

Grŵp Yr Economi, Sgiliau a Chyfoeth Naturiol
Economy, Skills and Natural Resources Group



Llywodraeth Cymru
Welsh Government

Ein Cyf/Our Ref: ATISN 11492

15 September 2016

Dear ,

ATISN 11492 Rhydymwyn

Thank you for your request which I received on 23 August in relation to the Old Valley Works site. Rhydymwyn

In part 1 of your request you asked for:

All information including documentation held by Welsh Government concerning The Former Valley Works at Rhydymwyn covering the period June 2014 to the present date. This information should include all relevant minutes, memos, emails, reports, etc.

This captures any information regarding the site, environmental or otherwise. Because the bulk of information captured is not environmental information, I am considering part one of your request under the Freedom of Information Act.

I have determined that to provide the information requested in part 1 of your request would cost more than the appropriate limit established in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 to consider your request and because of this the regulations allow me to refuse to deal with it. The appropriate limit specified for central government is £600. When calculating whether or not your request exceeds the appropriate limit, I am allowed to consider the time it is likely to take to establish if we hold the information, locate the information, retrieve the information and extract it. If these tasks are estimated to take more than 24 hours of working time, the limit will have been exceeded.

Initial searches have shown that information regarding the site can be found in a number of policy divisions of Welsh Government, including Cadw, Planning, Tourism, and also

potentially other Agriculture and Environment divisions, Transport, etc. We believe that locating all information captured by this request will require us to contact at least 22 divisions and ask them to locate all information they have in scope.

In order to understand the scale of this issue, we asked Cadw to locate information in scope of your request as an exercise and they located information across multiple grant schemes and that will require review of at least 20 files based on these initial searches. All information within those files must be reviewed to decide whether captured information is in scope.

Cadw staff spent 20 minutes accessing one sample file to find the information in scope. Repeating that exercise across 17 files would therefore be expected to take 20x20 minutes = 6 hours and 40 minutes to locate the information required.

To find all information across all policy divisions, we believe we must consult with some 22 policy divisions that may hold information captured, and we expect at least 5 of these will hold substantial amounts of information. Based on our search with Cadw, we would expect the time taken to process the request would be 6 hours 40 minutes x 5 = 33 hours and 20 minutes, plus the time taken for the remaining policy divisions to conduct smaller searches to verify they do not hold any information. This, taken in conjunction with the remainder of your request below, would thus substantially exceed the appropriate limit.

You may wish to narrow the focus of your request, depending on what you are looking for, as this may help bring it to within the limit. For example:

- request only the information on grants provided by Cadw on this site

As the remainder of your request is more specific I have decided that I can answer those questions within the appropriate limit.

Regarding the Bat protocol in relation to Building 45 a copy of the relevant documents held by this branch is attached.

I have decided that some of the information is excepted from disclosure under Regulation 12(4)e of the Environmental Information Regulations 2004 (EIR), and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex 1 to this letter.

I have redacted the names of officials who are not in either senior or public-facing roles, from the information I am disclosing under Regulation 13 of the EIR. We consider that the names of these officials clearly fall within the description of personal data as defined by the Data Protection Act (DPA)

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: FreedomOfInformationOfficer@wales.gsi.gov.uk

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 faithfully

Annex 1

I have decided to withhold the following information:

Information being withheld	Section number and exception name
Legal advice to the Cabinet Secretary for Environment and Rural Affairs	Regulation 12(4)e of the EIRs

This exception covers the the disclosure of internal communications. The information in question was legal advice provided by the Welsh Government's Legal Services Division to the Cabinet Secretary for Environment and Rural Affairs. As such this is clearly “internal communications”, and, as such, falls within the scope of the exception.

As with all exceptions provided by the EIRs, with the exception of Reg 13 “Personal data”, it is not enough that the requested information falls within the scope of an exception for that information to be properly withheld. Rather, we need to consider whether it is in the wider public interest to maintain the exception or not.

As well as the more generic public interest arguments that allows the public to better understand how government reaches decisions, and the basis for those decisions, there are some more specific arguments relating to the decision not to bring forward legislation to put in place a statutory ban on the shooting of the Greenland White-fronted Goose in Wales.

The Welsh Government has duty, under the Environment (Wales) Act 2016, to a maintain and enhance biodiversity in the exercise of functions in relation to Wales As such, the public have a right to know how the government intends to go about meeting that obligation. The public consultation exercise relating to options to promote the conservation of the Greenland White-fronted Goose in Wales generated a significant response underlining the public interest in matters relating to conservation of our biodiversity. This strong interest adds weight to the arguments that the basis for decisions made by the Government need to be clearly set out wherever possible.

Some of the information requested is subject to a claim of legal professional privilege (LPP). Disclosure of any such advice has the likelihood that it would cause substantial harm to the principal of LPP. We believe that if there is not a reasonable certainty of confidentiality between professional legal advisor and their client, the quality of legal advice may not be as frank and free as it ought to be.

In the ICO Decision Notice FER0220864 (dated March 31 2010), the Commissioner clearly states:

"Legal professional privilege (LPP) is not defined by the [Fol] Act or in any other legislation. It is a common law concept shaped by the courts over time. It is intended to provide confidentiality between professional legal advisers and clients to ensure openness between them and safeguard access to fully informed, realistic, candid and frank legal advice, including potential weaknesses and counter arguments".

That there is a public interest served in public authorities being able to access advice which benefited from professional legal privilege was noted in *Bellamy v the Information Commission 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...".

For this reason we are of the firm view that it is highly important to maintain legal professional privilege and that, in the absence of at least equally strong countervailing considerations, any attempt to undermine the principle of legal professional privilege would not be in the wider public interest.

Although there is a general public interest in the accountability and transparency of government, I believe that the context in the remainder of this briefing provides you with the information that you require surrounding this decision, and that the public interest therefore favours withholding this advice .

When NRW's legal advice appears in documents held by WG, it is also subject to LPP.