



Ein cyf/Our ref ATISN 11321

1 August 2017

Dear ,

### Request for Information – ATISN 11321

We wrote to you on 14 July regarding your recent complaint, in which you have taken issue with the redaction of names in the reply to your request for information which we sent you on 29 June.

I have conducted an internal review in accordance with the procedure outlined in the [Welsh Government's Practical Guide for Making Requests for Information](#) which is available by post on request, or via the internet.

I note in your original request you asked for a copy of all correspondence between the Welsh Government and Pembrokeshire County Council (PCC) concerning the South Quay, Pembroke regarding the third phase of the Pembroke Castle Pond Regeneration Scheme between the dates of 12 June 2012 and 23 May 2017.

In our response of 29 June, it was explained to you some of the information you had requested had previously been provided to you under a separate request, reference ATISN 10575. This information related to the Agreement issued prior to 31 March 2015 and therefore you were not provided with further copies.

I note that in response to this request, information after 31 March 2015 was released to you with the exception of some information which is considered exempt under Section 43, commercial interests of the Freedom of Information Act 2000. The withheld information relates to an opinion of current value for a property which PCC is actively marketing. You were provided with full reasoning for applying this exemption.

I further note that within the information that has been released to you, names and personal details were redacted as they were not deemed relevant to the request. On 30 June, you raised some initial queries regarding the response you received, which



BUDDSODDWYR | INVESTORS  
MEWN POBL | IN PEOPLE

E&I FOI Team  
Welsh Government  
Treforest - QED Centre  
Main Avenue  
Treforest Industrial  
Estate  
Ponty pridd  
CF37 5YR

[EconomyandInfrastructureFOI@wales.gsi.gov.uk](mailto:EconomyandInfrastructureFOI@wales.gsi.gov.uk)  
[www.gov.wales](http://www.gov.wales)

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 .

we addressed in our e-mail to you of 4 July. In response, you subsequently complained, stating that you had taken issue with the redaction of names and that this information should be disclosed unless there is a real reason not to do so. You disagreed with these redactions and challenged us to disclose them.

In light of this, my review has only given consideration to the redaction of names. I note that in our e-mail to you of 4 July, it was explained that the names were redacted as they were not considered relevant to your request. It was also explained that the redactions are in respect of individual officer details (who would not expect their details to be disclosed) and that it remained clear, despite the redactions, which body issued the correspondence, which was the primary focus of your request which was worded as correspondence “between the Welsh Government and Pembrokeshire County Council”

I have reviewed the response you received, our further e-mail to you of 4 July and considered the comments you have made in your complaint. I have also noted the comments you raised in your e-mail of 30 June that we did not consult with you regarding the withholding of your own name and other personal data in the released correspondence.

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”*.

I have concluded that, in this instance, the withheld information amounts to 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. I consider the principle being most relevant in this instance as being the first.

The first data protection principle 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.*

I consider that the withheld information in relation to names and contact details 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 1.4) states:

*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).*

Our analysis of the ICO's key considerations in assessing 'fairness', as set out in the Guidance, are presented below.

The withheld information amounts to the personal data of civil servants who do not have public facing roles and would not expect their names and contact details to be released in this context. There are set procedures in place for members of the public to contact both the Welsh Government and Pembrokeshire County Council using generic contact mechanisms. Having such systems in place means members of the public do not make direct contact with officials and avoids those officials dealing with potentially unnecessary and disruptive correspondence. In this context, the civil servants were liaising with each other as part of their normal course of business. In doing so, there would be no expectation that their personal details would at any time be placed in the public domain.

The Welsh Government does not believe there is any legitimate interest in the public or the requestor having access to this information, and we do not see any legitimate reason why the named officials need to be contacted directly. Because of that, it is believed release of this information would be unfair and so breach the first data protection principle. As explained in our e-mail to you of 4 July, despite withholding information of individual officer details, it remains clear which body issued the correspondence in each e-mail, which is the primary factor.

For that reason, I believe the information should be withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.

Accordingly, and for the reasons outlined above, I uphold your complaint in part as I believe it was correct to withhold the names and contact details of the affected civil servants and that the information should have been withheld under section 40(2) of the Freedom of Information Act. I also wish to apologise again that we did not consult with you regarding the publication of your own name in this correspondence.

I trust the above provides a clearer explanation of our position on this matter.

If you remain dissatisfied with this response you also have the right to complain to the Information Commissioner at:

Information Commissioner's Office  
Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Tel: 01625 545 745

Fax: 01625 524 510

Email: [casework@ico.gsi.gov.uk](mailto:casework@ico.gsi.gov.uk)

Also, if you think that there has been maladministration in dealing with your request, you have the option to make a complaint to the Public Services Ombudsman for Wales who can be contacted at:

Public Services Ombudsman for Wales  
1 Ffordd yr Hen Gae, Pencoed, Bridgend, CF35 5LJ

Telephone: 0845 6010987 (local rate)

Email: [ask@ombudsman-wales.org.uk](mailto:ask@ombudsman-wales.org.uk)

Yours sincerely,

**Mick McGuire**  
**Director – Sectors and Business**