

8 December 2020

Dear,

**ATISN 14548 Timber Business Investment Scheme – Cheriton Woods**

Thank you for your request which I received on 10<sup>th</sup> November. In your correspondence you asked to receive a copy of the grant application for Timber Business Investment Scheme funding toward Cheriton Woods Sustainable Forestry Project.

As part of our Timber Business Investment Scheme (TBIS) we hold recorded information relating to your first request. A copy of the application is enclosed at Annex 2 and 3. I have decided that some of the information described in the enclosed list is exempt from disclosure under Section 40 of the Freedom of Information Act and is therefore withheld. The reasons for applying this exemption is set out in full at Annex 1 to this letter.

You have also asked us to undertake a review into the funding and activities of the Cheriton Woods Project pertaining to alleged illegal activities on site. This is not a request for recorded information, and is not therefore being treated under the Freedom of Information Act (FOIA). However I have reviewed the matter and I can formally confirm correct official procedures have been followed in accordance with the [scheme guidelines](#).

However, although the issues of planning permission fall outside of the FOIA, to help you resolve the matter I would recommend discussing your case with a representative of Swansea Council. As a Welsh Government official I am unable to comment on the specific circumstances of this site with regards to planning permission as to do so could prejudice the role of the Welsh Ministers should the case come before them at a later date. For example, if the case was to proceed to appeal.

The day to day responsibility for planning control and its enforcement, which includes the consideration and determination of applications for planning permission, has been entrusted by Parliament, in the first instance, to the local planning authority. The Welsh Ministers seldom intervene in this jurisdiction in order to avoid prejudicing their statutory planning role in relation to the development plan system and the determination of appeals and of applications that have been called-in for consideration by the Welsh Ministers.

Welsh Ministers do not interfere with planning matters which fall within the jurisdiction of Local Planning Authorities, including the decision whether to undertake formal enforcement action.

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](mailto: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,

## 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, personal details of the applicant 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).*

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 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 with this grant application, and to allow anyone to access address details, such as the personal telephone number, that are not currently in the public domain.

- *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 application 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 their address and telephone number 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.