



Ein cyf/Our ref ATISN 14868

18 March 2021

Dear ,

### **Request for Information – ATISN 14868**

Thank you for your further e-mail dated 14 March regarding your request for information.

I wrote to you on 17 February with my understanding of what you had asked for in your request, as outlined below in points 1 and 2. Given I had heard nothing further from you, my response of 12 March was based on my understanding of what you had asked for.

In your e-mail of 14 March, I note you have now requested additional information (point 3). I have addressed the other points you have raised under the 'Our Response' section below.

### **Your Request**

1. A copy of the guidance, rules and procedures issued by the Welsh Government to local authorities in Wales for the administration of the Restrictions Business Fund.
2. Contact details for the Welsh Government's auditor who checked the administration of the scheme by local authorities.
3. Copies of correspondence with Gwynedd Council regarding their interpretation of the Restrictions Business Fund guidance.

### **Our Response**

I confirm the Welsh Government holds some information caught by your request.

With your first question, you refer to a 'national framework'. Please note there is no such framework in relation to the Restrictions Business Fund Non-Domestic Rates (RBFNDR) grant. The guidance document I sent you on 12 March relates to the most recent RBFNDR grant. This same guidance was also sent to all local authorities in



Wales. There was no separate guidance document for local authorities. Please accept my apologies that my earlier response was not clear on this point.

There have been different iterations of guidance linked to different RBFNDR grant schemes since March 2020. Whilst we have already provided you with the latest version of this guidance, it seems that you are in fact seeking an earlier version, linked to the first grant scheme from April/May 2020. We published the guidance on our website for that grant at that time. It is no longer publically available as it has been superseded by other versions. A copy of the April/May 2020 version is enclosed. Again, I confirm there was no separate guidance for local authorities.

We have only provided separate guidance to local authorities for one of the iterations of the grant, in December 2020. A copy of the guidance to businesses which was published on our website at that time, together with the version sent to local authorities, is enclosed.

I can further confirm that there is not a distinct, Gwynedd specific 'local scheme'. Each local authority was delivering the scheme using the guidance and applying local discretion where needed.

For your second question, as previously explained, the schemes have been considered by both the Welsh Government internal audit teams and Audit Wales. The names of the Welsh Government individual internal auditors are withheld from disclosure under Section 40, personal information, of the Freedom of Information Act 2000. Full reasoning for applying this exemption is given at Annex A to this letter. The generic e-mail address for contacting the Welsh Government Audit team is [Governance.Risk.Assurance@gov.wales](mailto:Governance.Risk.Assurance@gov.wales).

For your final question, I can confirm the Welsh Government does not hold any specific correspondence directly with Gwynedd Council regarding their interpretation of the scheme guidance.

### **Next steps**

If you remain 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.of.information@gov.wales](mailto:Freedom.of.information@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.

On the matter of the Welsh Government contact details and system for whistleblowing on the actions of a local authority, please note there is no formal appeals process. However, if a business remains dissatisfied with the way their application has been

handled, they may wish to consider taking their case to the Public Services Ombudsman for Wales. Details on how to make such a complaint are available at <https://www.ombudsman.wales/?emergency=1>.

Yours sincerely

## Section 40(2) – Personal Data

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(s) of the Welsh Government individual internal auditors.

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 does not believe there is any legitimate reason why the personal data, that is the name(s) of the Welsh Government individual internal

auditors, would need to be released. In undertaking audit work, the officials are representing the Welsh Government rather than themselves as individuals. 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. The individuals do not have public facing roles within the organisations and would therefore not expect their names to be released into the public domain. Rather, there are generic mechanisms in place for contacting the Welsh Government. In this case, the generic e-mail address is [Governance.Risk.Assurance@gov.wales](mailto:Governance.Risk.Assurance@gov.wales).

## **3. The Balancing Test**

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

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.