

12 August 2022

Dear

ATISN 16568 Brecon Beacons National Park Authority

Information requested

Thank you for your request which I received on 10 August 2022. Your request related to two decisions taken by the Minister for Climate Change regarding Brecon Beacons National Park Authority:

27 July 2022

The Minister for Climate Change has agreed not to reappoint one Member of the Brecon Beacons National Park Authority for an additional term and has agreed to end the term of appointment of another.

18 July 2022

The Minister for Climate Change has agreed a programme of assistance to Brecon Beacons National Park Authority to address the findings of an Audit Wales report.

You asked for:

1. The names of the member not reappointed for an additional term and the member that the minister agreed to end the term of; and
2. any correspondence sent or received by the government to the Brecon Beacons Park Authority and its members in July and August regarding the above decisions.

Our response

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

I have decided that some of the information is exempt from disclosure under section 40(2) of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex A 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 A

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 under FOIA Section 40(2) – Personal Data:

Personal information in correspondence between Welsh Government and the Brecon Beacons Park Authority and its members in July and August regarding the above decisions.

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. The data would identify correspondents and third parties mentioned, other than the subject of the correspondence, whose name is in the public domain.

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 that there are legitimate interests in accessing the information you have requested, and this also creates a legitimate interest in understanding the context of the information which includes understanding who was involved and whom they represented.

2. Is disclosure necessary?

Understanding the context of the correspondence is possible if sufficient information is retained to understand which authorities were involved. It is not necessary to know the names of individual correspondents as long as the context of their remarks is clear. Because the subject of the correspondence is known and that name is not being withheld, disclosure of the other names and other personal details to the world at large is not necessary.

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

Because officials are not senior staff nor in a public facing role they would have no expectation that their information would be disclosed. Although there are legitimate reasons in disclosure of the information, sufficient context is retained in what we are disclosing that the disclosure of the personal details is not necessary. I thus find that the balance of fundamental rights and freedoms of the data subjects necessitates withholding the information, as release would constitute unfair processing of their personal data.

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.