

27 September 2022

Dear

Complaint in respect of Request for Information – reference ATISN 16545

Thank you for your message of 26 August 2022. You asked us to review our decision not to disclose information to you in respect of the above Freedom of Information Request. Your request was for:

A copy of all correspondence between the Welsh Government and representatives of the Green Man Festival relating to the purchase of Gilestone Farm.

In our response to you we withheld the correspondence under FOIA Section 43, Commercial Interests.

In your message to us you raise the considerable public interest in this purchase. You further note that some of the commercial information, such as the purchase price, are already in the public domain.

Having looked at the information we hold on this matter, I have decided that the exemption was drawn too widely, and that the public interest argument you have raised does outweigh the public interest in withholding some commercial aspects in this case, and I am attaching the captured correspondence. Messages have been copied into a single document for your convenience.

I have found that some of the information captured is personal information and exempt from disclosure under section 40(2) and my reasons for applying this exemption can also be found below.

I apologise that more information was withheld than was necessary.

Reasons for applying exemptions

Section 40(2) – Personal Data

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 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.

The Welsh Government has 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 names of individuals correspondents in the material you have requested, and personal data referred to of third parties that is captured in the correspondence.

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 communication in order to follow the flow of that communication and to understand the position of each party. 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 these communications. By redacting the information in such a way that the context of the communications are preserved, the actual identities of individuals becomes irrelevant to the information caught by your request. 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. It is straight forward, even when withholding the personal data, to identify the position of each organisation, as we have left the context of discussion in place.

As such we do not believe it is necessary to disclose the personal data in order to understand the information.

3. The Balancing Test

In considering disclosure of personal data we are also mindful that some individuals have been contacted personally by members of the public owing to their involvement in this case. Disclosure of information under FOI is disclosure to the world, and not just to the requestor. The question is whether it is necessary to disclose personal information, and after that whether the balance of the interests of individuals against the rights of public access to their personal data favour disclosure.

In this case I have concluded that it is not necessary to disclose the identity of the individuals concerned to understand the information being released, and as such, there is no requirement to consider the balance of the rights and interests of those individuals 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.

If you remain dissatisfied with this response you also have the right to complain to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745
Fax: 01625 524 510
Email: casework@ico.gsi.gov.uk

Also, if you think that there has been maladministration in dealing with your request, you have the option to make a complaint to the Public Services Ombudsman for Wales who can be contacted at:

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
Bridgend
CF35 5LJ

Telephone: 0845 6010987 (local rate)
Email: ask@ombudsman-wales.org.uk

Yours Sincerely

Jason Thomas
Director, Culture, Sport and Tourism