

5 October 2022

Dear

**ATISN 16590**

Thank you for your request which I received on 17 August 2022. I asked for clarification of your request. In your clarification response you asked for:

- All emails and letters of concern, complaints and FOI that Welsh Government received from October 2020 onwards regarding cycle routes (these are 3m wide tarmac highways) through the Clyne Ancient Woodland habitat.

**Our response**

The information you requested is enclosed at Annex 2.

I have decided that some of the information is exempt from disclosure under section 40(2) (Personal Information) of the Freedom of Information Act and is therefore withheld. The reasons for applying this exemption are 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](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

## 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 those who wrote to the Welsh Government and officials.

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 contains details that would lead to the identification of officials working in an administrative capacity.

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 data you have requested, and in understanding who made decisions and in what capacity they did so.

### **2. Is disclosure necessary?**

In your request you asked for copies of the grant award letter, terms and conditions and monitoring reports, and we are supplying these. The names are from these documents, and so the question is whether disclosure of the names is necessary to comply with an information requirement for which you asked to access to these documents.

I do not find that release of the names on these documents is required to understand their context, scope or who made the decisions on them except for senior or public facing roles.

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

I find that there is a strong legitimate interest in understanding the context of these documents, and to that end staff roles and names of senior or public facing staff should, on balance, be released to you, even where this information identifies living individuals and thus constitutes personal data. Such data is being released to you.

On the question of staff acting entirely within an administrative capacity and where they were not senior, I find that they will have had no expectation that their names would be placed in the public domain, and that release of their data is not necessary. As such, release of their information 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.