

23 December 2021

Dear ,

ATISN 15714 – Waste Flow Model

Information requested

Thank you for your request which I received on 25 November 2021. You asked for:

1. a copy of the Waste Flow Model (WFM) that informed the ‘Strategic assessment for the future need for energy for waste capacity in the three economic regions of Wales’ published by the Welsh Government on 24th March 2021 (SA), and
2. to the extent not shown in the WFM, the data used and the methodology/logic for the figures set out in the SA.

Our response

A copy of the information requested in question 2 is attached at annex 2 to this letter.

I have decided that some of the information is exempt from disclosure under regulations 12(5)(c) 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 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

Application of exemptions/exceptions

The Environmental Information Regulations provide a right for anyone to ask a public authority to make requested information available to the wider public. As the release of requested information is to the world, not just the requester, public authorities need to consider the effects of making the information freely available to everybody. Any personal interest the requester has for accessing the information cannot override those wider considerations.

I have decided to withhold the following information:

- A copy of the Waste Flow Model (WFM)

This Annex sets out the reasons for the engagement of regulation 12(5)(c) “disclosure would adversely affect the intellectual property rights” of the software developer and regulation 12(5)(e) “to protect a legitimate economic interests” of the software developer; and our subsequent consideration of the Public Interest Test.

The Welsh Government believes that the Waste Flow Model, which is bespoke computer software, should be exempt from disclosure. Software is developed at considerable cost by software developers, and the intellectual property in that software remains with developer, even where Welsh Government has a license to make use of the software system.

Disclosure of the software would allow competitors to make use of the proprietary code and to embed such code into their own software. It would also, by nature of its disclosure into the public domain in response to this request, allow anyone to make use of the model without purchasing a licence from the developer. This then would adversely effect the intellectual property rights of the developer and their economic interests. .

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

There is a public interest in understanding how the Waste Flow Model has been implemented and how it matches the methodology described in our document being supplied under question 2.

Public interest arguments in favour of withholding

It is not in the public interest that information should be disclosed that will damage the economic interests of the developers of software systems licensed by Welsh Government, as this undermines legitimate economic interests of the public. It is also not in the public interest that government should disclose closed source software systems into the public domain, where the government merely licenses the systems. This would be likely to lead to higher licensing costs or inability for government to license such software.

Balance of public interest test

Although disclosure of intellectual property into the public domain is possible under EIR, because copyright and database right will still pertain to the disclosed material, in this case the public interest favour of disclosure is predicated on the public making use of the disclosed information without first obtaining a license to do so. It thus necessarily causes the harms that the exceptions in the act are designed to avoid.

Furthermore, as we are releasing the methodology itself, it is our view that sufficient information has been disclosed into the public domain to meet the public interest in scrutiny.

On balance, therefore, the public interest must favour withholding the information.