



Public Services Ombudsman (Wales) Act 2005

2005 CHAPTER 10

[^{F1}PART 2B

INVESTIGATION OF COMPLAINTS: SUPPLEMENTARY

[^{F1}Disclosure

Textual Amendments

- F1** Pts. 2A, 2B inserted (1.11.2014) by [Social Services and Well-being \(Wales\) Act 2014 \(anaw 4\)](#), s. 199(2), [Sch. 3 para. 2](#) (with [Sch. 3 para. 3](#)); S.I. 2014/2718, art. 2(b)

34X Disclosure of information

- (1) The information to which this section applies is—
- (a) information obtained by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of his or her functions—
 - (i) in deciding whether to begin an investigation,
 - (ii) in the course of an investigation, or
 - (iii) in resolving a complaint under section 3 or 34C;
 - (b) information obtained from an ombudsman mentioned in section 34U(7) by virtue of any provision of section 34U or a corresponding provision in an enactment relating to any of those ombudsmen;
 - (c) information obtained from the Commissioner for Older People in Wales by virtue of section 34V or 34W of this Act or section 16 or 17 of the Commissioner for Older People (Wales) Act 2006 (working with other ombudsmen);

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- (d) information obtained from the Welsh Language Commissioner by virtue of section 34V or 34W of this Act or section 22 of the Welsh Language (Wales) Measure 2011 (power to disclose information);
 - (e) information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (disclosure between Information Commissioner and ombudsmen).
- (2) The information must not be disclosed except—
- (a) for the purposes of deciding whether to begin an investigation;
 - (b) for the purposes of an investigation;
 - (c) for the purposes of resolving a complaint under section 3 or 34C;
 - (d) for the purposes of a statement or report made in relation to a complaint or investigation;
 - (e) for the purposes of any provision of section 34U, 34V or 34W;
 - (f) for the purposes of proceedings for—
 - (i) an offence under the Official Secrets Act 1911 to 1989 alleged to have been committed by the Ombudsman, a member of the Ombudsman's staff or other person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;
 - (ii) an offence of perjury alleged to have been committed in the course of an investigation;
 - (g) for the purposes of an inquiry with a view to the taking of proceedings mentioned in paragraph (f);
 - (h) for the purpose of proceedings under section 15 or 34J;
 - (i) in the case of information to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, to any person to whom the Ombudsman thinks it should be disclosed in the public interest;
 - (j) in the case of information to which subsection (3) applies, to the Information Commissioner.
- (3) This subsection applies to information if it appears to the Ombudsman to relate to—
- (a) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in subsection (4), or
 - (b) the commission of an offence mentioned in subsection (5).
- (4) The enactments are—
- [^{F2}(a) sections 142 to 154, 160 to 164 or 174 to 176 of, or Schedule 15 to, the Data Protection Act 2018 (certain provisions relating to enforcement);]
 - (b) section 48 of the Freedom of Information Act 2000 (practice recommendations);
 - (c) Part 4 of that Act.
- [^{F3}(5) The offences are those under—
- (a) a provision of the Data Protection Act 2018 other than paragraph 15 of Schedule 15 (obstruction of execution of warrant etc);
 - (b) section 77 of the Freedom of Information Act 2000 (offence of altering etc records with intent to prevent disclosure).]
- (6) No person may be called upon to give evidence in any proceedings (other than proceedings mentioned in subsection (2)) of information obtained by that person as mentioned in subsection (1)(a) or (b).

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Textual Amendments

- F2** S. 34X(4)(a) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 109\(2\)](#) (with ss. 117, 209, 210, [Sch. 20 para. 47\(1\)](#)); S.I. 2018/625, reg. 2(1)(g)
- F3** S. 34X(5) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 109\(3\)](#) (with ss. 117, 209, 210, [Sch. 20 para. 47\(2\)](#)); S.I. 2018/625, reg. 2(1)(g)

34Y Disclosure prejudicial to safety of State or contrary to public interest

- (1) A Minister of the Crown may give notice to the Ombudsman with respect to—
- any document or information specified in the notice, or
 - any class of document or information so specified,
- that, in the opinion of the Minister, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest.
- (2) If a notice is given under subsection (1), nothing in this Act is to be construed as authorising or requiring the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of his or her functions to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice.

34Z Protection from defamation claims

- (1) For the purposes of the law of defamation, the following are absolutely privileged—
- the publication of a matter, in the discharge of any of the Ombudsman's functions under this Act, by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;
 - the publication of a matter by a person in the discharge of functions under section 17;
 - the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Act, in communications between—
 - a listed authority, a member or co-opted member of a listed authority, an officer or member of the staff of a listed authority or another person acting on behalf of a listed authority or assisting it in the discharge of any of its functions, and
 - the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;
 - the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Act, in communications between—
 - a care home provider, domiciliary care provider or independent palliative care provider, an officer or member of staff of such a provider or another person acting on behalf of such a provider or assisting it in the discharge of any of its functions, and
 - the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;

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- (e) the publication of a matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Act, in communications between a person and an Assembly member;
 - (f) the publication of a matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Act, in communications between—
 - (i) the person, and
 - (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions.
- (2) For the purposes of subsection (1)(d)(i) a person is an officer of a provider if he or she has control or management of a provider which is not an individual or the affairs of such a provider.]

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