

4 July 2023

Dear

**ATISN 18567 – Information on Wentlooge Solar Farm DNS application.  
Reference No: CAS-01772-Z5P5D2.**

Thank you for your request submitted on 6 June, which I received on 7 June 2023.

You asked for:

- Copies of internal correspondence.

I interpreted your request as asking for all internal correspondence between officials and Ministers following submission of the Inspectors Report to Planning Directorate from Planning and Environment Decision Wales (PEDW) on the 6 February to the 6 June 2023. You confirmed on 26 June that your request related to internal correspondence relating to the determination of the DNS application.

I have enclosed with this letter some of the information you requested, as identified on the disclosure list. Information is being withheld under Regulations 12(4)(e), and 13, as it constitutes internal communications and the personal data of officials. The information being withheld are Ministerial Advice and the names, e-mail addresses and phone numbers of officials.

The information caught by your request constitutes environmental information and has been considered for disclosure under the Environmental Information Regulations (“EIRs”). I have decided some of the information described in the enclosed list is exempt from disclosure under Regulations 12(4)(e) and 13 of the EIRs. The reasons for applying these exemptions is set out in full at Annex 1 to this letter.

**Next steps**

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: [Freedom.ofinformation@gov.wales](mailto:Freedom.ofinformation@gov.wales)

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.

Any information released under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 will be listed in the Welsh Government's Disclosure Log (at <https://gov.wales/about/open-government/freedom-of-information/responses/?lang=en>).

Yours sincerely

### **Regulation 12(4)(e) – Disclosure of internal communications**

Regulation 12(4)(e) of the EIRs sets out an exception from the right to know for information contained within documents considered to be internal communications.

Where an official prepares advice for the Welsh Ministers into a planning decision, they offer conclusions on the main issues and make a recommendation to the Welsh Ministers. The Welsh Ministers consider those recommendations, which they may choose to accept or reject. Until the Welsh Ministers make a decision, especially as an application for the same form of development, on the same site, remains undetermined the advice previously provided forms part of internal advice, and, as such, falls within the scope of the exception.

The decision by the Minister in this case is part of a wider consideration, yet to be decided. The advice caught by this request will, therefore, continue to form part of internal advice.

This exception is subject to the public interest test, and I must determine whether the public interest favours releasing or withholding this document. This Annex sets out our subsequent consideration of the Public Interest Test.

#### **Public interest arguments in favour of disclosure**

The proposal for a solar farm in Wentlooge on the Gwent Levels is controversial with a strong public campaign against the proposal and a strong public and media interest in the proposal.

Disclosure would allow the public to better understand the government's internal decision making process and the steps taken by government in considering such proposals, taking account of both short and long term potential benefits and negative impacts to the local communities and the local environment, in order to make decisions in the best interests of Wales.

#### **Public interest arguments in favour of withholding**

The fact that this exception exists shows there is an inherent public interest in maintaining that free space where officials can freely discuss matters away from the public gaze, particularly where the discussions and deliberations are ongoing.

The internal advice provided to the Minister is conducive to the public interest which is to have an efficient and transparent planning system, which is fair to all. If the conclusions and recommendations of the officials contained within this advice are released, before a final decision is issued, there is a risk it will undermine the efficiency, transparency and impartiality of the planning process.

It is in the wider public interest that officials and Ministers fully weigh up the competing cases and for Ministers to reach a considered decision. Disclosure during

such deliberations would only serve to encourage both proponents and those against the proposal to delay the decision making by re-submitting their case.

### **Balance of public interest test**

On balance I have found that the public interest lies in withholding the information.

### **Regulation 13– Personal data**

Regulation 13(1) together with the conditions in Regulation 13(2)(a)(i) and 13(2)(a)(ii) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 2018 (‘the DPA 2018’) and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains third party personal data.

Under Regulation 13(1) of the EIRs, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

*“processed lawfully, fairly and in a transparent manner in relation to the data subject”*

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

*“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.*

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

### **1. Legitimate interests**

We have been unable to identify a legitimate interest the requester may have in accessing the personal data of those mentioned in the internal communications.

### **2. Necessity test**

We do not believe it is necessary to release the personal data for the exchanges of internal communication to be understood.

### **3. Balancing test**

As we don't believe there is neither a legitimate interest nor is it necessary to release the personal data, we are of the view that disclosure would breach the GDPRs and, as such, should be withheld under Reg 13.