



Our ref ATISN 18566

1 August 2023

Dear \_\_\_\_\_,

### **Request for Information – ATISN 18566**

Thank you for your request which I received on 06 June. You asked for:

- All correspondence between Atty Beor-Roberts and the Welsh Government relating to or referencing Gilestone Farm, Powys, Green Man Festival or Fiona Stewart (CEO of Green Man) over the period June 2021 to 2023
- All correspondence between Knight Frank and the Welsh Government relating to or referencing Gilestone Farm, Powys, Green Man Festival or Fiona Stewart (CEO of Green Man) over the period June 2021 to 2023

### **Our response**

I apologise for the delay in our response.

- Regarding your first request for *“All correspondence between Atty Beor-Roberts and the Welsh Government relating to or referencing Gilestone Farm, Powys, Green Man Festival or Fiona Stewart (CEO of Green Man) over the period June 2021 to 2023”*, this information has previously been released under FOI Release 17373 and can be accessed on the Welsh Government website [here](#)

A copy of the information I have decided to release under your second request is attached.

I have decided that some of the information is exempt from disclosure under sections 40(2) and 43 of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are 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](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 A**

### **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:

- Content relating to ongoing commercial negotiations regarding a lease – Section 43 – Commercial interests
- Names and email addresses of correspondents – Section 40(2) – Personal information

This Annex sets out the reasons for the engagement of sections 43 and 40(2) of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

### **Section 43(2) – commercial interests**

The exemption states:

- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

The Welsh Government (WG) is of the view that revealing the information in relation to ongoing commercial negotiations regarding a lease would be likely to prejudice those negotiations, leading to commercial loss, should they be disclosed at this point in time. Commercial negotiations are undertaken with the benefit of professional advice that should not be disclosed prior to completion of the negotiations.

### **Public Interest Test For Disclosure**

The Welsh Government recognises the public interest in openness and transparency within government, particularly in terms of ensuring an accountable government by disclosing how the Welsh Government spends public money and that the money is invested wisely.

### **Public Interest Against Disclosure**

Disclosure of this information would undermine commercial negotiations and would be likely to lead to commercial losses as a result. We do not believe facilitating this

type of unfair competitive advantage would be in the wider public interest, and neither is it in the public interest to undermine an ongoing process of negotiation.

I am aware that, as a general rule, the sensitivity of information is likely to reduce over time; therefore the age of the information, or timing of the request, may be relevant in determining whether to apply an exemption, or where the public interest may lie. In this case, however, the information captured is very much current information. I believe therefore that the balance of the public interest falls in favour of withholding the information.

## **Section 40(2) – Personal Data**

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.

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**

The personal data is the name of correspondents in the correspondence captured by this request. There is a legitimate interest in understanding the context of communications, and from which and to which organisations the correspondence was addressed.

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

Disclosure of the personal data is not necessary for the legitimate interest, where we can provide the context of the request instead. By replacing the names with the context (e.g. WG Official 1 etc.) we are able to maintain the context for which a legitimate interest exists without disclosing personal data, which affects the fundamental rights of the data subjects under data protection legislation.

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

Because the redaction meets the legitimate interest and so disclosure of the personal data is not necessary, there is no need to further consider the balance of interests, and the information is withheld.