

28 October 2022

Dear

ATISN 16526 - Housing and planning permission delay data

1. Thank you for your request under the Environmental Information Regulations 2004 ("EIRs") which I received of 1 August 2022, and clarified on 8 August 2022. You asked for:
 - *"The time cost of specific planning permission that is required in Wales, but differs from that required in England?"*
 - *Complaints made to the Welsh Government on housing/planning permission delays. Please could it be provided?*
 - *The cost of planning permission delays to the Welsh Government?"*
2. On 30 September you asked for an internal review as you had not received a response to your request within the prescribed deadline. I have carried out an internal review and you have not received the level of service you should expect and therefore I uphold your complaint and apologise on behalf of the Welsh Government for the poor level of service you have received.
3. To resolve the issue, I have proceeded to process your request, and the following response is made.
4. In relation to part 1 of your request, the Welsh Government does not hold data on the time costs in making a planning application in Wales in comparison with England.
5. In relation to part 2 of your request. I have enclosed with this letter some of the information you requested, as identified on the disclosure list. Information is being withheld under Regulation 13 of the EIRs, as it constitutes the personal data of third parties. The information being withheld are names, home postal addresses, mobile phone numbers, personal e-mail addresses and wet signatures.
6. In relation to part 3 of your request, we do not hold information on the costs incurred in delays to the Welsh Government in applying for planning permission.
7. The information caught by your request constitutes environmental information and has been considered for disclosure under the EIRs. I have decided some of the information described in the enclosed list is exempt from disclosure

under Regulation 13 of the EIRs. The reasons for applying this exemption is set out in full at Annex 1 to this letter.

Next steps

8. If you are dissatisfied with the Welsh Government's response to your complaint. 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.

Yours sincerely

Regulation 13– Personal data

Regulation 13 of the EIRs sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (“DPA”). Personal data is defined in Section 1(1) of the DPA as:

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

We have concluded that, in this instance, the information requested contains third party personal data. Under Regulation 13(1) of the EIRs, personal data is exempt from release if disclosure would breach one of the data protection principles. We consider the principle being most relevant in this instance as being the first.

The first data protection principle states:

*“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—
(a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met”.*

We consider that the identity of a member of the public and their home address, personal e-mail address, mobile phone number and wet signature clearly falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle. We also consider the wet signature of a Member of the Senedd or Member of Parliament is also personal data as defined by the DPA and should not be disclosed. The first data protection principle has two components:

- 1 Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

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, we believe the individuals 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 tests