



Ein Cyf/Our ref: ATISN 12206
Eich Cyf/Your ref: 0/43785
Dyddiad/Date: 3 April 2018

Dear ,

**ATISN 12206 – REQUEST FOR INFORMATION IN RESPECT OF CALL-IN REQUEST
UNDER THE TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77.
PLANNING APPLICATION FOR DEVELOPMENT TO CREATE 52 APARTMENTS,
COMMERCIAL (A3) FLOOR SPACE AND RELATED ACCESS AND PARKING.
AT FORMER PIER PAVILION, LLANDUDNO, CONWY, LL30 2LP.
APPLICATION NO. 0/43785**

Thank you for your request received on 27 March 2018 asking for confirmation of who has requested the call-in of the planning application at Llandudno Pier Pavilion building and how many people have contacted the Welsh Government in writing regarding this

To date we have received six requests to call-in the above planning application and six other letters relating to the application. Of the call-in requests five were submitted by members of the public and one by Janet Finch-Saunders AM.

The names, addresses and other contact details of the members of the public have been withheld under regulation 13 of the Environmental Information Regulations 2004 (EIR). Regulation 13 of the EIR 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.



It is concluded, in this instance, the names, addresses and other contact details of the members of the public amounts to personal data. Regulation 13(1) of the EIR outlines an exemption for third party data if one of two conditions is met.

Regulation 13(2) of the EIR sets out these conditions as follows:

(a) First condition - Disclosure of the information to a member of the public otherwise than under EIR would contravene:

- (i) any of the data protection principles (regulation 13 (2)(a)(i)), or
- (ii) a DPA section 10 notice (regulation 13 (2)(a)(ii)).

(b) Second condition - The information is exempt from the subject access right by virtue of an exemption in the DPA (regulation 13 (3)).

It is considered the principle being most relevant in this instance as being 13(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 EIR 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 EIR, the personal data is processed when it is disclosed in response to the request. This means 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.

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)* has been followed, this states :

“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, the following has been taken into account:

- 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, it is necessary to consider the likely consequences of disclosure and personal data must be processed fairly and not used in ways which have unjustified adverse effects on the individuals concerned. At the same time, it must be established how disclosure would lead to the adverse consequences.

The request for information contains information on members of the public, and as such, it is concluded it would be unfair to disclose the members of the public's name, address or other contact details given the subject matter they wrote to the Welsh Ministers on, i.e. a request for a planning application to be called in and determined by the Welsh Ministers, is a contentious issue 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.

It is considered 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 considered the disclosure of their names, addresses and other contact details would breach the first data protection principle, and thus is exempt from release under regulation 13 of the EIR.

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

Yours sincerely