



Ein cyf/Our ref ATISN 13216

8 August 2019

Dear ,

Request for Information – ATISN 13216

I wrote to you on 16 July in response to your e-mail of complaint of 11 July.

I have conducted an internal review of your request 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 Welsh Government website.

Your request for information concerns the First Minister's Statement of 4 June 2019 advising that the M4 Relief Road will not proceed. You provided a link to a media report stating the proposals had incurred costs of £114 million of which £44m was for a public inquiry. Specifically, you requested:

1. A detailed breakdown of this £114 million figure. This should include such information as the contractors, consultants, companies, etc, who were employed with this money, what they were employed for, and what the outcome of their employment was (i.e. what did they achieve). This should include any contracting of both private and public services or goods. (For example, both the inclusion of private companies employed as well as money used for the use of public resources.)
2. This detailed breakdown should also include the details of the £44 million for the public inquiry to the same level of detail. This should include any contracting of both private and public services or goods. This should include any contracting of both private and public services or goods. (For example, both the inclusion of



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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 .

private companies employed as well as money used for the use of public resources.)

The response of 4 July released a table outlining the total spending on the M4 Corridor around Newport project from 2013 to date. It was explained that the figures include the precursor Strategic Environmental Assessment and the subsequent Judicial Review. It also confirmed that the £44m for public inquiry preparation and administration was included within the figures released to you.

In your e-mail of complaint, you stated the response did not include the level of detail you had requested. You further stated that the response "... employs very sweeping categories that do not offer much information as to who was paid for what, how much, who contractors etc were etc".

I have noted your original request, the response that issued and your subsequent complaint.

In the first instance, I am of the view that the information caught by your request is environmental information and as such your request has been considered 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."

Turning to your request, you have asked for a detailed breakdown of the £114m expenditure which includes the £44m spent on the public inquiry. You would like to know how much of this money was spent on public resources and which payments were for the project itself and which were for the public inquiry.

I anticipate the information you have requested, if released, would appear as a table and likely to fall under the following headings:

Supplier	What the supplier was 'employed' for	What the supplier's 'employment' 'achieved'	Spend
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I have used the term 'supplier' to refer to your description of 'contractors, consultants and individual companies'.

With this in mind, I am of the view that whilst the information released to you provides some of the information you requested, it does not provide all of the information. As such, your complaint is upheld in part.

I am further of the view that to compile the full level of detail you have requested would be a significant and time consuming task. Under the EIRs, there is no appropriate costs limit above which public authorities are not required to deal with requests for information. However, Regulation 12(4)(b) of the EIRs allows a public authority to refuse to deal with requests that are 'manifestly unreasonable'.

Reg 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."

Reg 12(4)(b) is subject to the public interest test and as such I have given consideration to the public interest in disclosing the information, as well as our legal obligation under the EIRs to make environmental information available pro-actively. The Welsh Government fully recognises the general public interest in openness and transparency and this is particularly relevant in the case of the M4 Relief Road. The Welsh Government also recognises the public has an interest in how their money has been used on this project to ensure Government gets best value from the public purse.

Following the First Minister's Statement of 4 June, the [Public Accounts Committee](#) started to examine the £114m expenditure with the Welsh Government. The Committee will report on its findings early in the autumn term. As part of this exercise, on 15 July, the Welsh Government provided evidence to the Committee which is available to view on the Committee's [M4 Relief Road webpages](#).

On page 11 of the [Welsh Government's evidence](#), you will find a list of suppliers by highest spend (Table 4). Table 4 provides a list of suppliers, how much each received and the purpose of the funding. This detail is provided for all such expenditure over £0.3m. Table 4 has been presented in this way to be explicit on the expenditure with the largest suppliers. Expenditure below £0.3m was not included in the Table because

of the additional processing that would have been required for these smaller contracts, which was not considered sufficiently beneficial for the Committee to review.

Table 4 does not distinguish which payments were for the project itself and which were for the public inquiry. This is because additional processing would have been required to separate expenditure on these items, which was not considered sufficiently beneficial for the Committee to review.

Under the 'Activities' column, Table 4 does not distinguish between '*what they were employed for and what the outcome of their employment was*'. I can confirm, however, that each supplier met its contractual obligations in full and the single description given under the 'Activities' column accurately reflects both what the suppliers 'were employed for' and 'what they achieved'.

Lastly, Table 4 does not provide information on funds used on public resources, outlining how much was spent, for what purpose and what was achieved. This is because time costs of civil servants are not calculated/allocated on a project by project basis.

In order to compile the full detail you have requested in the format you have requested, it would be necessary to carry out significant additional sifting and processing of records, such as supplier invoices and payroll details, that would take at least 5 working days by civil servants and external suppliers.

On consideration of the above, I am of the view that the balance of public interest lies in favour of not releasing the information. Even with the statutory presumption of disclosure being applied, I believe dealing with your request would place a substantial burden on already stretched Welsh Government officials and resources. As set out above, the Welsh Government has released information in relation to your request and has proactively published a large amount of information about the costs incurred with this project which I believe satisfies the public interest in understanding how public money is spent. As a consequence, I do not believe there would be any additional public interest in releasing the additional information which would outweigh the burden involved in sifting our records to obtain the level of detail you have requested. This is particularly so because the costs incurred by the project are also being fully scrutinised by the National Assembly for Wales' Public Accounts Committee which are open to the public. The Welsh Government will be providing further evidence to the Committee during the course of its investigation.

To conclude, your complaint is upheld in part because only some of the information you asked for was released to you in our original response. Your request to provide you with the full level of detail as described above, however, is refused under Reg 12(4)(b), manifestly unreasonable, of the EIRs, for the reasons already outlined.

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

Simon Jones
Director Economic Infrastructure