



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref ATISN 12670 / ATISN 12672

14 February 2019

Dear ,

Internal Review of Request for Information – ATISN 12670 and ATISN 12672

I wrote to you on 19 December, 7 January and 18 January regarding your complaints on the handling of two of your requests for information, as referenced above.

I have conducted an internal review of both requests in accordance with the procedure outlined in the [Welsh Government's Practical Guide for Making Requests for Information](#) which is available by post on request, or via the internet.

ATISN 12670

With this request, you asked for three Welsh Government Cabinet papers in relation to Wylfa Newydd, specifically:

1. 20.03.18 – Item 5 - Cabinet Paper and up-dates provided to Cabinet on the paper
2. 09.01.18 – Item 4 - Cabinet Paper and up-dates provided to Cabinet on the paper
3. 03.10.17 – Item 3 - Cabinet Paper and up-dates provided to Cabinet on the paper

I note that in our response of 23 October, all of the information was withheld under Regulation 12(4)(e) of the Environmental Information Regulations 2004 (EIRs), internal communications.

ATISN 12672

With this request, you asked:



BUDDSODDWYR | INVESTORS
MEWN POBL | IN PEOPLE

E&T FOI Team
Welsh Government
Treforest - QED Centre
Main Avenue
Treforest Industrial Estate
Ponty pridd
CF37 5YR

FOI.EconomyandTransport@gov.wales.

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 .

1. In respect of the redacted information in the 31 March 2018 Board Paper (paragraph 4), perhaps you might consider being more specific than the blanket reasons in previous correspondence. Further, what is the redacted information about? Is the attribution internal or external? If external, might it be Hitachi, Horizon, the UK Government or other party?
2. Perhaps I may be permitted to enquire about the status of outstanding Papers for the Cabinet Meetings held 20 September 2016 and 21 March 2017, respectively.
3. With reference to the [20 July 2017 \[Welsh Government\] Board Paper](#), may I please request full information on:
 - a. the Legacy Framework (if finalised); and,
 - b. on all risks associated with the Wylfa Newydd Project?

I note that in our response of 31 October, it was explained that your first two questions related to your previous request, reference ATISN 11689 which was subject to a live investigation by the Information Commissioner and as such you were not provided with a response. I note that the investigation is still ongoing but that some information from the 20 September 2016 and 21 March 2017 Cabinet papers have since been released to you.

In relation to question 3(a), it was explained that three documents were caught by the legacy framework, two of which were released to you in full, namely the documents titled Aims and Objectives and Benefits Realisation. You were advised that all three documents were also caught by request ATISN 12670 as they were presented as three separate Appendices to the 9 January 2018 Welsh Government Cabinet meeting. Because of this, the two documents that were released to you were subsequently published alongside the minutes of that meeting on our [website](#). The third document, the Mitigation Negotiation Strategy, continued to be withheld under Reg 12(4)(e) of the EIRs, internal communications.

In relation to question 3(b), I note we were unclear what you meant by 'all risks'. As such, on 9 October, clarification was sought from you as required under Regulation 9 (2) of the Environmental Information Act 2004. You responded on 19 October. Our response advised that it was still not clear what information you were specifically requesting in relation to 'risks' and as such this question was refused under Reg 12(4)(c) of the EIRs, formulated in too general a manner.

In light of the above, my review for this request has focused on question 3 a and b only.

I have considered your original requests, the responses you received and your respective complaints of 11 and 28 December, 2018.

ATISN 12670

I am satisfied that it was correct to withhold the information at the time of your request, for the reasons already outlined to you. With the passage of time, however, I have concluded that the three Cabinet papers you have requested can now be released into the public domain, with the exception of some commercial and sensitive information.

For the meeting dated 20-03-18, reference CAB(BG17-18)40, I am satisfied that the Paper and Annex 2 can be released in full. However, I am of the view that Annex 1, 'Statement of Common Ground Progress Table and Action Plan', should be withheld for the reasons outlined in the original response. Whilst I note that Hitachi has since halted the proposed Wylfa Newydd project, the associated Development Consent Order process remains live and is still on-going. I am satisfied, therefore, that releasing the information contained in that document would be likely to harm that on-going process, for the reasons already outlined to you.

For the meeting dated 03-10-17, reference CAB(BG17-18)07, I am satisfied that the Paper can now be placed into the public domain, with the exception of a small amount of sensitive information on page 14.

For the meeting dated 09-01-18, reference CAB(BG17-18)19, I am satisfied that the Paper can now be placed in to the public domain, with the exception of a small amount of sensitive information on page 7. There are 6 Appendices with this Paper. I am satisfied that Appendices 1, 2, and 3 can be released in full. Appendices 4 and 6 have already been placed into the public domain, as explained above. I am of the view that some information within Appendix 5 should be withheld.

For all of the above, the reasons for withholding the sensitive information are as outlined in the original response and explained above.

ATISN 12672

My review has focused on question 3a and 3b only, as explained above.

The Welsh Government fully recognises that the decision on where to locate new nuclear generation is a matter fully reserved to UK Ministers. However, once the decision was taken to include the Wylfa site in the UK Government's National Policy Statement on Energy, the Welsh Government adopted a position of supporting the development and working with Horizon to maximise local supply chain content. Subsequently, the Welsh Government entered into a live negotiating position with Horizon Nuclear Power/Hitachi Ltd and the UK Government to secure as much financial (and other) investment from them as possible, in order to harness the maximum economic benefits from this rare opportunity.

The withheld information related to the Welsh Government's mitigation negotiation strategy in relation to the Development Consent Order (DCO) process, in order to ensure arrangements were in place to appropriately mitigate any potentially negative impacts of the project. It was important, therefore, for the Welsh Government to conduct its duties without interference, ahead of its second formal response to the DCO examination process. This has since been submitted and is in the public domain.

Whilst I have noted your comments as outlined in your complaint, I am satisfied it was correct to withhold the Mitigation Negotiation Strategy at that time as to release it prematurely would have been likely to harm the Welsh Government's position in relation to the next particular stage of the DCO process. Your complaint relating to withholding of this information is not, therefore, up-held. That said, with the passage

of time, I am satisfied that the Mitigation Negotiation Strategy (Appendix 5 of the 9-01-18 Cabinet Paper) can now be released into the public domain, as explained above, with a small amount of sensitive information withheld.

Turning to question 3b, risks, I have reviewed your complaint dated 28 December, 2018. In your complaint, you stated that the response had overlooked what you had originally asked for, namely 'all risks associated with the Wylfa Newydd Project' as outlined in the [20 July 2017 \(Welsh Government\) Board Paper](#).

I note that on 9 October, 2018, the acknowledgement stated that it was not clear which risks you were referring to, but noted that given you had specified the above Board Paper, you were likely referring to those as outlined in paragraph 2.3 of the Paper:

2.3 Since the May Board meeting we have also, through engagement with the developer, UK Government and specifically via the Pre-Application Consultation 3 (PAC3) process, become more attuned to the risks associated with this project, i.e. the risks to the Wylfa Newydd Project, the risks to Wales (of failing to secure benefits and of incurring negative impacts), and the risks to WG. This heightened understanding of risk further compounds the need for formalised governance across Welsh Government.

You were asked to provide a clearer description of the information you were looking for, which you provided on 19 October. You expanded your request by pinpointing certain paragraphs within two other Welsh Government Board Papers from 2017. You highlighted a list of topics or 'flags' which had been included in the Welsh Government's representation of 10 August 2018 to the DCO process. You stated that this representation was unlikely to contain the information you were looking for because "... *It would not appear to contain the evidence base and reasoning behind respective flags*".

The response concluded that it was still unclear what information you were looking for. In terms of the DCO process, it was confirmed that the Welsh Government's representation of 10 August 2018 was the sum total of information held on risks in relation to that process. I am satisfied that this was the case for the information held in relation to the DCO process at that time.

On the matter of other risks you were referring to, officials remained unclear what information you were seeking. My understanding is that you asked for '*full information on all risks associated with the Wylfa Newydd Project*', which you subsequently narrowed down to being '*an evidence base*' and '*reasoning behind respective flags*', namely the list of topics referred to in the DCO representation. Specifically, you stated:

"The Relevant Representation appears to flag up a list of risks appertaining to:

- a. digital networks (paragraph 4.1.8);*
- b. skilled workforce and local employer base (paragraph 4.2.1);*
- c. supply chain and remuneration levels (paragraph 4.2.6);*
- d. Skills Strategy and Skills Fund (paragraph 4.2.7);*
- e. flooding vulnerability (paragraphs 4.3.7, 4.3.15, and 4.3.16);*
- f. housing and homelessness (paragraph 4.6.5);*
- g. hospitality skills (paragraph 4.7.5); and,*

h. Welsh language (paragraph 4.8.4), respectively”.

I do not view your clarification or responses to be a sufficiently helpful or clear description of the information you want officials to look for in relation to risks. I note there is an obligation on public authorities to be helpful to requestors when submitting and formulating their requests. As such, officials tried to be helpful by, for example, suggesting ways in which you could expand your request beyond asking for ‘full information on all risks’. They also directed you to the Welsh Government’s DCO representation, from where you obtained the above list of topics. I am of the view, however, that providing a list of topics is not sufficient to undertake a search for ‘full information’. Whilst I understand you are seeking an ‘evidence base’ and ‘reasoning’ for the topics, I would expect you to have provided a clearer description and timeframe for what it is you wanted officials to search for. It would be assumed, for example, that you were aware of the particular risks you were interested in, or the type of information you wanted in relation to those risks. I am satisfied, therefore, that it was correct to refuse your request under Reg 12(4)(c), a request formulated in too general a manner.

To conclude, your complaints are not upheld as I believe it was correct to withhold the information at the time of your respective requests. I am also of the view that it was correct to refuse question 3(b) of ATISN 12672 for the reasons outlined above.

Should you wish to submit a revised request in relation to risks, it may be helpful to provide you with contextual explanations from a Welsh Government perspective in relation to the DCO process. Specifically, it may help to outline to you how the Welsh Government, as a Statutory Party, responds to the Planning Inspectorate (PINS) through the DCO process.

The Welsh Government has already shared the list of risks that we consider the Wylfa Newydd project presents for Wales which are included in our various responses to the public consultations from Horizon Nuclear Power. The evidence that led the Welsh Government to conclude that these are risks was extracted from the reading of Horizon Nuclear Power’s DCO application, which runs to several thousands of pages (in hard copy format, it constitutes some 24 large boxes and additional scrolls of diagrams). You can view these documents electronically on the PINS website.

The decision to deploy nuclear technology as part of the UK energy mix is a decision taken by the UK Government and is not a matter for which the Welsh Government has responsibility. Consequently, when considering the Welsh Government’s response to the DCO, only relevant matters can be raised, or considered. The use of nuclear technology is not considered to be a relevant matter and any comments made by the Welsh Government in this regard would be disregarded by PINS. The risks referred to in the various Cabinet Papers and listed by you are the sum total of the relevant matters (or risks) that the Welsh Government are able to raise, given the limited focus of the DCO process.

Following the Wales Act 2017 receiving Royal Assent, Horizon Nuclear Power has put all elements of its project into its DCO submission. This means that the ability for Welsh Government to directly influence the project is restricted as there will be no power to call in applications (should it have been necessary). The DCO decision will be taken by the UK Secretary of State in the first instance, in accordance with National Policy Statements rather than the local development plan and Welsh Government’s

Planning Policy Wales (and Wellbeing and Future Generations Act), which may be material considerations.

There will be a Statement of Common Ground (SoCG) between Welsh Government and the developer. This will be a key document identifying the areas of the project where agreement has been reached on the impacts (risks) and mitigation and the areas of the project yet to be agreed as well as what the differences are between parties. The statement of common ground is also limited, by the process, to relevant matters. Therefore, the SoCG allows the PINS panel of Inspectors examining the DCO to identify areas of contention and determine what aspects of the project require specific hearing sessions. At these hearing sessions, the Welsh Government will have to rely on presenting a robust arguments on the issues of concern (risks), which is related back to a National Policy Statement consideration and thereby rely on influencing PINS to support their view as part of PINS recommendation to the Secretary of State.

It is also critical to note that the DCO process acts as a funnel (see Figure 1 attached) for considering the relevant issues and concerns (risks) from statutory parties. It is unlikely to be acceptable to introduce new issues or concerns once the DCO examination has started. It is worth noting again that the use of nuclear technology is not relevant and therefore would not be considered.

I hope the above provides sufficient explanation to you to help you re-formulate your request, should you wish to do so.

If you remain dissatisfied with this response you also have the right to complain to the Information Commissioner at:

Information Commissioner's Office,
Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
Tel: 01625 545 745
Fax: 01625 524 510
Email: casework@ico.org.uk

Also, if you think that there has been maladministration in dealing with your request, you have the option to make a complaint to the Public Services Ombudsman for Wales who can be contacted at:

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae, Pencoed, Bridgend, CF35 5LJ
Telephone: 0845 6010987 (local rate)
Email: ask@ombudsman-wales.org.uk

Yours sincerely

Sioned Evans
Cyfarwyddwr, Busnes a Rhanbarthau / Director, Business and Regions
Economi, Sgiliau a Chyfoeth Naturiol / Economy, Skills and Natural Resources

Figure 1: The DCO Evidence Funnel

