



17 November 2017

Dear ,

Request for Information – ATISN 11689

I wrote to you on 7 November regarding your request for information. In relation to Wylfa Newydd, you asked for supporting papers for both Welsh Government Cabinet meetings and Welsh Government Board meetings, namely:

20.09.2016: Item 5 – Cabinet Paper
21.03.2017: Item 5 – Cabinet Paper
31.03.2017: Item 1 – Board Paper
26.05.2017: Item 3 – Board Paper
20.07.2017: Item 5 – Board Paper

On 7 November, you also enquired about the functional and responsibility distinction between Welsh Government Cabinet meetings and Welsh Government Board meetings. The Welsh Government Board, Chaired by the Permanent Secretary, takes the key strategic decisions about how the Welsh Government is developed to support the Cabinet and Ministers and ensures officials deliver what Ministers expect. The Cabinet, Chaired by the First Minister, is the main decision making body of the Welsh Government.

Turning to the information you have requested, I have concluded it is exempt from disclosure under the Environmental Information Regulations 2004 (EIRs). 'Environmental information' is defined in the Regulations as (inter alia) information on measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, and also factors such as substances, energy, noise, radiation or waste likely to affect the state of the elements of the environment above.



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In the recent Court of Appeal decision in *The Dept for Business, Energy and Industrial Strategy v The Information Commissioner and Alex Henney*, it was held that the statutory definition of 'environmental information' does not mean that the information itself must be intrinsically environmental. They confirmed it is well established that the term "environmental information" in the Directive is to be given a broad meaning and that the intention of the Community's legislature was to avoid giving that concept a definition which could have had the effect of excluding from the scope of that directive any of the activities engaged in by the public authorities.

As the proposed Wylfa Newydd development is a policy/plan likely to affect the environment, and as the information requested relates to the potential implementation of such a measure, then it falls within the definition set out in the Regulations.

The information is being withheld under Reg12(4)(e) (internal communications). Full reasoning for applying this exception is given at Annex A to this letter.

If you have any queries about this request, please do not hesitate to contact me at the address below. Please remember to quote the reference number above in any future correspondence.

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 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 sincerely

ARGUMENTS FOR AND AGAINST DISCLOSURE

Regulation 12(4)(e) – internal communications

This Annex sets out the reasons for the engagement of regulation 12(4)(e) - Internal communications of the Environmental Information Regulations and our subsequent consideration of the Public Interest Test.

Regulation 12(4)(e) states that a public authority may refuse to disclose information to the extent that—

(e) the request involves the disclosure of internal communications.

Guidance from the Information Commissioner has confirmed that this exception is drafted broadly and is a class based exception which covers *all* internal communications, not just those that are sensitive or actually reflect internal thinking. The concept of 'internal communications' covers a wide range of information and includes any information intended to be communicated to others or saved in a file where it may be consulted by others. I can confirm that the information held by the Welsh Government which is captured by your request amounts to internal communications.

Regulation 12(4)(e) is a qualified (public interest tested) exception. Even if the exception is engaged, public authorities must go on to apply the public interest test set out in regulation 12(1)(b). A public authority can only withhold the information if the public interest in maintaining the exception outweighs the public interest in disclosing the information. Because of this, consideration has been given to the effects of disclosure to the world at large rather than any personal interest you may have in being provided with the information.

The Welsh Government acknowledges the presumption in favour of disclosure under Regulation 12(2) and we acknowledge there is a public interest in openness and transparency within Government, particularly in terms of ensuring transparent and accountable government by disclosing how the Welsh Government utilises its resources, spends public money and that both are invested wisely on behalf of the people of Wales.

The information contained within the Papers you have requested consists of advice by officials to Cabinet Ministers and Welsh Government Board Members regarding the progress being made within the Welsh Government on ensuring the project delivers best and proper legacy benefits for Wales and how the Welsh Government can harness the opportunities arising from the proposed project. The advice discusses the mechanics, proposals and structures for servicing the project across Government, over a number of years, across different work streams, all of which are yet to be agreed by Ministers. The wide range of information expands into particularly sensitive and complex information regarding the proposed project, including the discussion of financial and commercial matters relating to the proposed project.

It is important for good governance that officials are able to fully engage with each other and with Ministers and exchange and provide advice away from the public gaze and that there should be no disincentive in doing so. If officials believed their advice or freely exchanged views would be made public, it is likely to inhibit the future provision of advice and exchange of views, leading to less rigorous and in-depth exploration of options and impairment of the quality of decision making. Unless officials are able to provide options and advice surrounding the possible offer of support to any company, the effectiveness of the possible support that could be offered and the process of reaching such a decision would be undermined. This would not be in the public interest.

The Welsh Government believes the public interest in this project is satisfied by the amount of information already published in each of the accompanying minutes in relation to the Papers in question. They explain the purpose of each paper. The outcomes of decisions made by Ministers and Board members will, in due course, be published at appropriate junctures.

In this regard, the Welsh Government believes the balance of public interest to withhold the information outweighs the public interest to release it for the reasons outlined above. The information has therefore been withheld under Regulation 12(4)(e) of the EIRs.