

19 August 2022

Dear

ATISN 16494 – BOP Consulting Report

Thank you for your request which I received on 22 July 2022. You asked for:

The BOP Consulting report referenced in a PowerPoint presentation released in ATISN 16447 on the matter of Gilestone Farm.

Our response

A copy of the information I have decided to release is enclosed.

I have decided that some of the information, that is, personal information of third parties, is exempt from disclosure under section 40(2) of the Freedom of Information Act and is therefore withheld. The reason for applying this exemption is set out in full at Annex 1 to this letter.

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

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 1

Application of exemptions/exceptions

The Freedom of information Act/Environmental Information Regulations provide 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.

I have decided to withhold the following information:

Personal information of people identified in the report

This Annex sets out the reasons for the engagement of section 40(2) of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

Engagement of section 40(2) (Personal Information) of the Freedom of Information Act

Section 40(2) of the 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 (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, by reference to an identifier such as a name, an identification number, location data, an online identifier or 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, the information requested contains third party personal data.

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 General Data Protection Regulation (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:

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **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 interests

We accept you have a legitimate interest in the document you have requested, and that transparency and accountability in government provide a strong legitimate interest in release of information to the fullest extent possible.

2. Is disclosure necessary?

We have not been presented with a legitimate interest in the personal data in particular, and the information we are providing can be understood and meets our expectations of openness and transparency without releasing the personal data. We do not believe disclosure of third party personal data is necessary in this case.

3. The balance between legitimate interests and the data subject’s interests or fundamental rights and freedoms

Our view is that releasing the information, with the redaction of third party personal data, achieves an appropriate balance between the legitimate interest in the content of the information, balanced with the fundamental rights and freedoms of the data subjects.

Further, even if release of the information were considered to be lawful, we believe that the 'fair' requirement of the above principle would not be satisfied. This is because those contributing on this matter would have no reasonable expectation that their personal information would be put into the public domain.

Thus, we believe release of this information into the public domain would be unfair and incompatible with the purpose for which the data was originally obtained.

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.