



7 November 2017

Dear ,

Request for Information – ATISN 11642

I wrote to you on 27 October regarding your request for information. In your request you asked for:

1. a copy of the grant application/submission which was made by Flintshire County Council for the proposed development scheme at Bryn Coch School in Flintshire.

I can confirm that we hold information relating to your request. The information we hold includes an application from Flintshire County Council and supporting evidence such as letters to and from the Head teacher, responses to a children's questionnaire and photographic evidence. Some of this information is being released to you. I have concluded, however, that some of this information is exempt from disclosure under section 40 – Personal Information of the Freedom of Information Act 2000 (FOIA). Personal details have been redacted and the photographs, letter to the Head teacher from a concerned parent and the children's questionnaire have not been included. Full reasoning for applying this exemption is provided at Annex A.

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@gov.wales. 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.



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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 11642 – Application for Exemption

Section 40(2) – 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 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 a civil servant and members of the public and their children, none of which would expect their names, contact details or images to be released in this context into the public domain. In this context, the members of the public and their children were going about their daily activities and expressing concern about traffic outside the school in a letter to the Head Teacher. The civil servant completed an application for funding as part of their normal course of business. There would be no expectation from the members of the public concerned or the civil servant 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 official nor members of the public need to have their personal details placed in the public domain in this context. Because of this, it is believed release of this information would be unfair and so breach the first data protection principle. Despite withholding this information, the main contents of the grant application are being released to you, 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.