

20 February 2025

Dear

Request for Information - ATISN 23301 Brilliant Basics Grant - Llansteffan North Carpark

Information requested

Thank you for your request for information which was received on 23 January. You have asked for the following information:

- All documents and records related to communications and renegotiations between Visit Wales and Carmarthenshire County Council concerning the Brilliant Basics grant following the grant award in July 2023.
- Any Notification Events from Carmarthenshire County Council received by Visit Wales, a condition as outlined in the funding award letter.

Our response

The information you requested is enclosed.

I have decided that some of the information is exempt from disclosure under section 40(2) (Personal Information) and section 42 (Legal Professional Privilege) of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are 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

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:

- Names and email addresses of correspondents – Section 40(2) – Personal information
- Legal advice – Section 42 – Legal professional privilege

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

The personal data is the name of correspondents in the correspondence captured by this request. The legitimate interest lies in the correspondence and information held, and in understanding the context of that information, and where any decisions are made.

2. Is disclosure necessary?

Disclosure of the personal data is not necessary for the legitimate interest where those included in the correspondence are not senior or public facing, and were acting in an administrative capacity.

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

Because the disclosure meets the legitimate interest with the personal information redacted, disclosure of the personal data is not necessary. There is no need to further consider the balance of interests, and the information is withheld.

Section 42(1) (Legal professional privilege)

This exemption states:

1. Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

Legal professional privilege (LPP) covers both confidential communications between lawyers and their clients made for the main purpose of seeking or giving legal advice (“advice privilege”), and confidential communications made for the purpose of providing or obtaining legal advice about proposed or contemplated litigation

("litigation privilege"). The information in question is legal advice which was provided to the Carmarthenshire County Council. We believe that advice privilege covers this information and that a claim to LPP could be maintained in legal proceedings in respect of it.

The section 42 exemption is qualified, which means that it is subject to a public interest test.

Public Interest in favour of disclosing

The Welsh Government recognises that there is a public interest in the openness and accountability of government, and that releasing the requested information would help the public gain a better understanding of the advice given to Carmarthenshire County Council.

Public interest in favour of withholding

That there is a public interest served in public authorities being able to access advice which benefits from legal professional privilege was noted in the judgment of *Bellamy v the Information Commissioner and DTI* [EA/2005/0023] in which the tribunal, on the subject of LPP said:

"there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest....it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case..."

The Welsh Government agrees with this view that it is important to maintain legal professional privilege and considers that, in the absence of at least equally strong countervailing considerations, any disclosure of information covered by legal professional privilege would be likely to result in substantial harm.

Legal advisers need to be able to present the full picture to their clients which includes legal arguments in support of a position and any relevant counterarguments. This is what underpins the long-established principle of legal professional privilege.

It is in the nature of legal advice that it often sets out the possible arguments both for and against a particular view. If recipients or providers of legal advice believe that it is likely that the legal advice would be published, especially in respect of an ongoing matter, then this would have an adverse effect on whether such advice is commissioned or provided and how comprehensive it is. This would be likely to result in substantial harm to the quality of decision-making since it would not be fully informed.

Moreover, disclosure of its legal advice has a significant potential to prejudice Carmarthenshire County Council's ability to defend its legal interests - both directly by unfairly exposing legal arguments to others who may seek to challenge the

council's action or position, and indirectly by diminishing the reliance it can place on the advice having been properly considered and presented without fear or favour.

Balance of the Public Interest

Although there is a public interest in understanding the context of advice regarding this matter, it is not necessary that the legal advice be made known to understand the negotiations and related matters about which the request asks. In the absence of any strong countervailing reason why the privileged advice should be disclosed in the public domain, and in view of the strong public interest in maintaining legal professional privilege in respect of legal advice received, I have concluded that the public interest lies in maintaining the exemption under section 42(1) of the Freedom of Information Act, and that this outweighs the public interest in disclosing the information.