



Llywodraeth Cymru
Welsh Government

10 December 2020

Dear

ATISN 14543 – Golden eagle death

Thank you for your request, which we received on 17 November. You asked for:

A copy of all correspondence received and sent by the Welsh Government about the death of the golden eagle that was found in the Abergwesyn Valley, Powys in August 2020.

The information you have requested accompanies this letter. We have redacted some personal information from the letter. We have decided that this information is exempt from disclosure under Section 40 of the Freedom of Information Act and/or Regulation 13 of the Environmental Information Regulations and is therefore withheld. The reasons for applying this exemption is set out in full 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.

You also have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner's Office,



BUDDSODDWYR | INVESTORS
MEWN POBL | IN PEOPLE

Wildlife Management
Welsh Government
Rhodfa Padarn
Llanbadarn Fawr
Aberystwyth
SY23 3UR

Ffôn • Tel 0300 061 5920
wildlife@gov.wales
Gwefan • website: www.gov.wales

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 sincerley

Annex 1

Section 40 of the Freedom of Information Act and Regulation 13 of the Environmental Information Regulations set 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, personal details of the correspondents with Welsh Government amount to third party personal data.

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).

Our analysis of the ICO’s key considerations in assessing ‘fairness’, as set out in the Guidance, are below

- *Whether the information is sensitive personal data and the possible consequences of disclosure on the individual ;*

Release under FOI/EIR is release to the world, and placing the personal details of the applicant into the public domain would be likely to lead to identification of that person, and to associate them with comments, views and details in the letter.

- *The reasonable expectations of the individual, taking into account: their expectations both at the time the information was collected and at the time of the request; the nature of the information itself; the circumstances in which the information was obtained; whether the information has been or remains in the public domain; and the FOIA principles of transparency and accountability;*

The applicant would reasonably expect that details of the letter itself could be released into the public domain, but had an expectation that their own personal details would be withheld. We conclude that they had no expectation that these details would be placed in the public domain.

- *Whether there is any legitimate interest in the public or the requester having access to the information and the balance between this and the rights and freedoms of the individuals who are the data subjects.*

We have not been presented with any reason why the name of the applicant or personal data should be legitimately placed in the public domain. We believe the legitimate interest in the requested information is fully met by our disclosure of the information with the personal details redacted.

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.