

12 March 2025

Dear

ATISN 24387 – Wrexham County Borough Council Local Development Plan

Thank you for your request submitted on 14 February, which I received on the same day.

Your request asks for:

“The total amount spent to date by Welsh Government in terms of officer time and legal expenses regarding legal challenges related to Wreccsam councils Local Development Plan.

Specifically I would request costs in relation to the following:

- *The Judicial Review*
- *The Court of Appeal case*
- *The appeal to the Supreme Court*

I would also like to request any correspondence, i.e. emails, messages, and meeting minutes in relation to this matter.”

Response

The information caught by your request constitutes environmental information and has been considered for disclosure under the Environmental Information Regulations (“EIRs”).

The costs incurred by the Welsh Government in relation to the ongoing litigation re: Wreccsam councils Local Development Plan and associated matters currently amount to £51,000 (inclusive of VAT). These costs relate only to external panel Counsel. It does not include staff time costs because this comes under their existing respective roles.

In regard to the other information requested I have decided this is exempt from disclosure under Regulation 12(5)(b) of the EIRs. The reason for applying this exemption is set out in full at Annex 1 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

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.

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>).

Data Protection

The request you sent me contains personal information about you - for example, your name postal and e-mail 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
- to 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 see contact details below:

Data Protection Officer
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ
Email: DataProtectionOfficer@gov.wales

Yours sincerely

Regulation 12(5)(b) - Course of justice, fair trial, criminal or disciplinary inquiry

Regulation 12(5)(b) provides an exception to the general duty to disclose environmental information where a disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature.

The course of justice is very wide in its coverage, and the other points may be viewed as subsets of that element. In *Rudd v the Information Commissioner & the Verderers of the New Forest* (EA/2008/0020, 29 September 2008), the Information Tribunal commented that 'the course of justice' does not refer to a specific course of action but is "a more generic concept somewhat akin to 'the smooth running of the wheels of justice'".

Advice subject to Legal Professional Privilege (LPP) specifically Litigation Privilege, falls within that general concept of the "course of justice" and, as such, may be exempt under regulation 12(5)(b), subject to the presumption in favour of disclosure and the public interest test.

For regulation 12(5)(b) to apply to legally privileged information, the public authority must demonstrate that disclosure of the requested information would have an adverse effect on the course of justice.

The Welsh Government believes that release of correspondence between Legal Services, Government Legal Department and Planning Directorate that relates to the seeking and provision of legal advice and, as such, is subject to LPP, should be exempt from disclosure as we believe disclosure would likely result in harm.

First, the Welsh Government is of the firm view that it is highly important to maintain LPP and that, in the absence of at least equally strong countervailing considerations, any attempt to undermine the principle of LPP would result in substantial harm to the ability of the Welsh Government to obtain fulsome advice from its legal advisors. In the ICO Decision Notice FER0220864 (dated March 31, 2010), the Commissioner clearly states:

"Legal professional privilege (LPP) is not defined by the Act or in any other legislation. It is a common law concept shaped by the courts over time. It is intended to provide confidentiality between professional legal advisers and clients to ensure openness between them and safeguard access to fully informed, realistic, candid and frank legal advice, including potential weaknesses and counter arguments. LPP belongs to the client and material protected by LPP cannot ordinarily be revealed without the consent of the client, even to a court".

We also note the case of *Bellamy v the Information Commissioner and the 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...’.

We believe that disclosure of the information would more likely than not adversely affect the course of justice. This is because it would involve public access to privileged information between Government Ministers and officials and their legal advisors. Release would undermine the general principles of legal professional privilege and of the administration of justice within government.

The exception is therefore considered to have met the qualification, and the release of information is considered under the public interest test. This will consider the balance of the public interest in maintaining the exception over disclosing the information.

Public interest arguments in favour of disclosure

We recognise that there is a general public interest in openness of information and transparency in the working of government. The release of advice provided prior to reaching the decision is conducive to the effective conduct of public affairs in providing openness of information and transparency in the planning process. We believe there is a general public interest in the disclosure of information as greater transparency makes Government more accountable and there is a public interest in being able to assess the quality of information and advice which is used in decision making. We recognise the increased public interest in decisions which impact upon the places in which people live and work.

Finally, we appreciate that in order for the public to be appropriately equipped to challenge the decisions and activities of public authorities and demand greater accountability, they need to be properly informed. The disclosure of information can go a long way to helping promote this empowerment.

In this particular case, it involves the legal challenges following the adoption of the Wrexham County Borough Local Development Plan.

Public interest arguments in favour of withholding

There is a strong public interest in the protection of the principle of LPP which allows Government to consult their lawyers in confidence, to be able to share information fully and frankly and to seek and obtain advice with the knowledge that such advice is privileged. Government needs to take decisions in a fully informed legal context and it is necessary for its lawyers to be able to fully explore the relevant arguments. To ensure that lawyers, officials and Ministers are free to fully examine the various alternatives, their deliberations, and the legal advice that underpins those deliberations, should be protected.

The public need to have trust that discussions they may have with their legal advisors can be properly protected. Any erosion, therefore, of the principle of confidentiality of LPP, particularly where they relate to ongoing, live, matters, is not in the wider public interest.

Balance of public interest test

While we acknowledge the public interest arguments in favour of disclosure as discussed above, we consider that the public interest balance in this case falls on the side of not disclosing any of the information in regard to the ongoing legal proceedings or the legal advice the Directorate has sought and received.