



7 March 2019

Dear \_\_\_\_\_,

### Request for Information – ATISN 12920

I wrote to you on 11 February regarding your request for information. You asked for the following information for the last 2 years:

1. All WelTag studies being carried out (and the councils responsible for them) over the last two years.
2. The stage each of those studies is currently at.
3. All completed WelTag studies.
4. The amount spent by the Welsh Government on each study.
5. The consultants being used on each of the studies.
6. Any proposed WelTag studies.

In my letter to you of 1 February, I explained that your original request was likely to be both voluminous and complex to deal with as you had asked for a significant amount of information and it was likely, therefore, to be refused under Regulation 12(4)(d) of the Environmental Information Regulations 2000 (EIRs), manifestly unreasonable request.

In order to bring the request within scope to potentially provide you with information, I suggested you submitted a more focused request by reducing the search timeframe and reference the particular schemes you were interested in. I note that in your response of 7 February you reduced the search time-frame to two years. You did not, however, specify what schemes you were interested in.

I have considered the type of information we may hold which may be caught by your request. In the first instance, the Welsh Government does not hold a single database which lists all Welsh Transport Appraisal Guidance (WelTAG) studies and all of the information you have requested. This is because local authorities are not required to submit WelTAG reports to the Welsh Government with their applications for support.



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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 .

In addition, because WelTAG should be applied to all transport interventions in Wales, it would simply not be possible or practical for the Welsh Government to hold such a large volume of information. That said, there are occasions where the Welsh Government may receive some reports, but there is no precedent in doing so.

The WelTAG guidance, which is available to view on the Welsh Government [website](#), aims to assist “.... anyone interested or involved in the development of any proposed intervention to deliver a more sustainable transport system for Wales. Many of these interventions will be schemes that involve the construction of new infrastructure, such as a railway station, cycle lane or new road. Others may be the provision of a service, such as the provision of travel advice or other interventions that require revenue rather than capital expenditure”.

The Welsh Government is therefore of the view that any information it may hold on projects involving “the construction of new infrastructure” should be considered under the EIRs, whereas information held on “the provision of travel advice” is more likely to be considered under the Freedom of Information Act 2000 (FOIA).

As the Welsh Government does not hold a single database of the information you have requested, your request is very broad and the time it would take to locate, retrieve and extract the information would still be substantial. Your request is therefore being refused under Section 12 of the FOIA, for the reasons outlined below.

The Welsh Government is also of the view that your request should be refused on the grounds that it is ‘manifestly unreasonable’ within the meaning of Regulation 12(4)(b) of the EIRs, for the reasons outlined below.

The “*Calculating costs where a request spans different access regimes*” guidance from the Information Commissioner (IC) states that where a public authority receives “a single wide-ranging request for information; some of which it should consider for disclosure to the world under FOIA, some of which it should consider for disclosure to the world under the EIR.....they should..... take the following approach”:

### **Step 1 - consider the request under the FOIA**

As explained above, the information you have requested is not contained in one single database. Local authorities submit applications for support from the Welsh Government under a number of different grant schemes including the Local Transport Fund, the Active Travel Fund, the Local Transport Network Fund, the Safe Routes and Communities fund and Road Safety Grants. It would be necessary to search through each application received under each fund in order to extract the information you have requested. For example, for your second question, it is not always clear from the funding application form at what stage the project may be and this would be for the local authority to advise. Similarly, monitoring and evaluation information would be contained within annual progress reports which relate to stage 4 and 5 applications.

I estimate there would be an average of 50 applications per grant scheme over a 1 year period. I further estimate it would take an average of 15 minutes to search

through each application to extract all of the information you have requested, if held, which totals 125 hours.

There may be other projects the local authorities are undertaking which the Welsh Government may or may not be aware of. For example, WelTAG studies may have been undertaken for projects which have not yet reached the application for funding stage. It is possible that the Welsh Government may have received some information regarding these projects, but this is not definitive. Searching for this information would add to the time estimated above.

In addition, WelTAG studies will have been undertaken for projects referred to in the Welsh Government's National Transport Finance Plan. It would be necessary to search separate Welsh Government electronic records for this information which again would add to the estimate above.

Having considered the above, I have concluded that in terms of the information that is not environmental, it will cost more than the appropriate limit set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 to deal with your request. I have therefore decided to refuse your request under Section 12 of the FoIA as to comply with it would exceed the appropriate limit.

The appropriate limit specified for central government is £600. This represents the estimated cost of it taking over 24 hours of time to determine whether we hold the information and to thereafter locate, retrieve and extract it. As outlined above, I estimate it would take at least 125 hours to locate, retrieve and extract the information.

## **Step 2 - consider any additional obligations under the EIR**

As per my initial letter to you and outlined above, much of this information will be 'environmental' information as defined by Regulation 2(1) of the Environmental Information Regulations 2004 (EIRs). Because of this, I have also given consideration to the exceptions contained within Regulation 12 of the EIRs. Regulation 12(4)(b) does not oblige a public authority to release information where the request is 'manifestly unreasonable'.

Under the EIRs, and unlike under FoIA, there is no appropriate costs limit above which public authorities are not required to deal with requests for information. However, 12(4)(b) can apply if the cost or burden of dealing with a request is too great. This position was confirmed in the Upper Tribunal case of *Craven v The Information Commissioner and the Department of Energy and Climate Change* [2012] UKUT442 (AAC).

*"Taking the position under the EIR first, it must be right that a public authority is entitled to refuse a single extremely burdensome request under regulation 12(4)(b) as "manifestly unreasonable", purely on the basis that the cost of compliance would be too great (assuming, of course, it is also satisfied that the public interest test favours maintaining the exception). The absence of any provision in the EIR equivalent to section 12 of FOIA makes such a conclusion inescapable."*

Further, under the EIRs, it may be valid for a public authority to take into account the cost of separating out the environmental information from the non-environmental information, when considering if the request is manifestly unreasonable. This is different from the position under FoIA because regulation 12(4)(b) is not limited by the FoIA fees regulations. Also, the identification of environmental information would not be classed as applying an exception under the EIR.

As has been set out above in relation to the s12 'appropriate limit', the request captures a substantial volume of information. It would be necessary to search through an estimated 500 local authority applications as well as the Welsh Government's own WelTAG reports, which means there is a substantial volume of information.

In terms of the information within this that would amount to 'environmental information', the burden on the Welsh Government is twofold. Firstly, the information itself would have to be located, a task which, as set out above, would take well in excess of 24 working hours. Following that, any environmental information within the whole would need to be identified and extracted. In this situation, the IC guidance states that a public authority may include the additional costs of separating out the environmental from the non-environmental information and take these costs into account when refusing a request under the manifestly unreasonable exception at regulation 12(4)(b).

Unlike s12 of the FoIA, Regulation 12(4)(b) is subject to the public interest test.

The Welsh Government recognises the general public interest in openness and transparency and releasing the information would help the public gain a better understanding of the decisions made by Government. It is also recognised there is a public interest in how public money is to be, or has been used to ensure Government gets the best value from the public purse. The Welsh Government also recognises the public will want assurance that projects are being appropriately assessed.

Some WelTAG reports are in the public domain, such as the Welsh Government's WelTAG stage 3 impact assessment report regarding the ['Consideration of Measures on the Welsh Government Motorway and Trunk Road Network for Nitrogen Dioxide Reduction'](#). Public authorities may similarly choose to publish some of their WelTAG reports, for example Vale of Glamorgan County Council has published its WelTAG Stage 2, Impacts Assessment Report on ['Improving Strategic Transport Encompassing Corridors from M4 Junction 34 to the A48'](#).

The Welsh Government is therefore of the view that the public interest is satisfied by the amount of information already in the public domain or otherwise available from relevant local authorities relating to specific projects. Unnecessarily expending already overstretched public resources in searching for such a significant amount of information, which would not necessarily inform the public debate or increase people's understanding of the issues under consideration, would not be in the public interest.

On that basis, the Welsh Government believes complying with the request would create an unreasonable burden on its resources and so the environmental element of your request is being refused under Regulation 12(4)(b) – manifestly unreasonable.

## **Conclusion**

Due to the very broad nature of your request and the amount of information captured by it, the Welsh Government is of the view that the time it would take to locate, retrieve and extract the information, for the reasons provided above, would be substantial. Your request is therefore being refused under Section 12 of the FoIA.

Your request is also being refused on the grounds that it is 'manifestly unreasonable' within the meaning of Regulation 12(4)(b) of the EIRs, for the reasons outlined above.

If you submit a new request for information, you would need to specify which project(s) are of interest to you. You may also wish to contact the relevant local authority 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 [FreedomOfInformationOfficer@wales.gsi.gov.uk](mailto:FreedomOfInformationOfficer@wales.gsi.gov.uk). Please remember to quote the ATISN reference numbers 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 Information Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely