

21 October 2026

Dear

ATISN 27419 - Year 2 Packaging Extended Producer Responsibility (pEPR) payment methodology for Welsh local authorities, including the Wales-specific adjustment or supplementary approach

Thank you for your request which I received on 25 August 2026. You asked for:

The main recorded information held by Welsh Government showing the assessment and assurance undertaken before adopting the Wales-specific approach used in the Year 2 pEPR payment methodology for Welsh local authorities.

This should include, where recorded, the reasons for the Wales-specific approach, alternatives considered, checks or assurance undertaken, any assessment of impacts on Welsh local authorities and the rationale for the approach adopted.

You are not seeking all correspondence or general discussion of the methodology. You asked that if the request still needs to be narrowed, then you would want the briefing paper, submission, options appraisal, assurance note or equivalent document that most directly records the internal assessment and rationale for the Wales-specific Year 2 pEPR approach to be prioritised.

Our response

In response to your request, we disclose the information contained within the following documents:

Document A – PowerPoint slides dated 5 November 2025.

Document B – Word document setting out proposed calculation dated 11 November 2025.

We have decided to withhold other information captured by your request under regulations 12(4)(e), 12(5)(b) and 12(5)(e) of the Environmental Information Regulations (EIR) 2004. Regulation 12(4)(e) EIR applies where the request involves the disclosure of internal communications. Regulation 12(5)(b) EIR applies where

disclosure would adversely affect the course of justice, the ability to receive a fair trial or the ability of a public authority to conduct an inquiry. Regulation 12(5)(e) EIR applies where disclosure would adversely affect the confidentiality of commercial or industrial information, where that confidentiality is provided by law to protect a legitimate economic interest. The reasons these exceptions apply, together with the relevant public interest considerations, are 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.

Yours sincerely

Annex 1

1. Application of exceptions and the public interest test

Regulation 12(1) EIR provides that a public authority may refuse to disclose environmental information where an exception applies and, in all the circumstances of the case, the public interest in maintaining that exception outweighs the public interest in disclosure.

In reaching our decision, we have considered the content of each document individually (see document list above). We have also applied the presumption in favour of disclosure required by regulation 12(2) EIR.

Relevant sections of information have been released, or, where exceptions apply and the public interest in maintaining the exemption outweighs the public interest in disclosure, the information has been withheld.

The following exceptions have been applied:

- regulation 12(4)(e) EIR, relating to internal communications, including advice to Ministers and the associated policy analysis, options and considerations informing that advice;
- regulation 12(5)(b) EIR, relating to information whose disclosure would adversely affect the course of justice, (including the confidentiality of legally privileged communications) 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; and
- regulation 12(5)(e) EIR, relating to the confidentiality of commercial or industrial information where that confidentiality is provided by law to protect a legitimate economic interest.

These exceptions, and the relevant public interest considerations, are addressed separately below.

2. Regulation 12(4)(e) EIR: internal communications

Application of the exception

Regulation 12(4)(e) EIR provides that a public authority may refuse to disclose internal communications.

The information withheld under this exception applies to Ministerial advice dated 23 October 2025 and an email dated 12 November 2025. These documents are internal Welsh Government communications recording advice to a Minister and concerns internal policy analysis, options and considerations informing that advice. Regulation 12(4)(e) EIR is consequently engaged. Regulation 12(4)(e) is a qualified exception and is subject to the public interest test.

Public interest in disclosure

We recognise that disclosure would promote openness around the development of the Year 2 pEPR payment approach, enable scrutiny of the evidence and options

considered, support accountability for decisions affecting Welsh local authorities and public funds, and assist understanding of how environmental policy is developed. These factors carry particular weight given the operational and financial significance of the methodology and the presumption in favour of disclosure under regulation 12(2) EIR.

Public interest in maintaining the exception

The matters addressed in the advice remain under active consideration. The documents capture policy thinking while options, risks and possible approaches are being refined and reconsidered. Disclosure at this stage would expose the detail of that deliberative process before it has concluded and would be likely to inhibit the full and frank exchange of views amongst and between officials and Ministers.

Officials need a protected space in which to identify weaknesses, challenge assumptions, consider alternatives and revise advice. Disclosure could reduce the candour and quality of future advice, narrow the range of options put forward and impair the Welsh Government's ability to reach a well-informed and robust policy position. The weight of this harm is increased because the issue remains live and disputed.

The public interest in transparency does not require every part of the internal deliberation to be disclosed while it is ongoing, particularly where the final approach, supporting rationale and other non-sensitive information can be made available at the appropriate stage.

Balance of the public interest

We have given considerable weight to openness, scrutiny and accountability, the presumption in favour of disclosure and the requirement to interpret the exception restrictively. Nevertheless, these factors are outweighed by the specific and current need to preserve a safe space for candid policy development while the Year 2 payment methodology and related issues remain under active consideration.

Disclosure would reveal analysis, options and internal challenge before the policy process has concluded, risk inhibiting future exchanges between officials and Ministers, and undermine the quality of decision-making. This conclusion is time-sensitive and should be revisited if the policy process concludes or the circumstances materially change.

Therefore, a copy of the Ministerial advice dated 23 October 2025, and email dated 12 November 2025 are withheld in full under regulation 12(4)(e) EIR. The advice is also subject to the separate application of regulations 12(5)(b) and 12(5)(e) EIR and considered below.

3. Regulation 12(5)(b) EIR: the course of justice and inquiries exception

Application of the exception

Regulation 12(5)(b) EIR provides that a public authority may refuse to disclose information where its disclosure would adversely affect the course of justice.

The information withheld under this exception appears in Document A, Ministerial advice dated 23 October 2025, email dated 5 November 2025, and email dated 6 November 2025. Further, Document B, containing an email dated 16 December

2025. The information withheld under this exception comprises of confidential communications between Welsh Government officials and legal advisers, discussing issues that remain 'live', disclosure of which would, more likely than not affect the course of justice, by revealing legal considerations and Welsh Government's position. Regulation 12(5)(b) EIR is consequently engaged.

Public interest in disclosure

We recognise that disclosure of this information would serve the public interest by:

- promoting openness and transparency in the development of the Welsh Government's approach to local authority payments under pEPR;
- enabling greater public understanding of the legal and policy considerations informing that approach and;
- supporting scrutiny and accountability of decisions affecting local authorities and the use and distribution of public funds.

These considerations carry weight because the underlying decisions affect local authority funding, environmental services and the delivery of statutory recycling outcomes.

Public interest in maintaining the exception

There is, however, a strong public interest in maintaining the confidentiality of communications protected by legal professional privilege. Confidentiality is essential to the working relationship between lawyer and client.

Legal professional privilege is a fundamental feature of the administration of justice. It enables public authorities to obtain full and frank legal advice before reaching decisions and allows officials and legal advisers to discuss legal considerations openly and candidly. If there is a chance that legal advice would be published relatively soon after it has been given this would seriously hinder the production of comprehensive legal advice.

The information is closely connected to issues that remain current and contentious. It is not merely historic legal advice concerning a completed matter. The adverse effect arising from disclosure is therefore real and significant.

Balance of the public interest

We have given appropriate weight to the public interest in transparency, accountability, environmental protection and scrutiny of public expenditure. We have also taken account of the presumption in favour of disclosure under regulation 12(2) EIR. We have determined that the factors in favour of maintaining the exception (as set out in the paragraph above) carry greater weight than those in favour of disclosure.

Therefore, the information is withheld.

4. Regulation 12(5)(e) EIR: the confidentiality of commercial or industrial information exception

Application of the exception

Regulation 12(5)(e) EIR provides that a public authority may refuse to disclose information where disclosure would adversely affect the confidentiality of commercial or industrial information, where that confidentiality is provided by law to protect a legitimate economic interest.

The information withheld under this exception appears in Ministerial advice dated 23 October 2025 and Document A. These documents contain commercially sensitive information, including costings from various local authorities, used to inform local authority pEPR payments.

The Information Commissioners Office (ICO) guidance identifies four elements that must be established for regulation 12(5)(e) EIR to apply:

1. the information is commercial or industrial in nature;
2. confidentiality is provided by law;
3. the confidentiality protects a legitimate economic interest; and
4. that confidentiality would be adversely affected by disclosure.

We have concluded that these elements are met for the following reasons.

Commercial nature of the information

These documents contain commercial or financial information rather than information of a purely administrative nature.

Confidentiality provided by law

The information was supplied by local authorities and used in circumstances giving rise to an expectation of confidentiality, it is not publicly available. In addition, the information is not trivial and therefore retains the necessary quality of confidence.

Legitimate economic interests

The confidentiality protects the legitimate economic interests of the organisations to which the information relates.

Adverse effect of disclosure

Making the data analysis publicly available would remove the confidentiality that currently protects it. It would expose commercially significant cost and financial information and could be used by third parties in future negotiations, procurement exercises or other commercial dealings. Regulation 12(5)(e) EIR is consequently engaged.

Public interest in disclosure

We recognise that disclosure would:

- increase transparency around the assessment of local authority pEPR payments;
- assist public understanding of the process;
- enable scrutiny of the accuracy, fairness and consistency of the assessment;
- support accountability for decisions involving substantial public and producer funding;

- promote confidence that public and environmental resources are being used effectively.

These are significant considerations, particularly because the information relates to the funding of public waste-management services and the delivery of environmental outcomes.

Public interest in maintaining the exception

There is a substantial public interest in public authorities being able to obtain sufficiently detailed and accurate cost information from external organisations so that evidence-based decisions can be made.

Disclosure would be likely to:

- prejudice the legitimate commercial and economic interests of the organisations concerned and;
- reduce the willingness of organisations to provide similarly detailed information in future which could weaken the evidence available for future decisions about local authority funding and environmental service delivery.

Balance of the public interest

We have attributed the appropriate weight to the public interest in transparency and in scrutiny of local authority payments, public expenditure and the delivery of environmental outcomes. We have also applied the presumption in favour of disclosure.

The relevant contextual and policy information has been disclosed, which provides transparency about the issues considered and the approach taken. Therefore, on balance, we consider that the public interest factors in maintaining the exception (as set out above) outweigh the public interest in disclosing the information.

Therefore, the information is withheld.

5. Information to which both exceptions apply

We have considered each exception separately and have carried out the public interest balancing exercise for each. We have also considered the cumulative weight of the public interest factors favouring the protection of the administration of justice and relevant legitimate economic interests and weighed these against the public interest in disclosure.

In all the circumstances, we have concluded that the public interest in maintaining the exceptions outweigh the public interest in disclosure of the information and the information is withheld