

24 March 2023

Dear

ATISN 17201

Thank you for your request which I received on 24 February 2023. You asked for:

Copies of all correspondence, whether email or letter or notes of phone conversations between:

The Welsh Government, Economy department, including Creative Wales, and officials in Creative Wales

From and To the following:

1. Clerk to Talybont-on-Usk Community Council talybontcc@gmail.com
2. Keren Bender kerenbender1@gmail.com
3. Councillor Ellen Walsh Moorman ellenwalshmoorman@gmail.com
4. Ellen Walsh Moorman e.w.moorman@gmail.com
5. Chairman of Talybont-on-Usk Community Council Simon Baldwin baldwinsimonc@gmail.com
6. County Councillor Anita Cartwright cllr.anita.cartwright@powys.gov.uk

The subjects of the correspondence to include: Green Man, Green Man Festival, Gilestone Farm, Usk Valley Conservation Group, UVCG, and Fiona Stewart

Our response

A copy of the information is enclosed.

I have decided that some of the is exempt from disclosure under section 40(2) of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex 1 to this letter.

As I have concluded that the legitimate interest in knowing the name of some correspondents whose personal data is captured in the attached correspondence outweighs their fundamental rights, and so they can be named, I am providing this key to the names of some individuals whose personal data (email addresses and/or telephone numbers) have been redacted.

Correspondent 1 - Keren Bender
Correspondent 2 - Simon Baldwin

Councillor's names have not been redacted.

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

Annex 1

Application of exemptions/exceptions

The Freedom of information Act/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.

I have decided to withhold the following information:

The names of correspondents and officials where this information would not be in the public domain.

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 third party personal data.

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

The request has asked for correspondence between certain named parties, and there is a legitimate interest in understanding who these named parties are in the captured correspondence, so that the context of the correspondence may be properly understood.

These people were also acting in a public service role and so there is a legitimate interest in understanding how they have conducted themselves in that public role and their public tasks.

There is also a legitimate interest in understanding the wider context of the communications.

2. Is disclosure necessary?

It is necessary to the understanding of the public role taken by parties in correspondence and discussion, that those parties be identified with comments they have made, particularly where those comments are a matter of public record.

It is not necessary that you know the names of officials or correspondents in the exchange where those officials are acting in an administrative capacity, and where they are not the subject of your request.

3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

Where I have established that there is a necessary interest in the data requested: that is to say, an interest in understanding the context of the communications between the named parties captured by your request, I have concluded that the balance of the legitimate interests in this case lies with release. That is, the data subjects identified would understand that their public role makes it likely that their comments and communications on this matter would be released, and that they would understand this.

Where personal data has been captured that is incidental, because these were officials acting in an administrative capacity, I have concluded that their fundamental rights and freedoms outweigh the balance of legitimate interest in the context that would be supplied by adding their names. I have, however, identified such officials with numbered context so that the context of all the correspondence may be understood.