



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref ATISN 13195

24 July 2019

Dear ,

Request for Information – ATISN 13195

I received your clarification on 6 June regarding your request for information. You asked for or the following information in relation to 0.75 miles from junction 37 on both sides and in both directions of the M4 on 27 April 2018 -

1. Details of all incidents, reported issues, collisions, RTCs, accidents or closures in that area.
2. For all collisions, RTCs and accidents, the weather conditions at the time and if the information is available, the recorded or likely cause.

I can confirm that we hold information relating to your request some of which is considered exempt from disclosure under Section 21 of the Freedom of Information Act 2000 (FoIA), information otherwise available. The information is available at –

Accident level data:

<https://statswales.gov.wales/Catalogue/Transport/Roads/Road-Accidents/Accident-Level-Data>

Road Accident dashboard

<https://gov.wales/police-recorded-road-accidents-interactive-dashboard>

The information relating to accident description, accident location and contributory factors such as these are considered personal data and therefore considered exempt from disclosure under Section 40(2) of the FOIA – Personal Data. Full reasoning for applying this exemption can be seen at Annex A below.

You may wish to note that you can apply for further information and details via Stats.Transport@gov.wales.



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es

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding .

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit, Welsh Government, Cathays Park, Cardiff, CF10 3NQ or FreedomOfInformationOfficer@wales.gsi.gov.uk.

Please remember to quote the ATISN reference number.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at: Information Commissioner's Office,

Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
Telephone: 01625 545 745 or 0303 123 1113
Website: www.ico.gov.uk

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

The request you sent me contains personal information about you - for example, your name and address. The Welsh Government will be the data processor for this information and, in accordance with the General Data Protection Regulation, it will be processed in order to fulfil our public task and meet our legal obligations under the Act to provide you with a response. We will only use this personal information to deal with your request and any matters which arise as a result of it. We will keep your personal information and all other information relating to your request for three years from the date on which your request is finally closed. Your personal information will then be disposed of securely.

Under data protection legislation, you have the right:

- to be informed of the personal data we hold about you and to access it
- require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further information about the information which the Welsh Government holds and its use, or if you wish to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer, Welsh Government, Cathays Park, CARDIFF, CF10 3NQ
Email: DataProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are as outlined above.

Any information released under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 will be listed in the Welsh Government's Disclosure Log (at <http://wales.gov.uk/about/foi/responses/?lang=en>).

Yours sincerely

ANNEX A

Freedom of Information Act 2000: Section 40(2) - Personal Data

Section 40 of the Freedom of Information Act sets out an exemption from the right to know if the information requested is personal information protected by the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA). Personal data is defined in the GDPR as:

“any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person”

We have concluded that, in this instance, if the information requested were held then it could contain third party personal data. Under Section 40(2) of the FOI Act, personal data is exempt from release if disclosure would breach one of the data protection principles set out under Article 5 of GDPR. We consider the principle being most relevant in this instance as being the first.

This states that personal data must be:

“processed lawfully, fairly and in a transparent manner in relation to the data subject”
We consider that if information of the type requested were held, it would fall within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle.

Guidance from the Information Commissioner’s Office (Personal information (section 40 and regulation 13) v 1.3) states (at p11):

- The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below.
- If disclosure would not be fair, then the information is exempt from disclosure.

This approach was endorsed by the Court of Appeal in the case of *Deborah Clark v the Information Commissioner and East Hertfordshire District Council* where it was held:

“The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA” (paragraph 63).

In this instance, we do not believe that, any individual who could be identifiable would have had any expectation that their personal data would be released into the public domain. Thus, we believe release of this information would be unfair and so breach the first data protection principle. For that reason, the information is being withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.

