



11 December 2017

Dear ,

Request for Information – ATISN 11712

I wrote to you on 16 November regarding your request for information regarding Wylfa Newydd. Thank you for your response of 27 November.

In relation to the Welsh Government's communications with Horizon Nuclear Power Ltd and Hitachi Ltd., for the period September 2014 to 13 November 2017, you asked for:

1. Communications and notes of meetings (electronic, physical and tele/video conference).
2. Content (including presentations) and outcomes of all seminars and workshops.
3. Memorandums of Understanding.
4. All other agreements and commitments.
5. All action plans, including joint action.
6. Advice and guidance provided by the Welsh Government.
7. Specific assistance and facilitation by the Welsh Government.
8. All proposed, or potential, further assistance and facilitation.

I have noted the comments you have made in your e-mail of 27 November. As stated in my letter of 16 November, you have asked for a significant amount of information, likely to be held across many Welsh Government Departments and Divisions, involving several officials and covering a three year period. I suggested ways in which you could provide a more focused request. Because you have not done so, I have considered your request as you originally submitted.

Since receiving your response of 27 November, I have undertaken a more thorough search of the information we may hold in relation to your request. In doing so, it has become apparent that not all of the information we hold relevant to your request will necessarily be environmental information. Where it is not, it will fall to be considered under the Freedom of Information Act 2000 (FoIA).



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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding .

The “Calculating costs where a request spans different access regimes” guidance from the Information Commissioner (IC) states that where a public authority receives “a single wide-ranging request for information; some of which it should consider for disclosure to the world under FoIA, some of which it should consider for disclosure to the world under the EIR.....they should..... take the following approach”:

Step 1 - consider the request under the FoIA

The Welsh Government is committed to harnessing the opportunities of major infrastructure projects, including Wylfa Newydd, as outlined in our national strategy “Prosperity for All”. The Welsh Government’s role is to ensure the project delivers best and proper legacy benefits for Wales and how the opportunities arising from the proposed project can be harnessed. This is a cross-Government approach. As such, the information you have described is held by several officials based in many Departments including Economy, Transport, Finance, Housing, Regeneration, Health, Welsh Language, Environment, Energy and Planning, to name but a few, some of whom will have been liaising directly with Horizon Nuclear Power Ltd and Hitachi Ltd for their respective reasons.

The substantial volume of correspondence regarding the proposed Wylfa Newydd development, across the Welsh Government, is stored on our electronic record management system, iShare, and within Outlook accounts for individual officials. Section 7 of our Information and Records Management policy, available at <http://gov.wales/about/foi/policies/recordsmanagement/?lang=en>, explains that our records are stored on an Electronic Document and Records Management System (EDRMS), known as iShare. iShare is the corporate repository for the majority of information created and received by Welsh Government Officials in the course of their duties that must be retained for business or historical purposes.

Documents are saved on iShare using naming conventions appropriate to the effective recording of information for our own purposes. Setting our systems in this way, and in line with our Records Management policy, enables effective delivery and will not necessarily lend themselves to being easily interrogated for generic requests for information. Where the Welsh Government believes providing such information would involve tasks that would be time consuming to deal with, in line with our obligations under the section 45 Code of Practice, we inform the requester of that fact and invite them to narrow down or re-focus their requests.

You have specified a search time frame of over three years. A general iShare search for this period, using the search term ‘Wylfa’, or ‘Hitachi + Nuclear’ or ‘Horizon + Nuclear’ yielded several thousand results. At an average estimate of one minute per result to check whether it is relevant to your request and then extracting the relevant information, would take one official at least a full working week, but it is very likely the work would extend beyond that timeframe.

Having considered the above, I have concluded that in terms of the information that is not environmental, it will cost more than the appropriate limit set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 to

deal with your request. I have therefore decided to refuse your request under Section 12 of the FoIA as to comply with it would exceed the appropriate limit.

The appropriate limit specified for central government is £600. This represents the estimated cost of it taking over 24 hours of time to determine whether we hold the information and to thereafter locate, retrieve and extract it. I estimate there are at least 100 members of staff across the Welsh Government which have had links with the project over the last 3 years. In order to provide you with the information you have requested, it would require those members of staff to locate, retrieve and extract the necessary information from those several thousand documents stored on i-share. In addition, there will be several hundred additional items of more recent correspondence within their individual Outlook e-mail accounts. Overall, this exercise would be enormous in terms of time and cost and would far exceed 24 working hours, as explained above.

Step 2 - consider any additional obligations under the EIR

As per my initial letter to you, much of this information will be 'environmental' information as defined by Regulation 2(1) of the Environmental Information Regulations 2004 (EIRs). Because of this, I have also given consideration to the exceptions contained within Regulation 12 of the EIRs. Regulation 12(4)(b) does not oblige a public authority to release information where the request is 'manifestly unreasonable'.

Under the EIRs, and unlike under FoIA, there is no appropriate costs limit above which public authorities are not required to deal with requests for information. However, 12(4)(b) can apply if the cost or burden of dealing with a request is too great. This position was confirmed in the Upper Tribunal case of *Craven v The Information Commissioner and the Department of Energy and Climate Change* [2012] UKUT442 (AAC).

"Taking the position under the EIR first, it must be right that a public authority is entitled to refuse a single extremely burdensome request under regulation 12(4)(b) as "manifestly unreasonable", purely on the basis that the cost of compliance would be too great (assuming, of course, it is also satisfied that the public interest test favours maintaining the exception). The absence of any provision in the EIR equivalent to section 12 of FOIA makes such a conclusion inescapable."

Further, under the EIRs, it may be valid for a public authority to take into account the cost of separating out the environmental information from the non-environmental information, when considering if the request is manifestly unreasonable. This is different from the position under FoIA because regulation 12(4)(b) is not limited by the FoIA fees regulations. Also, the identification of environmental information would not be classed as applying an exception under the EIR.

As has been set out above in relation to the s12 'appropriate limit', the request captures a substantial volume of information. As explained above, a general iShare search for the period you have specified, using the search term 'Wylfa', or 'Hitachi +

Nuclear' or 'Horizon + Nuclear', yielded several thousand results. It is important to note:

- The search timeframe provided by you will return items on the date that the document was recorded on iShare, and not the date of the actual correspondence.
- The search would not necessarily return relevant information. This is because the naming conventions that we use do not lend themselves to being easily interrogated for information in the general and broad way that you have specified.

In addition to the above, given there will be several hundred additional items of correspondence within individual Outlook e-mail accounts held by at least 100 officials, there is clearly a substantial volume of information.

In terms of the information within this that would amount to 'environmental information', the burden on the Welsh Government is twofold. Firstly, the information itself would have to be located, a task which, as set out above, would take well in excess of twenty four hours. Following that, any environmental information within the whole would need to be identified and extracted. In this situation, the IC guidance states that a public authority may include the additional costs of separating out the environmental from the non-environmental information and take these costs into account when refusing a request under the manifestly unreasonable exception at regulation 12(4)(b).

Unlike s12 of the FoIA, Regulation 12(4)(b) is subject to the public interest test.

As explained above, the Welsh Government is committed to harnessing the opportunities and legacy benefits of the proposed Wylfa Newydd project, subject to the necessary consents. The £14 billion new build will be the single largest investment project in Wales since devolution and will impact either directly or indirectly on the majority of functions exercised by the Welsh Government. With this in mind, the Welsh Government recognises the general public interest in openness and transparency and releasing the information we hold would help the public gain a better understanding of the matters being discussed by Government in relation to the project. The Welsh Government also recognises the public has an interest in how their money is to be, or has been, used to ensure Government gets the best value from the public purse. The Welsh Government further recognises the diverging views on nuclear power but also the opportunities and legacy benefits the project would bring to the North Wales economy.

As the project progresses, the Welsh Government will be publishing information to keep the public up-dated on key developments. It has already published some information, for example on the Energy and Environment pages of our Trade and Invest web page <https://tradeandinvest.wales/energy-environment/nuclear-energy>, and also a study into Wales' nuclear supply chain capability, which can be found at <http://gov.wales/topics/businessandconomy/our-priority-sectors/energy-and-environment/study-into-wales-nuclear-supply-chain-capability/?lang=en>. Ministers have also responded to Oral and Written Assembly Questions, the responses for which are published on the National Assembly for Wales website. The North Wales economy was also debated in the Chamber on 18 October, 2017, the transcript for which can be found at <http://record.assembly.wales/Plenary/4651#A38942>. Wylfa

Newydd has also been discussed at Cabinet meetings and some information regarding those meetings have already published in each of the accompanying minutes in relation to the Papers in question.

The Welsh Government is of the view that the public interest is satisfied by the amount of information already in the public domain, or which is committed to being published, regarding its support and related activities, as described above, for the proposed Wylfa Newydd project. Unnecessarily expending already overstretched public resources in searching for such a significant amount of information, which would not necessarily inform the public debate or increase people's understanding of the issues under consideration, would not be in the public interest

On that basis, we believe complying with the request would create an unreasonable burden on the Welsh Government and so we are refusing the environmental element of it under Regulation 12(4)(b) – manifestly unreasonable.

Conclusion

Due to the very broad nature of your request and the amount of information that is captured by it, the Welsh Government is of the view that the time it would take to locate, retrieve and extract the information, for the reasons provided above, would be substantial. Your request is therefore being refused under Section 12 of the FoIA.

The Welsh Government is also of the view that your request should be refused on the grounds that it is 'manifestly unreasonable' within the meaning of Regulation 12(4)(b)) of the EIRs, for the reasons outlined above.

If you submit a new request for information, it would be helpful if you could be more specific about the particular items of information you believe we hold and want the Welsh Government to look for, rather than ask for a broad spectrum of information. For example, you may want us to see if we hold on record minutes of meetings in relation to particular topics, such as in relation to roads leading up to and around Wylfa Newydd, or in relation to housing matters or skills and training. Or you may be interested in meetings we have held with Horizon Nuclear Power or Hitachi Ltd on particular topics.

I do hope that the explanation in this letter demonstrates the reasons why submitting very broad requests for information make it more likely that a request will be refused.

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 numbers 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

Information Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely