

1 December 2022

Dear

Request for Information – ATISN 16828

Thank you for your request which I received on 3 November 2022. You asked for:

The General and Principal Bridge Inspection Reports for Menai Suspension Bridge covering the last six years.

Our response

I confirm we hold information captured by your request. I have concluded however, that it is exempt from disclosure under Regulation 12(5)(e) – confidentiality of commercial or industrial information, of the Environmental Information Regulations 2004. The reasoning for withholding the information is given at Annex A.

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 12(5)(e) – confidentiality of commercial or industrial information

This exception states:

12.—(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—
(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

In order to refuse information under this Regulation, guidance from the Information Commissioner states that public authorities will need to establish that:

- the information is not on emissions;
- the information is commercial or industrial in nature;
- it is confidential under either the common law of confidence, contract, or a statutory bar;
- the confidentiality is protecting a legitimate economic interest;
- the confidentiality will be adversely affected by disclosure; and
- the public interest in maintaining the exception outweighs the public interest in disclosing the information.

The withheld information applies to:

The General and Principal Bridge Inspection Reports for Menai Suspension Bridge covering the last six years

The Menai Suspension Bridge is located on the A5 and this section of the major road is operated and maintained by a third party through a contract.

The Design Build Finance Operate (DBFO) contract between the Welsh Government and UK Highways is defined as a project delivery structure in which: The private sector party is awarded a contract to design, construct, finance and operate a capital project. Within that contract, it states the following:

49.1 Confidential Information

Each Party agrees, for itself and its respective directors, officers, employees, servants and agents, to keep confidential and not to disclose to any person (save as hereinafter provided) any of the terms of this Agreement or any confidential or proprietary information (including documents, the Financial Model, computer records, specifications, formulae, evaluations, methods, processes, technical descriptions, reports, any police reports STATS 19 (or any replacement or substitute for such report) and other data, records, drawings and information whether or not included in the Design Data or Traffic Data) provided to or arising or acquired by it pursuant to the terms or performance of this Agreement (including any such documents or information supplied in the

course of proceedings under the Disputes Resolution Procedure) (together the "Confidential Information").

If one of the parties to a [contract](#) fails to perform as required, this may constitute a breach of contract. A [breach](#) may entitle the innocent party to make a [claim](#) for [damages](#) for the losses it has suffered.

The information we hold includes documents sent to us by UK Highways, and emails between the Welsh Government and UK Highways. These documents and email correspondence contain confidential information. As such the information is neither trivial nor is it, at this point in time, publicly accessible. All of the information captured by your request was originally provided to the Welsh Government in confidence and on the explicit understanding that access to that information would be closely restricted.

The information is both commercial and confidential in nature and is not regarding emissions. UK Highways has not provided consent for us to make this information available to any party who asks for it.

Public interest test

The Welsh Government acknowledges there is public interest in openness and transparency, particularly in terms of the information we hold on the lead up to the decision to close Menai Suspension Bridge. It is also recognised that there is benefit in the public understanding the considerations being undertaken by the Welsh Government.

Given that the Menai Suspension Bridge is located on the A5 and this section of the major road is operated and maintained by a third party through a contract, disclosing the information that was originally provided to the Welsh Government in confidence will likely cause significant breach of our contract. We also do not have consent to make this information available to any party who asks for it.

It is the view of the Welsh Government that whilst the information we hold regarding the decision to close Menai Suspension Bridge remains confidential, then the balance of public interest is likely to favour withholding the information. This balance may change over time.