



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref ATISN 12578

Mr Max Wallis

request-512292-a84de308@whatdotheyknow.com

23 November 2018

Dear Mr Wallis

Complaint in respect of ATISN 12578

I wrote to you on 17 October in response to your e-mail of complaint dated 14 October.

I have conducted an internal review of your request in accordance with the procedure outlined in the [Welsh Government's Practical Guide for Making Requests for Information](#) which is available by post on request, or via the internet.

I have noted your original request of 22 August, which stated:

"Please disclose the letter to UK energy secretary Greg Clark and all documents relating to the political support for a project that's much more costly than some other renewable sources, and to the offer of £200million equity and/or loan investment by the Welsh government. Please justify the statement in the letter on "appropriate balance between supporting a pathfinder project ... while providing value for money". Please supply justification for making such an offer outside the normal competitive tendering process and the need to demonstrate value-for-money. The documents will need to go back several years and show what regard has been paid to sustainability and to environmental impacts, including NRW's objection to the TLP scheme. Please ensure all correspondence, e-mails and reports of phone-calls and meetings with TLP are included".

Your request was acknowledged on 24 August, outlining the Welsh Government's understanding of what you had asked for, namely:

1. A letter sent to the Secretary of State for Business, Energy and Industrial Strategy, Greg Clark and all documents relating to the political support for the Swansea Tidal Lagoon project and the offer of £200million equity and/or loan investment.
2. All information that sets out the justification for making such an offer outside the normal competitive tendering process and the need to demonstrate value for money.



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Given you did not respond any further, your request was considered on this basis.

I have considered your original request as understood by the Welsh Government, the response you received and your subsequent complaint.

You were advised that some of the information we held is environmental information and was considered in accordance with the Environmental Information Regulations 2000 (EIRs). Non-environmental information was considered in relation to the Freedom of Information Act 2000 (FoIA). Having considered both regimes, some information was released to you, namely a letter dated 5 June 2018 from the First Minister to the Secretary of State for Business, Energy and Industrial Strategy. You were also advised that two other letters caught by your request had already been published in response to another FOI request to the Welsh Government at <https://gov.wales/docs/decisions/2018/business/180509atish12166ltr.pdf>.

In your e-mail of complaint, you stated:

“Your official reply is very negative, seeking excuses against disclosing anything rather than seeking to disclose documents with redactions of sensitive or exempt points.

The refusal wrongly cites the FoI Act s.28 to refuse information covered by the Env Info Regs. You earlier released e-mails to BEIS in ATISN 12166 from 1 Jan to 1 March. The matter has since been concluded, so there is no longer a 'sensitive' issue between BEIS and WG Ministers. You should now release all those e-mails including the replies from BEIS and those before 1 Jan 2018 and after 1 Mar 2018, with redaction of personal information of non-senior officials as necessary.

It is not credible that an offer of £200 Million equity investment (Point 2) can be made on the basis only of the BEIS assessment of value for money cited, with no summary case and with no regard to sustainability and to environmental impacts (including NRW's objection to the TLP scheme) in the Welsh policy context. Please reconsider the non-disclosure of all the documents are caught by my request; please list them with title and date and the particular exemptions claimed for each, including why copies with appropriate redactions are said not to be possible”.

I will firstly address your comment about Section 28 of the FoIA in relation to environmental information. I note that our response of 19 September stated:

“I confirm we hold some information caught by your request, some of which is environmental information and as such it has been considered under the Environmental Information Regulations 2000. Where information is not environmental information, it has been considered under the Freedom of Information Act 2000 (FoIA)”.

In the course of my review, I have reconsidered all the information and I am satisfied that both regimes were appropriately considered and that elements of the information withheld under the Section 28 exemption of the FoIA were not environmental information. You were advised in our response which correspondence fell to this exemption.

In relation to your comments about ATISN 12166, only some of the e-mail correspondence was released into the public domain, all of which related to the timing of the then expected decision by the UK Government on whether or not it was going to support the proposed lagoon in Swansea. Other parts of the correspondence were withheld from disclosure.

Having considered the withheld information of this request, I am satisfied that it was appropriately withheld. Some of the information is official correspondence between the Welsh Government and the UK Government. Other official correspondence is between officials and Ministers. I can confirm that the withheld information is commercially sensitive in nature and some parts are personal information, all as outlined in the response of 19 September.

I have noted your comments that the offer of support for the proposed lagoon being concluded and that the information is no longer sensitive. I have also noted your request, as part of my review, to specify which exemptions or exceptions are relevant to each piece of withheld information. I can confirm that discussions are still ongoing regarding a future tidal lagoon project. The information contained within the withheld documents, if released, would be likely to prejudice those ongoing discussions. You may also be aware that Swansea Council has established a Swansea Bay Tidal Lagoon Task Force. The Task Force is in ongoing discussions with the proposed developer about the proposed lagoon. The developer recently issued a Prior Information Notice regarding a Swansea - Tidal Lagoon and Real Estate / Property Development, at https://www.sell2wales.gov.wales/search/show/search_view.aspx?ID=OCT271721 . All of the withheld information is, therefore, still very much live and commercially sensitive information and has been withheld in line with the response provided to you on 19 September.

I can further advise that in responding to your request, Officials sought the views of the each of the affected third parties, namely the UK Government and the developer. Their respective views were taken into consideration when preparing your response.

To conclude, your complaint is not upheld as I am satisfied that the information was appropriately withheld having given consideration to the appropriate regimes for withholding the relevant parts.

If you remain dissatisfied with this response you also have the right to complain to the Information Commissioner at:

Information Commissioner's Office,
Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
Tel: 01625 545 745
Fax: 01625 524 510
Email: casework@ico.org.uk

Also, if you think that there has been maladministration in dealing with your request, you have the option to make a complaint to the Public Services Ombudsman for Wales who can be contacted at:

Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae, Pencoed, Bridgend, CF35 5LJ

Telephone: 0845 6010987 (local rate)
Email: ask@ombudsman-wales.org.uk

Yours sincerely

Sue Moffatt - MBA, FCIPS

Cyfryngwr Achredu CEDR Accredited Mediator

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