



31 October 2018

Dear ,

Request for Information – ATISN 12672

I wrote to you on 9 October regarding your request for information. With reference to the [20 July 2017 Welsh Government Board Paper](#), you asked for full information on:

1. The Legacy Framework (if finalised).
2. All risks associated with the Wylfa Newydd Project.

I confirm we hold information caught by your request. The Legacy Framework referred to in paragraph 3.7 of the above Board Minutes consists of three separate papers and I can confirm that it has been finalised. I have concluded that two of these papers can now be placed into the public domain. The papers were presented to the 9 January 2018 meeting of the Welsh Government Cabinet and they will be duly published alongside the minutes of that meeting on the Welsh Government [website](#). I have concluded that the third paper, however, should be withheld from disclosure under Reg 12(4)(e) of the Environmental Information Regulations 2004, internal communications. Full reasoning for withholding the paper is given at Annex A.

Thank you for e-mail of 19 October providing clarification regarding your second question. It still remains unclear to me what information you are specifically seeking. Your response of 19 October outlines certain risks which have been referred to within some information which is in the public domain, namely minutes of Welsh Government Board meetings and the Welsh Government's representation in relation to Horizon's Development Consent Order (DCO) application to the Planning Inspectorate. The risks outlined in the Welsh Government's representation to the DCO process is the sum total of information held by the Welsh Government in terms of that process.

As explained above, whilst I note you have outlined some risks, I remain unclear about what information you want me to search for in relation to 'risks'. You have stated that



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you are seeking an 'evidence base' and 'reasoning behind respective flags'. You have not stated specifically what information you want me to search for, and over what time frame. The reference to risks associated with the proposed development is very broad and can be addressed in many different contexts. For example, you refer to paragraph 4.1 of the 31 March 2017 Welsh Government Board Paper which states:

4. Risks

4.1 If the Welsh Government does not allocate sufficient resource to servicing the demands of Wylfa Newydd, there is a risk that we will not deliver against the aim and objectives agreed by Cabinet. That in turn would mean Wales and specifically north Wales losing out on securing legacy benefits and being negatively impacted by hosting a project of this scale.

The above is a statement of fact in relation to internal Welsh Government resourcing and ensuring Wales secures the legacy benefits from the proposed development.

Having considered the above, I have decided to refuse your second question under Reg 12(4)(c), formulated in too general a manner. Should you wish to submit a revised request, please be as specific as possible about the information you would like me to search for. For example, you may be interested in certain types of risk only, such as internal resourcing referred to above, and over a certain timeframe. And in relation to those risks, you may be interested in certain types of information / documentation. Please clearly outline what information you are seeking, in relation to which risks and over what search timeframe. This would be treated as a new request for information.

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. 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

Regulation 12(4)(e) – internal communications

This Annex sets out the reasons for the engagement of regulation 12(4)(e) - Internal communications of the Environmental Information Regulations and our subsequent consideration of the Public Interest Test.

Regulation 12(4)(e) states that 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.

Regulation 12(4)(e) is a qualified (public interest tested) exception. Even if the exception is engaged, public authorities must go on to apply the public interest test set out in regulation 12(1)(b). A public authority can only withhold the information if the public interest in maintaining the exception outweighs the public interest in disclosing the information. Because of this, consideration has been given to the effects of disclosure to the world at large rather than any personal interest you may have in being provided with the information.

The Welsh Government acknowledges the presumption in favour of disclosure under Regulation 12(2). It acknowledges the public interest in openness and transparency within Government, particularly by disclosing how the Welsh Government utilises its resources, spends public money and that both are invested wisely on behalf of the people of Wales.

This is a £15 billion new build project which will be the single largest investment project in Wales over the next 10 years. There are significant economic, financial and environmental interests. With this in mind, the Welsh Government is very much aware of the significant public interest in the matter, both for and against. For example, there is the group “People Against Wylfa B” but there are also supply chain businesses wanting to get ahead of the game in securing the inevitable economic benefits which will arise from this significant build.

The withheld information consists of advice prepared by officials for consideration by Cabinet Ministers in relation to the Welsh Government’s negotiating strategy. The Welsh Government is effectively in a live negotiating position with Horizon Nuclear Power (and therefore Hitachi Ltd) as well as the UK Government to secure as much investment, both financial and otherwise, to ensure the project delivers best and proper legacy benefits for Wales and maximises the opportunities for the local

economy. The advice reveals particularly sensitive and complex information regarding the project, including financial and commercial matters. Some of the information is therefore commercially sensitive to both Horizon and the Welsh Government. Placing the information into the public domain would be likely to prejudice those on-going and live negotiations as it would reveal the Welsh Government's hand.

It is important for Officials and Cabinet Members to have a private thinking space to develop ideas, debate live issues and reach decisions away from external interference and distraction. As explained above, releasing the information into the public domain would result in the Welsh Government showing its negotiating hand to Horizon Nuclear Power and Hitachi and potentially cost the public purse several million pounds. In addition, releasing the information would result in Officials spending their time and resources justifying their analysis of key data, or why an option was or was not being considered and whether sufficient weight was being given to a particular option. This would not be in the public interest. When decisions about funding and other matters have been made they will be placed, at the appropriate time and within the appropriate context, into the public domain.

In order to satisfy the public interest, the Welsh Government continues to publish as much information as possible to keep the public informed of its position as matters develop. The Welsh Government's [registration of interest](#) as part of the Development Consent Order process is in the public domain. Further information has also now been released as a result of your request for information.

As explained above, this is not a short-term project and the matters under consideration are for the longer-term. The chilling effect is therefore particularly important in this regard. Cabinet will be receiving more advice as matters progress. If Officials believed their advice or freely exchanged views would be made public in an untimely manner, it is likely to inhibit the quality of future Papers, with the contents being bland, less rigorous and in-depth which in turn will impair the quality of decision making. Unless Officials are able to provide free and frank options and advice on the matters being considered, the effectiveness of the subsequent advice, in order to ensure the impacts from the project are mitigated and the legacy opportunities are maximised, would be undermined. This would not be in the public interest.

The Welsh Government believes the public interest in this project is satisfied by the amount of information already in the public domain and the intended publication of new information at appropriate junctures. It also believes the balance of public interest to withhold the information outweighs the public interest to release it for the reasons outlined above.