

Dear

Complaint in respect of ATISN 18531 HyBont Meeting Minutes

You have indicated your dissatisfaction with the response you received to your request for information and requested a review. I have reviewed the response as follows:

1. To your question, "What error caused the accidental release of the minutes released in ATISN 16860?" we responded: "We do not hold any recorded information in answer to this question."

You have asked, "If there is no recorded information to this question, how can you demonstrate the release of the minutes was an error? If it cannot be demonstrated that the release of the minutes was an error then it must have been deliberate."

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. ICO guidance says:

The Act does not cover information that is in someone's head. If a member of the public asks for information, you only have to provide information you already have in recorded form. You do not have to create new information or find the answer to a question from staff who may happen to know it.

[What is the Freedom of Information Act? | ICO](#)

The FOIA does not require that an authority publish all disclosures on a disclosure log, and the minutes were removed from the log. The discussion that identified the erroneous publication of the minutes and the decision to remove them from publication was verbal and no written record was made of the conversation.

As there was no recorded information, I uphold the original response.

2. You requested the release of all meeting minutes and communications which have occurred between Welsh Government and Marubeni. We responded: "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."

In citing FOI request ATISN18754 in your complaint I believe you were in fact referring to ATISN 18574, which asked for copies of all minutes for

meetings between Welsh Government and Marubeni from the beginning of 2022 to the present. We responded to that request with a copy of the information we decided to release, whilst withholding the information that is exempt from disclosure under sections 40(2) and 43 of the Freedom of Information Act.

In your most recent communication you said, "These FOI requests are substantially similar, with the only material difference being a date limitation set on the FOI which was released. I am therefore at a loss to understand how the FOI request I submitted was exempt under S41, whilst the FOI which was granted was partially redacted under S40 & S42."

I find that there is a material difference between the requests in that ATISN 18574 restricted itself to meeting minutes, whereas your request also captured communications. There was, however, substantial overlap between the two requests in terms of the minutes requested.

As we explained in our response to you, Welsh Government has engaged in a legally binding non-disclosure agreement. At the time of our response to you we understood that the minutes in their entirety were covered by this non-disclosure agreement. On further consideration, however, we came to a view that only the commercially sensitive parts of those minutes were covered by this agreement, as the balance of the information did not have the necessary quality of confidence to uphold a decision to withhold. Thus, redacted versions of the minutes were released.

I apologise that redacted copies of these minutes were not made available to you in your request, but they have now been released, and you now have them.

3. You asked for the date Japanese and Welsh Government's Innovation Programmes (NEDO & HyBrid) identified the HyBont opportunity. You have accepted the response and comment that this is at odds with what has been published by Marubeni.

I note your comments.

4. You asked for all meeting minutes and communications which have occurred between Welsh Government and any other entity, particularly Marubeni and BCBC, regarding the HyBont project. We responded, "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."

In your complaint you said, "I do not understand why S41 is applicable, and not S40 and S42 as per ATISN18754."

The information you have requested is subject to a non-disclosure agreement and therefore is exempted under S41 of the Freedom of

Information Act. Information in ATISN 18574 was withheld under S.43 (Commercial Interests), not S.42. It was also exempt under S.41. I can confirm that the non-disclosure agreement did also apply to this information, and had it not been exempted under S.43, it would have been exempted under S.41. I therefore uphold the original decision to withhold that information.

You make further comments relating to the figure that Marubeni quotes exceeding the rating submitted for planning. I note your comments.

If you remain dissatisfied with this response you also have the right to complain to the Information Commissioner at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745
Fax: 01625 524 510
Email: casework@ico.gsi.gov.uk

Also, if you think that there has been maladministration in dealing with your request, you have the option to make a complaint to the Public Services Ombudsman for Wales who can be contacted at:

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
Bridgend
CF35 5LJ

Telephone: 0845 6010987 (local rate)
Email: ask@ombudsman-wales.org.uk

Yours sincerely,

Elen Shepard

Dirprwy Gyfarwyddwyr, Newid yn yr Hinsawdd ac Effeithlonrwydd Ynni
Deputy Director, Climate Change and Energy Efficiency