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Eich cyfeirnod
Your reference

Ein cyfeirnod
Our reference

Dyddiad
Date

Llinell uniongyrchol
Direct line

Ebost
Email:

ATSIN 12774

6 December 2018

Dear ,

ATISN 12774 – Bat survey and closure of hole through scheduled monument MM189

Thank you for your request which I received on Wednesday 14 November. You asked:

- A. Please will you supply the bat survey reports with any sections that prejudice "public safety" and the "protection of the environment" redacted but leaving in the science and bat/secondary observations and the methods of carrying out the surveys, including the scope of what locations were visited by who, and the relevant experience and qualifications of those surveyors, and when and for how long intact.

You report that you have evidence of allegations that the work to seal the entrance has led to threats being made against those seeking to protect the site. What was the nature of those threats? To whom were they directed? Did they constitute risk of detriment to the safety of individuals identified in the bat reports? If there were threats of violence then I would hope you have reported these to the police to be dealt with.

- B. Please supply a copy of the Scheduled Monument Consent (SMC) application and approval for the works to seal the hole. Please include the rationale and background to the decision to approve the works while not including any provision for bat access. Please redact engineering diagrams/ details as I understand you have determined that that part of the information cannot be released.
- C. Please provide a trail of the ecological consultant tendering process relating to these works. Please include the letter of appointment of the ecological consultancy selected,

Cadw yw gwasanaeth amgylchedd hanesyddol Llywodraeth Cymru. Ein nod yw hyrwyddo gwaith cadwraeth ar gyfer amgylchedd hanesyddol Cymru a gwerthfawrogiad ohono.

Cadw is the Welsh Government's historic environment service. Our aim is to promote the conservation and appreciation of Wales's historic environment.

Rydym yn croesawu gohebiaeth yn Gymraeg.
We welcome correspondence in Welsh.



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INVESTOR IN PEOPLE



including the brief and the agreed price. During the tendering process Smith Ecology Ltd was asked to provide a quote for an underground bat survey. Amelia Pannett of Cadw later informed Peter Smith of Smith Ecology Ltd by email that the consultancy selected had beaten Smith Ecology on price for the same survey. To quote, she said "I was able to get 2 quotes for the bat survey and yours was the more expensive so we have had to go with the cheaper quote." It had been established that a comprehensive underground survey was required and Amelia Pannett when the nature of the survey quote accepted was questioned replied that "we are definitely after a comprehensive survey and I am confident that we will get that with our chosen specialist". I would expect all these emails to be included in your response as well as any correspondence and notes of meetings with alternative ecological consultants.

- D. Amelia Pannett said that the bat survey quote was to include underground bat survey of cave passages, and later when questioned on site on Thursday 4 October 2018 she stated that such a bat survey had been carried out, please provide all documentation relating to and referring to that underground bat survey. In your response so far I have seen only evidence of three bat activity surveys outside the cave in April and May 2018 plus one further activity survey outside the cave on 30 September 2018.

Further, Stuart France was told by a trustee of the Pwll Du Cave Management Group that underground bat survey work had been carried out. Please supply all correspondence with PDCMG officers and trustees and with Pwll Du Conservation Ltd (the landowning company) and records of meetings. If no underground bat survey was undertaken, then please confirm that this is the case.

- E. Please disclose all correspondence and records of meetings between Cadw and Pwll Du Conservation Ltd (the landowning company).
- F. In your response in addition to leaving out correspondence on ecological consultant tendering, you have included only one email after 18 June 2018. It would appear that further correspondence is missing. Please supply copies of the missing material. As an example, the Coal Authority has revealed an email trail of 25 September 2018. In this trail, Amelia Pannett first asks Mr Steve Wadley of AVA Ecology Ltd., who supplied ecological consultancy for bat surveys on this job, to confirm in an email that he is happy for the works to proceed. In his response, Steve Wadley asks if he should email NRW to let them know. Then Amelia sent an email to Jon Berry and Andy Hoskins (Coal Authority) in which she asked Jon Berry if it would be better that an email to NRW comes from Cadw. Please supply all these emails and responses including the subsequent email to NRW.
- G. Amelia Pannett, when questioned on site on Thursday 4 October 2018, said that NRW had approved methodology proposed for bat surveys on this job, had reviewed the subsequent bat survey reports and had then given their approval for the hole through MM189 to be sealed completely, leaving no access for bats. Please supply your documented evidence for each of these events.
- H. In your response, you reveal an email from Jonathan Berry to Julian Atkins dated 04 May 2018. In this email Jonathan Berry says that the South and Mid Wales Cave Rescue organisation is "of the opinion that the cave entrance is highly dangerous and

unstable, and ... subject to catastrophic collapse .. [that] may lead to the destruction of the tramway, the footpath and a significant part of the hillside around it". The email says that the Coal Authority is of the same opinion. Please supply all documentation that you hold supporting the holding of these opinions by these organisations. Please also supply copies of all documentation you hold from other organisations or authorities that provide opinions on this matter, including any that offer contrary opinions.

I have decided that some of the information is exempt from disclosure under regulation 12 (5)(a) and 12 (5)(g) of the Environmental Information Regulations and is therefore withheld. The reasons for applying these exceptions are set out in full at Annex A to this letter.

On points A and B, please note that the bat survey report and ancient monument grant documentation have had elements of their content redacted or withheld as in our opinion there are personal data, public safety and protection of the environment considerations.

On point A, please find a redacted version of the bat report set out in Annex B to this letter. I can confirm that Cadw officials received verbal reports of threats to parties involved in this casework and encouraged the complainants to report these instances to the police. The names of those making complaints constitute Personal Data under the General Data Protection Regulations (GDPR), and I have determined that to release those names would constitute unfair processing under GDPR. This information is therefore being withheld under sections 12(3) and 13 of the Environmental Information Regulations. The reasons for applying these exemptions are set out in full at Annex A.

On point B, please note that there was no formal scheduled monument consent application received by Cadw for these works. Rather, the applicant submitted an ancient monument grant application, together with accompanying documentation from the Coal Authority. The redacted application form, professional assessment form and the signed grant offer letter, which included scheduled monument consent conditions, are set out in Annex C to this letter. The scope of works document and the design drawing have been withheld for public safety and protection of the environment reasons.

On point C, it is correct that Cadw initially sought to fund the bat survey and obtained a preliminary quotation from yourself (email dated 17 January 2018). However, Cadw did not go through the formal procurement process to appoint you to undertake this work, as we did not have a budget in place to pay for the bat survey and report. The bat survey and report that were undertaken were the result of a private commission by the landowner, and we do not hold any correspondence between the landowner and the ecological consultant for that arrangement. We were aware that it was being commissioned through face-to-face conversations with the parties involved. As such, I confirm that Cadw does not hold any recorded information on this subject.

On point D, your email of 17 January 2018 that proposed to undertake a bat survey included provision for 'appropriate bat survey of passages within the Twll Du entrance to Ogof Draenen'. As mentioned in point C above, Cadw did not commission this work and was not responsible for preparing a brief or specifying the works. The landowner commissioned the actual bat survey and report independently of Cadw. I am therefore not aware of any underground monitoring or survey having taken place, although this may have been

undertaken by the ecologist for the landowner and not shared with us. Cadw does not hold any recorded information on this subject.

Please find our correspondence with officers of the Pwll Du Cave Management Group set out in Annex D to this letter. We have already sent you the meeting minutes of 10 January 2018, at which the Pwll Du Cave Management Group was represented.

On point E, please find Cadw's correspondence with Pwll Du Conservation Ltd. set out in Annex E to this letter. In addition, please see point B and Annex C for the exchange of correspondence regarding the ancient monument grant application.

On point F, this omission was explained to you in my correspondence dated Thursday 22 November. On further investigation, I am pleased to confirm that there was no further correspondence from June. The reason for this is because the scheme did not have a budget and could not be progressed further. Once a budget was identified in September, an ancient monument grant application was processed as described in point B above. This application was organised by the landowner. As such, Cadw does not hold any further information on this subject.

On point G, Cadw's official updated you verbally on the situation according to her understanding of the situation at that time. As you stated in your question, Natural Resources Wales is the body responsible for approving the methodology, report and method for sealing the hole, and these issues were a matter for the landowner, the landowner's ecological consultant, and Natural Resources Wales. Please note that Cadw does not hold any recorded information on this subject and we respectfully refer you to Natural Resource Wales.

On point H, with regard to the advice received on the stability of the cave entrance, we have already provided the information we hold on this. The Coal Authority was present at the second site meeting on 15 May, and expressed these concerns verbally. These were then included within the notes of the meeting, which have already been supplied.

The concerns of South & Mid Wales Cave Rescue were expressed to Cadw verbally during a site visit. We were asked to exclude these from correspondence, as the individual did not want to face adverse recriminations from the caving community, of which they are an active part. I confirm that Cadw did not receive any opinions contrary to those expressed by the Coal Authority and South & Mid Wales Cave Rescue.

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,

Annex A

I have decided to withhold the following information:

Information being withheld	Section number and exemption name
Data in the bat report, and the proposal to seal the entrance.	Regulation 12(5)(a) - "public safety"
Data in the bat report. The scope of works and design drawing submitted with the ancient monument grant application form, including its proposal to seal the entrance.	Regulation 12(5)(g) – "the protection of the environment to which the information relates."
Personal information in released correspondence, and the identities of those making complaints of harassment.	Regulation 12(3) and 13 – Personal data

This Annex sets out the reasons for the engagement of regulations 12 (5) (a) and 12(5) (g) of the Environmental Information Regulations and our subsequent consideration of the Public Interest Test.

Engagement of Regulation 12(5)(a) – International relations, defence, national security or public safety; of the Environmental Information Regulations.

The work to seal the man-made entrance to this cave system was undertaken to repair damage to the site created by cavers who had created an entrance into the caves without authority of the land owner. We have been supplied evidence of allegations that these activities have led to threats being made against those seeking to protect the site.

Because release under EIR regulations is released to the world, and not just to the individual making the request, if this report were placed in the public domain, it is possible it could be used to target individuals identified in the report, to the detriment of their safety.

Engagement of Regulation 12(5)(g) the protection of the environment to which the information relates.

As stated above, the work at this site has been undertaken to seal the entrance to this cave system. This entrance was recently created by human activity for the purpose of entry to the cave system, presumably by caving enthusiasts. This entrance into the cave system was made without authority of the land owner.

The cave system is known to be the home for various protected species, and the disturbance to the cave system caused by creation of these entrances, and ensuing human activity in the caves is detrimental to these species. Sealing the illegal entrance was therefore carried out to protect this sensitive environment from human encroachment.

Releasing the report, including the proposals for how the site should be sealed, would be detrimental in that it would reveal key information regarding the design of the seal that might be used to circumvent the seal and create a new opening into the cave system.

We have also been advised that release of detailed information about the location and species of bats in the cave system and other detailed survey data could be detrimental to the bats themselves as release of such information into the public domain may be used by individuals that would seek to observe or disturb those species.

As stated above, release under EIR is release to the world, and not just to the individual making the request. By placing the information in the public domain, it would necessarily become available to the individual(s) who created the illegal entrance in the first place, and to individuals who may make use of the survey data in a manner that is detrimental to the ecology of the site.

In particular, we are mindful that some animals, including terrestrial mammals such as certain species of bat, are protected from disturbance under Section 9.4, Schedule 5 of the Wildlife and Countryside Act 1981. We are keen that sensitive roost sites are not disturbed, and that any subsequent adverse impacts on breeding, resting, feeding and survival are avoided.

We are concerned that release of the survey data on roost sites for such species to the world would encourage well-intentioned enthusiasts to visit the identified locations and disturb the protected species. We understand that wilful disturbance of roost sites is a very frequent occurrence in Wales, and we are concerned that release under EIR, which is, as stated above, release to the world, will encourage disturbance at the site, which would damage the environment we are seeking to protect.

Public Interest Test

Public interest arguments in favour of disclosure

The Welsh Government is committed to the principles of openness and transparency in its dealing with the public. The Environmental Information Regulations themselves commit us to a presumption for release of information, and in this specific case we would certainly wish to release information that would reassure the public that public money was being spent in a manner that met our duties to protect and manage the environment in an appropriate manner. There is a clear public interest in understanding that the work carried out at this site was done so in accordance with our duties in this regard.

Public interest arguments in favour of withholding

We believe that there is a substantial risk that harm or distress would arise were information released that identified people in the report, where those people were acting in the best interest of the environment. As the damage to the site that was repaired was caused by illegal human activity, and as we have received allegations of threats being made to people

acting to protect that environment, it is clearly not in the public interest that information be placed in the public domain that could identify all such individuals.

Further, as public money has been spent on repairs to the environment designed to protect the habitat of protected native species, it would clearly not be in the public interest to release information that could be used by anyone who would seek to circumvent the new controls and create a new illegal entrance into the cave system. This would undermine the protections put in place, cause risk to the environment we have sought to protect, and could lead to more repairs being required in the future, at public expense.

Balance of public interest test

On balance, we believe that the public interest in understanding the detail of the actions we have taken does not outweigh the public interest in the protection of public safety, and neither does it outweigh the public interest in protection of the environment that the information relates to. Release of the information could undermine the very environment we sought to protect, so on balance we have decided to withhold the information.

Engagement of Regulation 12(3) and 13 – Personal Data

In the correspondence I am releasing to you, I have also identified personal data that is exempt from disclosure based on an exception provided by the Environmental Information Regulations 2004 (EIRs):

- (i) Regulation 12(3) and 13 – Personal data
- (ii) Regulation 12(5)(d) "...a public authority may refuse to disclose information to the extent that its disclosure would adversely affect – the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law".

This personal data is the names and identifying information of correspondents where the identity of the correspondents is not in the public domain, and where they would have had no expectation that their information would be placed in the public domain. There is also personal data relating to those who have made allegations of threats or harassment.

I have considered the public interest test when applying the exceptions and have balanced the arguments for withholding the information against the public interest to disclose the information.

Taking into account the exceptions 12(3) and 13 regarding personal data, we have taken the view that it is not in the interest of the public to release this information as the identity of the correspondents does not materially alter the nature of the correspondence, nor is there a

clear public interest in the disclosure of the names. Disclosure would be unfair to those named, which would breach the first data protection principle.

I have withheld names of those who have made allegations and redacted the names of correspondents and officials who are not in either senior or public-facing roles, from the information I am disclosing under Regulation 13 of the EIR.

We consider that the names of these individuals clearly fall within the description of personal data as defined by the Data Protection Act (DPA) and that 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 (ICO) (Personal information 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).

The ICO has issued guidance on whether release of names of officials would be unfair, and thus in breach of the first Data Protection Principle. 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 12(3) of the EIR's.

Additionally, those who have made allegations of threats received did so with no expectation that their personal data would be released into the public domain, and to release such data in such circumstances would clearly constitute unfair processing.