

21 July 2023

Dear

## **Freedom of Information Request - ATISN 18747**

Thank you for your request which I received on 18 July 2023. You asked for the following information:

**A copy of the correspondence from Welsh Government to Natural Resources Wales approving the new regulatory fees and charging regime introduced 1 July 2023.**

### **Our response**

I can confirm that the Welsh Government holds information captured by your request. A copy of the information I have decided to release is enclosed. I have decided, however, that some of the information is exempt from disclosure under section 40 of the Freedom of Information Act and is therefore withheld. Full reasoning for applying this exemption is given 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: [Freedomofinformation@gov.wales](mailto:Freedomofinformation@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

## 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 and email addresses of both NRW and Welsh Government officials contacted in the correspondence.

This Annex sets out the reasons for the engagement of section(s) 40 of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

### 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 1998 ('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 Welsh Government recognises there is a legitimate interest in being able to identify the parties involved in any communication, such as emails, in order to follow the flow of that communication and to understand the views and positions expressed by each party. We do not believe, however, there is any legitimate reason why the personal data would need to be released in order to follow and understand those communications/emails. The Welsh Government cannot identify any other legitimate interest in you or the public receiving the personal data captured by your request.

### **2. Is disclosure necessary?**

The Welsh Government is of the view that it is not necessary to disclose the personal information caught by your request. It is straight forward, even when withholding the personal data, to follow the emails and to identify the views expressed by each organisation. As such we do not believe it is necessary to disclose the personal data to allow the emails to be followed.

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

As it has been concluded that there is no necessity to disclose the personal data of another individual, the fundamental rights and freedoms of the affected third party prevail in this instance and releasing the information cannot be justified under Article 6(1)(f).

## **Conclusion**

To conclude, as release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has therefore been withheld under section 40 of the Freedom of Information Act. Section 40 is an absolute exemption and not subject to the public interest test.