

11 January 2024

Dear

### **ATISN 20032 – Request for Information**

Thank you for your request which I received on 27 December 2023. You asked for:

1. The names of the 3 Welsh Government civil servants and the policy advisor from Transport for Wales who wrote the Transport Strategy of 2021.
2. Names of any stakeholders and organisations involved.

### **Our response**

1. I have decided that this information is exempt from disclosure under section 40(2) of the Freedom of Information Act and is therefore withheld. The reason for applying this exemption is set out in full at Annex A to this letter.
2. Please see:

[Llwybr Newydd a new Wales transport strategy: summary of responses \(gov.wales\)](https://gov.wales/lwybr-newydd-a-new-wales-transport-strategy-summary-of-responses)

Organisations/stakeholders who responded are listed at the end (pages 21-24). In addition to those listed, we had meetings with:

- Cardiff Capital Region Transport Authority
- Confederation of Passenger Transport and Association of Transport Coordinating Officers
- Planning Officers Society
- The UK Department for Transport

### **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](mailto: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**

### **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 the 3 Welsh Government civil servants and the policy advisor from Transport for Wales who wrote the Transport Strategy of 2021

This Annex sets out the reasons for the engagement of section 40(2) of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

### **Section 40(2) – Personal Data**

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**

Although no reason for knowing the names of these officials has been given, there are legitimate interests in knowing who is drafting information in understanding that the public task has been taken with due competence and by appropriate officials.

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

Disclosure of the personal data is not necessary for the legitimate interest identified as it is sufficient for Welsh Government to confirm that policy officials at appropriate grades and in an appropriate policy division undertook this task.

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

Because the redaction meets the legitimate interest and so disclosure of the personal data is not necessary, there is no need to further consider the balance of interests, and the information is withheld. Nevertheless, since it is possible that another legitimate interest exists in knowing this information, I shall give consideration to the balance of legitimate interests with the subject's fundamental rights. Release of data under FOI is release to the world, and not just to the requestor. In releasing the names of officials involved in this task to the world, I must bear in mind that there is a possibility that individuals might be targeted by a member of the public, should their name become associated with the drafting of a policy that might be unpopular in some places. The risk of harm and thus the damage to the fundamental rights of individuals is sufficient that a very strong countervailing legitimate interest would be required for the balance to fall towards release of the information. As no such legitimate interest has been identified, the information is withheld.