

Adran yr Economi a'r Seilwaith
Department for Economy and Infrastructure



Ein Cyf / Our Ref : ATISN 11430

Llywodraeth Cymru
Welsh Government

15 September 2017

Dear ,

ATISN 11430 – Glasfryn Road, St Davids

I wrote to you 31 July and 25 August regarding your request for information. Please accept my apologies for the delay in providing you with this response.

You asked for correspondence between Pembrokeshire County Council and the Welsh Government regarding the application for funding towards the widening of the Glasfryn Road in St Davids and the granting of that funding.

The information we hold which is captured by your request is enclosed with this letter, as detailed at Annex A. I have concluded that some of the information within Doc 1, which is at the end of this letter, is exempt from disclosure under Section 40 of the Freedom of Information Act 2000, personal data. Full reasoning for applying this exemption is given at Annex B. The withheld information has been marked as such.

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. Please remember to quote the ATISN reference number above.



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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 .

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

Document Number	Type of Correspondence
Doc 1	Emails between WG and Pembrokeshire CC
Doc 2	Pembrokeshire CC - Local Transport Fund - FY2015-16 - Revised Grant Funding
Doc 3	Pembrokeshire CC - Local Transport Fund - Road Safety - SRiC - FY2015-16 Grant Award Letter
Doc 4	LTF 15-16 Guidance Note
Doc 5	LTF 15-16 Annex A Performance Report
Doc 6	LTF 15-16 Annex B Financial Report
Doc 7	LTF 15-16 Annex C Claim Form
Doc 8	LTF 15-16 Annex D Final Claim Form
Doc 9	LTF 15-16 Annex E Schedule of Eligible Expenditure
Doc 10	LTF 15-16 Annex F Estimated Final Grant Claim
Doc 11	LTF 15-16 Register of Signatories
Doc 12	Glasfryn Road - Land Plan
Doc 13	Glasfryn Road II - draft Local Transport Fund Application Form - FY 2015-16 (2)
Doc 14	Pembrokeshire CC - LTF Application Form 2015-16 - Highways - St Davids Access Improvements - Glasfryn Road 2015-16
Doc 15	Pembrokeshire CC - LTF 2016-17 Application - Highways - St David's Sustainable Access Project - Glasfryn Road
Doc 16	Glasfryn Road - Location Plan
Doc 17	Glasfryn Road - proposed layout
Doc 18	Glasfryn Road - photos of existing layout
Doc 19	Glasfryn Road - Programme of works
Doc 20	Glasfryn Road - Risk Register
Doc 21	St Davids Community Group Project - Artist's Impression
Doc 22	Glasfryn Road - Programme of Works 2016-17
Doc 23	Glasfryn Road - Risk Register 2016-17

ATISN 11414 – APPLICATION OF EXEMPTIONS

Section 40 – Personal Data

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 within the Departure Request 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.

Some of 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. Other information withheld under this exemption relates to the personal data of individuals who were liaising with civil servants in relation to the selling of their land. In this context, the civil servants were liaising with those individuals as part of their normal course of business. In doing so, there would be no expectation by any of those concerned 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. Despite withholding information of individual officer details, it remains clear which body issued or received the correspondence, 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.