



Llywodraeth Cymru
Welsh Government

Ein Cyf/Our ref: ATISN 15092
Dyddiad/Date: 29 April 2021

Dear

ATISN 15092 – Request to call in application 20/2087/ful - Proposed construction of an all-new crematorium, at land at Ael y Bryn, Aberhafesp, Newtown, Powys

Thank you for your request which I received on 9 April 2021. You asked for:

- Please to let me know who has made the request for Welsh Government Call-in of the application, and on what grounds?

The request for the Welsh Ministers to call-in the application for their own determination, was made on the following grounds:

1. The proposal could have wide effects beyond the immediate locality.
2. The proposal is likely to significantly affect sites of scientific, nature conservation of historic interest, or areas of landscape importance.
3. The proposal raises novel planning issues

We are withholding information in regards to the individual requesting call-in 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 2004 (EIRs). I have decided some of the information described in the request is exempt from disclosure under regulation 13 of the EIRs. The reasons for applying this exception 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,
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(1) together with the conditions in Regulation 13(2)(a)(i) and 13(2)(a)(ii) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 2018 (‘the DPA 2018’) and means any information relating to an identified or identifiable living individual. An identifiable living individual 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 the individual.

We have concluded that, in this instance, the information requested contains third party 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 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”
The lawful basis that is most relevant in relation to a request for information under the EIRs is Article 6(1)(f). This states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

In considering the application of Article 6(1)(f) in the context of a request for information under the EIRs it is necessary to consider the following three-part test:-

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

1. Legitimate interests

We acknowledge there could be a legitimate interest in knowing the identity of the organisation or persons making the call-in request on a specific application which might allow malicious requests for call-in to be identified,

such as one company making a call-in request to obstruct a competitor in taking development forward.

2. The Necessity test.

The identity of the party making the call-in request is not relevant, all requests are treated the same whether they be a Member of the Senedd, Member of Parliament, Councillor, organisation or a member of the public. The release of the identity of those requesting call-in would not enhance the process in any way, the status of a party requesting call-in is entirely irrelevant to our consideration as we only consider if the proposed application raises planning issues of more than local importance, that would make it more appropriate for the Welsh Ministers to determine it, rather than the local planning authority. It should be noted it only considers who should make the decision on the application and in no way indicates what the likely decision will be. The details of the basis of the call-in request which are being released are sufficient to identify the issues raised by the request and which will be taken into consideration.

The guidance on the issues taken into consideration in considering a call-in request are outlined in our guidance note which can be accessed at <https://gov.wales/sites/default/files/publications/2019-02/called-in-planning-applications-guidance.pdf>.

3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

Taking into consideration the legitimate interest and necessity test and the rights of the individual, Welsh Government believes that withholding the individual's name would not undermine the efficiency, transparency and impartiality of the planning process. As stated it is irrelevant as to the identity of those requesting call-in. Taking into account the rights of the individual, as safeguarded by the data protection legislation, in my view the legitimate interest and any necessity for disclosure do not outweigh the rights to privacy that the data subject may expect under the Data Protection Act 2018 and the UK General Data Protection Regulation. Therefore the information has been withheld as personal data under Regulation 13 of the Environmental Information Regulations 2004.