



Llywodraeth Cymru
Welsh Government

Ein Cyf/Our Ref: ATISN 13633

3 January 20

Dear ,

ATISN 13633 FOI Request Eglwysilan Common

Thank you for your request which I received on **5 December 19**. You asked for:

- All information held by Welsh Government relating to Eglwysilan Common from 2008 onwards.

The majority of the information you requested is environmental information, as such it should be considered under the Environmental Information Regulations (EIR). Section 12(4)(b) of the Regulations allows public authorities to refuse a request for information which is “manifestly unreasonable”. Guidance from the Information Commissioners Office (ICO) states that this exception can apply where cost of compliance with the request would be 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.”*

In assessing whether the cost or burden of dealing with a request is “too great”, the ICO advises that public authorities need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable, for example the resources available to respond to the request, including the extent to which the public authority would be distracted from delivering other services.

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.



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In assessing the level of costs that might be incurred in responding to a request, the ICO suggests that public authorities use a rate of £25 per hour for any staff time involved. This is in line with the rate applicable under The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (FoIA fees regulations) and gives a clear indication of what can be considered a reasonable charge for staff time.

From a preliminary assessment, in excess of 1600 documents have been identified that could fall within scope of this request. A sampling exercise was conducted to determine how long it would take to process all of the records identified so far. It took on average 10 minutes per document to locate, identify and extract information from the sample. Using this as a baseline it would take in excess of **267 hours** to process 1600 documents. This equates to a cost to Welsh Government of **£6,675** to process your request. This is over ten times the appropriate limit set out in the FoIA fees regulations. Whilst these do not apply to requests that fall under the EIR, they give a useful indication of what could be considered unreasonable. It should be noted that this initial search does not include all areas within the Welsh Government that may hold information relating to Eglwysilan Common. At this stage it is not possible to indicate whether the 1600+ so far identified represents all, most, or just a small part of the total number of documents that may contain information relating to the Common.

From your initial request it appears you are seeking information relating to a breach of The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017 (EIA), even though you did state clearly you required everything relating to the Common. We sought clarity from yourself and you re-iterated you required everything the Welsh Government holds on record for the Common since 2008 irrespective of whether it relates to yourself, your claims or any breaches. Much, if not most, of the information captured by the request would not relate to the breach and, as such, would not add to yours, or anybody else's, understanding of the issue relating to that breach.

Regardless of the cost, public authorities have to apply the public interest test set out in Regulation 12(1)(b) of the EIR. A public authority can only withhold information if the public interest in maintaining the exception outweighs the public interest in disclosing the information. ICO guidance suggests that withholding information may be in the public interest where releasing it would place a disproportionate burden or level of disruption on the public authority.

Due to the very broad nature of your request, the amount of information captured in the preliminary assessment and the estimated cost of locating, identifying and extracting the information requested, and the fact that much, if not most, of the requested information would have no bearing on your current dispute, I have decided that providing the information is not in the wider public interest. It would place an unreasonable burden on Welsh Government's resources and get in the way of delivering more important Ministerial priorities.

You may wish to refine your request by narrowing its scope by being more specific about the information you particularly wish to obtain, including any dates or period of time relevant to the information required. If you do refine your request in this way, this will be treated as a new request.

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