

26/02/2021

Dear

### **ATISN 14860: Communications Relating to Oil and Gas Limited**

Thank you for your request which I received on 10 February 2021. You asked for:

- Communications relating to the Welsh Government's handling of the request made by Coastal Oil and Gas Limited, on 17<sup>th</sup> May 2017, for permission to enter onto land owned by the Welsh Government at Brocastle, Bridgend. The land is adjacent to the Ford engine plant at Bridgend, and access was requested to carry out non-intrusive walkover tests at that location to collect data for the purposes of assessing the potential for the winning of hydrocarbons.
- In particular, any relevant communications sent or received by:
  - Officials in the Decarbonisation and Energy Division
  - Any official responsible for energy and the reduction of fuel poverty, climate change or natural resources management
  - Any member of the Welsh Government's Commercial Legal Services department.
  - Any member of the Welsh Government's Property and Estates department.
  - Any member of the Welsh Government's Planning department.
  - Any member of the Welsh Government's Economy and Infrastructure Division.
  - Any member of the Welsh Government's Economic Infrastructure department.
  - Any member of support staff having responsibilities or dealings with the land access request and proposed walkover tests.
  - Organisations and individuals engaged by any of the foregoing as consultants.
- Copies of all relevant communications relating to the land access and proposed walkover tests, sent or received by any Welsh Government official, to or from any representative of the Ford Motor Company Limited and/or of any of its affiliates.
- Copies of all agendas, minutes, notes and records prepared or received by any Welsh Government official in relation to meetings with any other Welsh Government official and/or any representative of Ford Motor Company Limited and/or of any of its affiliates in which any matters related to the land access request and walk over tests were discussed.

### **Our response**

From my preliminary assessment I believe your request is likely to be both voluminous and complex to deal with as you have asked for a significant amount of information across multiple policy areas and should be refused under Regulation

12(4)(b) of the Environmental Information Regulations 2004 (EIRs) - manifestly unreasonable requests.

The information you have requested is likely to be, in the main, Environmental Information, although it will also include information that should be considered under the Freedom of Information Act (FOIA). As the same searches are required to locate information under the FOIA, and it is not possible to carry out that part of the search separately from the search for environmental information, your request is also being refused under Section 12 of the FOIA, for the reasons outlined below.

The Welsh Government is also of the view that your request should also be refused on the grounds that it is 'manifestly unreasonable' within the meaning of Regulation 12(4)(b) of the EIRs, for the reasons outlined below.

The "*Calculating costs where a request spans different access regimes*" guidance from the Information Commissioner (IC) states that where a public authority receives "*a single wide-ranging request for information; some of which it should consider for disclosure to the world under FOIA, some of which it should consider for disclosure to the world under the EIR.....they should..... take the following approach*":

### **Step 1 - consider the request under the FOIA**

As explained above, your request asks for data across multiple policy areas and requires wide ranging searches. In your request you asked:

In assembling your responses to the requests set out above, Coastal Oil and Gas Limited kindly requests you to use the following search terms for electronic data searches to identify relevant documents, files and data: "CBM", "coalbed", "coal-bed", "coal bed", "coal seam", "methane", "gas", "natural gas", "oil", "unconventional", "conventional", "Devonian", "Brocastle", "walkover", "test", "Adrok", "drill", "ADR", "Ford", "INEOS", "PEDL217", "Coastal Oil" and "UK Onshore Gas".

That is, you asked us to search all communications to be reviewed that contained any one of 24 keywords, where many of these keywords will produce multiple hits not captured by the request. We carried out an exercise with an official not expected to have any information in scope, and found keywords such as "gas" and "methane" brought back hundreds of hits that would need to be reviewed to ensure the information was not in scope. The work in exhaustively searching all emails for that one member of staff would be well in excess of one hour. Such a search would exceed the 24 hour limit for FOI if carried out by just 24 officials.

However it is reasonable that any official might reasonably know if they were likely to have information in scope of the request, so we proceeded to examine the time required to contact all the officials you have requested, asking them first whether they are likely to hold any information in scope of the request. Only those who indicated they were likely to hold information would need to carry out the full search.

Guidance from the Information Commissioner's Office (ICO) allows that an official would require at least 30 seconds to read an email, understand what is being asked

and come to the conclusion that they do not hold information. That is, a minimum of 30 seconds is required by all officials requested to carry out the search, regardless of whether they have information in scope or not.

In order to ask the question, an email must be sent to:

- Officials in the Decarbonisation and Energy Division
- Any official responsible for energy and the reduction of fuel poverty, climate change or natural resources management
- Any member of the Welsh Government's Commercial Legal Services department.
- Any member of the Welsh Government's Property and Estates department.
- Any member of the Welsh Government's Planning department.
- Any member of the Welsh Government's Economy and Infrastructure Division.
- Any member of the Welsh Government's Economic Infrastructure department.
- Any member of support staff having responsibilities or dealings with the land access request and proposed walkover tests.
- Organisations and individuals engaged by any of the foregoing as consultants.

I have taken a look at our distribution of business lists to calculate how many officials must thus be contacted. The consultants in the last bullet point would be out of scope for this request under FOI or EIR, but the remainder of the departments and divisions described above amounts to 2896 officials.

Allowing a minimum of 30 seconds per person just to assess whether there is information in scope, the time taken just on undertaking this part of the search would be  $2896 \times 30 \text{ seconds} = 24 \text{ hours and } 8 \text{ minutes}$ .

The appropriate limit specified for central government is £600. This represents the estimated cost of it taking over 24 hours of time to determine whether we hold the information and to thereafter locate, retrieve and extract it.

As this first task will exceed 24 hours, there is no need to consider further how long it would take to collate and extract information that is in scope from those who indicate they are likely to hold it, but I note from our exercise that this too is likely to be time consuming.

Having considered the above, I have concluded that in terms of the information that is not environmental, it will cost more than the appropriate limit set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 to deal with your request. I have therefore decided to refuse your request under Section 12 of the FoIA as to comply with it would exceed the appropriate limit.

**Step 2 - consider any additional obligations under the EIR**

As per my initial letter to you and outlined above, much of this information will be 'environmental' information as defined by Regulation 2(1) of the Environmental Information Regulations 2004 (EIRs). Because of this, I have also given consideration to the exceptions contained within Regulation 12 of the EIRs. Regulation 12(4)(b) does not oblige a public authority to release information where the request is 'manifestly unreasonable'.

Under the EIRs, and unlike under FoIA, there is no appropriate costs limit above which public authorities are not required to deal with requests for information. However, 12(4)(b) 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."

Further, under the EIRs, it may be valid for a public authority to take into account the cost of separating out the environmental information from the non-environmental information, when considering if the request is manifestly unreasonable. This is different from the position under FoIA because regulation 12(4)(b) is not limited by the FoIA fees regulations. Also, the identification of environmental information would not be classed as applying an exception under the EIR.

As has been set out above in relation to the s12 'appropriate limit', the request captures a substantial volume of information, and the same search as under FOI would be required to find the specific environmental information.

In terms of the information within this that would amount to 'environmental information', the burden on the Welsh Government is twofold. Firstly, the information itself would have to be located, a task which, as set out above, would take well in excess of 24 working hours. Following that, any environmental information within the whole would need to be identified and extracted. In this situation, the IC guidance states that a public authority may include the additional costs of separating out the environmental from the non-environmental information and take these costs into account when refusing a request under the manifestly unreasonable exception at regulation 12(4)(b).

Unlike s12 of the FoIA, Regulation 12(4)(b) is subject to the public interest test.

The Welsh Government recognises the general public interest in openness and transparency and releasing the information would help the public gain a better understanding of the decisions made by Government. It is also recognised there is a public interest in how public money is to be, or has been used to ensure Government gets the best value from the public purse. The Welsh Government also recognises the public will want assurance that projects are being appropriately assessed.

However we also note that we have recently provided information on this matter in our response to your recent request, ATISN 14722. It is impossible to say, without carrying out the above searches, but we believe it unlikely that there is substantive information on this matter that has not already been released to you and into the public domain in full.

We believe that what has been released more than satisfies the public interest in the information being requested. Any public interest in releasing the information would also have to countervail the very significant burden on the Welsh Government at a time where resources are severely constrained owing to the response to the COVID pandemic that has seen redeployment of resource to meet the special circumstances we find ourselves in. Responding to this request would require diverting resource from the delivery of public policy, and this would not be in the public interest.

On balance, therefore, I believe the public interest favours withholding the requested information.

You may wish to refine your request by narrowing its scope and 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.

### **Next steps**

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