



Llywodraeth Cymru
Welsh Government

26 May 2020

Dear

ATISN 13932 Circular Economy Wales – Advice given by a Welsh Government official

Thank you for your request which I received on **27 April 2020** about **advice given by a Welsh Government official**. The information you requested was in six parts - where there is a response this is enclosed.

1. A copy of the advice from Welsh Government officials to the Wales Council for Voluntary Action (WCVA) in respect of the Circular Economy Wales (CEW) bid for funding for community fridges.

The Landfill Disposals Tax (LDT) Communities Scheme is a Welsh Government funding programme managed independently by WCVA. The scheme supports local community and environmental projects in areas affected by the disposal of waste to landfill.

Each year, the Fund will award one larger grant for projects of national significance up to the value of £250,000 for a project that meets two or more of the scheme's three themes.

The Welsh Government does not formally advise the WCVA in respect of bids to the Landfill Disposals Tax Communities Scheme. Therefore there is no formal advice to present.

2. Copies of all emails between Welsh Government officials and WCVA in respect of the CEW bid to WCVA.

The emails between Welsh Government officials and the WCVA in respect of the bid, and emails from the WCVA to Welsh Government officials, are attached. As you will see, in the case of nationally significant bids, WCVA officials may choose to engage with Welsh Government officials to understand strategic fit and context. Welsh Government officials are unable to advise or direct the WCVA in their decision-making which is independent from Government.

I have redacted the names of most officials from the email chains I am disclosing under section 40 of the Freedom of Information Act. Section 40 sets out an exemption from the

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.

right to know if the information requested is personal information. I have set out my full reasoning at annex 1 of this letter.

Some other information has been redacted where that information is not captured by this request.

3. Copies of evidence used to assess value for money of the CEW bid to WCVA.

The Welsh Government does not formally advise the WCVA in respect of bids to the Landfill Disposals Tax Communities Scheme. Therefore there is no evidence to present.

4. Copies of analysis of evidence used to assess value for money of the CEW bid to WCVA.

The Welsh Government does not formally advise the WCVA in respect of bids to the Landfill Disposals Tax Communities Scheme. Therefore there is no evidence to present.

5. Copies of guidance, protocols and criteria used in preparing analysis of the value for money of the CEW bid to WCVA.

The Welsh Government does not formally advise the WCVA in respect of bids to the Landfill Disposals Tax Communities Scheme. Therefore there is no evidence to present.

6. Copies of all notes of meetings and emails between Welsh Government officials regarding the CEW bid to WCVA.

The Welsh Government does not formally advise the WCVA in respect of bids to the Landfill Disposals Tax Communities Scheme. Therefore there is no evidence to present. There were no formal meetings regarding this matter. The emails which were sent are attached and Welsh Government officials did not keep any record of short telephone calls instigated by the WCVA regarding this bid.

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.

We would also be happy to speak to you regarding any further queries that you may have regarding this matter. You may also wish to be aware that both the WCVA and Social Business Wales provide support for third sector organisations including in bid preparation and you may wish to contact them to access this support.

Yours sincerely,

Annex 1

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 Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA as:

“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller”.

We have concluded that, in this instance, the names and email addresses of officials amounts to 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. We consider the principle being most relevant in this instance as being the first.

The first data protection principle.

This states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -

(a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

We consider that the information highlighted falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle. The first data protection principle has two components:

1. Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner’s Office (Personal information (section 40 and regulation 13) v 1.4) states:

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).

The Information Commissioner has issued guidance on whether release of names of officials in disclosed emails would be unfair, and thus in breach of the first principle of the DPA. The guidance states:

In assessing whether employees can have a reasonable expectation that their names will not be disclosed, key factors will include their level of seniority and responsibility and whether they have a public facing role where they represent the authority to the outside world.

Where the officials in question are not senior staff, do not have a public facing role and where they are acting entirely in an administrative capacity, I have concluded that they have a reasonable expectation that their names will not be disclosed.

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 .