



Llywodraeth Cymru  
Welsh Government

Our Ref: ATISN 13491

4 December 2019

Dear ,

### **Request for Information – ATISN 13491**

Thank you for your reply on 6 November confirming the details of your request for information. You asked for:

1. Any station design plans, maps, track reconfiguration documents for the Cardiff Parkway Railway Station, since January 2019.
2. A reply on the planning application by South Wales Infrastructure Ltd to Cardiff Council for the Cardiff Parkway Railway Station.
3. The impending date of the planning application.

I confirm we hold information caught by your request. Some of the information we hold is environmental information and as such it has been considered under the Environmental Information Regulations 2004 (EIRs). Other than the information we hold in relation to questions 2 and 3, I have concluded the information we hold in relation to question 1 is exempt from disclosure under Regulation 12(5)(e), confidentiality of commercial or industrial information, and Regulation 12(4)(d), material in the course of completion, unfinished documents and incomplete data. Full reasoning for applying these exceptions are given at Annex A to this letter.

In relation to the information we hold for question 2, I can advise a planning application is yet to be submitted to Cardiff Council. For question 3, Cardiff Parkway Developments Limited is aiming to submit a planning application in Spring 2020 as stated in its recent press release.

You may wish to note that Cardiff Parkway and Hendre Lakes recently launched their public engagement initiative. This includes various channels in which people are



**BUDDSODDWYR** | **INVESTORS**  
**MEWN POBL** | **IN PEOPLE**

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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 .

welcome to contact them should they have any queries relating to the project. Their new website <https://www.cardiffhendrelakes.com> has a 'contact us' section <https://www.cardiffhendrelakes.com/contact/> with a contact email address [communityrelations@cardiffhendrelakes.com](mailto:communityrelations@cardiffhendrelakes.com)

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

## **CONSIDERATION OF EIR EXCEPTIONS**

### **Regulation 12(5)(e) – confidentiality of commercial or industrial information**

This exception of the Environmental Information Regulations 2000 (EIRs) relates to question one of the request asking for any station design plans, maps, track reconfiguration documents for the Cardiff Parkway Railway Station (CPDL), since January 2019. The exception states:

*12.—(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—  
(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest*

In order to refuse information under this Regulation, guidance<sup>1</sup> from the Information Commissioner states that public authorities will need to establish that:

- *the information is not on emissions;*
- *the information is commercial or industrial in nature;*
- *it is confidential under either the common law of confidence, contract, or a statutory bar;*
- *the confidentiality is protecting a legitimate economic interest;*
- *the confidentiality will be adversely affected by disclosure; and*
- *the public interest in maintaining the exception outweighs the public interest in disclosing the information.*

The withheld information is commercially in nature as it relates to the sale and purchase of land by and from third parties. The Welsh Government has made the decision not to disclose the information requested, on the grounds that it is owed a duty of confidence in order to protect the commercial interests of CPDL.

It should be noted that the Information Tribunal has previously held similar information to be confidential.

#### *Prejudice Test*

Having consulted with the affected third party, I believe the withheld information, if released into the public domain, would prejudice the economic interests of CPDL. The station is still being designed in accordance with rigorous industry standards and best practice, and having widespread public conversations in parallel on rail design would undermine the design process, which considers health, safety and inclusive access. The station is being costed and operating and finance plans are being developed. The company has a legitimate commercial interest in ensuring that its proposed project proceeds without hindrance or interference on such commercially

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1624/eir\\_confidentiality\\_of\\_commercial\\_or\\_industrial\\_information.pdf](https://ico.org.uk/media/for-organisations/documents/1624/eir_confidentiality_of_commercial_or_industrial_information.pdf)

sensitive matters, particularly given the sums already invested by both private investors and the Welsh Government.

The information contained in the station design plans, maps details about track reconfiguration documents for Cardiff Parkway Railway Station (CPDL) contains sensitive, financial and technical project information. As such the information is neither trivial nor is it, at this point in time, publicly accessible. The information was originally provided to the Welsh Government in confidence with the appropriate confidentiality labels and notices making it clear that the information is of a confidential nature. It would be extremely prejudicial to CPDL's interests to make any detailed railway plans available at this point. CPDL has not provided consent for us to make this information available to any party who asks for it.

Consequently I believe that the information is owed a legal duty of confidence and that disclosure without consent would result in a breach of that confidence.

#### *Public interest arguments in favour of release*

The Welsh Government acknowledges there is significant public interest in the proposed project with strong feelings both for and against it. The Welsh Government also acknowledges there is public interest in openness and transparency within Government, particularly in terms of how the Welsh Government spends public money and that the money is invested wisely.

#### *Public interest arguments in favour of withholding*

Disclosing the information whilst consultations are ongoing regarding overall plans for the site would be likely to cause prejudice to CPDL's commercial interests. CPDL is currently consulting with the public and key stakeholders in relation to its overall plans for the site and therefore the public interest in transparency is already being met.

### **Regulation 12(4)(d) – material in the course of completion**

This Annex sets out the reasons for the engagement of Reg12(4)(d), material in the course of completion, unfinished documents and incomplete data of the EIRs and our subsequent consideration of the Public Interest Test.

'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.

In the recent Court of Appeal decision in *The Department for Business, Energy and Industrial Strategy v The Information Commissioner and Alex Henney*, it was held that the statutory definition of 'environmental information' does not mean that the information itself must be intrinsically environmental. They confirmed it is well

established that the term “environmental information” in the Directive is to be given a broad meaning and that the intention of the Community’s legislature was to avoid giving that concept a definition which could have had the effect of excluding from the scope of that directive any of the activities engaged in by the public authorities.

As the Cardiff Parkway Railway Station is likely to affect the environment, and as the information requested relates to the potential implementation of such a measure, then it falls within the definition set out in the Regulations.

The information requested is being withheld under Reg12(4)(d). This states:

*12.—(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—*

*(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data*

Guidance from the Information Commissioner has confirmed that “*Material which is still in the course of completion can include information created as part of the process of formulating and developing policy, where the process is not complete; draft documents are unfinished even if the final version has been produced; data that is being used or relied on at the time of the request is not incomplete, even if it may be modified later*”. I can confirm that this is the case with the information you have requested. Public consultation is required to be undertaken as part of the decision making process for planning applications. Publishing information online provides the public with an opportunity to engage with the process in a way that is convenient to them. It is expected that the information you have requested will be published on the local authority’s website by Spring 2019 as part of this consultation.

Regulation 12(4)(d) 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) and we acknowledge 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.

As outlined above, the station designs, maps and details about track reconfiguration held by the Welsh Government are not final and form part of material that is still in the course of being completed. The information will be published in a co-ordinated manner, with supporting contextual narrative, to all people at the same time. An

accelerated release of incomplete material will result in inaccurate and incomplete information being disclosed prematurely, thus misleading the public.

I do not think it is in the public interest to release incomplete data prematurely. Rather, I believe the public interest would be best served if the information were released following the public consultation, to all people at the same time.

To conclude, the Welsh Government believes the balance of public interest to withhold the information outweighs the public interest to release it for the reasons outlined above. The information has therefore been withheld under Regulation 12(4)(d) of the EIRs.