

ATISN: 17042

01/02/2023

Dear

Thank you for your response to our email of 13th January. You asked for the following information relating to all farms and holdings, within a 2-mile radius of Clarach Bay going back 18 months:

- business names
- business owners and partners
- landowners
- livestock owners/keepers
- sheep movements
- annual inventories

Our response

A copy of the information I have decided to release (sheep movements and annual inventories) is enclosed in the attached PDF document.

I have decided that **some of the information listed above described** is exempt from disclosure under Regulation 13(1) together with the conditions in Regulation 13(2)(a)(i) and 13(2)(a)(ii) of the **Environmental Information Regulations** and is therefore withheld. The reason for applying this exemption is 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

Regulation 13– Personal data

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. Whilst the information being withheld is not personal data per se, we believe that releasing this information to the World would allow individuals to be identified, and as such does constitute personal data. The names of the farm businesses are closely aligned to the farmers names and as such allows the individual farmers to be identified.

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

As your requests have not indicated why you are seeking access to this information we have been unable to identify whether or not you have a legitimate interest in access the personal data of third parties. Your request indicates you are interested in obtaining names of private individuals.

2. Is disclosure necessary?

As we have no indication of why you want the information we are unable to identify whether the provision of this information is necessary.

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

As we are unable to identify a legitimate interest in you obtaining this third party personal data and, thus, we are unable to identify whether or not the disclosure would be necessary, we have no option than to conclude that the rights or legitimate interests of the data subject take precedence and that the information should not be released to the World.