

8 February 2023

Dear

Complaint in respect of Request for Information – reference ATISN 16778

Apologies again for the delay in responding to you regarding the complaint you made and request for an internal review into the FOI response you received on the 1 December 2022 for information that led to the closure of the Menai Suspension Bridge.

In your request you asked for:

1. Information regarding the findings leading up to the decision by WG to immediately and without warning close the Menai suspension bridge on 21/10/2022.
2. Any previous information indicating problems, to be interpreted widely, whether actual or potential, since January 2018, with the same bridge.

Welsh Government holds reports by UK Highways A55 Ltd who are the company responsible for the Design Build Finance and Operators of the A55 between Junction 1 to 11 and the Menai Bridge Loop that contains information captured by your request

In our original response we withheld this information under Regulation 12(5)(e) of the Environmental Information Regulations (EIRs) – confidentiality of commercial or industrial information. This is because the information was shared with Welsh government under a duty of confidence, as described in our response to you.

You disagreed with our use of the exemption, stating that “details of the report have been widely disclosed in the public domain by the WG already.” Inasmuch as this is so, the information shared has been shared with the agreement of the contractors, and such information is now in the public domain, and so exempt from disclosure. Nevertheless the report we hold contains other information that is not in the public domain, and to share that information we held would create an actionable breach of contract as described to you in our initial response.

The request made for an internal review has been undertaken and as a result of this review, and following discussion with our contractors, we have concluded that the information can now be released based on your request. We attach for your information the following:-

In response to point 1 above - OCTOBER 2022 UK HIGHWAYS A55 LTD. MENAI BRIDGE – HANGER LOSS ASSESSMENT FINAL REPORT as completed by COWI.

In response to point 2 above - UK Highways, Bridge Management Principal Inspection Report, Menai Bridge (Structure Ref. A5 Menai Bridge) December 2019 as completed by Atkins.

For the point 2 report, the information relating to the hanger issues is classed as a medium term issue. UK Highways A55 Ltd were also planning a repainting programme on the hangers (the 15 year cycle) and as part of this work employed the services of COWI consultants who drew to the conclusion and recommendation to close the Menai Suspension Bridge (point 1 report).

I am withholding some personal information within these reports under Regulation 13 of the Environmental Information Regulations (Personal Data) and my reasons for applying this exception are at annex 1 to this letter.

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,

Annex 1: Application of Exemptions

Engagement of (Regulation 13) of the Environmental Information Regulations 2004

Regulation 13(1) together with the conditions in Regulation 13(2)(a)(i) and 13(2)(a)(ii) 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.

Under Regulation 13(1) of the EIRs, 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

The requestor has requested reports regarding the Menai Bridge. There is a legitimate interest in the content of the report, which includes a legitimate interest in understanding that the report has been created to appropriate professional standards and with suitable expertise.

2. Is disclosure necessary?

The information requested does not state a purpose for which it is requested, but there is no reasonable expectation created in the request that the requestor wishes or needs to understand or know the names of those who drafted the report. Redacting the personal information still ensures that we are supplying sufficient information to establish the identified legitimate interests above.

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

As the interests of the requestor can be achieved without the disclosure of personal information, the information will be released with redaction of personal identifying information. This protects the data subject's interests whilst ensuring transparency.