

13 September 2023

Dear

Complaint in respect of ATISN 18773 – Poisoning reports

I wrote to you on 10 July to acknowledge receipt of your complaint about the handling of your environmental information regulations request in relation to reports produced by FERA into investigations into wildlife poisoning incidents in Wales.

Your complaint focused on the decision to redact four-digit grid references in the information which was released to you.

I have considered your complaint and have concluded that it is not upheld.

I have concluded that the correct decision was reached in redacting specific location data from the reports. Having conducted the review, I concluded that we were correct to identify four-digit grid references and some of the other information in the reports as constituting personal data. As our response letter sets out, this means Regulation 13 of the Environmental Information Regulations is engaged and we needed to consider the application of Article 6 of the GDPR to this information by applying the tests of legitimate interest, necessity and balancing to determine whether the data could be lawfully released.

Having reviewed the explanation of how the tests were applied, I concluded that some factors were not considered or at least not explicitly referred to in our letter to you. I therefore undertook a fresh assessment of the legitimate interest, necessity to release and balancing tests and have set out my conclusions below.

Legitimate interest test

There is, potentially, a wider public interest in this information although the release of less specific location data significantly reduces the legitimate public interest.

However, I consider that there is a legitimate private interest in the location data, including the more detailed location data which constitutes personal data, contained in the reports. The interest relates to your work researching wildlife poisoning.

Necessity test

In relation to the general public interest, I concluded it is not necessary to share such specific location data that it enables individuals to be identified, particularly when more general information – to at least Local Authority area – has been made available.

In relation to the private interest, the question as to whether the more specific location data is necessary is more finely balanced. Location data, to at least Local Authority area, has been provided and should be sufficient to undertake research. More detailed information would enable research at a smaller spatial level but it is questionable whether this interest justifies interference with the privacy of individuals, particularly because the consequence of release would be to make the information publicly available.

Balancing test

We have provided information at a higher spatial level which should be sufficient to undertake research without making personal data public. Whereas releasing specific location data which would enable individuals to be identified (and who might be either a land owner / manager or the person who made the report) interferes too far in fundamental rights and freedoms of the data subject.

Having applied the tests, I concluded that the private interest identified in disclosure is outweighed by the interests and fundamental rights and freedoms of the data subject which require the protection of personal data. As a result, your complaint is not upheld.

In your email you accepted our conclusion that three reports should not be released because investigations were ongoing. You asked that these be provided when those investigations concluded. I can confirm that we will do so.

I also wanted address the point you made in your complaint that HSE have made reports available to you, following a similar request for information in relation to incidents in England, which contain the four-digit grid references. I have no knowledge of the considerations which informed HSE's decision but the Environmental Information Regulations require each authority receiving a request to reach its own decisions on whether information should be withheld.

Finally, I note from your email display name that you are working on research in relation to wildlife poisoning. For research work, there are other options available to access information, for example entering data sharing agreements. Unlike requests under Freedom of Information (Fol) or the Environmental Information Regulations (EIR), this type of arrangement would not result in the release of information to the general public.

If you are dissatisfied with the Welsh Government's handling of your request and subsequent complaint, you 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

Yours sincerely

Claire Bennett
Director of Environmental Sustainability