



Llywodraeth Cymru
Welsh Government

Our ref ATISN 15061

10 May 2021

Dear

Request for Information – ATISN 15061

Information Requested

I wrote to you on 13 April regarding your request for information. In relation to FOI Request 100221/COG/FOI/BRO/2 (ATISN 14860), you have asked for the following –

1. Copies of all Communications (as defined in FOI Request 100221/COG/FOI/BRO/2) received by (1) Jacquelyn Rees, Commercial Property Lawyer, Commercial Legal Services and (2) Tim Howard, Deputy Director, Property, relating to the 'Request' and/or the 'Proposed Tests' adjacent to the Ford Motor Plant as defined in FOI Request 100221/COG/FOI/BRO/2.
2. Copies of all agendas, minutes, notes and records prepared or received by (1) Jacquelyn Rees, Commercial Property Lawyer, Commercial Legal Services, and (2) Tim Howard, Deputy Director, Property in relation to meetings with any other WG Official(s) in which any matters related to the 'Request' and/or the 'Proposed Tests' adjacent to the Ford Motor Plant as defined in FOI Request 100221/COG/FOI/BRO/2 were discussed.

Our response

I can confirm we hold information relating to your request. However the information requested has been withheld under Regulations 12(4)(d) - material in the course of completion and 12(4)(e) – internal communications of the Environmental Information Regulations (EIRs). Full reasoning for using these exceptions can be seen below at Annex A. I have not considered any communications between Coastal Oil and Gas and the above mentioned officials as you already have those on your records.

Next Steps



BUDDSODDWR | INVESTORS
MEWN POBL | IN PEOPLE

Llywodraeth Cymru /
Welsh Government
Parc Cathays / Cathays Park
CF10 3NQ

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 .

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.of.information@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.

The request you sent me contains personal information about you - for example, your name and address. The Welsh Government will be the data processor for this information and, in accordance with the General Data Protection Regulation, it will be processed in order to fulfil our public task and meet our legal obligations under the Act to provide you with a response. We will only use this personal information to deal with your request and any matters which arise as a result of it. We will keep your personal information and all other information relating to your request for three years from the date on which your request is finally closed. Your personal information will then be disposed of securely.

Under data protection legislation, you have the right:

- to be informed of the personal data we hold about you and to access it
- require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection

For further information about the information which the Welsh Government holds and its use, or if you wish to exercise your rights under the GDPR, please contact: Data Protection Officer, Welsh Government, Cathays Park, CARDIFF, CF10 3NQ or e-mail DataProtectionOfficer@gov.wales.

Any information released under the Freedom of Information Act 2000 or Environmental Information Regulations 2004 will be listed in the Welsh Government's Disclosure Log (at <https://gov.wales/about/open-government/freedom-of-information/responses/?lang=en>).

Yours sincerely

ANNEX A

Regulation 12(4)(e) – internal communications

Regulation 12(4)(e) states that a public authority may refuse to disclose information to the extent that—

(e) the request involves the disclosure of internal communications.

Guidance from the Information Commissioner has confirmed that this exception is drafted broadly and is a class based exception which covers all internal communications, not just those that are sensitive or actually reflect internal thinking. The concept of ‘internal communications’ covers a wide range of information and includes any information intended to be communicated to others or saved in a file where it may be consulted by others. I can confirm that the information held by the Welsh Government which is captured by your request amounts to internal communications.

Regulation 12(4)(e) is a qualified (public interest tested) exception. Even if the exception is engaged, public authorities must go on to apply the public interest test set out in regulation 12(1)(b). A public authority can only withhold the information if the public interest in maintaining the exception outweighs the public interest in disclosing the information. Because of this, consideration has been given to the effects of disclosure to the world at large rather than any personal interest you may have in being provided with the information.

Public Interest Test

The Welsh Government acknowledges the presumption in favour of disclosure under Regulation 12(2) and we acknowledge there is a public interest in openness and transparency within Government, particularly in terms of ensuring transparent and accountable government by disclosing how the Welsh Government utilises its resources, spends public money and that both are invested wisely on behalf of the people of Wales.

The information requested consists of advice by officials to Cabinet Ministers and internal communications between officials discussing the advice and matters relating to the ‘Request’ and/or the ‘Proposed Tests’ adjacent to the Ford Motor Plant as defined in FOI Request 100221/COG/FOI/BRO/2. The advice discusses the mechanics and proposals for servicing the project across Government, over a number of years, across different work streams, all of which are yet to be agreed by Ministers. The wide range of information expands into particularly sensitive and complex information regarding the proposed project, including the discussion of financial and commercial matters relating to the proposed project and commercially confidential information in relation to Ford. It also contains legal advice shared internally for officials to inform any advice sent to Ministers.

It is important for good governance that officials are able to fully engage with each other and with Ministers and exchange and provide advice away from the public gaze and that there should be no disincentive in doing so. If officials believed their advice or freely exchanged views would be made public, it is likely to inhibit the future provision of advice and exchange of views, leading to less rigorous and in-depth exploration of options and impairment of the quality of decision making. Unless officials are able to provide options

and advice surrounding the possible offer of support to any company, the effectiveness of the possible support that could be offered and the process of reaching such a decision would be undermined. This would not be in the public interest.

The outcomes of decisions made by Ministers will, in due course, be published at appropriate junctures.

In this regard, the Welsh Government believes the balance of public interest to withhold the information outweighs the public interest to release it for the reasons outlined above. The information has therefore been withheld under Regulation 12(4)(e) of the EIRs.

Reg12(4)(d) - material in the course of completion, unfinished documents and incomplete data

This Annex sets out the reasons for the engagement of Reg12(4)(d), material in the course of completion, unfinished documents and incomplete data of the EIRs and our subsequent consideration of the Public Interest Test.

‘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.

In the recent Court of Appeal decision in *The Department for Business, Energy and Industrial Strategy v The Information Commissioner and Alex Henney*, it was held that the statutory definition of ‘environmental information’ does not mean that the information itself must be intrinsically environmental. They confirmed it is well established that the term “environmental information” in the Directive is to be given a broad meaning and that the intention of the Community’s legislature was to avoid giving that concept a definition which could have had the effect of excluding from the scope of that directive any of the activities engaged in by the public authorities.

Unconventional petroleum extraction is a policy/plan likely to affect the environment, and as the information requested relates to the potential implementation of such a measure, then it falls within the definition set out in the Regulations.

The information requested is being withheld under Reg12(4)(d). This states:

12.—(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data

Guidance from the Information Commissioner has confirmed that “Material which is still in the course of completion can include information created as part of the process of formulating and developing policy, where the process is not complete; draft documents are

unfinished even if the final version has been produced; data that is being used or relied on at the time of the request is not incomplete, even if it may be modified later". I can confirm that this is the case with the information you have requested. As a new area of responsibility for WG, and following the commitments in Taking Wales Forward, we have commissioned a report to review the evidence base on unconventional petroleum extraction which is due to report by the end of November. It is a continually evolving policy area. This work will be used to inform future policy development, as well as the transfer of the licensing system.

Regulation 12(4)(d) is a qualified (public interest tested) exception. Even if the exception is engaged, public authorities must go on to apply the public interest test set out in regulation 12(1)(b). A public authority can only withhold the information if the public interest in maintaining the exception outweighs the public interest in disclosing the information. Because of this, consideration has been given to the effects of disclosure to the world at large rather than any personal interest you may have in being provided with the information.

Public Interest Test

The Welsh Government acknowledges the presumption in favour of disclosure under Regulation 12(2) and we acknowledge there is a public interest in openness and transparency within Government, particularly in terms of ensuring transparent and accountable government by disclosing how the Welsh Government utilises its resources, spends public money and that both are invested wisely on behalf of the people of Wales.

The Welsh Government has committed to publishing information on its website, once it is complete. At that time, it will be published in a co-ordinated manner, with supporting contextual narrative, to all people at the same time. An accelerated release of incomplete material will result in inaccurate and incomplete information being disclosed prematurely, thus misleading the public.

I do not think it is in the public interest to release incomplete information prematurely. Rather, I believe the public interest would be best served if the information were released following Ministerial consideration on this new continually evolving area of policy, to all people at the same time. Summaries of all the decisions made by Ministers are published on our website in due course.

To conclude, the Welsh Government believes the balance of public interest to withhold the information outweighs the public interest to release it for the reasons outlined above. The information has therefore been withheld under Regulation 12(4)(d) of the EIRs.