

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 May 2017

**Public Authority:** Isle of Anglesey County Council

**Address:** Council Offices

Llangefni

Anglesey

LL77 7TW

### **Decision (including any steps ordered)**

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1. The complainant requested the name of the individual(s) involved in submitting a complaint about him to the Public Services Ombudsman for Wales ('the PSOW'). Anglesey County Council ('the Council') withheld the information under section 40(2) of the FOIA. The Commissioner's decision is that the Council has correctly applied section 40(2) to the information. She does not require any steps to be taken.

### **Request and response**

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2. On 22 July 2016 the complainant wrote to the Council and requested the name of the person(s) involved in the complaint against him to the PSOW.
3. The Council responded on 12 August 2016 and stated that the information requested was exempt under sections 40(2) and 41 of the FOIA.
4. The complainant wrote to the Council on 19 August 2016 and requested an internal review of its refusal to provide the information requested.
5. The Council responded on 23 August 2016 and stated that it was unable to conduct an internal review as the Council's 'Qualified Person' ie the Corporate Information Manager and the Monitoring Officer had been involved in dealing with the request initially.

## Scope of the case

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6. The complainant contacted the Commissioner on 29 September 2016 to complain about the way his request for information had been handled.
7. The scope of the Commissioner's investigation into this complaint is to determine whether the Council should disclose the information requested on 22 July 2016.

## Reasons for decision

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### Section 40 – the exemption for personal data

8. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
9. The Council considers that the information requested constitutes the personal data of the individual concerned and that disclosure would breach the first data protection principle.

### Is the requested information personal data?

10. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:
  - from that data,
  - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
11. In considering whether the information requested is "personal data", the Commissioner has taken into account her own guidance on the issue<sup>1</sup>. The two main elements of personal data are that the information must "relate to" a living person, and that person must be identifiable.

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Data\\_Protection/Detailed\\_specialist\\_guides/PERSONAL\\_DATA\\_FLOWCHART\\_V1\\_WITH\\_PREFACE001.ashx](http://ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx)

12. The complainant in this case is a Councillor for the Council. The withheld information comprises the name of an individual who was involved in a complaint against him. The complaint was initially made to the Council and subsequently referred by the Council to the PSOW.
13. The Commissioner considers that an individual can be identified from their name, particularly as the subject matter relating to the complaint to the PSOW concerns a planning matter in a fairly small community, within the complainant's own ward. The Commissioner is therefore satisfied that the withheld information falls within the definition of personal data as set out in the DPA because it 'relates to' identifiable living individuals.

### **Would disclosure breach one of the data protection principles?**

14. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. She considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:
  - personal data shall be processed fairly and lawfully; and
  - personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

### **Would disclosure be fair?**

15. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, she has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. She has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.
16. The Council considers an important point in this case to be the fundamental power difference between the individual who made the referral, who is a member of the public and the complainant, who is a County Councillor. This issue informed the Council's deliberations on the issue of fairness.
17. The Council advised that on contacting the Council about the complaint, the individual was given assurances that their identity would be

protected and that their name would not be disclosed. The Council has not consulted with the individual in relation to the request for information because it was deemed highly likely or almost certain that consent to disclosure would not be given. The Council pointed out that it is accepted practice within local government to protect the identity of informants or complainants in order to facilitate the transfer of information that enables the authority to pursue its enforcement work, or in this case complaints about an elected member's behaviour and their Code of Conduct.

18. The Council explained that the individual was under no duty to volunteer the information and could not have been put under any compulsion by the Council to provide it. The Council considers that in light of the assurances provided to the individual that their identity would be kept confidential, disclosure could result in an actionable breach of confidence.
19. In terms of the consequences of disclosure, the Council appreciates that it is difficult to accurately identify the particular harm that could arise. However, when a member of the public seeks assurances of confidentiality about an issue and it appears reasonable to provide such assurance, the Council has to be mindful of any unintended consequences that may arise through disclosure of their identity. The Council considers that disclosure would result in an unfair and unwarranted intrusion into the everyday life of the individual concerned.
20. Based on the Council's representations and the subject matter associated with the request, the Commissioner accepts that the individual concerned would have a reasonable expectation that their personal data would remain private and not be disclosed into the public domain. She also accepts that disclosure would give rise to an unfair and unwarranted intrusion on the individual's privacy in the circumstances of this case, and has the potential to cause unnecessary and unjustified harm to the individual in this case.
21. Despite the reasonable expectations of an individual and the fact that damage or distress may result from disclosure, it may still be fair to disclose the information if there is an overriding legitimate interest in disclosure to the public. Under the first principle, the disclosure of information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public.
22. In order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.

23. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake along with specific interests, which in this case is knowing the details of who made the complaint/referral to the Council about the complainant's conduct.
24. The complainant provided the Commissioner with background information relating to the subject matter associated with the request. He explained that in his role as Councillor, he is also a member of the Council's Planning Committee. He expressed a view on a planning application in his area which had been referred to the Planning Committee for consideration. The complaint that was submitted to the Council suggested that he should have declared an interest in the application as a relative of his lives near the development site. He was subsequently advised by the Council's monitoring officer not to be involved in the planning application in question. By the time that the complainant received the PSOW's response to the complaint about him, and permission given to him to be involved in the planning application again, outline planning permission had already been granted.
25. The complainant pointed out that the planning applicant will receive huge financial benefit as a result of the planning permission. He feels that, "er mwyn tryloywder ei bod hi'n ddyletswydd arnaf i ddarganfod pwy oedd tu ôl i'r gŵyn a roddodd ganlyniad positif i'r ymgeisydd" (in the interests of transparency that I am duty bound to discover who was behind the complaint which provided the applicant with a positive outcome). The complainant also advised the Commissioner that there were strong views within the local area on what happened in this particular planning case, which tarnished people's faith in the planning system.
26. The Council's position is that none of the conditions in schedule 2 of the DPA would allow the information to be disclosed as it considers the processing to be fundamentally unfair and unlawful. The Council does not consider that there is any legitimate interest of the public in disclosure of the identity of the individual. The Council explained that the complainant has been informed of the relevant issues which were raised, as part of the investigation carried out by the PSOW.
27. In considering such matters, the Commissioner is mindful that disclosure under the FOIA is a disclosure to the world at large. In a case such as this one, the decision for the Commissioner is whether the information requested should be placed in the public domain. The Commissioner recognises that the complainant has personal reasons for making the request in this case, as he was the subject of the complaint which was made.

28. The Commissioner notes the complainant's point that the planning matter has attracted local interest and affected people's faith in the planning system. The Commissioner accepts that there is a legitimate interest in overall transparency in the way a public authority conducts its business, and in issues which have an environmental impact such as planning and development of land. The Commissioner also accepts there is a legitimate interest in individuals having access to information that helps them understand the reasons why decisions that affect them are taken by public authorities, and in them having the ability to challenge those decisions and to participate in the debate around them. However, the Commissioner notes that the matter was investigated by the PSOW and a decision made and communicated to the complainant.
29. The Commissioner acknowledges that the planning process should be sufficiently transparent to determine that the correct procedures have been followed, and to allow for challenges. However, in this case, she does not consider there to be sufficient legitimate interest to circumvent the existing planning processes and procedures. Her view is that while certain members of the public may be interested in knowing who first made the complaint to the Council, this does not mean that the wider public interest is served by disclosure of the information requested. The Commissioner also believes that there is a greater interest in protecting the individual in this type of case, as she notes that otherwise there would be a considerable 'chilling effect' on any future complaints being reported regardless of whether the complaints in question are upheld.
30. Taking all of the above into account, the Commissioner concludes that it would be unfair to the individual concerned to release their personal data. Disclosure would not have been within the reasonable expectations of the individual and the loss of privacy could cause unwarranted distress. She acknowledges that there is a legitimate interest in matters relating to the planning process, but she does not consider that any legitimate interests in disclosure outweigh the individuals' reasonable expectations and right to privacy.
31. As the Commissioner has decided that the disclosure of the information would be unfair, and therefore in breach of the first principle of the DPA, she has not gone on to consider whether there is a Schedule 2 condition for processing the information in question. The Commissioner has therefore decided that the Council was entitled to withhold the information under section 40(2).

## Right of appeal

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32. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**David Teague**  
**Regional Manager (Wales)**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Deddf Rhyddid Gwybodaeth 2000 (y Ddeddf)**

### **Hysbysiad penderfynu**

**Dyddiad:** 11 Mai 2017

**Yr Awdurdod Cyhoeddus:** Cyngor Sir Ynys Môn

**Cyfeiriad:** Swyddfa'r Cyngor

Llangefni

Ynys Môn

LL77 7TW

#### **Y penderfyniad (gan gynnwys unrhyw gamau y gorchmynnir eu cymryd)**

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35. Gofynnodd yr achwynydd am enw'r sawl a fu'n ymwneud â chyflwyno cwyn amdano i Ombwdsmon Gwasanaethau Cyhoeddus Cymru ('yr Ombwdsmon'). Daliodd Cyngor Sir Ynys Môn ('y Cyngor') yr wybodaeth yn ôl o dan adran 40(2) o'r Ddeddf. Penderfyniad y Comisiynydd yw bod y Cyngor wedi cymhwyso adran 40(2) o'r Ddeddf at yr wybodaeth yn gywir. Nid yw'r Comisiynydd yn gofyn i unrhyw gamau gael eu cymryd.

#### **Y cais a'r ymateb**

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36. Ar 22 Gorffennaf 2016 ysgrifennodd yr achwynydd at y Cyngor gan ofyn am enw'r sawl a fu'n ymwneud â'r gŵyn amdano i'r Ombwdsmon.

37. Ymatebodd y Cyngor ar 12 Awst 2016 gan ddweud bod yr wybodaeth y gofynnwyd amdani'n esempt o dan adrannau 40(2) a 41 o'r Ddeddf.

38. Ysgrifennodd yr achwynydd at y Cyngor ar 19 Awst 2016 gan ofyn am adolygiad mewnol o'r penderfyniad i wrthod darparu'r wybodaeth y gofynnwyd amdani.

39. Ymatebodd y Cyngor ar 23 Awst 2016 gan ddweud na allai gynnal adolygiad mewnol gan fod 'Person Cymwys' y Cyngor, sef y Rheolwr Gwybodaeth Gorfforaethol a'r Swyddog Monitro, wedi bod yn ymwneud ag ymdrin â'r cais ar y dechrau.

## Rhychwant yr achos

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40. Cysylltodd yr achwynydd â'r Comisiynydd ar 29 Medi 2016 i gwyno am y modd yr ymdriniwyd â'i gais am wybodaeth.
41. Rhychwant ymchwiliad y Comisiynydd i'r gŵyn hon yw penderfynu a ddylai'r Cyngor ddatgelu'r wybodaeth y gofynnwyd amdani ar 22 Gorffennaf 2016.

## Y rhesymau dros y penderfyniad

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### Adran 40 – yr esemptiad ar gyfer data personol

42. Mae adran 40(2) o'r Ddeddf yn dweud bod gwybodaeth yn esempt rhag cael ei datgelu os yw'n ddata personol i drydydd parti ac y byddai ei datgelu o dan y Ddeddf yn torri unrhyw un neu ragor o'r egwyddorion diogelu data neu adran 10 o Ddeddf Diogelu Data 1998.
43. Mae'r Cyngor o'r farn bod yr wybodaeth y gofynnwyd amdani yn ddata personol i'r unigolyn o dan sylw ac y byddai datgelu'r wybodaeth yn groes i'r egwyddor diogelu data gyntaf.

### Ydy'r wybodaeth y gofynnwyd amdani'n ddata personol?

44. Er mwyn dibynnu ar yr esemptiad a ddarperir gan adran 40, mae'n rhaid i'r wybodaeth y gofynnir amdani fod yn ddata personol fel y mae wedi'i ddiffinio gan adran 1 o'r Ddeddf Diogelu Data. Mae honno'n diffinio gwybodaeth personol fel data sy'n ymwneud ag unigolyn byw a all gael ei adnabod:
  - o'r data hwnnw,
  - neu o'r data hwnnw a gwybodaeth arall sydd ym meddiant y rheolwr data, neu sy'n debyg o ddod i'w feddiant.
45. Wrth bwysu a mesur a yw'r wybodaeth y gofynnwyd amdani yn "ddata personol", mae'r Comisiynydd wedi cymryd i ystyriaeth ei chanllawiau ei hun ar y mater.<sup>2</sup> Dwy brif elfen data personol yw bod rhaid i'r

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Data\\_Protection/Detailed\\_specialist\\_guides/PERSONAL\\_DATA\\_FLOWCHART\\_V1\\_WITH\\_PREFACE001.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx)

wybodaeth “ymwneud â” pherson byw, a rhaid bod modd i'r person hwnnw gael ei adnabod.

46. Yn yr achos hwn, un o gynghorwyr y Cyngor yw'r achwynydd. Yr wybodaeth a gadwyd yn ôl yw enw unigolyn a fu'n ymwneud â chwyn yn erbyn yr achwynydd. Cafodd y gwyn ei gwneud yn wreiddiol i'r Cyngor a'i chyfeirio wedyn gan y Cyngor at yr Ombwdsmon.
47. Mae'r Comisiynydd o'r farn bod modd i unigolyn gael ei adnabod o'i enw, yn enwedig gan fod testun y gwyn at yr Ombwdsmon yn ymwneud â mater cynllunio mewn cymuned weddol fach, yn ward yr achwynydd ei hun. Mae'r Comisiynydd wedi'i bodloni felly fod yr wybodaeth a gadwyd yn ôl yn syrthio o fewn y diffiniad o ddata personol fel y'i nodwyd yn y Ddeddf Diogelu Data am ei bod yn 'ymwneud ag' unigolion byw a all gael eu hadnabod.

### **A fyddai datgelu'r wybodaeth yn torri un o'r egwyddorion diogelu data?**

48. Wedi derbyn bod yr wybodaeth y gofynnwyd amdani yn ddata personol i unigolyn byw heblaw'r ceisydd, rhaid i'r Comisiynydd ystyried nesaf a fyddai datgelu'r wybodaeth honno'n torri un o'r egwyddorion diogelu data. Mae o'r farn mai'r egwyddor diogelu data gyntaf sydd fwyaf perthnasol yn yr achos hwn. Mae i'r egwyddor diogelu data gyntaf ddwy gydran:
  - rhaid i ddata personol gael ei brosesu'n deg ac yn gyfreithlon; a
  - rhaid peidio â phrosesu data personol oni bai bod o leiaf un o'r amodau yn Atodlen 2 i'r Ddeddf Diogelu Data wedi'i fodloni.

### **A fyddai datgelu'r wybodaeth yn deg?**

49. Wrth bwysu a mesur a fyddai datgelu'r wybodaeth y gofynnwyd amdani yn cydymffurfio â'r egwyddor diogelu data gyntaf, mae'r Comisiynydd wedi ystyried yn gyntaf a fyddai datgelu'r wybodaeth yn deg. Wrth asesu tegwch, mae wedi ystyried disgwyliadau rhesymol yr unigolyn o dan sylw, natur y disgwyliadau hynny a chanlyniadau datgelu'r wybodaeth ar gyfer yr unigolyn. Wedyn mae wedi cydbwysu'r rhain yn erbyn egwyddorion cyffredinol atebolrwydd, tryloywder ac unrhyw fuddiannau dilys sy'n codi o amgylchiadau penodol yr achos.
50. Mae'r Cyngor o'r farn mai un pwynt pwysig yn yr achos hwn yw'r gwahaniaeth sylfaenol o ran y pŵer rhwng yr unigolyn a wnaeth yr

atgyfeiriad, sy'n aelod o'r cyhoedd, a'r achwynydd, sy'n Gynghorydd Sir. Llywiodd y mater hwn ystyriaethau'r Cyngor ynglŷn â mater tegwch.

51. Dywedodd y Cyngor fod yr unigolyn wedi cael sicrwydd, pan gysylltodd â'r Cyngor ynglŷn â'r gŵyn, y câi ei fanylion adnabod eu diogelu ac na châi ei enw ei ddatgelu. Nid yw'r Cyngor wedi ymgynghori â'r unigolyn ynglŷn â'r cais am wybodaeth am y bernid ei bod yn debyg iawn neu bron yn sicr na châi cydsyniad ei roi i ddatgelu'r wybodaeth. Nododd y Cyngor ei fod yn arfer cydnabyddedig mewn llywodraeth leol i ddiogelu manylion adnabod hysbyswyr neu achwynwyr er mwyn hwyluso trosglwyddo gwybodaeth sy'n fodd i'r awdurdod wneud ei waith gorfodi, neu yn yr achos hwn gwynion am ymddygiad aelod etholedig a'u Cod Ymddygiad.
52. Esboniodd y Cyngor nad oedd yr unigolyn o dan ddyletswydd i gynnig yr wybodaeth ac na allai fod wedi cael ei roi o dan unrhyw bwysau gan y Cyngor i'w darparu. Mae'r Cyngor o'r farn y gallai datgelu'r wybodaeth, yng ngoleuni'r sicrwydd a roddwyd i'r unigolyn y câi ei fanylion adnabod eu cadw'n gyfrinachol, arwain at dor-cyfrinach a allai fod yn destun achos cyfreithiol.
53. O ran canlyniadau datgelu'r wybodaeth, mae'r Cyngor yn sylweddoli ei bod yn anodd nodi'n fanwl-gywir y niwed penodol a allai godi. Er hynny, pan fydd aelod o'r cyhoedd yn gofyn am sicrwydd ynglŷn â chyfrinachedd ynghylch mater a'i bod yn ymddangos yn rhesymol rhoi sicrwydd o'r fath, mae'n rhaid i'r Cyngor fod yn ofalus ynglŷn ag unrhyw ganlyniadau anfwriadol a allai godi drwy ddatgelu pwy yw'r unigolyn. Mae'r Cyngor o'r farn y byddai datgelu'r wybodaeth yn arwain at ymyrraeth annheg a diesgus ym mywyd bob dad dyr unigolyn o dan sylw.
54. Ar sail sylwadau'r Cyngor a thestun y cais, mae'r Comisiynydd yn derbyn y byddai'n rhesymol i'r unigolyn o dan sylw ddisgwyl y byddai ei ddata personol yn aros yn breifat ac na châi ei ddatgelu yn y bau gyhoeddus. Mae'n derbyn hefyd y gallai datgelu'r wybodaeth arwain at ymyrraeth annheg a diesgus ym mhreifatrwydd yr unigolyn o dan amgylchiadau'r achos hwn, ac y gallai beri niwed diangen na ellid ei gyfiawnhau i'r unigolyn yn yr achos hwn.
55. Er gwaethaf disgwyliadau rhesymol yr unigolyn a'r ffaith y gallai niwed neu drallod ddeillio o ddatgelu gwybodaeth, mae'n dal yn gallu bod yn deg datgelu'r wybodaeth os oes yna fudd cyhoeddus trech o blaid datgelu'r wybodaeth i'r cyhoedd. O dan yr egwyddor gyntaf, rhaid i'r penderfyniad i ddatgelu'r wybodaeth fod yn deg i destun y data, ond mae asesu tegwch yn golygu cydbwysio hawliau a rhyddidau'r testun data yn erbyn y budd dilys a ddaw o ddatgelu'r wybodaeth i'r cyhoedd.

56. Er mwyn dyfarnu o blaid datgelu gwybodaeth, byddai angen dangos bod yna fudd mwy grymus o blaid datgelu a fyddai'n peri bod hynny'n deg.
57. Mae'r Comisiynydd yn derbyn wrth ystyried 'buddiannau dilys' y gall y buddiannau hyn gynnwys egwyddorion cyffredinol bras ynghylch atebolrwydd a thryloywder er lles tryloywder ynghyd â buddiannau penodol, sef yn yr achos hwn gwybod manylion pwy wnaeth y gŵyn/atgyfeiriad at y Cyngor ynghylch ymddygiad yr achwynydd.
58. Rhoddodd yr achwynydd wybodaeth gefndir i'r Comisiynydd ynghylch y testun sy'n gysylltiedig â'r cais. Esboniodd ei fod yn rhinwedd ei swydd fel Cynghorydd yn aelod hefyd o Bwyllgor Cynllunio'r Cyngor. Mynegodd farn ar gais cynllunio yn ei ardal a gyfeiriwyd at y Pwyllgor Cynllunio i gael ei ystyried. Awgrymodd y gŵyn a gyflwynwyd i'r Cyngor y dylai fod wedi datgan buddiant yn y cais gan fod perthynas iddo'n byw yn agos i safle'r datblygiad. Dywedodd swyddog monitro'r Cyngor wrtho wedyn am beidio ag ymwneud â'r cais cynllunio o dan sylw. Erbyn i'r achwynydd gael ymateb yr Ombwdsmon i'r gŵyn amdano, a chaniatâd iddo ymwneud â'r cais cynllunio eto, roedd caniatâd cynllunio amlinellol eisoes wedi'i roi.
59. Nododd yr achwynydd y caiff y ceisydd yn yr achos cynllunio fudd ariannol enfawr o ganlyniad i'r caniatâd cynllunio. Mae'n teimlo, "er mwyn tryloywder ei bod hi'n ddyletswydd arnaf i ddarganfod pwy oedd tu ôl i'r gŵyn a roddodd ganlyniad positif i'r ymgeisydd". Dywedodd yr achwynydd wrth y Comisiynydd hefyd fod yna safbwyntiau cryf yn yr ardal ynghylch yr hyn ddigwyddodd yn y cais cynllunio penodol hwn, a oedd wedi ysigo ffydd pobl yn y system gynllunio.
60. Safbwynt y Cyngor yw na fyddai'r un o'r amodau yn Atodlen 2 i'r Ddeddf Diogelu Data yn caniatáu i'r wybodaeth gael ei datgelu gan ei fod o'r farn y byddai prosesu'r wybodaeth yn annheg ac anghyfreithlon yn y bôn. Nid yw'r Cyngor o'r farn bod gan y cyhoedd unrhyw fudd dilys mewn datgelu pwy yw'r unigolyn. Esboniodd y Cyngor fod yr achwynydd wedi cael gwybod am y materion perthnasol a godwyd, fel rhan o ymchwiliad yr Ombwdsmon.
61. Wrth ystyried y materion hyn, mae'r Comisiynydd yn ymwybodol bod datgelu o dan y Ddeddf yn golygu datgelu i'r byd yn gyffredinol. Mewn achos fel hyn, y penderfyniad i'r Comisiynydd yw a ddylai'r wybodaeth y gofynnwyd amdani gael ei gosod yn y bau gyhoeddus. Mae'r Comisiynydd yn cydnabod bod gan yr achwynydd resymau personol dros wneud y cais yn yr achos hwn, gan mai ef oedd testun y gŵyn a wnaed.
62. Mae'r Comisiynydd yn nodi pwynt yr achwynydd fod y mater cynllunio wedi ennyn diddordeb yn lleol ac wedi effeithio ar ffydd pobl yn y

system gynllunio. Mae'r Comisiynydd yn derbyn bod yna fudd dilys mewn tryloywder drwyddi draw yn y modd y mae awdurdod cyhoeddus yn cynnal ei fusnes, ac mewn materion sy'n effeithio ar yr amgylchedd megis cynllunio a datblygu tir. Mae'r Comisiynydd hefyd yn derbyn bod yna fudd dilys mewn sicrhau y gall unigolion weld gwybodaeth sy'n eu helpu i ddeall y rhesymau pam mae awdurdodau cyhoeddus yn cymryd penderfyniadau sy'n effeithio arnynt, ac y gallant herio'r penderfyniadau hynny a chymryd rhan yn y trafod yn eu cylch. Serch hynny, mae'r Comisiynydd yn nodi bod yr Ombwdsmon wedi ymchwilio i'r mater a bod penderfyniad wedi'i wneud ac wedi'i gyfleu i'r achwynydd.

63. Mae'r Comisiynydd yn cydnabod y dylai'r broses gynllunio fod yn ddigon tryloyw i benderfynu bod y gweithdrefnau cywir wedi'u dilyn, ac i ganiatáu ar gyfer heriau. Serch hynny, yn yr achos hwn, nid yw'n credu bod yna ddigon o fudd dilys i drechu'r prosesau a'r gweithdrefnau cynllunio presennol. Ei barn hi yw y gall aelodau penodol o'r cyhoedd fod â diddordeb i wybod pwy wnaeth y gŵyn i'r Cyngor i ddechrau, ond nad yw hynny'n golygu bod y budd cyhoeddus ehangach yn cael ei ateb drwy ddatgelu'r wybodaeth y gofynnwyd amdani. Mae'r Comisiynydd hefyd yn credu bod mwy o fudd mewn diogelu'r unigolyn yn y math hwn o achos, gan ei bod yn nodi y ceid 'effaith ataliol' sylweddol fel arall yn rhwystro unrhyw gwynion yn y dyfodol rhag cael eu mynegi, ni waeth a fyddai'r cwynion o dan sylw'n cael eu cynnal ai peidio.
64. Gan gymryd popeth uchod i ystyriaeth, mae'r Comisiynydd yn dod i'r casgliad y byddai'n annheg i'r unigolyn o dan sylw pe bai ei ddata personol yn cael ei ddatgelu. Ni fyddai datgelu'r wybodaeth wedi bod yn un o ddisgwyliadau rhesymol yr unigolyn a gallai colli preifatrwydd beri trallod diesgus. Mae'r Comisiynydd yn cydnabod bod yna ddiddordeb dilys mewn materion sy'n ymwneud a'r broses gynllunio, ond nid yw'n credu bod unrhyw fudd dilys o blaid datgelu gwybodaeth yn drech na disgwyliadau rhesymol unigolion a'u hawl i breifatrwydd.
65. Gan fod y Comisiynydd wedi penderfynu y byddai datgelu'r wybodaeth yn annheg, ac felly yn groes i egwyddor gyntaf y Ddeddf Diogelu Data, nid yw wedi mynd ymlaen i ystyried a oes yna amod yn Atodlen 2 ar gyfer prosesu'r wybodaeth o dan sylw. Mae'r Comisiynydd wedi penderfynu felly fod gan y Cyngor hawl i gadw'r wybodaeth yn ôl o dan adran 40(2).

## Yr hawl i apelio

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66. Mae gan y naill barti a'r llall hawl i apelio yn erbyn yr hysbysiad penderfynu hwn i Dribiwnlys yr Haen Gyntaf (Hawliau Gwybodaeth). Mae gwybodaeth am y broses apelio ar gael oddi wrth:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Ffôn: 0300 1234504

Ffacs: 0870 739 5836

Ebost: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Gwefan: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

67. Os hoffech apelio yn erbyn hysbysiad penderfynu, gallwch gael gwybodaeth am sut i apelio ynghyd â'r ffurflenni perthnasol ar wefan y Tribiwnlys Gwybodaeth.
68. Dylai unrhyw Hysbysiad Apelio gael ei gyflwyno i'r Tribiwnlys o fewn 28 diwrnod (calendr) ar ôl dyddiad anfon yr hysbysiad penderfynu hwn.

**Llofnod .....**

**David Teague**  
**Rheolwr Rhanbarthol (Cymru)**  
**Swyddfa'r Comisiynydd Gwybodaeth**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**