

20 May 2025

Dear

## **ATISN 24655 Ffos-y-Fran Technical Working Group Meetings**

### **Information Requested**

Thank you for your request which I received on 17 April 2025. You asked for:

1. any notes or records received or taken in relation to the Technical Working Group described above - we suggest Tracey Burke (Director General Local Govt, Housing, Climate Change and Rural Affairs) may be a good starting point to track down the requested details.
2. any Ministerial advice prepared on the topic of Ffos-y-fran since 2024 - this will likely be addressed to the Cabinet Secretary for Climate Change.

### **Our Response**

A copy of the information I have decided to release is enclosed.

I have decided that some of the information is exempt from disclosure under regulations 12(5)(b) and 12(5)(e) of the Environmental Information Regulations and is therefore withheld. The reasons for applying these exceptions are set out in full at Annex B 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 – Information for Disclosure**

Document 1 – Notes of TWG meeting held July 2024

Document 2 – Notes of TWG meeting held February 2025

Document 3 – Notes of TWG meeting held March 2025

## **Annex B – Exceptions**

I have decided to withhold the following information:

- Information held by us for the purposes of legal proceedings, or where the information held, if disclosed, would prejudice the fairness of potential legal proceedings that may be brought – withheld under Regulation 12(5)(b)
- Other information with respect to Welsh Government's aim in securing restoration of the site, where that information would not be privileged information – withheld under Regulation 12(4)(e).

This Annex sets out the reasons for the engagement of Regulation 12(5)(b) and Regulation 12(4)(e) of the Environmental Information Regulations 2004.

### **Engagement of Regulation 12(5)(b) of the Environmental Information Regulations 2004**

The exemption states:

*'For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect – ...*

*(b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;*

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").

The information in question is legal advice, provided by a qualified legal advisor, which was provided to Julie James MS, Minister for Climate Change. We believe that litigation privilege covers this information and that a claim to LPP could be maintained in legal proceedings in respect of it.

The Regulation 12(5)(b) exemption is qualified, which means that it is subject to a public interest test.

#### **Public Interest in favour of disclosing**

The Welsh Government recognises that there is a public interest in the openness and accountability of government, and that releasing the requested information would help the public gain a better understanding of the basis upon which policy is enacted.

#### **Public interest in favour of withholding**

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 its legal advice has a significant potential to prejudice the Government’s ability to defend its legal interests - both directly by unfairly exposing legal arguments to others who may seek to challenge the Government’s action or position, and indirectly by diminishing the reliance it can place on the advice having been properly considered and presented without fear or favour.

### **Balance of the Public Interest**

For the reasons set out above, there is a strong public interest in maintaining legal professional privilege in respect of this information, and I do not find that the public interest in release outweighs the public interest in withholding the information. It is therefore withheld.

### **Engagement of Regulations 12(4)(e) of the Environmental Information Regulations 2004**

Regulation 12(4)(e) states:

*... 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.

**Public Interest Test**

In order to satisfy the public interest test in relation to the exemption(s), it is necessary to conclude that the public interest arguments in favour of withholding the information are sufficient to *outweigh* the public interest arguments in favour of release.

**Public interest arguments in favour of disclosure**

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. There is a public interest in understanding how the Welsh Government is developing policy. Disclosure would increase public trust in, and engagement with, the Welsh Government.

**Public interest arguments in favour of withholding**

Disclosure would be likely to harm the interests of the Welsh public sector by disclosing internal deliberations that, in this instance, would be likely to prejudice a matter that is under internal scrutiny. The matter of scrutiny is, at this stage, a closed one to allow free and frank discussion, which is protected so that the discussion does not impact upon the parties and interests involved, at a time where no firm view or decisions have been taken. Although the matters will become public in due course, the disclosure of these discussions at this stage would be likely to cause damage to a legal process, including the collapse of the process and damage to the outcomes the process has been designed to seek. This could also cause a very significant loss to the public purse.

**Balance of public interest test**

Although there is a strong public interest in the transparency of decision making, and the area in question is itself of public interest, we note that the information under discussion will all become available to the public domain in due course, and that the question is only whether there is a public interest in disclosure of this information now, rather than at a later date. We have not identified any strong public interest in such disclosure, sufficient that the balance of public interest in disclosure now, rather than in the future, would outweigh the likelihood of loss identified above. The information has therefore been withheld under Regulation 12(4)(e) of the EIRs.