

Ein cyf / Our ref: ATISN 13806

Dyddiad / Date: 05/03/2020

Dear ,

Request for Information ref: ATISN 13806

Thank you for your request which we received on 07/02/2020. You asked for:

- **A copy of the written notice supplied by Fairytale Celebrations in respect of their service provision.**

A copy of the information that you have requested is enclosed. We have decided that any third party personal information contained within this document is exempt from disclosure under Section 40(2) of the Freedom of Information Act as it is personal data protected by the Data Protection Act 2018 (DPA). This information has therefore been redacted from the document. Our reasons for the application of this exemption are set out at Annex 1 to this letter.

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.

Arolygiaeth Gofal Cymru (AGC)
Swyddfeydd Llywodraeth
Sarn Mynach
Cyffordd Llandudno
Conwy
LL31 9RZ
www.arolygiaethgofal.cymru

Care Inspectorate Wales (CIW)
Government Offices
Sarn Mynach
Llandudno Junction
Conwy
LL31 9RZ
www.careinspectorate.wales

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.

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

Annex 1

ATISN 13806 - Request for Information

Care Inspectorate Wales has decided to withhold the following information:

Information being withheld	Section number and exemption name
Third party personal data contained within the information requested.	Section 40(2) of the Freedom of Information Act. Personal data protected by the Data Protection Act 2018 (DPA).

This Annex sets out the reasons for the use of Section 40(2) of the Freedom of Information Act.

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, by reference to an identifier such as a name, an identification number, location data, an online identifier or 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 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.

Our consideration of these tests is set out below:

1. Legitimate interests

We accept you have a personal interest in obtaining this information. However, we do not believe there is a legitimate interest in the disclosure of personal data contained within it.

2. Is disclosure necessary?

We do not believe disclosure of third party information is necessary in this case as the request was for the content of the correspondence from this organisation, therefore the names and contact details of individuals within that organisation are not relevant.

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

Our view is that releasing the information, with the redaction of third party personal data, achieves an appropriate balance between the legitimate interest in its content with the fundamental rights and freedoms of the data subjects.

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.