



4 March 2019

Dear ,

### Request for Information – ATISN 12942

I wrote to you on 11 February regarding your request for information on Transport for Wales funding.

In your request, you stated that the final budget for 2019/20 allocates £171.250m and £185.218m from the Resource and Capital budgets respectively to Transport for Wales. You stated that this is a very limited breakdown of a large volume of expenditure to a subsidiary company of Welsh Government. The information you asked for is:

1. A breakdown of how much of the Economy and Transport budget is going to be spent in which sectors (road, rail, sea, air, etc).
2. Details of what budgets have been allocated to specific projects (M4 Relief Road, Metro, Deeside Corridor, etc).

I confirm we hold information caught by your request. The information we hold caught by your first question is available to view on the Welsh Government [website](#). The presentation of the 2019/20 budget is consistent with the level of detail provided in the previous years budget. However, there has been some changes to the resource and capital budget expenditure line titles from what was used previously, although the nature of the spend within those lines remains the same.

- The “New Road Construction and Improvement” budget expenditure line has been renamed “National Transport Infrastructure”.
- The “Rail Franchise and Service Improvements” budget expenditure line has been renamed “Transport for Wales”, as has the capital budget expenditure line previously titled “Rail Investment”.
- ‘Air’ expenditure continues to be reflected within the “Aviation” budget expenditure line.



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](mailto: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 .

With regards the information you have requested under your second question, the Welsh Government is of the view that it is environmental information and as such has considered its release under the Environmental Information Regulations 2004 (EIRs). 'Environmental information' is defined in the Regulations as (inter alia) information on measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, and also factors such as substances, energy, noise, radiation or waste likely to affect the state of the elements of the environment above.

The above also includes financial information. This position was confirmed in the case of Mersey Tunnel Users Association (MTUA) v Information Commissioner and Halton Borough Council [[EA/2009/0001, 24 June 2009](#)]:

*The MTUA had requested information about a proposal to introduce tolling on an existing bridge and a proposed bridge across the River Mersey. The Tribunal agreed with the Commissioner that the information fell within the definition of environmental information. The council had argued that the information on tolling was not sufficiently connected to the 'measure' (ie the proposal to construct a new bridge) to be environmental. However the Tribunal stated: "there is no dispute that the Mersey Gateway Project will have a significant impact on the state of elements of the environment, such as, at least, the land and the landscape, and on factors such as emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to, such that information relating to it would fall squarely within the definition of environmental information under Regulation 2(1) of the EIR" and "we are satisfied that tolling is an integral part to the Project and its viability."*

With the above in mind, the Welsh Government has considered the release of a breakdown of the budget information and concluded it should be withheld from disclosure under Reg12(4)(e) (internal communications) of the EIRs. Full reasoning for applying this exception is given at Annex A 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: [Freedom.of.information@gov.wales](mailto:Freedom.of.information@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 there is a public interest in openness and transparency within Government, particularly in terms of ensuring transparent and accountable government 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.

The budget information you have requested under your second question is intended for internal use only. This is because publishing the information on a project by project basis would be likely to prejudice the Welsh Government's commercial position when negotiating future contracts. It is important for Welsh Government officials to discuss and agree detailed budgetary levels on a project by project basis without external interference. Whilst projected budget levels are allocated, these are not necessarily the final agreed budget levels, they are subject to change and Ministerial agreement at the appropriate time. If the information were to be released, it would be likely to create a chilling effect on the on-going provision of advice and discussions regarding budget levels for the relevant projects, leading to less-informed decisions on the budgets and negotiations for the contracts.

It is important for good governance that officials are able to fully engage with each other and with Ministers and exchange and provide advice away from the public gaze and that there should be no disincentive in doing so. If officials believed their advice or freely exchanged views would be made public, it is likely to inhibit the future provision of advice and exchange of views, leading to less rigorous and in-depth exploration of options and impairment of the quality of decision making. Unless officials are able to provide options and advice surrounding individual project budget levels, the effectiveness of the process of reaching final decisions for individual contracts would be undermined. This would not be in the public interest.

Information about how the budgets you have requested under your second question will be utilised and prioritised, will be reflected in the forthcoming update to the National Transport Finance Plan (NTFP). When the Welsh Government publishes the NTFP, it publishes what it is expected to cost (at a macro level) together with a list of schemes that will be funded by it. The last NTFP up-date is available to view on the Welsh Government [website](#). The next up-date will be published on our website during March. The Welsh Government is of the view that the information that is currently published on the NTFP and is due to be published, sufficiently meets the public interest on this matter.

The Welsh Government therefore believes the balance of public interest to withhold the information outweighs the public interest to release it for the reasons outlined above and that the information should be withheld under Reg 12(4)(e) of the EIRs.