

21 March 2023

Dear

ATISN17205 – Sheep movements

Information requested

Thank you for your request which I received on 21 February 2023.

Your request follows our earlier response to your request ATISN 17042, in which we provided sheep movements and annual inventories for all farms and holdings within a 2-mile radius of Clarach Bay, going back 18 months. Your current request asks for sheep movements and annual inventories for the last 18 months specifically for Roschellan Fach Farm.

Our response

I have decided that the information requested is exempt from disclosure under Regulation 13(1) of the **Environmental Information Regulations (EIR)**, and the conditions in Regulation 13(2)(a)(i) and 13(2)(a)(ii) of the **EIR** and is therefore withheld. The reason for applying this exemption is set out in full 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

Annex A

Regulation 13– Personal data

Regulation 13(1) together with the conditions in Regulation 13(2)(a)(i) and 13(2)(a)(ii) 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. Whilst the information being withheld is not personal data per se, we believe that releasing this information to the World would allow individuals to be identified, and as such does constitute personal data. The names of the farm businesses are closely aligned to the farmers names and as such allows the individual farmers to be identified.

Under Regulation 13(1) 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”

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

Your request indicates you are interested in obtaining the personal data of a third party. As your request has not indicated why you are seeking access to this information, we have been unable to identify whether or not you have a legitimate interest in accessing this personal data.

2. Is disclosure necessary?

Though we acknowledge the statutory presumption to release and the general public interest in transparency that release would engender, requests under the Regulations are generally treated as applicant and purpose blind. As you have not provided an indication as why you want the information, we are unable to identify a necessity to release this particular information.

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

We consider that the privacy information provided to the third party, along with the context in which it was provided, means we do not believe they would have any expectation that their personal data would be released to the World. Therefore we consider doing so would breach the first data protection principle in that, in the absence of any compelling arguments otherwise, it would be unfair to the third party for us to do so. Consequently, we have concluded that the requested data should not be released.