



Our Ref: ATISN 15298

28 July 2021

Dear ,

Request for Information – ATISN 15298

I wrote to you on 6 July regarding your request for information.

Information requested

A copy of the Road Safety Audit that has been undertaken both at initial design stage and any subsequent updates that clearly show the design and 50 mph speed limit intent on the A465 dual carriageway.

Our Response

I confirm the Welsh Government holds information caught by your request. I have decided, however, that most of that information is exempt from disclosure under Regulation 12(4)(d) of the Environmental Information Regulations, material in the course of completion, unfinished documents and incomplete data, and also Regulation 13, personal information, and is therefore withheld. The reasons for applying these exceptions are set out in full at Annex 1 to this letter.

I am content to release to you sections of the documents we hold up to this point which refer to the 50 mph speed limit. That information is at Annex 2.

You may also find of use other information regarding the 50 mph design speed limit on the A465 Section 2 website Inspectors Report, section 4.65, at:
<https://gov.wales/a465-gilwern-brynmawr-planning-inspectors-report>.

Next steps



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 .

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

This Annex sets out the reasons for the engagement of Reg12(4)(d), material in the course of completion, unfinished documents and incomplete data and Regulation 13, personal data, of the Environmental Information Regulations and our subsequent consideration of the Public Interest Test, where relevant.

Reg12(4)(d) - material in the course of completion, unfinished documents and incomplete data

Reg12(4)(d) states:

12.—(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data

Guidance from the Information Commissioner has confirmed that “Material which is still in the course of completion can include information created as part of the process of formulating and developing policy, where the process is not complete; draft documents are unfinished even if the final version has been produced; data that is being used or relied on at the time of the request is not incomplete, even if it may be modified later”. I can confirm that this is the case with the information you have requested. There are multi-stage process for undertaking Road Safety Audits and that process is not yet complete. It is expected the final Audit will not take place until 1 year after completion.

Regulation 12(4)(d) is a qualified (public interest tested) exception. Even if the exception is engaged, public authorities must go on to apply the public interest test set out in regulation 12(1)(b). A public authority can only withhold the information if the public interest in maintaining the exception outweighs the public interest in disclosing the information. Because of this, consideration has been given to the effects of disclosure to the world at large rather than any personal interest you may have in being provided with the information.

Public Interest Test

The Welsh Government acknowledges the presumption in favour of disclosure under Regulation 12(2) and we acknowledge there is a public interest in openness and transparency within Government, particularly in terms of ensuring transparent and accountable government by disclosing how the Welsh Government utilises its resources, spends public money and that both are invested wisely on behalf of the people of Wales.

As outlined above, there is a pre-determined multi-stage process for undertaking Road Safety Audits and that process is not yet complete. It is expected the process will not be complete until 2022, after which, whilst the Audits themselves won't be published, information will be made available in a co-ordinated manner with supporting contextual narrative, to all people at the same time. An accelerated release of incomplete

material will result in inaccurate and incomplete information being disclosed prematurely, thus misleading the public.

I do not think it is in the public interest to release incomplete data prematurely. Rather, I believe the public interest would be best served by the availability at the completion of the process described above, together with the release of information regarding the 50mph limit with this request at Annex 2.

To conclude, the Welsh Government believes the balance of public interest to withhold the information outweighs the public interest to release it for the reasons outlined above. The information has therefore been withheld under Regulation 12(4)(d) of the EIRs.

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, signatures and details of traffic incidents 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).

The personal information contained in the information you have requested amounts to the personal data of officials and members of the public, including their names, signatures and details of traffic incidents. These individuals would not expect their personal data 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.

A465 Heads of the Valleys - Section 2 - Stage 1 : Road Safety Audit Brief
Date 22 June 2012

1.2 Design Speed & Traffic Flows

The whole scheme has a Design Speed of 85kph and a speed limit of 50mph will be in place. This is a direct requirement of the Works Information.

A465 Heads of the Valleys - Section 2, Key Stage 6 - Stage 2 : Road Safety Audit Brief
Date 31 March 2015

1.2 The Scheme

The A465 between a point to the west of Brymawr and a point to the east of Gilwern will have a 50mph speed limit enforced with permanent average speed cameras.