



Llywodraeth Cymru
Welsh Government

27 July 2023

Dear ,

Complaint in respect of Request for Information – reference ATISN 17402

Thank you for your email of 3 July in which you requested an internal review of our handling of your FOI requests. Your complaints were:

1. that ATISN 17402 was not replied to within the timescale laid down in the Act – that is 20 working days;
2. that five requests under the Act were treated as one, and that I am henceforward only allowed one request every 60 working days;
3. that even though for ATISN 17402, 17456, 17471, and 17474 the request was stated for the Department for the Economy this seemed to be interpreted as a much broader request – that is Mr While mentioned four Welsh Government Departments in his response to 17402.
4. that, despite email correspondence with Mr While and others was helpful in a superficial way, requests under the Act are treated with apparent fastidious prevarication. This was so with ATISN 18555, as work had already been done to highlight 651 documents, pared down from

3491, the request was still denied as being too manpower intensive to fulfil under the Act even though dates and document titles were the only information requested.

I shall take each of these in turn.

On the first point, request 17402 was received by us on 14 April 2023. We should have replied to you no later than Tuesday 16 May, but the response was not sent until 31 May. This is clearly well in excess of the deadline, and I apologise for this delay in responding to you.

On the second point, you object that ATISNs 17456, 17471, 17474 and 17488 were aggregated in our response to ATISN 17402.

As we stated in our response to ATISN 17402, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004, state that when a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in Regulation 5 of the above Regulations can be satisfied. Those conditions state where requests are made to a public authority:

- (a) by one person, or*
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,*

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account of complying with all of them.

Regulation 5(2) clarifies:

2) This regulation applies in circumstances in which:

- (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and*
- (b) those requests are received by the public authority within any period of sixty consecutive working days.*

As these requests were on the same matter and all made by yourself, I find that the regulation was correctly applied, and that all five requests could indeed be aggregated for purposes of considering the appropriate limit. However, I should clarify that this does not limit you to one request per 60 day period. Your information rights are unaffected by this refusal, and you may continue to request information, except where one request, or a totality of related requests in a 60 day period, exceeds 24 hours of time to process.

On your third point you say that the response to your request was inappropriately interpreted more widely than the Department of Economy, which may have impacted on our decision to refuse the request.

The relevant part of our response to you is where we say:

There are four different areas within the Welsh Government that are involved with the HyBONT project, including Innovation; Climate Change and Energy Efficiency; and Business and Regions,

These are divisions within Welsh Government and their work does not map directly to ministerial portfolios, which are substantially larger. Rather, these are specific divisions who would be likely to hold information in scope in relation to that part of your request which was for:

“All information regarding meetings between the Minister for Economy, either as scientific or economic, or with a nominated official with the HyBONT project partners,”

Each of these portfolios are likely to have contributed to any such meetings, to briefings, or making notes as attendees. They may have provided administrative support or there might be email information in relation to such meetings.

I thus find that officials interpreted your request reasonably in narrowing down the policy divisions that may have contributed in this matter to these, and do not find that the net was drawn unnecessarily widely.

On your fourth point, I have investigated what preparatory work was done prior to the refusal of your request. The 3491 document figure was based on a keyword search for “Marubeni” in our electronic filing system, one of the search terms expected to find documents in scope for ATISN 17402. At the time of that request, there were 3491 matching documents. As of today, that number stands at 3841 documents. The smaller list of 651 documents was obtained by attempting to subtract documents from divisions out of scope and by omitting all documents that do not contain the keyword “HyBONT”. I believe that the officials who conducted this initial search and attempted to limit the search space in this manner were in error. There are documents that could reasonably be in the scope of this request that do not contain the keyword HyBONT, and it is also reasonable that contributions to the meetings you are asking about came from divisions other than those listed. I therefore do not believe that the officials were correct in narrowing the scope in this manner, and that it is more likely that all 3491 documents (or 3841 documents today) would need to be reviewed in order to find all the information within the scope of your request.

I therefore uphold our decision to refuse your requests under the appropriate limit.

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.gsi.gov.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