



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref ATISN 15519

14 October 2021

Dear

Request for Information – ATISN 15519

I wrote to you on 23 September regarding your request for information and requesting a refined request which I received on 24 September.

Information requested

You asked for the following information:

1. Please can you send me the copies of the bat detector findings for the areas in and around Llewellyn Street, Dowlais, CF48. I have defined the area to the best of my knowledge of where I know the survey was being carried on a google map.
2. I would also be very grateful as well if you send me a copy of the bat roost activity on all the public areas surveyed
3. Also if you could send me the bat species detected during the survey

Our Response

I can confirm we hold some information captured by your request. For question 1, ground based assessments were initially undertaken by suitably experienced / licenced bat ecologists in February 2020 in the Dowlais area, focussing on Llewellyn Street, Pant Road, Victoria Street, the rear of Wern Street and the public footpath between Victoria Street and Wern Street. A copy of the A465 bat survey results for the Dowlais area is appended at Annex A. Please note that the name of a Welsh Government official amounts to personal data and has therefore been redacted from the document. 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



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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 .

the GDPR. Full reasoning for applying Regulation 13 is attached to the bottom of this letter.

For questions 2 and 3, I can confirm that no bat roosts were observed in the buildings located on Llewellyn Street, Pant Road, Victoria Street, the rear of Wern Street and the public footpath between Victoria Street and Wern Street during these surveys.

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

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 the name of a Welsh Government official 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 personal data included in the A465 Bat Survey Results – Dowlais Area has been redacted.

The personal information contained in the survey results amounts to the personal data of a Welsh Government official. This Welsh Government official does not have an openly public facing role and would not expect their name to be released in this context. We believe that 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.