

21 February 2024

Dear

ATISN 20141 – Fox carcass from Ynysddu, Caerphilly

Thank you for your request which we received on 28 January 2024. You have asked for copies of all communications, including internal, about the non-testing of the fox carcass for Polycyclic aromatic hydrocarbons (PAHs).

The information you requested is enclosed.

We have decided that some of the information is exempt from disclosure under section 13 of the Environmental Information Regulations (EIRs) and is therefore withheld. The reasons for applying these exceptions are set out in full at Annex A to this letter.

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

Environmental Information Regulations

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.

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

There is a legitimate interest in understanding the context and decisions taken surrounding testing of the fox carcass for Polycyclic aromatic hydrocarbons (PAHs).

2. Is disclosure necessary?

We do not believe it is necessary to identify individuals in the captured correspondence to meet the legitimate interest described above. The context of the decisions made can be understood without the need to name specific individuals, who would have had no expectation that their personal information would be placed in the public domain.

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

As disclosure is not necessary to meet the legitimate interests in understanding the context and decisions made around this matter, it is not necessary to consider the balance between legitimate interest and the data subject's interests, and the information is withheld.