



Ein cyf/Our ref ATISN 15365

26 August 2021

Dear ,

Request for Information – ATISN 15365

I wrote to you on 4 August regarding your request for information.

Your request

1. Isle of Anglesey County Council's Road Safety Grant (Capital) application forms for 2021 - 2022, 2020 - 2021, 2019 - 2020.
2. The appropriate grant criteria for each of the above years.
3. The Welsh Government's appraisal against the grant criteria including any scoring documents.
4. Grant offer letter and any attached conditions.

Our Response

I confirm the Welsh Government holds some information caught by your request. The information you have requested for questions 1, 2 and 4 are being released to you and are appended at Docs 1, 2 and 3 respectively.

The appraisal against the grant criteria and scoring documents you have requested under question 3 are being withheld under Regulation 12(4)(e) of the Environmental Information Regulations, internal communications. All personal data is also being withheld under Regulation 13 of the EIRs, personal data. The reasons for applying these exceptions are set out 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,



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

FOI.EconomyandInfrastructure@gov.wales

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 .

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 15365 - Application of exceptions

The 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.

We have decided to withhold the following information:

- The Welsh Government's appraisal against the grant criteria including any scoring documents.
- Personal data.

This Annex sets out the reasons for the engagement of Regulations 12(4)(e) and 13 of the Environmental Information Regulations and our subsequent consideration of the public interest test, where relevant.

Engagement of Regulation 12(4)(e) – internal communications

The Welsh Government believes that the appraisal and scoring information you have requested is environmental information and as such has considered its release under the Environmental Information Regulations 2004 (EIRs). 'Environmental information' is defined in the Regulations as (inter alia) information on measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, and also factors such as substances, energy, noise, radiation or waste likely to affect the state of the elements of the environment above.

With the above in mind, the Welsh Government has considered the release of the appraisal and scoring information and concluded it should be withheld from disclosure under Reg12(4)(e) (internal communications) of the EIRs.

Regulation 12(4)(e) states that a public authority may refuse to disclose information to the extent that—

(e) the request involves the disclosure of internal communications.

Guidance from the Information Commissioner has confirmed that this exception is drafted broadly and is a class based exception which covers all internal communications, not just those that are sensitive or actually reflect internal thinking. The concept of 'internal communications' covers a wide range of information and includes any information intended to be communicated to others or saved in a file where it may be consulted by others. I can confirm that the information held by the Welsh Government which is captured by your request amounts to internal communications.

Regulation 12(4)(e) is a qualified (public interest tested) exception. Even if the exception is engaged, public authorities must go on to apply the public interest test set out in regulation 12(1)(b). A public authority can only withhold the information if the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Public Interest Test

The Welsh Government acknowledges the presumption in favour of disclosure under Regulation 12(2). It acknowledges there is a public interest in openness and transparency within Government, particularly in terms of ensuring transparent and accountable government by disclosing how the Welsh Government utilises its resources, spends public money and that both are invested wisely on behalf of the people of Wales.

The appraisal and scoring information you have requested under your third question is intended for internal use only. It is part of wider documentation which covers all applications submitted by local authorities across Wales for the respective years. It is important for Welsh Government officials to discuss and agree the scoring of projects and awarding of funding to all local authorities in Wales on a project by project basis without external interference. The scoring decisions are final and are not otherwise shared with the local authorities.

It is important for good governance for officials to be able to fully engage with each other and with Ministers, to exchange and provide advice, away from the public gaze and there should be no disincentive in doing so. If officials believed their advice or freely exchanged views would be made public, it is likely to inhibit the future provision of advice and exchange of views, leading to less rigorous and in-depth exploration of options and impairment of the quality of decision making. Unless officials are able to freely allocate scoring surrounding individual funding applications, the effectiveness of the process of reaching final scoring decisions would be undermined. This would not be in the public interest.

The Welsh Government is of the view that the information it publishes on its website on an annual basis at [Road safety and safe routes in communities grants: guidance to applicants 2021-22 | GOV.WALES](#), together with the information that is being released with this request, sufficiently meets the public interest on this matter.

The Welsh Government therefore believes the balance of public interest to withhold the information outweighs the public interest to release it for the reasons outlined above and that the information should be withheld under Reg 12(4)(e) of the EIRs.

Engagement of Regulation 13 - Personal Data

Regulation 13 of the EIRs sets out an exception from the right to know if the information requested is personal information protected by the General Data Protection Regulation (GDPR) and Data Protection Act 2018 (DPA). Personal data is defined in the GDPR as:

“any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person 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 that natural person”

We have concluded that, in this instance, the information in relation to names and signatures amounts to personal data. Under Regulation 13 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”

Guidance from the Information Commissioner’s Office (Personal information (section 40 and regulation 13) v 1.3) states (at p11):

- The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below.
- If disclosure would not be fair, then the information is exempt from disclosure.

This approach was endorsed by the Court of Appeal in the case of *Deborah Clark v the Information Commissioner and East Hertfordshire District Council* where it was held:

“The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA” (paragraph 63).

In this instance, the redacted personal data amounts to names and signatures of Welsh Government officials and local authority officers. They do not have openly public facing roles and would not expect their names, signatures or contact details to be released in this context. We believe they would have no expectation that this information would be made public. Thus, we believe release of this information would be unfair and so breach the first data protection principle.

For that reason, the information is being withheld under Regulation 13 of the EIRs. This is an absolute exemption and not subject to the public interest test.