

;Yr Is-adran Dŵr, Gwastraff, Effeithlonrwydd Adnoddau a Llifogydd
Water, Waste, Resource Efficiency and Flood Division
Adran yr Amgylchedd a Materion Gwledig
Department for Environment & Rural Affairs



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref ATISN 11980

6 March 2018

Dear ,

Thank you for your request which I received on 6 February about soft drink deposit return schemes, which asked for:

1. Correspondence relating to the development of a soft drinks deposit return scheme from June 2017 to the present between the Welsh Government and the following companies and organisations; The British Soft Drinks Association, The Association of Convenience Stores, Incpen, The British Retail Consortium, The Foodservice Packaging Association and Coca-Cola
2. Correspondence covered; emails, letters, briefings invitations, details of meetings (include invitations, briefing notes, slides, hand-outs and follow-up correspondence to meetings).

A copy of the information I have decided to release is enclosed at Annex 2.

I have decided that some of the information described in the enclosed list is exempt from disclosure under Regulation 12(4)(e) and Regulation 13 of the Environmental Information Regulations and is therefore withheld. The reasons for applying these exceptions are set out in full at Annex 1 to 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:

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.

Welsh Government
Cathays Park, Cardiff
CF10 3NQ

Canolfan Cyswllt Cyntaf / First Point of Contact Centre
0300 0604400

Information Rights Unit
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

or email: 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

Annex 1

I have decided to withhold the following information:

Information being withheld	Section number and exemption name of the Environmental Information Regulations 2004
Internal briefings between Welsh Government Ministers, officials regarding Deposit Return Schemes ahead of meetings/correspondence with listed organisations	Regulation 12(4)(e) the request involves the disclosure of internal communications.
Names and addresses of: <ul style="list-style-type: none">• non public facing civil servants• non public facing officers of external organisations• retired officers of organisations or people who have since left the organisation	Regulation (13) the information requested includes personal data of which the applicant is not the data subject

This Annex sets out the reasons for the engagement of Regulation 12(4)(e) and Regulation (13) of the Environmental Information Regulations 2004 and our subsequent consideration of the Public Interest Test.

Engagement of 12(4)(e) of the Environmental Information Regulations 2004

Regulation 12(4)(e) states:

*... 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.

Public Interest Test

In order to satisfy the public interest test in relation to the exemption(s), it is necessary to conclude that the public interest arguments in favour of withholding the information are sufficient to *outweigh* the public interest arguments in favour of release.

Public interest arguments in favour of disclosure

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. There is a very high public and media interest in understanding how the Welsh Government is developing policy related to Deposit Return Schemes (DRS). Understanding how we work and communicate with the corporations, listed in this request, on DRS and the wider very topical issue of plastic and it has a very high media profile. By disclosing the emails and letters which were sent, shows the communication we have had with the listed organisations and that liaising and working with different stakeholders is part of developing balanced informed policy and part of

government business. Disclosure of these documents would increase public trust in, and engagement with, the Welsh Government.

Public interest arguments in favour of withholding

The Welsh Government believes internal briefing between Welsh Government Ministers, officials and Special Advisers regarding Deposit Return Schemes (DRS) in advance of meeting the listed organisations should be exempt from disclosure. Disclosure of internal briefing could harm the Welsh Government formulation of policy, which in the long-term would not be in the Public interest. It could lead to the loss of frankness of advice in providing internal briefing between Welsh Government Ministers, officials and Special Advisers regarding DRS in relation to the listed organisations and therefore should be exempt from disclosure. The policy in this area is currently in development and incomplete and the Welsh Government is reviewing all available evidence and policy options in a balanced way to develop this policy. The ability for officials, Ministers and Special Advisors to provide advice ahead of meetings/correspondence for any stakeholders in relation to the development of DRS policy allows for the formulation of unbiased policy making which is in the public interest.

We acknowledge that there is high level of public and media interest with regards to the development of DRS and the topic of plastics as a whole has captured the public's interest. The ability to advise and discuss subject matter freely ahead of meetings/ correspondence to the listed organisations, on this fast-moving policy area which is still in development, is essential to being able to give the Minister or Cabinet Secretary balance and up-to-date advice. This would happen with any organisation or stakeholder who met or wrote to the Minister or Cabinet Secretary whether it was a company or an environmental organisation. We believe this internal advice enables the Welsh Government to develop unbiased policy outweighs the need of public at this time.

Balance of public interest test

There is currently a high public interest in reducing waste, particularly of single use plastics, such as drinks containers, and there is a very strong public interest in understanding what government is planning to do on this matter. To support this, we believe that disclosing all requested correspondence sent by Ministers, officials, or Special Advisers to the listed organisations is in the public interest as it will increase public trust in and engagement with the Welsh Government. We recommend withholding the background internal briefings, which are provided to any Minister or Cabinet Secretary ahead of meetings or correspondence with the listed organisations, as it will hinder the provision of frank and candid advice on the undeveloped policy, this could hinder the formulation of unbiased policy. Therefore, disclosing all internal background briefings, as noted under Regulation 124)e) of the EIRs The Welsh Government believes is in the balance of public interest to withhold some of the information outweighs the public interest to release it for the reasons outlined above. The information has therefore been withheld under Regulation 124)e) of the EIRs.

Engagement of (Regulation 13) of the Environmental Information Regulations 2004

Regulation 13 of the EIRs sets out an exception from the duty to disclose 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 consider that information regarding names and addresses of members of the public, constituents whose correspondence was forwarded by an AM or MP, officers of external organisations and civil servants clearly 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 1.3) states (at p11):

- *The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below.*
- *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 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).

Release of information under the EIRs is not release to the requestor, but release to the world. Members of the public identified in correspondence with AMs would have had no reasonable expectation that their correspondence would be published to the world, and as such, release of their personal data would constitute unfair processing under the DPA.

Additionally, the ICO has issued guidance on whether release of names of officials and employees named in correspondence would be unfair, and thus in breach of the first principle of the Data Protection Act 1998. The guidance states:

In assessing whether employees can have a reasonable expectation that their names will not be disclosed, key factors will include their level of seniority and responsibility and whether they have a public facing role where they represent the authority to the outside world.

Where the officials in question are not senior staff, do not have a public facing role and where they are acting entirely in an administrative capacity, I have concluded that they have a reasonable expectation that their names will not be disclosed. It is my view, therefore, that disclosure of their names would breach the first data protection principle, and thus are exempt from release under regulation 13 of the Environmental Information Regulations 2004.