



Llywodraeth Cymru
Welsh Government

Our ref: ATISN 15145

24 June 2021

Dear

Request for Information – ATISN 15145

I wrote to you on 27 May regarding your request for information sent on 19 May.

Your Request

You asked for the following information regarding the junction of A489 and A470 (Caersws railway crossing):

1. A copy of your current road maintenance policy relating to the road above including:
 - a) details of the intended frequency of road safety inspections
 - b) how these inspections should be conducted
 - c) the maximum time between identification of a defect and repairs being carried out.

2. A copy of the road repair history for that road over the past year including:
 - a) dates of all safety inspections between 08/01/21 to 08/03/21
 - b) details of how safety inspections were undertaken (walked or driven, speed of inspection vehicle etc)
 - c) details of all carriageway defects identified, with description, date and time
 - d) details of how the authority handled these defects
 - e) what repairs were undertaken
 - f) the time between the identification of each defect and a repair being carried out.

Our response



BUDDSODDWYR | **INVESTORS**
MEWN POBL | **IN PEOPLE**

Llywodraeth Cymru /
Welsh Government
Parc Cathays / Cathays Park
CF10 3NQ

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding .

I apologise for the delay in responding to you. I can confirm that we hold information caught by your request. We are releasing to you 19 documents including our maintenance policy, as well as information regarding inspection records for the period concerned, the alterations to the standard Trunk Road Maintenance Manual requirements because of the current Covid working situation, and a schedule of repair interventions carried out with supporting IRIS Order details.

I have concluded however, that some of the information should be withheld from disclosure under Section 40, personal information, of the Freedom of Information Act 2000. Full reasoning for applying this exemption is given 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

ATISN 14475 - Application of exemptions

The Freedom of information Act provides 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.

We have decided to withhold the following information:

- The personal data contained in the information you have requested under Section 40 of the Freedom of Information Act 2000 (FoIA), personal data.

This Annex sets out the reasons for the engagement of Section 40 of the FoIA.

Engagement of S40(2) – Personal Data

The Welsh Government believes the personal data contained in the information being released with this request should be exempt from disclosure

Section 40(2) of the Freedom of Information Act 2000 (FOIA), 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, some of the information contained within the documents caught by your request contains third party personal data. Specifically, this relates to the names of the inspectors mentioned in the Safety Patrol & Defect Logs, as well as the name of a North and Mid Wales Trunk Road Agent officer and the names of two junior Welsh Government officials mentioned in the COVID-19, Revised Service Provision (Rev. 004) Briefing Note.

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 UK 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) of the UK GDPR. 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:

1. The Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;
2. The Necessity test: Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
3. 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 Interest Test

The Welsh Government recognises there is a legitimate interest in being able to identify the parties involved in any communication. We do not believe, however, there is any legitimate reason why the personal data would need to be released in order to follow and understand those communications, and in this case the names of the inspectors included the safety patrol and defect log and the name of a North and Mid Wales Trunk Road Agent officer and the names of two junior Welsh Government officials mentioned in the COVID-19, Revised Service Provision (Rev. 004) Briefing Note. The Welsh Government cannot identify any other legitimate interest in you or the public receiving the personal data captured by your request.

2. Is disclosure necessary?

The Welsh Government is of the view that it is not necessary to disclose the personal information caught by your request. It is straight forward, even when withholding the personal data, to follow the details included in the documents. As such we do not believe it is necessary to disclose the personal data to allow the safety patrol and defect logs and briefing note to be followed.

3. The Balancing Test

As it has been concluded that there is no necessity to disclose the personal data of another individual, the fundamental rights and freedoms of the affected third party prevail in this instance and releasing the information cannot be justified under Article 6(1)(f).

Conclusion

To conclude, as release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has

therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.