



Mr Wynne Jones
cj-editor@biggeesblog.cymru

26 July 2021

Dear Mr Jones,

STAGE 2 COMPLAINT RESPONSE

I am writing in response to a complaint the Welsh Government received from the **Information Commissioner's Office** (ICO), reference **IC-87082-T5D5**, on 17 May 2021. My response to this complaint was provided to you on 6 July 2021, setting out the WG position on the matters you had raised. You have contacted the Welsh government Complaints Unit under "Stage 2" of the complaints process with respect to one matter you consider to be unresolved.

Your complaint has been considered under the formal review process detailed in the Welsh Government's Complaints policy and procedure, which is available by post on request and on our website at: <https://gov.wales/complain-about-welsh-government>.

My role as formal reviewer at the final stage of the Welsh Government's complaints procedure is to consider what, if any, further actions can be taken to resolve matters, which is appropriate and proportionate to your complaint. At the same time, my review will add to the information already provided which discharges the request made of the Welsh Government by the ICO to take steps to address your data protection issues.

In my capacity as Data Protection Officer, I have considered whether the handling of your personal data was compliant with the UK General Data Protection Regulation (UK GDPR). Specifically, the UK GDPR sets out six principles which require that your personal data is processed lawfully, fairly and transparently, for a limited purpose, using the minimal data necessary, which is accurate, kept only for as long as is necessary and kept securely.

You have identified one outstanding issue you believe the Welsh Government should address:

My only remaining concern regarding the processing of personal data in Wales relates to the ongoing harvesting of human DNA [deoxyribonucleic acid] for genomic sequencing in conjunction with the Covid 19 RT-PCR testing process. As you are no doubt aware, DNA is classified as "personal data" as it is unique to an individual. Data subjects are not aware that their DNA is being harvested under the testing programme or how it is being used, and whether the DNA is stored in national or international databases. Additionally, data subjects are not aware of whether their DNA is being shared with private companies or how the personal data is being used by private companies. For example, is the DNA being provided to pharmaceutical companies currently developing, and delivering, gene-editing therapies [vaccines].

In answer to your concerns, I confirm DNA is "personal data" under the UK GDPR. However, PCR testing does not use DNA and no DNA is being "harvested". PCR testing uses RNA and this can also be "personal data" under the UK GDPR. However, PCR testing analyses the Covid-19 virus RNA and not the host's (data subject's) RNA. Specifically:

- PCR testing or sequencing for COVID-19 by NHS Wales or Light House Laboratories focuses on analysing genetic information of the pathogen (coronavirus RNA) and not human genetic material (human DNA). Therefore, personal data is not being collected and, consequently, is not being held, stored or shared.
- An endogenous human gene control (RNAseP) is used to help scientists understand if the extraction process and reaction of converting RNA to DNA has worked; this is an important part of RT-PCR. However, RNAaseP is less than 150 nucleotides long and looks exactly the same in all people, so it is impossible to differentiate a person from looking at the sequence. Therefore, it is not within the definition of personal data under the UK GDPR.
- Any use of personal data for a PCR test is explained in the Privacy Notice published by the Data Controller (Public Health Wales) and is fully transparent and freely available to data subjects at <http://www.wales.nhs.uk/traceprivacyanddataprotectioninformation>. PHW has also published its Data Protection Impact Assessment (available on the same web page).
- Nothing produced from RT-PCR could be sold for financial gain nor give specific information about any individual. In essence the 'data' is that of the pathogen and not the host (human).
- There are some research studies, like GenomiCC, that look at human genetic markers and susceptibility to infection, like COVID-19, but these have explicit enrolment, consent (by the data subjects) and ethical approval and are not part of the general PCR testing process.
- Vaccines are not a form of "gene therapy" as they are not designed to (and do not) alter or change your genes in any way.

To confirm my original position, the Welsh Government is not the Data Controller for the data processing relating to PCR testing. In addition, the Welsh Government has no legal responsibility to account for how the data processing is undertaken or to monitor or oversee the compliance with the UK GDPR of the organisations which are undertaking the processing. Under UK law, only the Data Controller is accountable and responsible for its own data processing and data protection compliance. The Welsh Government has no statutory or other oversight responsibility as data protection is a "reserved" matter, that is, powers have not been devolved to the Welsh Government so oversight responsibility rests with the UK Government. The UK Government exercises this oversight through its statutory regulator, the Information Commissioner's Office (ICO), which ensures compliance across the whole of the UK, including Wales.

On this occasion, I have chosen to provide you with the answers to the issues you have raised. However, in future, I intend only to respond to data processing enquiries which are within the remit of the Welsh Government as the Data Controller. Where the Welsh Government is not the Data Controller you are advised to contact the organisation which is the Data Controller or to raise the matter directly with the ICO as the UK Regulator.

Having taken all the circumstances into account, your complaint is not upheld.

If you are dissatisfied with my response to your complaint or if you feel that your complaint has not been properly considered, I should also remind you of your option to refer the matter to the Public Services Ombudsman for Wales who is independent of all government bodies, and can be contacted at:

Public Services Ombudsman for Wales

1 Ffordd yr Hen Gae

Pencoed

Bridgend

CF35 5LJ

Telephone: 0300 7900203

E-mail: ask@ombudsman-wales.org.uk

Website: Public Services Ombudsman for Wales

Alternatively, you have a right to complain directly to the Information Commissioners Office. You can submit a complaint on line at: <https://ico.org.uk/make-a-complaint/>. The contact details for the Information Commissioner's Office are:

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Telephone: 01625 545 745 or 0303 123 1113

Website: www.ico.org.uk

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Helen Morris'.

Helen Morris

Welsh Government Data Protection Officer