

25 October 2023

Dear

ATISN 18831 – Request for information - Access to PEDW's files for appeal ref. CAS-01341-N2Q5B8.

I write further to my previous letters regarding the above request under the Environmental Information Regulations 2004 (the EIRs). You asked for the following information:

- Records and documents held on PEDW's file which are not already publicly available, to include but not limited to:
- Memos (PEDW does not use this terminology, but our system holds 'file notes' which are similar, so I will assume you require these).
- Meeting minutes.
- Telephone attendances.
- Correspondence (incorporating emails), not including items that are entirely procedural in nature or which have been provided to DIAG before.

Our Response

Information not held

Following a search of PEDW's file (as confirmed previously this consists of our CRM system and related iShare file – PEDW no longer uses paper files), I can confirm that it does not contain any meeting minutes or telephone attendances.

Information held

I have identified all other records and documents that fall within the scope of your request, i.e. File Notes (as opposed to 'Memos' – see above) and correspondence, not including items that are entirely procedural in nature or which have been provided to DIAG before.

Regulation 13– Personal data

Regulation 13(1) of the EIRs together with the conditions in Regulation 13(2)(a)(i) and 13(2)(a)(ii) provide 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.

I 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

The Welsh Government recognises there can be a legitimate interest in being able to identify individuals involved in correspondence or file notes (to help understand the reason for their involvement). However, in this instance we do not believe there is any legitimate reason why the identified personal data would need to be released in order to follow and understand the correspondence or file notes that are being released (other than where consent has been provided by more senior members of staff). The Welsh Government cannot identify any other legitimate interest in you or the public receiving the third party personal data captured by your request.

2. Is disclosure necessary?

I have given consideration to the effects of disclosure of the information to the world at large, as the information is made available to anybody and everybody, not just the

requestor. The Welsh Government is of the view that it is not necessary to disclose third party personal information, other than that specified above, or that of junior staff who would have no expectation their information would be placed in the public domain. We do not believe it is necessary to disclose that personal data to understand the information.

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

As it has been concluded it is not necessary to disclose the personal information caught by the request, there is no requirement to balance the rights and interests of those individuals against the rights, under FOIA, of the requester.

To conclude, as release of the personal data would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has therefore been withheld under regulation 13(1) of the EIRs. Regulation 13(1) is an absolute exemption and not subject to the public interest test.

The information that is being released under your request has therefore been subject to redaction where necessary to withhold personal data in the terms set out above. Notwithstanding the withholding of such data, the information you requested is being disclosed and is attached with this letter.

Yours sincerely