15 May 2026

Dear

ATISN 26921 – Request for Information

Information requested

Thank you for your request which I received on 24 April 2026. You asked for:

1. Information on the detailed assessment of the Application carried out by the Panel (referenced at paragraph two of the Refusal Letter), including copies of:

    a. the standardised scoring results that the Application received;
    b. any assessment reports prepared and considered by the Panel,
    c. the ministerial submission and recommendation submitted to the Welsh Government Ministers to support their consideration of the Application and their decision-making;
    d. any minutes of meetings and/or emails or other communications that record the decision-making process that led to the decision to refuse to appoint Exchange for Change as DMO; and
    e. any other documents which record the factors and considerations taken into account by the Welsh Government Ministers when reaching their decision.

2. Further information as to the basis for the conclusion that the Application did not demonstrate how the proposed scheme would comply with the requirements of the Regulations to collect and manage glass in the scheme, from scheme commencement through to after the transition period (*see paragraph three, bullet point two of the Refusal Letter*), in view of (a) the transitional arrangements for glass under Regulation 3 and (b) the commentary on those transitional arrangements in the Explanatory Memorandum laid before Senedd Cymru on 20 March 2026.

3. Any communications between the Welsh Government Ministers and National Resources Wales and, if relevant, the devolved administrations in respect of the Application.

4. Information on the number and names of any other applicants that applied for appointment as DMO in Wales.

5. Confirmation that the published appointment criteria for the appointment of the DMO, which Exchange for Change's Application was considered against, is as set out on the DMO application webpage: Deposit Management Organisation (DMO) | GOV.WALES.

6. A copy of the Welsh Government's proposed exclusion from the UK Internal Market Act in connection with the Welsh deposit return scheme.

Our response

A copy of the information I have decided to release is enclosed. This information includes:

- A copy of the application received.
- Minutes of meetings between the applicant and the Welsh Government.
- Correspondence between the applicant and the Welsh Government during the process to consider the application which include:
    - Clarifications sought and responses during each stage of the process
    - Final outcome letter

I can inform you that an application was received only from Exchange for Change.

I have decided that some of the information is exempt from disclosure under section(s) 35(1)(a), 40(2), 42(1) and 43(2) of the Freedom of Information Act and is therefore withheld. The reasons for applying these exemptions are 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:

- Minutes and presentations of moderation panel meetings – section 35(1)(a) & section 40(2)- Formulation of Government Policy & Personal information
- Advice to Ministers – Section 35(1)(a) & 42(1)– Formulation of Government Policy Legal Professional Privilege
- Names of the panel members – Section 40(2) – Personal information
- The scoring matrix considered by the panel – Section 43(2) – Commercial Interests
- Financial reports of applicants Section 43(2) – Commercial Interests

This Annex sets out the reasons for the engagement of sections 35(1)(a), 40(2) 42(1) and 43(2) of the Freedom of Information Act and our subsequent consideration of the Public Interest Test.

Section 35 (1)(a) – Formulation of Government Policy

The information caught by this exemption relates to the development of a Deposit Return Scheme (DRS) in Wales and policy development of reuse. Decisions relating to non-disclosure of this information have been taken with due consideration of the exemption identified under sections 35(1)(a) of the Freedom of information Act 2000. This exemption states that:

(1) information held by a government department is exempt information if it relates to

(a) the formulation or development of government policy.

Section 35 is a qualified (public interest tested) exemption. This means that in order to engage it, I must show that the public interest in withholding the information is greater than the public interest in releasing it. I have therefore given consideration to the effects of disclosure of the information to the world at large as the information is made available to anybody and everybody, not just the requester.

Public Interest For Release

There is a public interest in openness and transparency around the Welsh Government's work on the development of a DRS in Wales and related policy development on reuse. Disclosure would promote accountability and help the public to understand the factors

being considered by Ministers and officials in developing policy in this area. It would also contribute to informed public debate on matters of clear public interest, including the design and implementation of significant environmental policy.

Public Interest Against Disclosure

There is a public interest in withholding this information while policy is still being formulated and developed. Good government depends on Ministers and officials being able to consider options, test emerging views, and receive candid advice and input without concern that preliminary thinking will be disclosed prematurely. The withheld information relates to live and developing policy issues concerning the DRS in Wales and reuse policy.

Disclosure at this stage would be likely to undermine the safe space required for the effective formulation and development of policy, and for proper decision-making. Ministers and officials need to be able to consider options, test emerging views and receive candid advice while matters remain live. Releasing information relating to the detailed assessment of applications, internal consideration of options and associated policy thinking would be likely to inhibit the free and frank exchange of views and the provision of honest advice.

There is also a public interest in protecting the integrity and fairness of the process for appointing a Deposit Management Organisation. Disclosure during a live process would be likely to prejudice that process by exposing internal assessment and developing thinking before the process has concluded. This could create confusion about the basis on which applications are considered, discourage candid contributions to the process, and undermine the ability of Ministers and officials to take decisions in a properly considered and even-handed manner.

This would not be in the public interest. While transparency is important, I consider that in this case the public interest is better served by protecting the safe space needed for the effective formulation and development of government policy, and for the proper development of a fair DMO appointment process.

I believe therefore that the balance of the public interest falls in favour of withholding this information under section 35(1)(a) of the Freedom of Information Act 2000.

Section 40(2) – Personal Data

Section 40(2) together with the conditions in section 40(3)(a)(i) or 40(3)(b) provides an absolute exemption if disclosure of the personal data would breach any of the data protection principles.

'Personal data' is defined in sections 3(2) and (3) of the Data Protection Act 2018 ('the DPA 2018') and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the

physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

We have concluded that, in this instance, the information requested contains third party personal data and names of Welsh Government officials working on policy development.

Under Section 40(2) of the FOI Act, personal data is exempt from release if disclosure would breach one of the data protection principles set out in Article 5 of the General Data Protection Regulation. We consider the principle being most relevant in this instance as being the first. This states that personal data must be:

"processed lawfully, fairly and in a transparent manner in relation to the data subject"

The lawful basis that is most relevant in relation to a request for information under the FOI Act is Article 6(1)(f). This states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child".

In considering the application of Article 6(1)(f) in the context of a request for information under FOIA it is necessary to consider the following three-part test:-

- **The Legitimate interest test**: Whether a legitimate interest is being pursued in the request for information;
- **The Necessity test**: Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;
- **The Balancing test**: Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

Our consideration of these tests is set out below:

1. Legitimate interests

The personal data includes the name of panel members. There is a legitimate interest in understanding who is on the panel, both in terms of a general duty in

government towards openness and transparency, and also in allowing public understanding that the panel consists of suitable and broad expertise to be making the judgements required.

The personal data also includes the names of officials developing the policy.

2. Is disclosure necessary?

Disclosure of the data is necessary for openness and transparency purposes, but where panel members represent bodies, the names of the panel members themselves are not

required to ensure that the panel consists of suitable and broad expertise. It is sufficient to know what organisation they represent, without needing to disclose their personal data.

3. The balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

Where the disclosure of the personal data is not necessary, there is no need to further consider the balance of interests. That is, the extent to which the legitimate interests are met by disclosure of information about the organisations represented, there is no need to consider the balance of public interest. However the interests of general openness and transparency must be considered. This must be balanced against the risk of placing such personal data in the public domain during a time when a competitive process is currently underway with the same panel, and where placing this information into the public domain would be likely to be used by those tendering in the process to contact panel members directly. This is explored also under the section 43 arguments below. Under S.40, the risk is that providing, in the public domain, the information required to contact panel members, outside of a process agreed with the panel; members, would constitute unfair processing of their personal data. As such, the information is withheld.

Section 42 – Legal Professional Privilege.

This exemption states (inter alia):

(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

Legal professional privilege (LPP) covers communications between lawyers and their clients for the purpose of obtaining legal advice, or documents created by or for lawyers for the "dominant" (main) purpose of litigation. The information in question concerns confidential communications made for the purpose of providing or obtaining legal advice or for lawyers to use in preparing a case for litigation.

The section 42 exemption is qualified, which means that it is subject to a public interest test. That there is a public interest served in public authorities being able to access advice which benefited from professional legal privilege was noted in Bellamy v the Information Commission and DTI [EA/2005/0023] in which the tribunal, on the subject of LPP said:

"there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest….it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case…'.

The Welsh Government is of the firm view that it is highly important to maintain legal professional privilege and that, in the absence of at least equally strong countervailing considerations, any attempt to undermine the principle of legal professional privilege would result in substantial harm.

Legal advisers need to be able to present the full picture to their clients, in this case all UK Government and devolved administrations, which includes arguments in support of final conclusions and any relevant counter-arguments. This is the purpose behind the long-established principle of legal professional privilege.

It is in the nature of legal advice that it often sets out the possible arguments both for and against a particular view. If recipients or providers of legal advice believe that it is likely that the legal advice would be published, especially so soon after being sought and in a complex political environment, then it is unlikely that comprehensive advice would be commissioned or provided. This would be likely to result in substantial harm to the quality of decision-making since it would not be fully informed. It would also undermine the ability of legal advisers and their clients to rely confidently on the protection afforded by the principle of legal professional privilege.

Moreover, disclosure of legal advice has a significant potential to prejudice the governments' ability to defend its legal interests - both directly by unfairly exposing its legal position to challenge, and indirectly by diminishing the reliance it can place on the advice having been fully considered and presented without fear or favour.

Section 43(2) – Commercial Interests

This applies to financial reports into the applicants.

This exemption states that:

(*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)*.

Section 43 is a qualified (public interest tested) exemption. This means that in order to engage it, I must show that the public interest in withholding the information is greater than the public interest in releasing it. I have therefore given consideration to the effects of disclosure of the information to the world at large as the information is made available to anybody and everybody, not just the requestor. As such, when considering your request I have considered the wider effects of disclosure rather than any personal interest you may have in being provided with the information.

Prejudice test

The withheld information consists of financial information captured about the applicant as part of the application process. This information is commercially sensitive and that disclosure would be likely to prejudice the commercial interests of the applicant for the purposes of section 43(2) of the Act. In particular, disclosure would reveal information

about the applicant's financial standing and commercial position which is not otherwise publicly available, and which could be used by other parties to gain insight into the applicant's relative position in the context of a live competitive process. This would be likely to prejudice the fairness and integrity of that process. Disclosure would also risk harming the willingness of applicants to provide detailed financial material in confidence in future, which would in turn prejudice the Welsh Government's ability to conduct robust and fair assessments.

Public interest arguments in favour of release

There is a public interest in the openness and transparency of government, and in ensuring any process is fair, that rules and procedures have been followed and that the public can trust the decisions of government.

Releasing the advice to ministers and the application panel scoring matrix would provide applicants with valuable insight into the Welsh Government's expectations and the specific criteria used to assess applications. This transparency would enable applicants to better tailor their submissions, improving their understanding of the process and ensuring that they address the key factors considered in decision-making.

Making financial information about applicants publicly available would help foster trust in the appointment process by demonstrating that decisions are based on clear, objective criteria. Increased transparency regarding the financial standing of applicants would reassure the public that appointments are made fairly and judiciously, and that the process is open to proper scrutiny. This openness can

enhance confidence in the integrity of government procedures and ensure accountability in the selection of successful candidates.

Public interest arguments in favour of withholding

There is a public interest in ensuring that any private sector body can continue to enter into arrangements with the public sector and that they can compete fairly when offering services to the public sector or partnering with them. Disclosure of information of such bodies in the midst of an application process, where the process is designed to limit disclosure to ensure a level playing field for all taking part, would not be in the public interest. A disclosure that damaged the tender process and led to a challenge of that process would also not be in the public interest. It is also not in the public interest that companies be disadvantaged commercially by their engagement in such tender processes.

Therefore, I consider that the public interest in maintaining the exemption outweighs the public interest in disclosure.