

From: ESNR-Tourism, Heritage & Sport-Cadw
Sent: 01 August 2019 13:47
To:
Subject: FOI request: MM287 Tredegar Ironworks Cholera Cemetery

Dear _____,

ATISN 13271 – MM287 Tredegar Ironworks Cholera Cemetery

Thank you for your email of 3 July requesting a copy of the following information relating to the scheduled monument known as MM287 Tredegar Ironworks Cholera Cemetery;

1. A copy of any Heritage Impact Assessment undertaken in respect of the erection of galvanised metal fencing around the cemetery;
2. A copy of any Assessment of the Impact of Developments within the setting of Historic Assets undertaken in respect of the erection of galvanised metal fencing around the cemetery; and
3. Any Cadw correspondence relating to the approval of scheduled monument consent for the proposed fencing.

I have attached a copy of an exchange of emails (Documents 1 to 3) about the requirement for scheduled monument consent to replace the existing fencing and a letter dated 13 December 2018 that we submitted to the Planning Inspectorate (Document 4). New fencing is proposed as part of a wider proposal for a solar farm in the area (reference DNS/ 3213639) and full details of the application are available [here](#). You will note from the application that there is a *Heritage Impact Assessment Summary Note* by Foundations Heritage which recommends replacement fencing. The analysis concludes that the replacement of the existing fence with a facsimile of the original fencing would result in a minor beneficial impact on the setting of the scheduled monument and further offset any adverse impact resulting from the wider proposal for a solar farm. We hold no further information about the existing, or proposed, fencing nor has scheduled monument consent been approved.

I have redacted names and job titles from the documentation that I am disclosing under section 40 of the Freedom of Information Act (FOIA). Section 40(2) of the FOIA sets out an exemption from the right to know if the information requested is personal information of someone other than the requester and is protected by the Data Protection Act 2018 (DPA). Personal data is defined in Section 3(2) of the DPA as: *“Personal data” means any information relating to an identified or identifiable living individual.* We have concluded that, in this instance, the name and job title of the officials identified in the released information amounts to the personal data of others, other than the person submitting the request (see Annex A). Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the General Data Protection Regulations (GDPR). We consider the principle being most relevant in this instance as being the first.

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 the Information Rights Unit, Welsh Government, Cathays Park, Cardiff, CF10 3NQ FreedomOfInformationOfficer@gov.wales Please remember to quote the ATISN reference number above.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at the Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely,

Matthew Coward

Uwch-Rheolydd Cynllunio Treftadaeth a Dynodiadau / Senior Heritage Planning and Designations Manager.

Gwasanaeth Amgylchedd Hanesyddol (Cadw) / Historic Environment Service (Cadw)

Llywodraeth Cymru / Welsh Government

Ffôn / Tel: 03000 256005

Enclosures:

Attachment 1 : ATISN 13271 – Documents 1-3 – Cadw correspondence

Attachment 2 : ATISN 13271 – Document 4 – Cadw response to DNS/ 3213639

Annex A

ATISN 13271 – Tredegar Ironworks Cholera Cemetery

Freedom of Information Act 2000: Section 40(2)

Section 40(2) together with the conditions in section 40(3)(a)(i) or 40(3)(b) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

'Personal data' is defined in sections 3(2) and (3) of the Data Protection Act 2018 ('the DPA 2018') and means any information relating to an identified or identifiable living individual. An identifiable living individual 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 the individual.

We have concluded that, in this instance, the information requested contains personal data.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the 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”

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- The Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;
- The Necessity test: Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- The Balancing test: Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

In considering these tests we have considered whether disclosure would amount to fair and lawful processing of those individuals' personal data. The request for information is very precise and is more concerned with impact assessments and consents rather the personal information. We are releasing all the information that we hold rather than just impact assessments. However, the individuals concerned do not have public facing roles. We consider that those individuals would be under the reasonable expectation that their information would remain confidential and not disclosed to the public at large. As such, we do not consider that disclosure of the redacted personal data would be fair. In this instance, because the individuals would have had no expectation that their personal data would be released into the public domain, we believe that 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.