

17 January 2024

Dear

Request for information - ATISN 19388

I wrote to you on 22 December regarding your request for information. I apologise for the delay in sending you this response.

Your Request

You asked for the following information relating to the temporary 50mph speed restriction on the A40 dual carriageway trunk road from Abergavenny to Raglan, as specified in this order issued on behalf of the Minister for Climate Change:

<https://www.gov.wales/sites/default/files/publications/2023-09/a40-trunk-road-raglan-roundabout-to-hardwick-roundabout-abergavenny-monmouthshire-order-2023.pdf>

- 1. The engineers report identifying a defective barrier, its physical fault, the length of this barrier on the A40 and the assessment from the engineer about the number of occurrences of a repeated fault along the A40 and assessment of the chance of it failing and under what circumstances.***

For ease, I would hope that my request for the above information is contained in a single engineer's report, however, if not then I would like all relevant papers produced by any engineer and responses from the government.

- 2. Copies of discussions about the report and its issue and how the decision was made that a 50mph limit needed to be put in place. I would appreciate documents which outlined options from 'do nothing' to immediate road closure as I assume the policy and advisory process by civil servants would have briefed the Minister. Also the Ministers' full decision on their preferred option and why.***

Our Response

I can confirm that the Welsh Government holds some of the information you have requested.

The information we hold is appended at Annex A. Please note that all personal information has been removed under Section 40 of the Freedom of Information Act 2000, personal information. Full reasoning for applying this exemption is appended at Annex B at the bottom of this letter. Also, any information that is not captured by your request and therefore irrelevant has also been removed.

For information, in the "Decision Email A40" document there is a line where one official asked another to "draft a briefing note for the DMCC". Please note that officials were not required to formally brief the Deputy Minister for Climate Change

regarding this. No briefing note was drafted and therefore I can confirm that we do not hold this information.

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

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

ATISN 19388 - Application of exemptions

The Freedom of information Act provides 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.

We have decided to withhold the following information:

- The personal data contained in the information you have requested under Section 40 of the Freedom of Information Act 2000 (FoIA), personal data.

This Annex sets out the reasons for the engagement of Section 40 of the FoIA.

Engagement of S40(2) – Personal Data

The Welsh Government believes the personal data contained in the information being released with this request should be exempt from disclosure.

Section 40(2) of the Freedom of Information Act 2000 (FOIA), 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, some of the information contained within the information caught by your request contains third party personal data. Specifically, this relates to correspondence containing names of Welsh Government officials, their e-mail addresses and direct telephone numbers.

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 UK 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) of the UK GDPR. 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:

1. The Legitimate interest test: Whether a legitimate interest is being pursued in the request for information;
2. The Necessity test: Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
3. 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 Interest Test

We do not believe there is any legitimate reason why the personal data would need to be released. The names of the engineers and the private telephone number of the officials are irrelevant to the information you have requested. 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 information. As such we do not believe it is necessary to disclose the personal data to understand the information.

3. The Balancing Test

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.