



Llywodraeth Cymru  
Welsh Government

15<sup>th</sup> January 2021

Dear ,

**ATISN 14752 – Request for the evidence that was used to formulate policy in Building Better Places (July 2020) and Planning Policy Wales (PPW)**

Thank you for your request which I received on **12<sup>th</sup> January 2021**. You asked for:

- **Proof of the original evidence that was used to formulate the policy ‘to direct growth to sustainable locations to prevent the creation of car-dependent developments’ (or similarly worded policy with the same intent) in Building Better Places (July 2020), Planning Policy Wales (Edition 10) and earlier editions.**

In the first instance, I am of the view that the information you want me to search for is environmental information and as such I have considered your request 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’. Also, as the information relates to the potential implementation of measures, it falls within the definition set out in the Regulations.

I have concluded that your request is both voluminous and complex and will be very time consuming to deal with. Under the EIRs, there is no appropriate costs limit above which public authorities are not required to deal with requests for information. However, Reg 12(4)(b), manifestly unreasonable request, 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.”*



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In order to provide you with the information that you have requested it would require an excessive amount of time and cost to review whether we hold the relevant information and then extract the policy specific evidence and decisions taken for all editions of Planning Policy Wales (PPW). To illustrate the time and cost implications I have used the publication of PPW (Edition 10) below.

The need to publish Edition 10 of Planning Policy Wales was announced during the passage of the Planning (Wales) Act through the National Assembly for Wales in 2015. Work began on this project in mid-2016 and took over 2 ½ years to complete before PPW was published in December 2018.

At least 12 officials were involved in this project from the Planning Directorate alone and could have assisted in the development of the specific policy to which you refer. Many more officials from Welsh Government, specifically Transport, Economy, Environment, Health, Energy, were involved in the drafting of the document and these officials in turn would have conducted their own consultation with other officials in their departments.

PPW then went through an extensive 12-week period of public consultation which involved colleagues from external public bodies including the Future Generations Commissioner's Office and the Design Commission for Wales.

All of this information would be captured by your request. Thus, to comply with your request we would need to consult with officials across the greater number of Welsh Government policy areas to ask whether they hold information in scope. Owing to the age of the information requested, and the mobility of officials across that time, this would need to be carried out using emails cascaded to staff across all such areas looking for any with knowledge of the policy area. The ICO guidance specifies that the estimate time taken by an official in a policy area who does not hold any information to read the email and conclude they have no information in scope is 30 seconds. We believe such an email would need to be reviewed by at least 3,000 officials. This alone would constitute some 25 hours of work.

Although no time limit is specified in the environmental information regulations, ICO guidance allows us to consider that where the cost of complying with a request exceeds the 24 hour limit set in the Freedom of Information Regulations, it is likely that the request will be considered manifestly unreasonable.

In addition to the time taken just to consider the above cascaded email query, we would need to locate, request and review information from files in an attempt to locate information you have requested. Again, because of the age of the information requested, and the likelihood that those who produced the information can no longer be located, it will be necessary for documents in the files to be read and reviewed in an attempt to locate the information you have requested.

Given the size of this project we estimate that the total number of hours it will take all officials involved to locate and review evidence such as emails, notes and records of meetings and other information related to PPW would also be likely to meet the threshold to be manifestly unreasonable.

## Public Interest Test

Reg 12(4)(b) is subject to the public interest test. I have given consideration to the public interest in disclosing the information. The Welsh Government recognises the general public interest in openness and transparency and that releasing the information would help the public understanding the original evidence base for the policy in question. Understanding of the evidence base is an important matter of public interest when it comes to understanding and appropriately challenging public policy.

However, your request is for the original evidence basis for a policy that has been in place for many years and has evolved over that time period. Even if the evidence is still held by Welsh Government, it is likely that the evidence basis for the policy as it exists now would differ from what was originally considered. In ensuring the democratic right to scrutinise and challenge current public policy, it is release of the current evidence base that allows for public engagement with and understanding of the policy. For example, Planning Policy Wales (Edition 10) reflects the current Wales Transport Strategy which provides the strategic policy framework for transport related activities and sets out the Welsh Government's strategic transport priorities and desired outcomes:

<https://gov.wales/sites/default/files/publications/2017-09/wales-transport-strategy.pdf>

I have also considered that the original policy has been in place for many years. The original evidence may not be held by Welsh Government, either because it has been disposed of, owing to its age, or because it was never held by Welsh Government if the original policy arose with UK Government prior to 1999. We cannot know whether the evidence is still held without carrying out the searches described above, but it is likely that any files holding the original evidence will have been disposed of under our usual retention schedules.

The Welsh Government therefore considers the balance of the public interest lies in favour of refusing your request. This is because it is believed your request would place a substantial and unreasonable burden on Welsh Government resources which are already stretched and on balance, it is considered the public interest would be better served by not deploying our resources in undertaking core work. As part of these considerations we have applied the statutory presumption in favour of disclosure under Reg12(2) of the Regulations but our view is that the significant burden that this request would impose outweighs the public interest in releasing this information.

Your request is therefore refused under Reg 12(4)(b) – manifestly unreasonable, of the EIRs, for the reasons outlined above.

Consequently, I have decided not to provide you with the information you have requested.

You may wish to refine your request by narrowing its scope by being more specific about what 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](mailto: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,