24 March 2020

Dear

**ATISN 13837 - Tidal Lagoon Swansea Bay - Discharge of Development Consent Requirements**

Thank you for your request which I received on 3 March 2020 in which you requested the following information relating to the sections 16 and 17 of Part 3 of Schedule 1 of the Swansea Bay Tidal Generating Station Order 2015:

- copies of any submission received by Cadw or referred to Cadw by others (eg, local authority);
- copies of any reports compiled and any responses or decisions; and
- if not concluded, details of the current position.

All of the information we hold is attached and explained in Annex A. I understand that the project has been delayed and while we hold no information regarding the current position, the developer may be able to provide you with an update.

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 the Information Rights Unit, Welsh Government, Cathays Park, Cardiff, CF10 3NQ or email: Freedomofinformation@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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The Welsh Government Historic Environment Service (Cadw) promotes the conservation and appreciation of Wales’s historic environment.

Rydym yn croesawu gohebiaeth yn Gymraeg ac yn Saesneg. We welcome correspondence in both English and Welsh.
Annex A - ATISN 13837 – Documents for release

Doc 001 – Email of WSIs and DCO from Neath Port Talbot Council
Doc 001 – Annex 1 – Terrestrial Written Scheme of Investigation
Doc 001 – Annex 2 – Marine Written Scheme of Investigation
Doc 001 – Annex 3 – Tidal Lagoon DCO
Doc 002 – Cadw advice for WSIs
Doc 003 – Email to Neath Port Talbot Council with Cadw advice on WSIs
Doc 004 – Planning application from Neath Port Talbot
Doc 005 – Consultation from Swansea Council
Doc 006 – Email from Swansea Council for a response from Cadw
Annex B - ATISN 13837 – Regulation 13 of the Environmental Information Regulations 2004

I have decided to withhold the following information:

<table>
<thead>
<tr>
<th>Information being withheld</th>
<th>Section number and exception name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal emails and phone numbers of correspondents</td>
<td>Regulation (13) of the Environmental Information Regulations: the information requested includes personal data of which the applicant is not the data subject.</td>
</tr>
</tbody>
</table>

**Engagement of Regulation 13**

Regulation 13 of the Environmental Information Regulations 2004 (EIRs) provides an absolute exception to disclosure if disclosure of personal data would breach any of the data protection principles.

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 2018 (‘the DPA 2018’) and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains third party personal data.

Under Reg 13 of the EIRs, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

> “processed lawfully, fairly and in a transparent manner in relation to the data subject”

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states: “processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

Mae'r Gwasanaeth Amgylchedd Hanesyddol Llywodraeth Cymru (Cadw) yn hyrwyddo gwaith cadwraeth ar gyfer amgylchedd hanesyddol Cymru a gwerthfawrogi ohono.

Rydym yn croesawu gohebiaeth yn Gymraeg ac yn Saesneg.

We welcome correspondence in both English and Welsh.
In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- **The Legitimate interest test**: Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test**: Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test**: Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

1. **Legitimate interests**  
   Whilst we recognise that there is a legitimate interest in release of information relating to the Development Consent Order for the Tidal Lagoon at Swansea Bay, we cannot identify any legitimate interest in the disclosure of the personal data of officials whose role was simply administrative, forwarding or receiving emails, etc.

2. **Is disclosure necessary?**  
   We do not believe it is necessary to release the personal data of administrative staff. Disclosure of such data would not lead to any greater understanding of the Development Consent Order for the Tidal Lagoon at Swansea Bay, as these were simply staff undertaking their day to day tasks and, in most cases, the function could have been carried out by a number of officials, which is the function would be the same irrespective of who carried it out.

3. **The balance between legitimate interests and the data subject’s interests or fundamental rights and freedoms**  
   As we do not believe there is any legitimate interest in disclosing the personal data of administrative officials, not do we believe that disclosure is necessary to aid an understanding of the information being released, we are of the view that disclosure of the personal data would breach the fundamental rights of individuals as provided by the GDPR/DPA. Consequentially, we believe this personal data is exempted from disclosure by virtue of Reg 13 of the EIRs.