



14 January 2021

Dear

### **Request for Information – ATISN 14660**

I wrote to you on 15 December regarding your request for information relating to Swansea Active Travel Funding.

### **Information requested**

1. A copy of the application that the City and County of Swansea Council made for active travel funding for the following two schemes:
  - a) Cross-valley link from Llansamlet railway station to Morriston Hospital for financial year 2018-19
  - b) Gors Ave, Townhill shared use path for financial year 2019-20.
2. A copy of the Welsh Government's appraisal of the schemes and conditions attached to the grant offer.

### **Our Response**

I can confirm that we hold information captured by your request. For question 1, we are releasing the active travel funding application submitted by the City and County of Swansea Council for both schemes mentioned above. Please see the attached documents appended at Annex A and Annex B.

For question 2, we hold on file the Welsh Government's criteria that was used to assess the schemes, this document is appended at Annex C. The conditions of the grant offer is also enclosed at Annex D, namely a template grant offer letter along with the terms and conditions of this grant.

For both questions, some information has been withheld under Section 40, personal information, of the Freedom of Information Act 2000. Full reasoning for applying this exemption is given at the end of this letter.

Please note that for both questions, the two schemes you refer to are part of a wider application for several projects. The information which is not relevant to your request has been redacted or removed.

### **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

## **ATISN 14660 – Application of Exemption**

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 1998 (‘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, some of the information contained within the information caught by your request contains third party personal data. Specifically, this relates to:

- the name of the Local Authority’s Project Manager, along with that person’s telephone number and email address, contained in the Local Authority’s application form.
- the signature of the Head of Service, Transportation at the Local Authority, contained in the application form.
- the name of Welsh Government official; the name of an official from Transport for Wales; and the name of an official from Sustrans who assessed the Strategic Scheme Application, contained in the scoring sheets.

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 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”*

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). 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 application process for the Active Travel Fund. We do not believe, however, there is any legitimate reason why the personal data would need to be released in order to follow and understand the assessment process. 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. As such we do not believe it is necessary to disclose the personal of the junior officials from the Welsh Government, Transport for Wales or Sustrans. These officials are not senior staff members and would therefore not expect their names to be released into the public domain.

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

As it has been concluded it is not necessary to disclose the identity of the individuals, there is no requirement to balance the rights and interests of those individuals against the rights, under FOIA, of the requester.

### **Conclusion**

To conclude, as release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.