

30 October 2023

Dear

FREEDOM OF INFORMATION REQUEST – ATISN 19117 - MARCONI SITE

Thank you for your request of 3 October 2023. You asked that we provide the following information:

- an update on the position in relation to your request that Cadw considers the above site for scheduling.

The initial view of the archaeological inspector responsible for this case is that the relict remains at the site are likely to meet the criteria for scheduling. This will now be tested by inspection. However, the inspector's priority work is the designation of historic assets within the Slate Industry of N Wales World Heritage Site.

You also asked for:

- all information, internal and otherwise, relating to the proposal for scheduling, for the period 1 April 2022 to 3 October 2023.

The information you requested is enclosed. A list of the documents to be released is set out in Annex A.

I have redacted the names and 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.

I have interpreted your request to exclude any information that will already be in your possession through previous exchanges of emails with Cadw.

I have also redacted the names of other monuments being considered for potential designation, Regulation (12.5.g) of the Environmental Information Regulations 2004.

The reason for applying this is set out in full at Annex B to this letter.

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 - ATISN 19117 – Documents for release

Item	Description	Date
01	Desk Assessment	11.8.22
02	Internal e-mails – Desk Assessment endorsement by Head of Regeneration & Conservation (HRC)	15.8.22
03	Internal e-mail – Handling of additional information	3.10.22
04	Internal e-mail – from HRC to Inspector of Listed Buildings	14.3.23
05	Internal e-mail – from Archaeological Inspector to Head of Branch (HoB)	27.4.23
06	Internal e-mail – from HoB regarding follow-up enquiry	4.5.23
07	Internal e-mail – Additional information from casework manager to Archaeological Inspectors	9.5.23
08	Internal e-mails - Archaeological Inspectorate exchange	23.5.23
09	Internal e-mail – Scheduling Casework	14.6.23
10	Internal e-mails – Archaeological Inspector update 1	12.7.23
11	Internal e-mails – Archaeological Inspector update 2	19.7.23

Annex B - ATISN 19117

Regulations 12 & 13 the Environmental Information Regulations 2004

I have decided to withhold the following information:

Information being withheld	Section number and exception name
Environmental Information of: - Other monuments being considered for designation, the disclosure of which may adversely affect them.	Regulation (12.5.g) of the Environmental Information Regulations: the protection of the environment to which the information relates.
Personal information of: - names and email addresses of Welsh Govt officials.	Regulation (13) of the Environmental Information Regulations: the information requested includes personal data of which the applicant is not the data subject.

Engagement of Regulation 12

Regulation 12 of the EIRs sets out an exception from the duty to disclose if disclosure would adversely affect the protection of the environment to which the information relates (5.g).

Guidance from the Information Commissioner's Office states:

- The system for the designation of historic assets is an example of the protection of the environment.
- If disclosure would lead to increase in individuals attempting to interfere with an historic asset there would an adverse effect on the protection of the environment.

I consider that disclosure has the potential to cause harm to other monuments being considered for formal protection, through, for example, nighthawking and looting (heritage crime).

Engagement of Regulation 13

Regulation 13 of the EIRs sets out an exception from the duty to disclose if the information requested is personal data protected by the General Data Protection Regulations (GDPR).

Personal data means information which relates to a living individual who can be identified from that data; or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

Guidance from the Information Commissioner's Office states:

- The starting point is to consider whether it would be fair to the data subject to disclose their personal data;
- If disclosure would not be fair, then the information is exempt from disclosure.

I have assessed that the individuals concerned would have a reasonable expectation that their personal data would be kept confidential and not disclosed to the world at large. It would be unfair to the individual concerned to release their personal data. Disclosure would give rise to unfair and unwarranted intrusion on the individuals' privacy and has the potential to cause unnecessary and unjustified harm to the individual.

I have thus concluded that in in this case, disclosure would not have been within the reasonable expectation of the individual and the loss of privacy would cause unwarranted distress. It is my view that disclosure of would breach the first data protection principle, and thus are exempt from release under regulations 12 and 13 of the Environmental Information Regulations 2004.

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 personal data. Specifically, the names and email addresses of the officials and of correspondents.

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 details of officials and 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 names and email addresses of the correspondents, I do not find that disclosure of this is necessary to understand the correspondence itself in context. For that reason I do not find that disclosure 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.