

Dear

ATISN 26814 - Information relating to the escrow agreement concerning the Ffos Y Fran reclamation scheme

Information requested

You asked for:

The most up-to-date and detailed breakdown that can be released, showing:

- 1. How much money remains in the escrow account?*
- 2. How much has been spent out of the escrow account, and on what work packages?*
- 3. Details of any remaining, uncompleted work packages yet to be funded and their projected cost.*

Our response

1. We do not hold information on the current escrow fund total. This information is held by Merthyr Tydfil County Borough Council and has not been shared with Welsh Government. However, reference was made to escrow total by Merthyr Tydfil County Borough Council during a recent technical working group meeting which has been included below;

(Update – Merthyr TCBC) – Ffos-y-Fran Technical Working Group Meeting Notes 16 October 2025

Finances

'Financial information from MSW relating to the revised restoration application is outstanding. MTCBC continues to pursue this, with MSW set to provide accounts by December. However, MSW intends to share on a confidential basis. Financial information is key to the planning application determination, as costs for the revised scheme may not fall within the escrow account's limits. The current proposals do not, for example, include the reclamation of overburden 2 & 3.

MTCBC advised that the escrow account will have an excess of £11.5m following implementation of the agreed phases 2a and 2b of restoration work.

WG expressed the requirement for sight of the escrow agreement to understand the mechanism for funding restoration works. MTCBC confirmed they are not able to share details of the escrow agreement with WG. (Post meeting note provided by MTCBC - The escrow is a tri-party agreement and without the consent from the other parties who has signed the agreement, it is not possible to share the contents of the document.)'

2. We have included information that references the escrow in relation to potential works below which has been shared with Welsh Government during technical working group meeting on 16 October 2025. However, more detailed information will be held by Merthyr Tydfil County Borough Council and has not been shared with Welsh Government.

'MTCBC will consider the possibility of using a section 106 agreement for a 30-year aftercare plan. Financial implications of aftercare plan will need to be considered. The cost of additional survey work being undertaken on-site (for the Section 73 application) is being paid by MSW and is not being drawn from the escrow, possibly explaining why it is taking so long to complete. However, if MSW are liquidated it is unlikely that any funds from either MSW's reserve or from the escrow could be used to secure improvements.'

3. We do not hold information on remaining work packages at the site other than brief references to future work shared by the Council during Technical Working Group meeting minutes which I have included below;

Phase 2a & 2b (Update – Merthyr TCBC) – Ffos-y-Fran Technical Working Group Meeting Notes - 11 December 2025

'Most groundworks have ceased due to winter period. Majority of Phase 2a & 2b completed. The site is now operating in 'maintenance mode' and restoration works will recommence in the spring.'

Phase 2a & 2b (Update – Merthyr TCBC) – Ffos-y-Fran Technical Working Group Meeting Notes 16 October 2025

'MTCBC confirmed that over 124 hectares of the site has been restored to date, and considered that the quality of restoration achieved, on the main site and drainage designed and installed, is of a high standard. Ditches and attenuation ponds have been installed without calculations (particularly the BOAT). The interim restoration works (phase 2a and 2b) are currently under budget, delivering in advance of the money being spent.

It was reported that the base of main slopes of OB3 were excavated and re-instated, encouraging instability. MSW was asked to ensure this has been re-instated and finalised. MTCBC has advised MSW to not disturb the overburdens unless agreement was made in advance. HSE has been informed of these concerns by MTCBC, however no response has been received from HSE setting out their position on the matter.

NRW raised concerns regarding impact to protected species within small ponds near OB3 (newts) and potential damage to pond area from vehicle movements and earthworks in the area. MTCBC suggested NRW make use of its enforcement powers (protected species) to restrict some activities around OB3 in this respect. NRW cited resource difficulties and the lack of a dedicated environmental crime police officer.

It was acknowledged HSE need to become involved in the ongoings around the any ongoing works at OB3.

Works are being undertaken, and plant machinery is being hired via contractors. MSW owned plant is identified as 1x D11, 2x D9, 1x D6, 1x Fuel Bowser, and 1x 50T

excavator.

Phase 2a of restoration works is 80% complete, and 36% of phase 2b is complete. The phase 1 drainage catchment areas are being reviewed. MSW has been asked to suspend works for winter apart from some reprofiling work and road development.'

Additional copies of earlier Ffos Y Fran Technical Working Group meeting minutes are available on the Welsh Government website [here](#).

I have decided that some of the information within the correspondence and accompanying documents is exempt from disclosure (Regulation 13 (1) Environmental Information Regulations) and is therefore withheld due to it relating to personal information. The reasons for applying these exemptions are set out in full at Annex A within 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.

Yours sincerely

Regulation 13 – Personal data

Regulation 13(1) together with the conditions in Regulation 13(2)(a)(i) and 13(2)(a)(ii) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

‘Personal data’ is defined in sections 3(2) and (3) of the Data Protection Act 2018 (‘the DPA 2018’) and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains third party personal data.

Under Regulation 13(1) of the EIRs, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the GDPR. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:]

“processed lawfully, fairly and in a transparent manner in relation to the data subject”

The lawful basis that is most relevant in relation to a request for information under the FOIA is Article 6(1)(f). This states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- **The Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test:** Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test:** Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

1. Legitimate interests

Welsh Government acknowledges the general public interest in openness and transparency that release of the information would engender. However, we cannot identify any particular legitimate interest in the provision of personal data for individuals working in this area. We do not believe it is necessary to release the names of individuals for the discussions and exchange of information to be understood. The request asked for information that has passed between two named organisations, and release of the redacted information would

not add to this. The provision of this data would not add to the understanding of the information provided or provide any additional context.

2. Is disclosure necessary?

Based on the arguments set out above, we do not believe that disclosure of the information is necessary in this context.

3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

As we do not believe disclosure would further the understanding of the information released we do not believe any interest in accessing these details outweigh the data subjects' interests, fundamental rights or freedoms.

As release of the information would not be legitimate under Article 6(1)(f), and as no other condition of Article 6 is deemed to apply, release of the information would not be lawful within the meaning of the first data protection principle. It has therefore been withheld under Reg13(1) of the Environmental Information Regulations. Reg 13 is an absolute exception and not subject to the public interest test.