



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref ATISN 13250

Paul Emmitt

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19 July 2019

Dear Mr Emmitt

Request for Information – ATISN 13250

I wrote to you on 28 June regarding your request for information. You asked for air quality data for before and after the “air quality” 50mph speed limits were put in place on the M4 at Port Talbot and Newport.

I confirm that we do hold other information captured by your request. .

Air Quality monitoring data recorded at both locations prior to the initial implementation of the 50mph speed limits on 29 May 2018 (M4 Newport) and 18 June 2018 (M4 Port Talbot) is contained within the WelTAG Stage 3 Appraisal Reports and the supplementary Impacts Assessment Report. Links to the Reports are included below:

M4 Junction 25 to Junction 26 WelTAG Stage 3:

https://gov.wales/sites/default/files/consultations/2018-09/m4-newport-j25-to-j26-weltag-stage-three-report_1.pdf

M4 Junction 41 to Junction 42 WelTAG Stage 3:

https://gov.wales/sites/default/files/consultations/2018-09/m4-port-talbot-j41-to-j42-weltag-stage-three-report_1.pdf

WelTAG Stage 3 Impacts Assessment Report:

https://gov.wales/sites/default/files/consultations/2018-09/weltag-stage-three-impact-assessment-report_1.pdf

NO2 monitoring data for these 2 locations following initial implementation of the 50mph speed limits in June 2018 will not be available until September 2019. I have therefore concluded that this information is exempt from disclosure under Reg12(4)(d) of the Environmental Information Regulations 2004 (EIRs) - material in the course of completion, unfinished documents and incomplete data. Full reasoning for applying this exemption is attached at Annex A at the end of this letter

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



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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

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 FreedomOfInformationOfficer@wales.gsi.gov.uk. 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

Mark Emmett
Air Quality Programme Manager

ANNEX A

This Annex sets out the reasons for the engagement of Reg12(4)(d), material in the course of completion, unfinished documents and incomplete data of the EIRs and our subsequent consideration of the Public Interest Test.

‘Environmental information’ is defined in the Regulations as (inter alia) information on measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, and also factors such as substances, energy, noise, radiation or waste likely to affect the state of the elements of the environment above.

In the recent Court of Appeal decision in *The Department for Business, Energy and Industrial Strategy v The Information Commissioner and Alex Henney*, it was held that the statutory definition of ‘environmental information’ does not mean that the information itself must be intrinsically environmental. They confirmed it is well established that the term “environmental information” in the Directive is to be given a broad meaning and that the intention of the Community’s legislature was to avoid giving that concept a definition which could have had the effect of excluding from the scope of that directive any of the activities engaged in by the public authorities.

As the information relating to air quality is likely to affect the environment, and as the information requested relates to the potential impact of this information in relation to the environment then it falls within the definition set out in the Regulations.

The information requested is being withheld under Reg12(4)(d). This states:

12.—(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

(d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data

Guidance from the Information Commissioner has confirmed that “Material which is still in the course of completion can include information created as part of the process of formulating and developing policy, where the process is not complete; draft documents are unfinished even if the final version has been produced; data that is being used or relied on at the time of the request is not incomplete, even if it may be modified later”. I can confirm that this is the case with the information you have requested. It is the intention prior to its’ release, that the data recorded over the 12 month period up to the end of June 2019 be reviewed and analysed to establish the effects of seasonal variation, as climatic conditions can yield significant variance in the levels of NO₂ recorded by the roadside diffusion tubes and potentially provide an inaccurate picture.

Regulation 12(4)(d) is a qualified (public interest tested) exception. Even if the exception is engaged, public authorities must go on to apply the public interest test set out in regulation 12(1)(b). A public authority can only withhold the information if the public interest in maintaining the exception outweighs the public interest in disclosing the information. Because of this, consideration has been given to the effects of

disclosure to the world at large rather than any personal interest you may have in being provided with the information.

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, particularly in terms of ensuring transparent and accountable government by disclosing how the Welsh Government utilises its resources, spends public money and that both are invested wisely on behalf of the people of Wales.

As outlined above, the Welsh Government has committed to publishing all of the information on its website, once it is complete. At that time, it will be published in a coordinated manner, with supporting contextual narrative, to all people at the same time. An accelerated release of incomplete material will result in inaccurate and incomplete information being disclosed prematurely, thus misleading the public.

I do not think it is in the public interest to release incomplete data prematurely. Rather, I believe the public interest would be best served if the information were released following due diligence, to all people at the same time, together with supporting contextual narrative.

To conclude, the Welsh Government believes the balance of public interest to withhold the information outweighs the public interest to release it for the reasons outlined above. The information has therefore been withheld under Regulation 12(4)(d) of the EIRs.