

21 June 2023

Dear

**ATISN 18531**

### **Information requested**

Thank you for your request which I received on 24 May 2023, and revised on 30 May 2023. You asked:

1. What error caused the accidental release of the minutes released in ATISN 16860?
2. For the release of all meeting minutes and communications which have occurred between Welsh Government and Marubeni.
3. For the date Japanese and Welsh Governments Innovation Programmes (NEDO & HyBrid) identified the HyBont opportunity.
4. For all meeting minutes and communications which have occurred between Welsh Government and any other entity, particularly Marubeni & BCBC, regarding the HyBont project.

### **Our response**

I have decided that some of the information is exempt from disclosure under sections 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 A to this letter.

1. What error caused the accidental release of the minutes released in ATISN 16860?

We do not hold any recorded information in answer to this question. The Freedom of Information Act gives the requestor the right to access information that is recorded by an authority, but does not require that the authority create new information in answer to that query.

2. All meeting minutes and communications which have occurred between Welsh Government and Marubeni.

I have decided that this information is exempt under S.41 of the Freedom of Information Act (Information Provided in Confidence) and is therefore withheld.

3. For the date Japanese and Welsh Governments Innovation Programmes (NEDO & HyBrid) identified the HyBont opportunity.

We do not hold any recorded information in answer to this question. Please note that Welsh Government did not identify these opportunities.

4. Meeting minutes and communications which have occurred between Welsh Government and any other entity, particularly Marubeni & BCBC, regarding the HyBont project.

I have decided that this information is exempt under S.41 of the Freedom of Information Act (Information Provided in Confidence) and is therefore withheld.

### **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

## **Annex A**

### **Application of exemptions/exceptions**

The Freedom of information Act/Environmental Information Regulations provide a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

I have decided to withhold the following information:

- All meeting minutes and communications which have occurred between Welsh Government and Marubeni.
- Meeting minutes and communications which have occurred between Welsh Government and any other entity, particularly Marubeni & BCBC, regarding the HyBont project.

This Annex sets out the reasons for the engagement of sections 41 of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

### **Section 41 – Information Provided in Confidence**

This applies to all of the information identified as confidential or commercially sensitive and thus to the minutes and information captured in points 2 and 4 of this request.

Section 41 sets out an exemption from the right to know where the information requested was provided to the public authority in confidence and disclosure of the information would give rise to an actionable breach of confidence.

Section 41 states that:

*(1) Information is exempt information if—*

- (a) it was obtained by the public authority from any other person (including another public authority), and*
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.*

Welsh Government have engaged in a legally binding non disclosure agreement regarding this information, as it relates to ongoing commercial considerations. The information has the necessary quality of confidence, and disclosure of such information would create an actionable breach of the non disclosure agreement. Action litigated from such a breach would be likely to succeed.

### **Public Interest Test For Disclosure**

The Welsh Government recognises the public interest in openness and transparency within government, particularly in terms of ensuring an accountable government. There is a public interest in furthering understanding of and allowing participation in issues of the day.

### **Public Interest Against Disclosure**

Disclosure of this information would potentially damage the commercial interests of the organisations with whom we have engaged in the non disclosure agreements, and in agreeing to keep that information confidential, this would create an actionable breach that would damage public trust in government, and also create costs to the public purse. Neither of these are in the public interest.

There exists a planning process and a means for public participation in the matter, and to the extent that appropriate democratic oversight and public process exists, this mitigates the public interests for disclosure.

I therefore find that the public interest favours withholding this information.