



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref ATISN10595

19 August 2016

Dear ,

**ATISN10595 – Freedom of Information Request with regards to EIA Tip Off**

Thank you for your request which I received on 22 July 2016 about details on the person or organisation who contacted the Welsh Government to inform of land works taking place at Bryneglwys.

I have decided that information described in the enclosed list is exempt from disclosure under section 40(2) of the Freedom of Information Act 2000 (FOIA). If the information were deemed to be environmental information, it is also withheld under regulation 13(1) of the Environmental Information Regulations, 2004 (EIRs). The reasons for applying these exemptions are set out in full at Annex A 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: [FreedomOfInformationOfficer@wales.gsi.gov.uk](mailto:FreedomOfInformationOfficer@wales.gsi.gov.uk)

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

## Annex A

I have decided to withhold the following information:

| Information being withheld                                                                                                       | Section number and exemption name                          |
|----------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| <ul style="list-style-type: none"><li>Details of the person or organisation of the tip off on land works at Bryneglwys</li></ul> | Section 40(2) of the FOIA and Regulation 13(1) of the EIRs |

### Section 40(2)

Section 40 of the Freedom of Information Act and Regulation 13(1) of the EIRs set 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 identity of the contactor clearly falls 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, we believe the individual 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 section 40(2) of the Freedom of Information Act or Regulation 13(1) of the EIRs. This is an absolute exemption and not subject to the public interest tests.