



Llywodraeth Cymru
Welsh Government

Ein Cyf/Our ref: /ATISN 13476
Eich Cyf/Your ref: qA1404844
Dyddiad/Date: 5 November 2019

Dear

ATISN 13476 – REQUEST FOR INFORMATION IN RESPECT OF A CALL IN REQUEST FOR APPLICATION 19/0050/FUL.

Thank you for your request which I received on 8 October. You asked for:

- **“how many people put in a request for call in, their names and the reason for call in and your reasons for accepting it”**

I interpreted your request as follows:

- The number of persons requesting call-in of application 19/0050/FUL (the application);
- The names of the persons requesting call-in of the application;
- The reasons given by those persons in their requests for call-in of the application; and
- The reasons for the Welsh Ministers calling in the application.

In respect of the first part of your request the Welsh Ministers received 4 requests for the application to be called in for their own determination.

In respect of the second part of your request. I have enclosed with this letter some of the information you requested, as identified on the disclosure list. We are withholding information in regards to the individuals requesting call-in under Regulation 13, as it constitutes the personal data of third parties.

The information caught by your request constitutes environmental information so has been considered for disclosure under the Environmental Information Regulations 2004 (EIRs). I have decided some of the information described in the enclosed list is exempt from disclosure under regulation 13 of the EIRs. The reasons for applying this exemption is set out in full at Annex 1 to this letter.

In respect of the third part of your request the reasons given by those requesting call-in are detailed in the information provided as detailed in the disclosure list.

As to the fourth part of your request. No decision has yet been taken as to whether or not the application should be called in. As such we hold no information matching the description of your request

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

Regulation 13– Personal data

Regulation 13(1) together with the conditions in Regulation 13(2)(a)(i) and 13(2)(a)(ii) 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 third party personal data.

Under Regulation 13(1) of the EIRs, 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 EIRs 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.

Our consideration of these tests is set out below:

1. Legitimate interests
- 2.

You need to set out here whether you have identified any legitimate interests in disclosure

NOTE – ICO guidance states:

In considering any legitimate interests in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general

principles of accountability and transparency for their own sakes as well as case specific interests.

2. Is disclosure necessary?

You need to set out here why you concluded that disclosure is not necessary in this case. How else could the legitimate interests be met in this case?

NOTE – ICO guidance states:

'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and therefore disclosure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

In carrying out the balancing test you should weigh the factors identified above against the legitimate interest in disclosure. You need to consider each case on its own merits.

Although this exercise involves balancing the rights and interests of individuals against the legitimate interests in disclosure, this is not the same as the usual FOI public interest test; the balancing exercise is carried out in order to decide whether section 40 is engaged. In particular, there is no assumption of disclosure in the legitimate interests test, as there is with qualified exemptions.

NOTE – ICO guidance states:

It is necessary to balance the legitimate interests in disclosure against the data subjects' interests, fundamental rights or freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA, and/or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.