



Llywodraeth Cymru
Welsh Government

Plas Carew, Uned 5/7 Cefn Coed
Parc Nantgarw, Caerdydd CF15 7QQ
Ffôn 01443 33 6000 Ffacs 01443 33 6001
Ebost cadw@cymru.gsi.gov.uk
Gwefan www.cadw.cymru.gov.uk

Plas Carew, Unit 5/7 Cefn Coed
Parc Nantgarw, Cardiff CF15 7QQ
Tel 01443 33 6000 Fax 01443 33 6001
Email cadw@wales.gsi.gov.uk
Web www.cadw.wales.gov.uk

Eich cyfeirnod Your reference	TC/AMG
Ein cyfeirnod Our reference	ATISN 10961
Dyddiad Date	02 March 2017
Llinell uniongyrchol Direct line	
Ebost Email:	

Dear ,

Request for Information - ATISN 10961 – Former Grove Park School, Wrexham

Thank you for your request for information regarding the former Grove Park School, which we received on 1 December. I apologise for the delay in replying to you.

You requested information on all communications, emails and other correspondence and any reports notes, advices or other documents relating to the request to list the building, relating to both the previous decision of the Cabinet Secretary for Economy and Infrastructure and the recent decision by the Cabinet Secretary for Finance and Local Government, over and above that already in the public domain and which has been provided in previous correspondence.

This request has been considered under the Environmental Information Regulations 2004 (EIRs) and a copy of the information I have decided to release is attached.

You will note that legal advice has been withheld and, where appropriate, redacted. I have decided that this information, along with a note of a meeting that took place on 15 November 2016 between the Cabinet Secretary for Finance and Local Government, Cadw and our Legal Services Department is excepted from disclosure under Regulation 12(5)(b) of the EIRs. The reason for applying this exception is set out at Annex 1 to this letter. However, I have enclosed a note produced by Cadw following the meeting which was subsequently provided to the Cabinet Secretary.

You will also note that Docs 1-5 of the Ministerial Advice have not been included as these have been released to you previously and are available on the Welsh Government's website at: <http://gov.wales/about/foi/responses/2016/Oct16/atisn10696/?lang=en>.

Similarly, Doc 7 is not included as the information is publicly available on Cadw's website at: <http://cadw.gov.wales/historicenvironment/help-advice-and-grants/makingchanges/listedbuildconsent/?lang=en>.

Mae'r Gwasanaeth Amgylchedd Hanesyddol Llywodraeth Cymru (Cadw) yn hyrwyddo gwaith cadwraeth ar gyfer amgylchedd hanesyddol Cymru a gwerthfawrogiad ohono.

The Welsh Government Historic Environment Service (Cadw) promotes the conservation and appreciation of Wales's historic environment.

Rydym yn croesawu gohebiaeth yn Gymraeg ac yn Saesneg.
We welcome correspondence in both English and Welsh.



BUDDSODDWR MEWN POBL
INVESTOR IN PEOPLE



Some additional correspondence was received which was not passed to the Cabinet Secretary because it arrived too late to be taken into account. Copies can be provided if required, but we do not consider it relevant to your request because it was not taken into account by the Cabinet Secretary in making the decision.

Finally, some names and addresses have been redacted under Regulation 13 of the EIRs – Personal Information. The reason for applying this exception is set out at Annex 2 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 FreedomOfInformationOfficer@wales.gsi.gov.uk.

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

ATISN 10961 - List of Information

Contents

<i>Number</i>	<i>Title</i>	<i>Date</i>
01	Ministerial Advice Submitted to Cabinet Secretary	10/11/16
02	Answer to 3 questions posed by the Cabinet Secretary	17/11/16
03	Additional information submitted to the Cabinet Secretary to accompany the Ministerial Advice (This does not include the Ministerial Advice, which is released at Doc 01)	21/11/16
04	Cabinet Secretary's Decision	29/11/16
05	Notification of Decision	29/11/16

Annex 1 – Regulation 12(5)(b) Environmental Information Regulations 2004 (EIRs)

The Welsh Government has decided to withhold the following information:

Information being withheld	Section number and exemption name
Legal advice to the Cabinet Secretaries for Economy and Infrastructure and Finance and Local Government	Regulation 12(5)(b) of the EIRs

This Annex sets out the reasons for the engagement of regulation 12(5)(b) of the EIRs and our subsequent consideration of the public interest test.

Regulation 12(5)(b) of the EIRs states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect – the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.

Regulation 12(5)(b) covers information in respect of which a claim to legal professional privilege can be maintained. The principle of legal professional privilege can be described as a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications between the client and his/her professional legal advisers as well as exchanges which contain or refer to the legal advice which might be imparted to the client.

The information clearly falls within the scope of the exception as it consists of legal advice provided by qualified lawyers to the Cabinet Secretaries for Economy and Infrastructure and Finance and Local Government. Disclosure of such advice would have an adverse effect on the course of justice as it would undermine the important common law principle of legal professional privilege. This would in turn undermine a lawyer's capacity to give full and frank legal advice and would discourage people from seeking legal advice. Disclosure of the legal advice would also adversely affect the Welsh Government's ability to defend itself in any current or future legal challenge. The Welsh Government should be able to defend its position and any claim made against it without having to reveal its position in advance.

Regulation 12(1)(b) of the EIRs also requires a public interest test to be carried out to ascertain whether the public interest in withholding the information outweighs the public interest in disclosure. Our consideration of the public interest test is set out below.

Public interest arguments in favour of disclosure

It is recognised that there is a public interest in individuals being able to exercise their rights under the EIRs to enhance their understanding of the reasons for decisions or actions taken by a public body and in some cases challenge decisions affecting the lives of members of the public. It is also acknowledged that regulation 12(2) of the EIRs applies a presumption in favour of disclosure.

There is an inherent public interest in ensuring that public authorities are transparent in the decisions they make in order to promote accountability and improve the quality of their decision making.

The disclosure of the legal advice would assist the public to ascertain whether there was any incompatibility between the advice provided and the policy decisions that were taken and whether any advice which had been provided was followed.

Public interest arguments in favour of withholding the information

There is a strong public interest in protecting the established principle of confidentiality in communications between lawyers and their clients and information subject to legal professional privilege. The fundamental importance of this principle was considered in the case of Bellamy v the Information Commissioner and the DTI [EA/2005/0023] and a number of other important cases. In the case of Bellamy the Tribunal said:

‘...there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest....it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case...’.

It is important that Government can obtain whatever legal advice it considers necessary in order to ensure that any decision that is ultimately taken is one that has been the subject of the most careful consideration. In a governmental context it is crucially important to the democratic process that Ministers and officials should have a free space in which to seek advice from lawyers, without fear of public scrutiny of that advice.

The legal adviser needs to be able to present the full picture to policy clients/Ministers, which includes arguments in support of his or her final conclusions but relevant counter-arguments. It is in the nature of legal advice that it often sets out the possible arguments both for and against a particular view, weighing up their relative merits. This means that legal advice obtained by a government will often set out the perceived weaknesses of a particular policy position.

There is also a need for reasonable certainty relating to confidentiality and the disclosure of legal advice. If information subject to privilege were to be disclosed on a regular basis the doctrine of legal professional privilege would be weakened. Disclosures would be likely to inhibit clients from seeking legal advice and advisers from providing the advice in a free and frank manner.

Without such comprehensive advice the quality of the government’s decision making would be much reduced since it would not be fully informed and this would be contrary to the public interest.

In weighing up the arguments for and against disclosure, the Welsh Government considers that the public interest arguments in favour of withholding the information clearly outweigh those in favour of disclosure.

Annex 2 - Regulation 13 Environmental Information Regulations 2004 (EIRs) – Personal Information

Regulation 13 of the Environmental Information Regulations 2004 (EIRs) provides for third party personal data to be withheld in circumstances where its disclosure would breach any of the data protection principles set out in Schedule 1 of the Data Protection Act 1998 (DPA). 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 Regulation 13 of the EIRs, 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 information concerning names of members of the public 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, because the individuals are members of the public and would have had no expectation that their personal data would be released into the public domain, we believe that 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 Environmental Information Regulations.