



29 June 2020
Llywodraeth Cymru
Welsh Government

Dear

ATISN 14017 - Seaward Boundaries review

Thank you for your email of 29 May in which you request information about the above which I received on 1 June

A copy of the information I have decided to release is enclosed.

I have decided that some of the information described in the enclosed list is exempt from disclosure under section(s) 41 and 43 of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex 1 to this letter.

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.

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.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

Sent by e-mail

Annex 1

I have decided to withhold the following information:

| Information being withheld | Section number and exemption name |
|----------------------------|---|
| Redacted section 1 | Section 43 – Commercial Interest |
| Redacted section 2 | Section 43 – Commercial Interest |
| Redacted section 3 | Section 41 – Information Provided in Confidence Section 43 – Commercial Interest |

Engagement of section 41 of the Freedom of Information Act.

Section 41(1) of the FoIA provides an exemption to disclosure where disclosure of the requested information would constitute an actionable breach of confidence. For information to be owed a legal duty of confidence that information must satisfy two conditions: 1. that the information itself must possess the necessary “quality of confidence”. That is the information cannot be trivial, obtainable by other legitimate means, and must be worthy of protection. and. 2. The information was shared in an arena where a duty of confidence was implied or explicitly provided.

With respect to the information under consideration here, it is our view that this information does possess the necessary quality of confidence and was shared with us on this basis. As such a duty of confidence is applicable to this information and the disclosure of this information would open ourselves to litigation for breach of the confidence.

This exemption is a qualified exemption and, as such, is subject to the public interest test. This tests asks whether it is in the wider public interest is best served by withholding the information or releasing the information despite the harm that would be likely to arise. As the tests asks us to consider the wider public interest we do not consider to what use you as the requester will do with the information but to the likely benefits and harms of releasing the information to the wider World.

The review in question was initiated at the request of the Tidal Lagoon (Swansea Bay) PLC in connection with its plans to establish a Tidal Lagoon. Given the interest in the wider project position with regard the changes proposed by the Local Democracy and Boundary Commission are of interest both to supporters and opposers. The report and its recommendations are already in the public domain and Ministers have confirmed that a decision on those recommendations will be considered once there is clarity about the future direction of the project.

Whilst investors, proponents and protestors are looking for clarity on the proposals future, disclosure of the information in question at this point in time is unlikely to provide any clarity on the future of the proposal. We believe that the wider public interest lies in respecting the duty of confidence that exists, so that any other party that shares sensitive information with us can do so with the expectation that were appropriate we will respect that duty of confidence

It is in the wider public interest that the Welsh Government does not open itself to litigation for breach of confidence.

Engagement of section 43 of the Freedom of Information Act.

Section 43(2) of the FoIA provides an exemption to disclosure where the release of the information would, or would be likely to prejudice the commercial interests of any party.

The small amount of information withheld in this case sets out the author / company view about their working assumptions in relation to the Seaward Boundary Review and the wider Tidal Lagoon project.

Having considered the information in question we believe that should it be released at this point in time it would be likely to prejudice the commercial interests of a third party

As with section 41 above, this exemption is a qualified exemption and therefore the same test applies.

The wider interest in knowing the outcome of the review and the impact any decisions would have on the scale and scope of the wider project itself is of value to the public. There is clearly merit in local authorities having clarity about the position of the boundaries and how this affects their operations. There would also be a public interest in what would happen should the recommendations of the Commission be rejected or amended.

As with the information withheld in this case under section 41, we do not consider disclosure of the information in question would provide any further clarity on the position of Welsh Ministers in relation to the timing of decisions about the proposed boundary changes.

On the basis of the above we do not consider it is in the wider public interest to undermine the commercial interests of individuals or organisations.

Annex 2

Information provided under ATISN 14017

Extract from correspondence of 17 April 2020 from the Tidal Lagoon Industry Advisory Group to Julie James, MS, Minister for Housing and Local Government

“Boundary Commission

To conclude the discharge of the DCO as mentioned above, the project needs Welsh Government sign off on the final recommendations of the Local Democracy and Boundary Commission’s recommendations that were put forward to Welsh Government back in 2017. At this time the project was turned down in terms of subsidy support from the UK Government, it appears this matter was stalled. [Redacted section 1]

Extract from letter dated 22 May 2020 from First Minister of Wales to the Tidal Lagoon Industry Advisory Group

“Boundary Commission review

The purpose of the review undertaken by the Local Democracy and Boundary Commission for Wales was to consider the position in terms of extending the seaward boundary between the counties to allow the local authorities to monitor, regulate and (if need be) conduct enforcement activities relating to the construction and operation of the Swansea Bay Tidal Lagoon Project.

In considering whether to make an Order altering a boundary, timing is important. It would be inappropriate to make a change prematurely and in advance of all the appropriate arrangements being in place to enable the development [Redacted section 2] to proceed.

The recommendations put forward by the Local Democracy and Boundary Commission for Wales will be considered once there is clarity about the future direction of this project.”

Extract from correspondence of 7 April from Tidal Power Plc to Lesley Griffiths, MS, Minister of Environment, Energy and Rural Affairs

“We await the decision of the Welsh Government on the findings of the Local Democracy and Boundary Commission (“LDBC”) for Wales, which conducted a review of the Seaward Boundaries of the County Borough of Neath Port Talbot and the City and County of Swansea. [Redacted section 3]

The response to the correspondence referenced above did not contain any information that falls within the scope of this request.