



Llywodraeth Cymru
Welsh Government

Ein Cyf/Our ref: ATISN 14865
Dyddiad/Date: 10 March 2021

Dear

ATISN 14865 – COPIES OF THE REQUESTS TO THE WELSH MINISTERS TO CALL-IN PLANNING APPLICATIONS 19/0789/COU AND 19/0787/COU AND LISTED BUILDING CONSENT APPLICATIONS 19/0790/LBC AND 19/0788/LBC.

Thank you for your request which I received on 10 February 2021. You requested the following information:

- Copies of the requests to the Welsh Ministers to call-in planning application 19/0789/COU.

You clarified your request on 15 February and requested:

- Copies of the requests to the Welsh Ministers to call-in planning applications 19/0789/COU and 19/0787/COU and listed building consent applications 19/0790/LBC and 19/0788/LBC.

Our response:

I have enclosed with this letter some of the information you requested, as identified on the disclosure list. Information is being withheld 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 (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 are set out in full at Annex 1 to this letter.

Next steps:

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

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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.

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 of the EIRs 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 information requested contains 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. We consider the principle being most relevant in this instance as being the first.

The first data protection principle 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 identity of an individual clearly 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 1.3) states (at p11):

- *The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below.*
- *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).

In this instance, we believe the individual would have no expectation that this information would be made public. 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 Regulation 13 of the EIRs. This is an absolute exemption and not subject to the public interest tests.