



Ein cyf/Our ref ATISN 11825

23 January 2018

Dear ,

Request for Information – ATISN 11825

I wrote to you on 12 December regarding your request for information on superfast broadband. You asked for:

All recorded information regarding superfast broadband availability for postcodes SA18 2UN and SA18 2UG from Superfast Cymru's inception in 2012 through various extensions to the present day (6 December 2017).

I confirm we hold information caught by your request. Some of the information is captured in a wider document therefore the majority of that document has been considered not relevant to your request. The information is in two parts that outline availability in 2012 and May 2014 respectively. I am releasing the relevant parts at Annex A.

I am releasing to you a copy of an email from BT to a member of the public who lives in SA18 2UG regarding broadband availability at the premises. This information is appended at Annex B. I have concluded that some of the information within the document is withheld under Section 40: personal data, of the Freedom of Information Act 2000. Full reasoning for applying this exemption is given at Annex C.

I am also releasing information from a Welsh Government database that shows progress to delivery in each postcode, appended at Annex D. It is important to recognise that this information dates from July 2017 for information on SA18 2UN and from September 2017 for information on SA18 2UG and therefore does not necessarily reflect the current position. The current position for all premises within the two postcode areas can be found at <https://beta.gov.wales/can-i-get-it>.



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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.

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.

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 C

ATISN 11825 – Application for Exemption

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.

The withheld information amounts to the personal data of a BT officer and a member of the public. Both would not expect their names and contact details to be released in this context.

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 individuals 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 individuals’ 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 .