



28 July 2022

Ein cyf/Our ref ATISN 17281

Dear ,

### **Request for Information – ATISN 17281**

Thank you for your request for information dated 16 March.

### **Information requested**

Who is on the transport performance board and when have they discussed transport for Wales equality performance or women in transport funding

### **Our response**

We apologise for the late response.

The Equality Pathway was discussed at the National Transport Performance Board's Core Reference Group on 14 November 2022 as part of the wider agenda.

Regarding who is on the Transport Performance Board, I consider that this information is exempt from disclosure under S40 – Personal Data, of the Freedom of Information Act 2000, and is therefore withheld. The reasons for applying this exemption are set out in full at Annex A to this letter.

I can confirm however the following organisations are represented on the Board –

Children and Young People's Commission(receive papers only)  
Community Transport Association  
Confederation of Passenger Transport  
Confederation of British Industry  
Ethnic Minorities and Youth Support  
Equality and Human Rights Commission  
Federation of Small Businesses  
Future Generations Commissioner  
Healthy Air Cymru  
Older People's Commission  
Stonewall Cymru  
Sustrans  
Transport Focus  
NHS  
Cardiff Business School



**BUDDSODDWYR** | **INVESTORS**  
**MEWN POBL** | **IN PEOPLE**

Llywodraeth Cymru /  
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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 .

## **Next steps**

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: [Freedom.ofinformation@gov.wales](mailto:Freedom.ofinformation@gov.wales). 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 A**

The Freedom of information Act provides a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider

the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

We have decided to withhold the following information:

- The personal data contained in the information you have requested under Section 40 of the Freedom of Information Act 2000 (FOIA), personal data.

This Annex sets out the reasons for the engagement of Section 40 of the FOIA.

### **Engagement of S40(2) – Personal Data**

The Welsh Government believes the personal data contained in the information being released with this request should be exempt from disclosure

Section 40(2) of the Freedom of Information Act 2000 (FOIA), together with the conditions in section 40(3)(a)(i) or 40(3)(b), provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 2018 (‘the DPA 2018’) and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, all of the information contained within the information caught by your request contains third party personal data. Namely this refers to the identity of those individuals on the board. Disclosing of any information would be likely to lead to their subsequent identification.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the UK GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

*“processed lawfully, fairly and in a transparent manner in relation to the data subject”*

As part of the settlement we have undertaken to keep this personal information of the third party confidential, and disclosure of this information, should it identify the third party, would clearly represent unfair processing.

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f) of the UK GDPR. This states:

*“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.*

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:

1. The Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;
2. The Necessity test: Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
3. The Balancing test: Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

### **1. Legitimate Interest Test**

The Welsh Government recognises there is a legitimate interest in being able to identify the parties involved in any communication in order to follow the flow of that communication. As this relates to personal data and not communication, the Welsh Government cannot identify any other legitimate interest in you or the public receiving the personal data captured by your request.

### **2. Is disclosure necessary?**

The Welsh Government is of the view that it is not necessary to disclose the personal information caught by your request. Doing so would jeopardise the anonymity of people involved, but there is no legal or over-riding necessary public interest that would make the disclosure necessary.

### **3. The Balancing Test**

As it has been concluded that there is no necessity to disclose the personal data of another individual, the fundamental rights and freedoms of the affected third party prevail in this instance and releasing the information cannot be justified under Article 6(1)(f). Disclosure of the third party information would constitute unfair processing of the personal data, and would breach an agreement in the settlement to keep the information confidential.