



Ein cyf/Our ref ATISN 11841

14 February 2018

Dear ,

Request for Information – ATISN 11841

I wrote to you on 4 January regarding your request for information on superfast broadband. You asked for the following information regarding the Brechfa telephone exchange:

1. Copies of all documentation including letters and correspondence between the Welsh Government and BT and/or BT Cymru (or any other relevant suppliers) from December 2015 – December 2017 in relation to the provision of the recent fibre cable roll out from the Brechfa Telephone exchange that is currently ongoing.
2. Copies of all planning documentation and decision making documents including cost/benefit analysis and other decision making formula/analysis of which properties should and should not benefit from a fibre connection; in particular those that show why properties in the postcodes SA327JZ and SA327JY have been excluded.

I confirm we hold some information caught by your request. Some of the information we hold in response to your first question relates to information reported to the Welsh Government by BT connected with the Superfast Cymru project. This includes details of premises claimed as being able to access superfast broadband, technical information about the infrastructure provided, financial information and information on testing and verification of the technical data provided. However, I have concluded that this information is withheld under Section 40, personal data; Section 41, information provided in confidence; and Section 43, commercial interests, of the Freedom of Information Act 2000 (FoIA). Full reasoning for applying these exemptions is given at Annex A.



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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.

We hold further information in response to question one which is captured in wider documents, therefore the majority of those documents have been considered not relevant to your request. I am releasing the relevant parts at Annex B.

For your second question, I can confirm that we do not hold any information. All documentation in terms of planning and decision making processes are held by BT. This is because the grant agreement with BT stipulates how many premises must be provided with access to superfast broadband but does not set out which premises will be connected. This allowed BT the flexibility to deliver to as many premises as possible as quickly and efficiently as possible.

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

ATISN 11841 – Application for Exemption

Section 40 – Personal Data

Section 40 of the FoIA 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 FoIA, 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:

The starting point is to consider whether it would be fair to the data subject to disclose their personal data.

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.

This refers to question 1:

The withheld information captured by this request amounts to the personal data of individuals, including any of their declared interests, in BT / Openreach or any of the respondents. We believe that these individuals do not have any public facing roles and would have the reasonable expectation that their personal data would be kept confidential and not released into the public domain in this context.

Thus, we believe 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 the public interest tests.

Section 41 – Information Provided in Confidence

This applies to some of the information caught by question 1 of the request.

Section 41 of the FoIA states that:

(1) Information is exempt information if—

- (a) it was obtained by the public authority from any other person (including another public authority), and*
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.*

The information reported to Welsh Government by BT connected with the Superfast Cymru project includes details of premises claimed as being able to access superfast broadband, technical information about the infrastructure provided, financial information and information on testing and verification is withheld as it includes detailed financial and technical project information and information about BTs infrastructure. As such the information is neither trivial nor is it, at this point in time, publicly accessible. Some of the information submitted by BT was provided to the Welsh Government on the explicit understanding that access to that information would be closely restricted. BT has not provided consent for us to make this information available to any party who asks for it.

BT has maintained that this documentation was disclosed in confidence or in the expectation of confidence.

Consequently I believe that the information is owed a legal duty of confidence and that disclosure without consent would result in an actionable breach of that confidence.

Section 41 is an absolute exemption and is not, therefore, subject to the public interest test.

Section 43 (2) – Commercial Interests

This applies to some of the information caught by question 1 of the request.

Section 43(2) of the FoIA states that:

(2) Information is exempt information if its disclosure under this Act would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it).

Section 43 is a qualified (public interest tested) exemption. This means that in order to engage it, I must show that the public interest in withholding the information is greater than the public interest in releasing it. I have therefore given consideration to the effects of disclosure of the information to the world at large as the information is made available to anybody and everybody, not just the requestor. As such, when considering your request I have considered the wider effects of disclosure rather than any personal interest you may have in being provided with the information.

Public Interest Test

I recognise the general public interest in openness and transparency and that releasing the information would help the public gain a better understanding on the provision of the recent fibre cable roll out from the Brechfa Telephone exchange. It is also recognised that there is a public interest in how public money is to be, or has been, used to ensure that Government gets the best value from the public purse.

As identified above, the withheld information relates to the financial and technical aspects of the project and information about BT's infrastructure. If this information was placed into the public domain, at this time, I believe it would be likely to prejudice BT's ability to fairly engage in future tender exercises to roll out superfast broadband to other areas in the UK.

I am aware that as a general rule, the sensitivity of information is likely to reduce over time, so that the age of information, or timing of the request may be relevant in determining whether to apply the exemption, or where the public interest may lie. In this case, however, the information captured is very much current information.

In conclusion, I believe the public interest is satisfied by the amount of information being disclosed in response to this request for information.