

**Is-adran Môr a Physgodfeydd /
Marine & Fisheries Division**



**Llywodraeth Cymru
Welsh Government**

7 November 2017

Dear ,

ATISN 11644 Sea Bass fishing

Thank you for your request for information under the Environment Information Regulations 2004 which I received on 16 October 2017 and acknowledged to you via email 18 October.

You have asked for information regarding the following:

1. Copies of all correspondence between the Welsh Government Marine and Fisheries Division and Defra in relation to a shore-netting by-catch derogation for sea bass?

The information you requested in regard to this is attached at PDF Document I. Additionally I also attach at PDF Document II a copy of the UK Submission to the European Commission as referred to in the email from Defra dated 12 June 2017 at 11:57am.

2. The number of permits issued by Welsh Government to allow shore-netting fisheries to exist in Wales?

The Welsh Government does not issue permits for shore netting activity therefore we do not hold the information you have requested.

3. The number of fishermen involved in these fisheries?

The information you have requested is not held by the Welsh Government.

4. The quantity of sea bass landed in each of these fisheries in each year from 2012 to 2016

The information you have requested is not held by the Welsh Government.

5. Any information or evidence indicating whether the sea bass caught in these fisheries was targeted or by-catch.

The information you have requested is not held by the Welsh Government.

In regard to your request for copies of correspondence between the Welsh Government and Defra I have identified some information in the correspondence, specifically the names of correspondents and reference to non UK Government organisations and individuals which is personal data. I believe this information is exempt from disclosure in these cases and it is therefore withheld as it falls under the following exceptions provided by the Environmental Information Regulations 2004 (EIRs):

- Regulation 12(3) and 13 – Personal data

I have considered the public interest test when applying the exceptions and have balanced the arguments for withholding the information against the public interest to disclose the information.

Taking into account the exceptions 12(3) and 13 regarding personal data, I have taken the view it is not in the interest of the public to release this information and would be unfair to those named. I have redacted the names of Welsh Government officials, UK Government and other officials and correspondents who are not in either senior or public-facing roles, from the information I am disclosing under Regulation 13 of the EIR.

We consider the names of these officials clearly fall within the description of personal data as defined by the Data Protection Act (DPA) and 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 the DPA Schedule 2 is met.

Guidance from the Information Commissioner's Office (ICO) (Personal information 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 detailed 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 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).

The ICO has issued guidance on whether release of names of officials would be unfair, and thus in breach of the first principle of the DPA. The guidance states:

“In assessing whether employees can have a reasonable expectation their names will not be disclosed, key factors will include their level of seniority and responsibility and whether they have a public facing role where they represent the authority to the outside world”.

Where the officials in question are not senior staff, do not have a public facing role and where they are acting entirely in an administrative capacity, I have concluded they have a reasonable expectation that their names will not be disclosed.

It is my view, therefore, disclosure of their names would breach the first data protection principle, and thus are exempt from release under regulation 12(3) of the EIR's.

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

Please remember to quote the ATISN reference number found at the top of this letter.

You 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 the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Finally, the request you sent me contains personal information about you - for example, your name and email address. I will only use this personal information in accordance with the Data Protection Act 1998 to deal with your request and any matters which arise as a result of it. I will keep your personal information and all other information relating to your request for three years from the date on which your request is finally closed. Your personal information will then be disposed of securely.

Any information released under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 will be listed in the Welsh Government's Disclosure Log (at <http://wales.gov.uk/about/foi/responses/?lang=en>).

Yours sincerely

Attached:

Doc I. PDF Document. Copies of email correspondence with Defra

Doc II. PDF Document containing copy of the Submission to the European Commission regarding UK request for an in-year amendment to the 2017 fishing opportunities legislation