



15 October 2019

Dear

Request for Information – ATISN 13416

I wrote to you on 4 October regarding your request for information. You asked for:

- 1. The applicable Risk Assessments, Permit to Work, Traffic Management design, Method Statements and other permit-to-work documentation for works carried out on the central reservation of the M4 between junctions 33 & 34 on 9 May 2019.**

I can confirm we hold some of the information you have requested which is enclosed. Please note that some of the information is being withheld under Section 40 of the Freedom of Information Act 2000, personal data. My reasoning for withholding this information is given at Annex 1.

The information I am releasing to you is:

- Road works report – which doubles as a permit
- Contractor Risk Assessment (personal information withheld)
- Contractor Method Statement (personal information withheld)
- Traffic Management Plan showing Lane 3 closure

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 Email: Freedom.ofinformation@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:

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

Section 40(2) – Personal Data

Section 40(2) of the Freedom of Information Act 2000 (FOIA), 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 1998 (‘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, some of the information contained within the information caught by your request contains third party personal data. Specifically, this relates to correspondence containing names of third party individuals and their signatures.

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:

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

Our consideration of these tests is set out below:

1. Legitimate Interest Test

The Welsh Government recognises there is a legitimate interest in being able to identify the parties involved in any communication in order to follow the flow of that communication and to understand the views and positions expressed by each party. We do not believe, however, there is any legitimate reason why the personal data would need to be released in order to follow and understand those communications. The personal data in this respect is irrelevant to the overall documentation as it is clear which organisation they are representing. The Welsh Government cannot identify any other legitimate interest in you or the public receiving the personal data captured by your request.

2. Is disclosure necessary?

The Welsh Government is of the view that it is not necessary to disclose the personal information caught by your request. It is straight forward, even when withholding the personal data, to follow the flow of the documentation and to identify each organisation. As such we do not believe it is necessary to disclose the personal data to allow the documentation to be understood.

Nor do we believe it is necessary to disclose the personal data in order to allow members of the public to contribute to this, or future discussions on this or any other matter. There are mechanisms by which the public can contact the relevant policy areas, such as generic mailboxes, public consultations, or writing to a Minister, etc.

3. The Balancing Test

As it has been concluded it is not necessary to disclose the identity of the correspondents, there is no requirement to balance the rights and interests of those correspondents against the rights, under FOIA, of the requester.

To conclude, as release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.