



23 October 2018

Dear ,

Request for Information – ATISN 12670

I wrote to you on 9 October regarding your request for information. In relation to Wylfa Newydd discussions at meetings of the Welsh Government Cabinet, you asked for:

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 confirm we hold information caught by your request. I have concluded, however, that it is exempt from disclosure under Reg 12(4)(3) of the Environmental Information Regulations 2004, internal communications. Full reasoning for applying this exception is at Annex A.

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



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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 .

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 the public interest in openness and transparency within Government, particularly 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.

This is a £15 billion new build project which will be the single largest investment project in Wales over the next 10 years. There are significant economic, financial and environmental interests. With this in mind, the Welsh Government is very much aware of the significant public interest in the matter, both for and against. For example, there is the group “People Against Wylfa B” but there are also supply chain businesses wanting to get ahead of the game in securing the inevitable economic benefits which will arise from this significant build.

The information contained within the three Cabinet Papers consists of advice by officials to Cabinet Ministers. The advice reveals particularly sensitive and complex information regarding the project, including financial and commercial matters. The Welsh Government is effectively in a live negotiating position with Horizon Nuclear Power (and therefore Hitachi Ltd) as well as the UK Government to secure as much investment, both financial and otherwise, to ensure the project delivers best and

proper legacy benefits for Wales and maximises the opportunities for the local economy. Some of the information is therefore commercially sensitive to both Horizon and the Welsh Government. Placing the information into the public domain would be likely to prejudice those on-going and live negotiations as it would reveal the Welsh Government's hand.

It is important for Officials and Cabinet Members to have a private thinking space to develop ideas, debate live issues and reach decisions away from external interference and distraction. As explained above, releasing the information into the public domain would result in the Welsh Government showing its negotiating hand to Horizon Nuclear Power and Hitachi and potentially cost the public purse several million pounds. In addition, releasing the information would result in Officials spending their time and resources justifying their analysis of key data, or why an option was or was not being considered and whether sufficient weight was being given to a particular option. This would not be in the public interest. When decisions about funding and other matters have been made they will be placed, at the appropriate time and within the appropriate context, into the public domain.

In order to satisfy the public interest, the Welsh Government publishes as much information as possible to keep the public informed of its position as matters develop. The latest such information is the Welsh Government's registration of interest as part of the Development Consent Order process. The letter can now be viewed at <https://infrastructure.planninginspectorate.gov.uk/projects/wales/wylfa-newydd-nuclear-power-station/?ipcsection=relreps&relrep=26669>.

As explained above, this is not a short-term project and the matters under consideration are for the longer-term. The chilling effect is therefore particularly important in this regard. Cabinet will be receiving more advice as matters progress. If Officials believed their advice or freely exchanged views would be made public, it is likely to inhibit the quality of future Papers, with the contents being bland, less rigorous and in-depth which in turn will impair the quality of decision making. Unless Officials are able to provide free and frank options and advice on the matters being considered, the effectiveness of the subsequent advice, in order to ensure the impacts from the project are mitigated and the legacy opportunities are maximised, would be undermined. This would not be in the public interest.

The Welsh Government believes the public interest in this project is satisfied by the amount of information already in the public domain and the intended publication of new information at appropriate junctures. It also believes the balance of public interest to withhold the information outweighs the public interest to release it for the reasons outlined above.