



Eich cyf/Your ref
Ein cyf/Our ref ATISN 10420

31 May 2016

Dear ,

Request for Information – ATISN 10420 – Copy of the OBC for Beacons Campus Project along with copies of minutes and responses of meetings between Welsh Government and Powys Local Authority

Thank you for your request which I received on 2 May 2016. You asked for the following in relation to Powys County Council's submission of an Outline Business Case (OBC) for its Beacons Campus Project to the Welsh Government on 29 February 2016:

1. Copies of minutes of meetings held in relation to the OBC since February 29th;
2. Responses to the OBC from Welsh Government to Powys CC since February 29th; and
3. A copy of Powys CC's OBC submitted Feb 29th.

A copy of the information I have decided to release is enclosed at **Annex 1 to 2** accompanying this letter.

With respect to the requested information, I have decided that some is exempt from disclosure under section 40(2) of the Freedom of Information Act 2000 and is therefore withheld. The reasons for applying this exemption are set out in full at **Annex 3** of this letter.

If you have any queries about this request, please do not hesitate to contact me at the address below. Please remember to quote the reference number above in any future correspondence.

The request you sent me contains personal information about you, for example, your name and address. I will only use this personal information in accordance with the Data Protection Act 1998 to deal with your request and any matters which arise as a result of it. I will keep your personal information and all other information relating to your request for three years from the date on which your request is finally closed. Your personal information will then be disposed of securely.



Any information released under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 will be listed in the Welsh Government's Disclosure Log (at <http://wales.gov.uk/about/foi/responses/?lang=en>).

Yours sincerely

Annex 3

I have decided to withhold the following information:

Information being withheld	Section number and exemption name
Names and email addresses of the people involved in the attached email exchanges.	Section 40(2) - Personal information about others

This Annex sets out the reasons for the engagement of section 40(2) of the Freedom of Information Act.

Engagement of Section 40(2) (Personal information about others) of the Freedom of Information Act.

The Welsh Government believes that personal information about others should be exempt from disclosure.

Section 40 of the Freedom of Information Act 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 third party personal data. Under Section 40(2) of the FOI Act, 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.

This 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 names of junior staff within the emails fall 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, releasing the email addresses and names of junior staff involved in the attached email exchanges would clearly identify them. 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 section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.