

16 December 2022

Dear

**ATISN 16890 - Capel Salem (Capel y Cwm), Bonymaen**

Thank you for your email of Monday 21 November, which I received on Tuesday 22 November, requesting:

- 1) All correspondence, between the dates of 01/09/2021 through to 21/11/2022, about Capel Salem, Bonymaen; and
- 2) All correspondence with Swansea Council about Capel Salem; and separately,
- 3) Information about an enforcement case relating to Capel Salem.

The information you requested is enclosed (See index at Annex B).

I have redacted the email addresses of the recipients of the emails under Section 40(2) of the Freedom of Information Act. My reasoning for doing so is set out at Annex A of this letter.

You also asked for:

- 4) Information about a planning application relating to Capel Salem

Following a search of our paper and electronic records, I have established that the information you require is not held by the Welsh Government.

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  
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,

## Freedom of Information Act 2000: Section 40(2)

Section 40(2) 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 ('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, the information requested contains third party personal data. Specifically the email addresses of the correspondents in question.

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:-

- **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

Your request is for the correspondence, which is provided. There is a legitimate interest in understanding who the correspondence is with. This information has not been withheld. The contact emails of correspondents may be legitimately required in

some circumstances, and as release under FOI is release to the world, there is a legitimate interest in seeing these addresses.

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

The FOI entitles the requestor freedom of information, which in this case is the correspondence we hold. Although that correspondence captures the email addresses of the correspondents, I do not find that disclosure of these addresses is necessary to understand the correspondence itself in context. For that reason I do not find that disclosure of the email addresses is necessary

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

As disclosure is not necessary to understand the information you have requested in context, I do not need to balance the data subject's rights with legitimate interests and the information is withheld.

**Index**

- Doc 1 – email exchange between Cadw and Swansea Council, dated 21 December 2021.
- Doc 2 – email from Swansea Council to Cadw, dated 24 January 2022.<sup>1</sup>
- Doc 3 – email exchange between Cadw and Swansea Council, dated 25 February 2022.<sup>1</sup>
- Doc 4 – email exchange between Cadw and Cllr Paul Lloyd (cc'ing Cllr Mandy Evans) at Swansea Council, dated between 21 December 2021 and 8 March 2022.<sup>2</sup>
- Doc 5 – email enquiry from Mike Hedges MS to the Deputy Minister for Arts and Sport, dated 17 March 2022.
- Doc 6 – reply from the Deputy Minister for Arts and Sport to Mike Hedges MS, dated 7 April 2022.

**Notes**

<sup>1</sup> You may note a variation in font colour. This is not an edit or redaction – it was received in that format.

<sup>2</sup> You may note a gap in recipients in the email chain. This is not an edit or redaction – it was received in that way.