



Llywodraeth Cymru
Welsh Government

Our ref ATISN 15016

21 May 2021

Dear

Request for Information – ATISN 15016

I wrote to you on 23 March regarding your request for information.

Information requested

1. A copy of Swansea's active travel application and plan for Singleton Park links
2. The Welsh Government's approval letter and any subsequent correspondence

Our Response

I apologise for the delay in responding to you. I confirm the Welsh Government holds information caught by your request. For question 1, I am releasing the following documents to you:

1. Active Travel Fund – Local Routes Bid – FY2018-19
2. Swansea Active Travel INM Consultation Report
3. Local Route Bid Summary
4. Singleton Park Links
5. Active Travel Fund Local Routes – 18-19 Programme
6. Strategic & Local Route Bid Summary

I have decided that some of the information held in documents 1 and 2, however, is exempt from disclosure under Regulation 12(5)(e), confidentiality of commercial information, and Regulation 13, personal data, of the Environmental Information Regulations, and is therefore withheld. The reasons for applying these exceptions are set out in full at Annex A to this letter.

For question 2, the information we hold is the Swansea Council Active Travel Fund Award Letter FY 2018-19, which I am releasing to you. However, the subsequent correspondence we hold, i.e. emails between the Welsh Government and Swansea Council is exempt from disclosure under Regulation 12(5)(e), confidentiality of commercial information, of the Environmental Information Regulations. The reasons for applying this exception is set out in full at Annex A to this letter.



BUDDSODDWYR | INVESTORS
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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.

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 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.of.information@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 - Personal Data

Regulation 13 of the EIRs sets out an exception from the right to know if the information requested is personal information protected by the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA). Personal data is defined in the GDPR as:

“any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person”

We have concluded that, in this instance, the information in relation to names and signatures amounts to personal data. Under Regulation 13 of the EIRs, 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”

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, the personal data included in the following two documents have been redacted:

Swansea Active Travel INM Consultation Report; and

Swansea Council Active Travel Fund Award Letter FY 2018-19

The personal information contained in the Swansea Active Travel INM Consultation Report amounts to the personal data of Swansea Council workers, including their names and signatures. The personal information included in the Swansea Council

Active Travel Fund Award Letter amounts to the name, email address and telephone number of a junior Welsh Government official. This Welsh Government official and Swansea Council workers do not have openly public facing roles and would not expect their names, signatures or contact details to be released in this context. We believe that they 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 test.

Regulation 12(5)(e) – confidentiality of commercial or industrial information

This exception states:

12.—(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—
(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest

In order to refuse information under this Regulation, guidance¹ from the Information Commissioner states that public authorities will need to establish that:

- the information is not on emissions;
- the information is commercial or industrial in nature;
- it is confidential under either the common law of confidence, contract, or a statutory bar;
- the confidentiality is protecting a legitimate economic interest;
- the confidentiality will be adversely affected by disclosure; and
- the public interest in maintaining the exception outweighs the public interest in disclosing the information.

In this instance, the withheld information relates to financial details contained in the:

1. Active Travel Application and plan for Singleton Park Links, submitted by Swansea Council; and
2. The subsequent correspondence (emails) following the award of funding for individual elements of the packages.

Public interest arguments in favour of release

The Welsh Government acknowledges there is significant public interest in the Active Travel Schemes throughout Wales. The Welsh Government also acknowledges there is public interest in openness and transparency within Government, particularly in terms of how the Welsh Government spends public money and that the money is invested wisely. With the funding information caught by this particular request, it is

recognised that there is benefit in the public having access to the financial information for this particular scheme.

Public interest arguments in favour of withholding

Having consulted with the affected third party and the respective contractor, I believe the withheld information, if released into the public domain, would jeopardise the contractor's ability to maintain a competitive advantage. The withheld information has been shared with the Welsh Government in confidence by Swansea Council regarding the contractor's commercial activities. The contractor has a legitimate commercial interest in ensuring that the financial information relating to the Singleton Park Links Active Travel Scheme, and any commercially sensitive matters, are not released into the public domain.

Disclosing the financial information related to these schemes would likely cause prejudice to the contractor's commercial interests. It is believed, therefore, that the public interest is satisfied by the amount of information already in the public domain and the information that is being released to you. The full amount of grant funding awarded to Swansea Council is included in the award letter, however, the costs per individual schemes is being withheld. Please note that the Active Travel schemes developed by the Local Authorities undergo independent audit and scrutiny.

It is the view of the Welsh Government that the balance of public interest is likely to favour withholding the information