

21 December 2017

Dear ,

ATISN 11756 Grant Claim Documentation for Deltastream

Thank you for your request which I received on 24 November. You asked for information regarding European grants made to Tidal Energy for Deltastream, specifically:

1. A copy of each grant claim document detailing the amount of eligible and ineligible spend in each period, the grant drawdown requested and supporting evidence.

I confirm we hold information captured by your request; a copy of each grant claim relating to Deltastream Prototype Stage 1 and Deltastream Prototype Stage 2 is provided at Annex A. Each claim provides details of eligible and ineligible spend for each period including the grant approved to be paid. Transaction lists and progress reports are provided with each grant claim as supporting evidence. Transaction lists for each claim can be found at Annex B and progress reports at Annex C.

I have concluded, however, that some information detailed within these reports is exempt from disclosure under Section 40, personal data, of the Freedom of Information Act 2000 and therefore this information has been redacted from these reports. Full reasoning for applying this exemption is provided at the end of this letter.

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

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The FOIA provides a right for individuals to ask public authorities to make specified recorded information freely available to the World. As such any information released in response to a FOI request is released to the World and not just to the party submitting the request. Consequentially, when considering whether information should be released a public authority has to consider the potential effects of that wider disclosure and how any person could use that information. Whilst a requester may have a legitimate interest in accessing the requested information, that personal interest has little weight when considering whether the public interest favours disclosure or withholding of the information.

Section 40 – Personal Data

Section 40 of the Freedom of Information Act sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (DPA). Personal data is defined in Section 1(1) of the DPA as: *“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller*”.

I have concluded that, in this instance, the redacted information within the progress reports and transaction lists for the Deltastream projects amounts to third party personal data.

Under Section 40(2) of the FOI Act, personal data is exempt from release if disclosure would breach one of the data protection principles. I consider the principle being most relevant in this instance as being the first.

The first data protection principle states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -

(a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

I consider that the withheld information in relation to staff costs falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle. The first data protection principle has two components:

1. Personal data shall be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner's Office (Personal information (section 40 and regulation 13) v 1.4) states:

If disclosure would not be fair, then the information is exempt from disclosure.

This approach was endorsed by the Court of Appeal in the case of Deborah Clark v the Information Commissioner and East Hertfordshire District Council where it was held:

“The first data protection principle entails a consideration of whether it would be fair to disclose the personal data in all the circumstances. The Commissioner determined that it would not be fair to disclose the requested information and thus the first data protection principle would be breached. There was no need in the

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present case therefore to consider whether any other Schedule 2 condition or conditions could be met because even if such conditions could be established, it would still not be possible to disclose the personal data without breaching the DPA” (paragraph 63).

Our analysis of the ICO’s key considerations in assessing ‘fairness’, as set out in the Guidance, are presented below.

The withheld information amounts to the personal data of individuals employed by Tidal Energy Ltd.

The Welsh Government does not believe there is any legitimate interest in the public having access to this personal information, and we do not see any legitimate reason why these details should be placed into the public domain. The individuals concerned would have had no expectation that these details would be placed into the public arena. Because of that, it is believed release of this information would be unfair and so breach the first data protection principle.

For that reason, I believe the information should be withheld under section 40(2) of the Freedom of Information Act. This is an absolute exemption and not subject to the public interest tests.

Annex A



Deltastream
Prototype Stage 2 - C (Prototype Stage 1 - C

<<Doc 1>>



Deltastream

<<Doc 2>>

Annex B



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Annex C



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