

5 September 2023

Dear

Request for Information – ATISN 18721

Information requested

Thank you for your request which I received on 30 March. You asked for:

1. *Any records or information held by Welsh Government that relates to management activities planned or unplanned at Gilestone Farm, Talybont on Usk between the dates 1st April 2023 and 12th July 2023.*

Our response

I have decided that the information is exempt from disclosure under sections 43 of the Freedom of Information Act and is therefore withheld. The reasons for applying this exemption is set out in full at Annex A 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 A

Application of exemptions/exceptions

The Freedom of information Act/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:

Copies of the below under Section 43 – Commercial interests:-

- Water analysis/legionella risk assessment
- Oil Survey
- Biodiversity Report
- Tree Survey

This Annex sets out the reasons for the engagement of sections 43 and 40(2) of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

Section 43(2) – commercial interests

The exemption states:

- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

The Welsh Government (WG) is of the view that revealing the information whilst commercial and legal discussions regarding the future of the property continue would place WG under a disadvantage in the ongoing negotiations surrounding the site. The Welsh Government would like to emphasise that this is a time limited exemption until the conclusion of commercial discussions around the future of the property. Disclosure of this information at this time would be likely to prejudice the ongoing negotiations and as such, the commercial interests of Welsh Government. The information would reveal commercially sensitive information not otherwise publicly available.

Public Interest Test For Disclosure

The Welsh Government recognises the public interest in openness and transparency within government, particularly in terms of ensuring an accountable government by disclosing how the Welsh Government spends public money and that the money is invested wisely.

Public Interest Against Disclosure

Disclosure of this information would prejudice ongoing commercial negotiations as release would reveal commercially sensitive information not otherwise publicly available. Disclosure of this information would provide competitors and potential interested parties access to a level of information not otherwise available to them. This would be likely to enable them to obtain an advantage when negotiating with

Welsh Government. We do not believe facilitating this type of unfair competitive advantage would be in the wider public interest. This is a time limited exemption until the conclusion of commercial discussions around the future of the property.

To freely disclose the information would give private entities negotiating with Welsh Government a distinct commercial advantage and stepping stone which would be likely to prejudice the ability of WG to engage in fair and level playing field for commercial activities. We believe the resultant harm should this information be released, to be substantial and would disadvantage Welsh Government, and as such the public purse, during commercial negotiations.

Whilst the withheld information would be of interest to other commercial entities, we do not believe it would be of sufficient interest to the wider public to countervail the public interest in withholding the information. Release of the information would also allow potential competitors access to a level of detail that they otherwise wouldn't have, so as to enable them to obtain a commercial advantage by understanding and potentially copying the methodology, their processes and business case. I do not believe that facilitating this type of unfair competitive advantage would be in the wider public interest. I further do not believe there is a public interest in prejudicing the commercial interests of the Welsh Government or the company by the release of this information.

I am aware that, as a general rule, the sensitivity of information is likely to reduce over time; therefore the age of the information, or timing of the request, may be relevant in determining whether to apply an exemption, or where the public interest may lie. In this case, however, the information captured is very much current information and is relevant to ongoing commercial negotiations. I believe therefore that the balance of the public interest falls in favour of withholding the information.