



Ein Cyf/Our ref: ATISN 12846
Eich Cyf/Your ref:
Dyddiad/Date: 16 January 2019

Dear ,

ATISN 12846

Thank you for your request which I received on 17 December 2018. You asked for:

Copies of advice given to Minister Lesley Griffiths by her advisors prior to her decision to over-turn the decisions made by Powys County Council and the Inquiry Inspector to refuse permission for a wind farm development at Hendy in Powys. A copy of the report, the details of the person who wrote it, and the dates of the report, and the date this report was provided to Ms Griffiths.

You have also requested details of what instruction was given by officials to Ms Griffiths before they produced the report.

I have enclosed with this letter, some of the information in respect of your request, which I believe is what you requested as identified on the disclosure list. Items 001, 001a-o, 002, 003, 004, 004a-h and 005 are being withheld under Regulation 12(4)(e) of the Environmental Information Regulations 2004 as they are considered internal communications.

The dates the advice was sent to the Cabinet Secretary are identified in the disclosure list. The information identified as 001a and 004a were prepared by Mrs Marged Wyatt, Planning Manager, Decisions Branch, Planning Directorate.

The information caught by your request constitutes environmental information so has been considered for disclosure under the Environmental Information Regulations (EIRs). I have decided the information described in the enclosed list is exempt from disclosure under regulation 12(4)(e) of the EIRs. The reasons for applying this exemption 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:



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

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.

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. The information in question was internal advice to and from the Cabinet Secretary for Energy, Planning and Rural Affairs. This is clearly “internal communications”, and, as such, falls within the scope of the exception.

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

We recognise there is a general public interest in openness of information and transparency in the working of government.

We recognise the release of the advice provided to the Cabinet Secretary prior to her reaching her final decision is conducive to the effective conduct of public affairs in providing openness of information and transparency in the planning process.

Public interest arguments in favour of withholding

Where an official prepares advice for the Welsh Ministers into a called-in application or a planning appeal, the advice sets out the evidence presented at the hearing/inquiry, their conclusions on the main issues and makes 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 the advice forms part of internal advice.

Once the decision has been taken, the main parties to the application/appeal receive a copy of the decision letter and other parties may request a copy. Thereafter a challenge to a decision can be made within 6 weeks by way of an appeal to the High Court under Section 288 of the Town and Country Planning Act 1990. The decision by the Cabinet Secretary in this case is subject to High Court proceedings, which have not yet been considered by the Courts. Should that High Court challenge prove successful and the decision is quashed, the decision no longer exists. The advice will, therefore, continue to form part of internal advice.

The advice provided to the Cabinet Secretary 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 decision is final, there is a risk it will undermine the efficiency, transparency and impartiality of the planning process.

Balance of public interest test

On balance I have found that the public interest lies in withholding the information until the decision on the case before the High Court is concluded and the challenge process is exhausted. The advice provided to the Cabinet Secretary will also be made available once this process has concluded. The information is therefore being withheld.

Disclosure List – Request for recorded information - Reference Number (12846)

Item number	Item date	Item title or description	Reason for withholding information
001	27/07/2018	E-mail from Decisions Branch, Planning Directorate to Cabinet Secretary with advice	Regulation 12(4)(d)
001a	27/07/2018	Minute of advice	Regulation 12(4)(d)
001b	27/07/2018	Inspector's Report	Regulation 12(4)(d)
001c	27/07/2018	Note on processing planning applications	Regulation 12(4)(d)
001d	27/07/2018	Note on propriety issues	Regulation 12(4)(d)
001e	27/07/2018	Welsh language impact assessment	Regulation 12(4)(d)
001f	27/07/2018	Location in context	Regulation 12(4)(d)
001g	27/07/2018	Site boundary plan	Regulation 12(4)(d)
001h	27/07/2018	SAMs location	Regulation 12(4)(d)
001i	27/07/2018	Viewpoint locations	Regulation 12(4)(d)
001j	27/07/2018	Viewpoint 1	Regulation 12(4)(d)
001k	27/07/2018	Viewpoint 4	Regulation 12(4)(d)
001l	27/07/2018	Viewpoint 5	Regulation 12(4)(d)
001m	27/07/2018	Viewpoint 9	Regulation 12(4)(d)
001n	27/07/2018	Wireframe view from Llandegley Hillfort towards Graig Camp	Regulation 12(4)(d)
001o	27/07/2018	Distance from SSA	Regulation 12(4)(d)
002	13/08/2018	E-mail from Cabinet Secretary to Decisions Branch, Planning Directorate	Regulation 12(4)(d)
003	23/10/2018	E-mail from Cabinet Secretary to Decisions Branch, Planning Directorate	Regulation 12(4)(d)
004	24/10/2018	E-mail from Decisions Branch, Planning Directorate to Cabinet Secretary with advice	Regulation 12(4)(d)
004a	22/10/2018	Minute of advice	Regulation 12(4)(d)
004b	24/10/2018	Inspector's Report	Regulation 12(4)(d)
004c	24/10/2018	Inspector's Addendum Report (Appropriate Assessment)	Regulation 12(4)(d)
004d	24/10/2018	Draft decision letter	Regulation 12(4)(d)
004e	24/10/2018	Annex A - conditions	Regulation 12(4)(d)

004f	24/10/2018	Note on propriety issues	Regulation 12(4)(d)
004g	24/10/2018	Note on processing planning applications	Regulation 12(4)(d)
004h	24/10/2018	Welsh language impact assessment	Regulation 12(4)(d)
005	25/10/2018	E-mail from Cabinet Secretary to Decisions Branch, Planning Directorate	Regulation 12(4)(d)