



Ein cyf/Our ref ATISN 11649

15 November 2017

Dear ,

Request for Information – ATISN 11649

We wrote to you on 20 October regarding your request for information. You asked for information relating to the delay of the Cefn Coed Mine headframe project at Crynant:

- 1) The reason for the delay.
 - 2) Date the project is due to start.
 - 3) Contractor name.
 - 4) Will the work continue to comply with the original planning consent.
 - 5) The name of the project officer.
-
- 1) Following the successful dismantling phase of the project an assessment of the required restoration work has indicated that this is significantly more extensive than identified prior to dismantling.
 - 2) Following the procurement of appropriate consultants and a specialist engineering contractor we estimate work will commence on site during the Summer of 2018.
 - 3) A contractor has not yet been appointed.
 - 4) The work will be required to meet the conditions of the planning permission granted. Any variations will require the agreement of the local planning authority
 - 5) The Welsh Government Property Lead for South West Wales Projects along with the assistance of a property management surveyor will project manage.(their names are considered exempt from release under Section 40(2) of the Freedom of Information Act – Personal data. Full reasoning for applying this exemption can be seen at Annex 1 below.)

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



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

EconomyandInfrastructure
FOI@wales.gsi.gov.uk
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.

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.

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

Annex 1

Section 40(2)

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”.

We have concluded that, in this instance, the information relating to the names of civil servant officials (below Senior Civil Service level) 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. 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 the information highlighted 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 below

- *Whether the information is sensitive personal data and the possible consequences of disclosure on the individual ;*
- *The reasonable expectations of the individual, taking into account: their expectations both at the time the information was collected and at the time of the request; the nature of the information itself; the circumstances in which the*

- information was obtained; whether the information has been or remains in the public domain; and the FOIA principles of transparency and accountability;*
- *Whether there is any legitimate interest in the public or the requester having access to the information and the balance between this and the rights and freedoms of the individuals who are the data subjects.*

In this instance, because the individuals 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 Section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to public tests.