



Ein Cyf/Our ref: ATISN 12112
Eich Cyf/Your ref:
Dyddiad/Date: 22 March 2018

Dear ,

ATISN 12112 – REQUEST FOR INFORMATION

Thank you for your request for information received on the 19 February 2018. You asked for:

“outcome of any correspondence with the green camping club”

I interpreted your request as asking for copies of all correspondence between the Planning Directorate, Welsh Government and the Greener Camping Club between 15 March 2017 and 19 February 2018.

On 27 February you subsequently clarified your request as asking for:

“All correspondence

- 1.between yourselves and the greener camping club regarding the issuing of the exemption certificate for Penralltgoch camping
2. between yourselves and Penralltgoch regarding the illegal structures and any correspondence after that but relating to the structures.”

In respect of part 1 of your request.

I have enclosed with this letter the information which I believe is what you requested. The items identified are listed in a separate disclosure list attached to this letter.

The names, addresses and other contact details of the members of the public have been withheld under section 40(2) of the Freedom of Information Act 2000 (FOI). Section 40(2) of the FOI 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 names, addresses and other contact details of the members of the public amounts to personal data. Section 40(2) of the FOI outlines an exemption for third party data if one of two conditions is met.

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

We consider the principle being most relevant in this instance as being 40(2)(a)(i) i.e. where disclosure of personal data would breach one of the data protection principles.

There are eight data protection principles and for the purposes of disclosure under FOI we consider the first principle – data should be processed fairly and lawfully – to be the most relevant. The first principle deals particularly with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. 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.”

In the case of request for information under the FOI, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA Schedule 2 conditions (and Schedule 3 conditions if relevant). If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

We have followed the Information Commissioner's Office (ICO) approach on assessing whether the first data protection principle is satisfied as set out in the guidance contained in *Information Commissioner's Office (ICO) Personal information (section 40 and regulation 13)*. This states that:

"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 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 (EA/2012/0160 29 January 2013)*, 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)."

In considering whether it would be fair to the data subject to disclose their personal data, I have taken into account the following:

- whether the information is sensitive personal data;
- 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; and
- any legitimate interests in the public having access to the information and the balance between these and the rights and freedoms of the individuals who are the data subjects.

In assessing fairness, we have to consider the likely consequences of disclosure and personal data must be processed fairly and not used in ways that have unjustified adverse effects on the individuals concerned. At the same time, we must establish how disclosure would lead to the adverse consequences.

The request for information contains information on members of the public, and as such, we conclude that it would be unfair to disclose the members of the public's name, address or other contact details given the subject matter as they were not party to the correspondence relating to a complaint against a third party and disclosure of their name, address or other contact details could lead to the individuals being subject to distress, threats, harassment, or attacks on their integrity or credibility.

We consider the names, addresses and other contact details of the members of the public clearly falls within the description of personal data as defined by the DPA and it is our view that the disclosure of their names, addresses and other contact details would breach the first data protection principle, and thus is exempt from release under section 40 of the FOI.

In respect of part 2 of your request as I advised you on 14 March, neither I, nor any of my colleagues in the Planning Directorate, Welsh Government have corresponded with the site owners at Penralltgoch, as the erection of any structures on the site, is a matter between the site owner and the local planning authority to consider. Therefore we do not hold any information which falls within the scope of this part of your request.

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 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

Disclosure List – Request for recorded information - Reference Number (12112)

Item number	Item date	Item title or description	Reason for withholding information
001	20/03/2017	E-mail from Planning Directorate to Greener Camping Club	Section 40(2) (FOI)
002	20/03/2017	E-mail from Greener Camping Club to Planning Directorate with enclosure	Section 40(2) (FOI)
003	21/03/2017	E-mail from Greener Camping Club to Planning Directorate with enclosures	Section 40(2) (FOI)
004	21/03/2017	E-mail from Planning Directorate to Greener Camping Club	Section 40(2) (FOI)
005	21/03/2017	E-mail from Greener Camping Club to Planning Directorate with enclosure	Section 40(2) (FOI)
006	05/07/2017	E-mail from Greener Camping Club to Planning Directorate with enclosure	Section 40(2) (FOI)