall and the UHB. As this is a qualified exemption, the UHB is required to complete a public interest test in deciding whether it is in the public's interest to withhold or disclose the information.

### **In favour of disclosure**

There is a public interest in transparency and in the accountability of spending of public funds. Furthermore, it is in the public's interest that public funds be used effectively and that public sector bodies obtain the best value for money when contracting for the provision of services.

### **Against disclosure**

It has been established that releasing the information sought under the Freedom of Information Act 2000, to which the UHB is subject, will give an unfair advantage to Stonewall's competitors. Stonewall's empowerment programme is the leading training programme for ensuring all LGBTQ+ staff are accepted without exception in the workplace. This programme is important to Stonewall as it provides valuable income for the charity, while at the same time furthering its charitable objects. Disclosure of this information would be prejudicial to Stonewall's commercial interests as it would allow competitors access

to Stonewall's expertise in relation to inclusion work. There is a wide range of organisations who deliver training, guidance, and accreditation on LGBTQ+ inclusion. Organisations providing similar services are expected to do market research around their competitors, and would be likely to use any information gained in relation to Stonewall from Freedom of Information disclosures to their advantage, and to Stonewall's detriment.

Additionally, it would allow other organisations the benefit of Stonewall's expertise without purchasing the training. This deprives Stonewall of the income from such bodies and in turn the opportunity to assist with the improvement of their inclusion practices and, more widely, impacts on Stonewall's ability to achieve its charitable objects.

Furthermore, there is a risk of disclosure prejudicing the commercial interests of the UHB by affecting its bargaining position with suppliers. This in turn could lead to less effective use of public funds in future. The UHB believes that there is wider established public interest in suppliers not being prejudiced merely because they have contracted with a public sector body (as upheld in ICO decision notice FS50473543 *ICO v Royal Marsden Hospital Trust*).

## Decision

The UHB considers that the public interest in withholding the information is greater than the interest in disclosing it and thereby giving unfair commercial advantage to competitors of the supplier to which this information concerns. The UHB believes that disclosure of information in a manner which fails to protect the interests and relationships arising in a commercial context could have the effect of discouraging companies from dealing with the UHB because of fears that the disclosure of information could damage them commercially. This could consequently jeopardise the UHB's ability to compete fairly and pursue its function to bring forward development in the area and obtain value for money. It was therefore decided that it is not in the public's interest to disclose this information.

However, in accordance with a public authority's duty to advise and assist pursuant to section 16 of the Freedom of Information Act 2000, the UHB can disclose the membership fees paid between 1 January 2022 and 1 January 2024 was £3,000.00 for the financial year ending 2022, and £3,090.00 for the financial year ending 2023.