



13 March 2019

Dear ,

Request for Information – ATISN 12974

I wrote to you on 1 March regarding your request for information in relation to rail services in South Wales.

You asked for memos, emails, minutes and/or other information regarding the Welsh Government's consideration of and decisions relating to:

1. Capacity improvements on the Maesteg line.
2. The construction/implementation of the 'Tondu Passing Loop'.
3. The inclusion, or not, of the Maesteg line in the phase of the South Wales Metro proposal from 2018-2033 (i.e. the contract awarded to KeolisAmey).
4. Passenger number projections for the period 2018-2033 for the Maesteg line.

The search time-frame you specified is 1 January 2017 to 31 January 2019.

In my letter to you of 1 March, I noted that you had essentially requested the same information as your previous request, reference ATISN 12894, but specified a search time-frame. In my response to you of 13 February in relation to ATISN 12894, I explained why I was unable to process your request, not only because you had not specified a timeframe, but also due to the broad phrasing of your request. In my letter of 1 March, I therefore explained that whilst you have had now specified a search time frame, your request was still phrased very broadly which meant the request was still likely to be refused. In order to bring your request within scope, I suggested you consider submitting a more focused request and provided you with advice and guidance to do so. Given I have not heard anything further from you I have considered your request as originally submitted.

I have given further consideration to the type of information we may hold and am now of the view that any information the Welsh Government may hold on projects involving



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“the construction of new infrastructure”, as in questions 1 to 3 of your request, should be considered under the Environmental Information Regulations 2004 (EIRs), whereas information held on passenger number projections is more likely to be considered under the Freedom of Information Act 2000 (FoIA).

Given you have only narrowed the timeframe of your request, I confirm your request is still very broad and the time it would take to locate, retrieve and extract the information would still be substantial. Your request is therefore being refused under Section 12 of the FoIA, for the reasons outlined below.

I am 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 below.

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

Requesting a broad scope of information as described in your first 3 questions make the search very difficult. As previously explained, a substantial volume of the information is stored on our Electronic Document and Records Management System, known as iShare, and within Outlook e-mail accounts for individual officials. 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. Further information about iShare can be found under Section 7 of our Information and Records Management policy, which is available on the Welsh Government website.

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.

A general iShare search using the search terms ‘Maesteg Line’ and ‘Tondu Passing Loop’ for the timeframe specified yielded in excess of five 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, it would take one official at least a full working week, but it is very likely the work would extend beyond that timeframe.

In addition to the above, I estimate at least 3 officials would also need to search through their Outlook e-mail accounts for any information potentially held. This would add to the above time-frame.

I have therefore 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. As outlined above, I estimate it would take at least 1 person a whole week to retrieve and extract the information.

Step 2 - consider any additional obligations under the EIR

As outlined above, much of this information will be 'environmental' information as defined by Regulation 2(1) of the (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. It would be necessary to search through an estimated 15,000 iShare files and at least 10 Outlook e-mail accounts which means there is 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 24 working 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.

The Welsh Government recognises the general public interest in openness and transparency and releasing the information would help the public gain a better understanding of the decisions made by Government. It is also recognised there is a public interest in how public money is to be, or has been used to ensure Government gets the best value from the public purse. It is further recognised that releasing the information would help the public gain a better understanding of the projects in question and decisions made to improve future rail travel in Wales.

I am of the view that the public interest is satisfied by the amount of information already in the public domain. For example the National Transport Finance Plan - <https://beta.gov.wales/sites/default/files/publications/2017-12/national-transport-finance-plan-2017-update.pdf>. Further information can be found on the National Assembly for Wales website where consultation details and expert views are recorded - <http://senedd.assembly.wales/mgConsultationDisplay.aspx?id=328&RPID=1513636503&cp=yes> and at the following regarding the Metro - <https://beta.gov.wales/metro>. Unnecessarily expending already overstretched public resources in searching for such a significant amount of information caught by the broad phrasing of your request, 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, the Welsh Government believes complying with the request would create an unreasonable burden on its resources and so the environmental element of your request is being refused under Regulation 12(4)(b) – manifestly unreasonable.

Conclusion

Due to the very broad nature of your request and the amount of information 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.

Your request is also being 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, please specify what you are specifically interested in regarding the Maesteg line, the Tondu passing loop and the Metro so that

I can search for and potentially release the information to you, in line with my previous guidance.

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