

14 February 2025

Dear

### **ATISN 23274 – Request for Information**

Thank you for your request which I received on 17 January 2025 about the remediation works carried out at the Whitehead Estate.

Thank you for your request which I received on [insert date]. You asked for:

1. All letters and emails between the WG and WDCL and/or Tirion Group Limited (“Tirion”) and/or Walters and/or Arup and/or others involved in the Remediation Works at the Site
2. Information about the relationship between WG and WDCL and/or Tirion (including a copy of the relevant contractual documentation concerning the sale of the Site);
3. Details of the steps taken by the WG following the first flood on 8 and 9 November 2016 and the second flood on 20 November 2016; and
4. Copies of any reports commissioned by the WG in relation to the flooding or the risk of flooding at the Site.

### **Our response**

I have decided that information described in the enclosed list is exempt from disclosure under section(s) 21, 32 and 42 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.

### **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:

<b>Information being withheld</b>	<b>Section number and exemption name</b>
1 All letters and emails between the WG and WDCL and/or Tirion Group Limited ("Tirion") and/or Walters and/or Arup and/or others involved in the Remediation Works at the Site  2 Information about the relationship between WG and WDCL and/or Tirion (including a copy of the relevant contractual documentation concerning the sale of the Site);  3 Details of the steps taken by the WG following the first flood on 8 and 9 November 2016 and the second flood on 20 November 2016; and	S.21 – Information accessible to the applicant by other means  S.32 – Court, inquiry or arbitration records
4 Copies of any reports commissioned by the WG in relation to the flooding or the risk of flooding at the Site.	S.42 – Legal Professional Privilege

This Annex sets out the reasons for the engagement of section(s) 21, 32 and 42 of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

### **Engagement of section 21 (Information accessible to the applicant by other means) of the Freedom of Information Act**

Requested information has been made available to you (or their client), by virtue of normal litigation disclosure procedures. Where you have such information, this information is accessible to you and is thus exempt from disclosure.

Section 21 is an absolute exemption and no public interest test is required.

### **Engagement of section 32 (Court, inquiry or arbitration records) of the Freedom of Information Act**

The purpose of s.32 is to allow the courts to maintain judicial control over access to information, including to determine what information can be disclosed without prejudicing those proceedings. The ICO's guidance further states that s.32 ensures the FOIA cannot be used to circumvent existing court access and disclosure regimes.

ICO guidance states that, in effect, section 32 ensures that FOIA can't be used to circumvent existing court access and discovery regimes. Also, public authorities won't be obligated to disclose any information in connection with court, inquiry or arbitration proceedings outside those proceedings.

Section 32 is an absolute exemption so there is no requirement to carry out a public interest test.

### **Engagement of section 42 (Legal professional privilege) of the Freedom of Information Act**

This exemption states:

1. Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

Legal professional privilege (LPP) covers both confidential communications between lawyers and their clients made for the main purpose of seeking or giving legal advice ("advice privilege"), and confidential communications made for the purpose of providing or obtaining legal advice about proposed or contemplated litigation ("litigation privilege").

Your request for the reports at paragraph 10.4 of your letter (item 4 in the above list) captures legally privileged information. The reports in relation to the flooding were only obtained as a consequence of emails from your client's director, Dean Proctor, and letters of claim from your client's original solicitors, McTaggart, alleging that Welsh Government had caused the flooding.

These reports are therefore covered by litigation privilege.

The section 42 exemption is qualified, which means that it is subject to a public interest test.

### **Public Interest Test**

That there is a public interest served in public authorities being able to access advice which benefited from professional legal privilege was noted in *Bellamy v the Information Commission and DTI* [EA/2005/0023] in which the tribunal, on the subject of LPP said:

*"there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest....it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case...".*

The Welsh Government is of the firm view that it is highly important to maintain legal professional privilege and that, in the absence of at least equally strong countervailing considerations, any attempt to undermine the principle of legal professional privilege would result in substantial harm.

Legal advisers need to be able to present the full picture to their clients, in this case all UK Government and devolved administrations, which includes arguments in support of final conclusions and any relevant counter-arguments. This is the purpose behind the long-established principle of legal professional privilege.

It is in the nature of legal advice that it often sets out the possible arguments both for and against a particular view. If recipients or providers of legal advice believe that it is likely that the legal advice would be published, especially so soon after being sought and in a complex political environment, then it is unlikely that comprehensive advice would be commissioned or provided. This would be likely to result in substantial harm to the quality of decision-making since it would not be fully informed. It would also undermine the ability of legal advisers and their clients to rely confidently on the protection afforded by the principle of legal professional privilege. Moreover, disclosure of legal advice has a significant potential to prejudice the governments' ability to defend its legal interests - both directly by unfairly exposing its legal position to challenge, and indirectly by diminishing the reliance it can place on the advice having been fully considered and presented without fear or favour.