



Dear,

ATISN 27244 – Internal Review report

Thank you for your 17th August email requesting an Internal Review (Annex A details this request) to the Welsh Government's 17th August reply to your 22nd July Freedom of Information (Fol) request. This request has been considered under both the FOIA and the Environmental Information Regulations 2004 (EIR).

As indicated in my 28th August *Acknowledgement* email, I have undertaken this Internal Review in accordance with the procedure outlined in the [Requesting information from the Welsh Government](#), this is available by post on request or via this link.

As per Annex A, your request comprises 14 components i.e. an Introduction, 11 detailed complaints (NB the request's #4 has three, detailed sub-points), an expected outcomes' statement and a Conclusion. Accordingly, this Internal Review report addresses each of these 14 detailed complaints

1. Failure to Disaggregate FOI/EIR Material

- a. The 17th August reply did not state that the Welsh Government could not disaggregate EIR and Fol information, rather the reply stated that compliance with the request would substantially exceed the appropriate limit per Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Also, the reply provided evidence to explain why it had been concluded that your request was manifestly unreasonable for the purposes of EIR regulation 12(4)(b).

- b. Regulation 12 of the EIR does not require a public authority to disaggregate environmental and non-environmental information before determining that a request for information is manifestly unreasonable under subparagraph (4)(b).
- c. Please note, the Information Commissioner's Office's decision notice (Reference: FS50555509) to Crawley BC of 13 April 2015 did not make any findings as to the disaggregation of information.
- d. Having undertaken this Review, I conclude that although I am satisfied that it was reasonable to conclude that your initial request for information was in parts manifestly unreasonable, we should have provided answers to the two specific questions you asked as detailed in *Annex B – answers to two specific questions re Whistleblowing and Regulatory Culture*. The request for this information is not considered to be manifestly unreasonable as it is possible to identify the information without having to undertake extensive searches and scoping exercises.
- e. Accordingly, part of the original decision is upheld and part is reversed.

2. Misapplication of FOIA s12(1)

- a. You have challenged the failure of the Welsh Government to identify FOIA only material, to calculate the cost of retrieving only that material and to demonstrate that the cost of doing so exceeds £600.
- b. Section 12 of the FOIA does not require a public authority to identify which information is in FOIA scope before applying this exemption. Rather this section states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit. The basis for concluding the cost of compliance would exceed the appropriate limit was set out in the original response, and I am satisfied that the conclusion reached is reasonable and that the exemption is engaged. The above reasoning in 1(b) is also applicable here.
- c. Accordingly, the original decision is upheld.

3. No granular burden analysis

- a. You have challenged the failure to provide you with a breakdown of the number of documents held which contain environmental information, the number which contain non environmental information, and the number containing both. You have also stated that the "2451 documents" figure given is unsubstantiated.
- b. I am satisfied that your request for a detailed breakdown of the content of the 2451 documents is manifestly unreasonable.

- c. The original decision explained that searches on the first four points of your request yielded 2451 documents, but that to locate and review each document to ascertain whether it included environmental information and/or non-environmental information would be excessively burdensome. I am satisfied that the basis on which that conclusion was reached is reasonable and that the exemption in regulation 12(4)(b) was engaged.
- d. Accordingly, the original decision is upheld.

4. Sampling methodology

- a. You challenged the failure of the Welsh Government to provide information regarding how, in the exercise where files in the context of the first four points of your request were searched, it was concluded that it would take on average, a little over five minutes to review each document. You also, queried the failure to provide you with details of the sample size, selection method or representativeness evidencing this approach.
- b. The statement in 3 above is also applicable here. I am satisfied that the conclusion that it would take a little over five minutes to review each document, based on the internal exercise undertaken, is reasonable and clear. However, you have now put forward a way to narrow the scope of your request, which will now be reconsidered as set out in #5 below.
- c. Accordingly, the original decision is upheld.

5. Narrowing search/ partial disclosure

- a. You challenged the failure of the Welsh Government to consider narrowing its search by date range, theme, authority, document type or to carry out a staged disclosure.
- b. Regulation 9 of the EIR requires a public authority to provide advice and assistance, to applicants where reasonable. Where a public authority decides that an applicant has formulated a request in too general a manner, it must ask the applicant to provide more particulars in relation to the request and assist the applicant in providing those particulars. However, in this case, the request was not rejected on the basis that it was too general in manner, it was rejected on the basis that it was manifestly unreasonable.

- c. I am satisfied that such advice and assistance as was reasonable was given to you in the 17th August reply to help you in refining the search scope in order to make a request for information which would not be considered to be manifestly unreasonable, as follows: *“You may wish to consider refining the scope of your request. Rather than focus on where you think the information is held (such as correspondence, assessments, etc.), you focus on the specific information you want. It may help by setting out what it is you want to know or understand and focus your request on that specific information. You could look at a tighter date range, or focusing on a specific issue. Any revised request will be treated as a new request.”*
- d. You were therefore invited to consider narrowing your information request, for example, by date range or specific issue, this invitation is still open for the remaining points included in this specific concern. It would not have been practicable or appropriate for the Welsh Government to have done this for you as it is you who must decide which information you wish to request. It would also not be practicable to carry out a staged disclosure as you suggest, as that would not overcome the difficulty that your request was considered to be manifestly unreasonable.
- e. You have now suggested that the Welsh Government could have narrowed its search by date range, theme, authority, document type or to carry out a staged disclosure. I am satisfied that the searches and scoping exercises already undertaken were reasonable in terms of date range, authority, and document type,
- f. However, I consider that narrowing the scope of your request by theme, as now requested by you, may potentially identify documents which may be disclosed to you. The search and scoping exercise will therefore be repeated with the use of relevant themes as identified from your 17th August request. This will be undertaken and its results communicated to you within 20 working days of this outcome letter.
- g. Accordingly, part of the original decision is upheld and part is being reconsidered.

6. Pre refusal advice and assistance

- a. You challenged the failure of the Welsh Government to advise you to refine your search request prior to its refusal of your request.
- b. There is no specific requirement in EIR regulation 9(1) requiring advice and assistance be given to a person making a request for information prior to determining that an exemption applies to the request – the requirement is to provide such advice and assistance so far as it would be reasonable to expect the authority to do so. I am satisfied that the advice given at the same time your request was refused was reasonable and fair, as detailed in response to #5 above.

- c. Accordingly, the original decision is upheld.

7. Failure to Identify the Actual Records Held

- a. You challenged the failure of the Welsh Government to identify the systems searched, divisions holding the information, custodians consulted or the repositories used.
- b. I am satisfied that the searches and scoping exercises in response to your original request were undertaken in a reasonable manner and that all relevant areas were searched. All documents held by the Welsh Government are stored on a single system.
- c. The 17th August reply confirmed information is held relevant to the request, this satisfies the requirement to let the requester know whether or not the information requested is held. There is no requirement under the EIR or FOIA when refusing an information request to set out in detail the methodology used when searching for information or to identify the matters you have queried above.
- d. Accordingly, the original decision is upheld.

8. Failure to Evidence Search Adequacy

- a. You challenged the failure of the Welsh Government to disclose (in the context of how it undertook its search) the keywords used, systems searched, date ranges applied nor the custodians consulted.
- b. I am satisfied that the searches and scoping exercises in response to your original request were reasonably undertaken with regard to the systems searched and the custodians consulted.
- c. You have now limited the scope of your request by reference to the 'keywords used' and 'date ranges' of our search. I will therefore arrange for the search and scoping exercise to be repeated with the use of relevant keywords and the use of date ranges, where specified, as identified from your 17th August request. This will be undertaken and its results communicated to you within 20 working days of this outcome letter.
- d. Accordingly, part of the original decision is upheld and part will be reconsidered.

9. Failure to Consider Narrowing Within Each Point

- a. You challenged the failure of the Welsh Government to consider narrowing each heading, such as whistleblowing culture only for 2023–2026, governance risks only for Welsh Water nor enforcement communications only with NRW.
- b. Having undertaken my review, I have determined that information should have been provided relating to the whistleblowing culture only for 2023–2026, as addressed in #1 above and Annex B, on the basis that this part of your request was not manifestly unreasonable as it could have been located and provided without having to undertake excessive searches.
- c. I am happy to arrange for the two remaining concerns you have now specified in this complaint – governance risks with Welsh water and enforcement communications with NRW – to be re-considered. This will result in the search and scoping exercise being carried out afresh with the use of these and other specific keywords as identified from your 17th August request, as stated in #8 above. This will be undertaken and its results communicated to you within 20 working days of this outcome letter.
- d. Accordingly, part of the original decision is upheld and part is being reconsidered.

10. Failure to Consider Existing Public Domain Material

- a. Signposting of information, already available in the public domain, had been included in previous replies i.e. TO/LGRRS/05410/26 and TO/HIDCC/00480/26. However, it would have been helpful for our 17th August reply to repeat such information to assist you in accessing these public sources – this information is repeated in *Annex C – repeat signposting of information, already available in the public domain, as stated in TO/LGRRS/05410/26 and TO/HIDCC/00480/26*.
- b. Accordingly, part of the original decision is upheld and part is reversed.

11. Failure to Consider Structured Repositories methodology

- a. You challenged the failure of the Welsh Government to consider whether relevant material is already held in structured repositories such as indexed policy files, ministerial submissions, Water Division shared folder, NRW shared files, pollution monitoring dashboards, enforcement briefings, special measures act implementation files, governance risk registers nor water sector reform working.

- b. As stated in #8 and #9 above, your narrowed information request will be considered afresh. As also stated above, all Welsh Government documents are stored in a single online location. This will be searched when carrying out the new searches identified above, and its results communicated to you within 20 working days of this outcome letter.
- c. Accordingly, this original decision is being reconsidered.

12. Failure to Consider Metadata Tagging

- a. You have challenged the failure of the Welsh Government to use metadata tags including environmental, water, NRW, pollution, governance, policy and correspondence.
- b. I am happy to arrange for your original information request to be reconsidered within these parameters. This will result in this exercise being repeated as stated in #8, #9 and #11 above. This will be undertaken and its results communicated to you within 20 working days of this outcome letter.
- c. Accordingly, this original decision is being reconsidered.

13. Public Interest Test – Irrational and Incomplete this is based on 12(1)

- a. Consideration of this test has been undertaken, as set out in the 17th August reply. I am satisfied that the public interest test undertaken was fair, balanced and reasonable and that there is no public interest in disclosure.
- b. Accordingly, the original decision is upheld. However, the public interest test will be applied again as necessary to each of the reconsidered requests outlined above.

14. Internal Contradiction 12 (1) related to burden assessment

- a. This has been addressed in #1 above, which relates to identifying if the information requested is held. Such identification does not make it reasonable or practicable to review each of the numerous documents identified in the initial search in order to be able to answer the points raised in your 22nd July request. I am satisfied that the request for information is manifestly unreasonable.
- b. Accordingly, the original decision is upheld.

Next steps

If you remain dissatisfied with this response you 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.

Yours sincerely,

Philip Bowen
Deputy Director
Environmental Protection Division

Annex A – Details of the Request for an Internal Review, dated 17th August

1. Introduction

I request an internal review of the Welsh Government's refusal dated 17 August 2026 concerning ATISN 27244. The refusal relies on FOIA s12(1) and EIR 12(4)(b). The decision is procedurally defective, legally unsound, and internally contradictory. It fails to comply with statutory duties under FOIA, EIR, ICO guidance, and Tribunal authority.

The refusal notice states:

"These searches yielded 2451 documents... reviewed in... a little over five minutes per document."

and:

"it is not possible to disaggregate the environmental information from the other information without carrying out the same searches".

and:

"We recognise the strong public interest in transparency... However... the balance favours maintaining the exception."

These statements reveal multiple errors of law and failures of process.

2. Failure to Disaggregate FOI/EIR Material

The Welsh Government asserts:

"information captured... are a mix of environmental information and information that is not environmental information."

and:

"it is not possible to disaggregate... without carrying out the same searches".

This is legally incorrect. Under the EIR, the authority must disaggregate environmental and non-environmental information unless impossible in principle, not merely burdensome. The Upper Tribunal in *Crawley Borough Council v ICO* confirmed this duty.

The authority's own wording shows disaggregation is possible, but "burdensome". That is not a lawful reason. This is a fatal error.

3. Misapplication of FOIA s12(1)

FOIA s12 can only be applied after identifying which information is FOI-only. The authority has not done so. It applies s12 to the entire dataset, including environmental information.

This is a procedural error of law.

The authority must:

- identify FOI-only material,
- calculate the cost of retrieving only that material, • demonstrate that cost exceeds £600.

None of these steps were undertaken.

4. Unlawful Reliance on EIR 12(4)(b)

The refusal relies on:

“manifestly unreasonable... grossly oppressive and disproportionate burden.”

However, the authority failed to comply with mandatory requirements.

4.1 No granular burden analysis

No breakdown is provided of:

- number of documents actually in scope, • number containing environmental information, • number containing non-environmental information, • number containing both.

The “2451 documents” figure is unsubstantiated.

4.2 No sampling methodology

The claim of “five minutes per document” is unsupported. No sample size, selection method, or representativeness is provided.

4.3 No consideration of partial disclosure

The authority did not consider narrowing by:

- date range,
- theme,
- authority,
- document type,
- staged disclosure.

This breaches EIR Regulation 9.

4.4 No pre-refusal advice and assistance

The authority only suggests refinement after refusing:

“You may wish to consider refining the scope of your request.”

This is unlawful. Regulation 9 requires proactive assistance before refusal.

5. Failure to Identify the Actual Records Held

The refusal states:

“We hold information relevant to your request.”

However, it does not identify:

- the systems searched,
- the divisions holding the information, • the custodians consulted, • the repositories used.

ICO guidance requires authorities to describe the nature of the information held when refusing a request. This omission is a procedural defect.

6. Failure to Evidence Search Adequacy

The refusal relies on unspecified “keyword searches” but does not disclose:

- the keywords used,
- the systems searched,
- the date ranges applied,
- the custodians consulted.

Without this, the burden calculation is unverifiable. This is a breach of the duty to conduct adequate searches.

7. Failure to Consider Narrowing Within Each Point

My request contains 16 discrete headings. The authority treated it as a single monolithic request. It did not consider narrowing within each heading, such as:

- whistleblowing culture only for 2023–2026, • governance risks only for Welsh Water, • enforcement communications only with NRW.

This is a breach of FOIA s16 and EIR Reg 9.

8. Failure to Consider Existing Public Domain Material

Many topics are already subject to published reports, including:

- Water (Special Measures) Act 2025 implementation, • sewage discharge monitoring, • NRW governance assessments.

The authority failed to consider whether some information could be disclosed quickly because it is already collated or summarised elsewhere.

9. Failure to Consider Structured Repositories

The authority failed to consider whether relevant material is already held in structured repositories, including:

- Indexed policy files
- Ministerial submissions
- Water Division shared folders
- NRW liaison files
- Pollution monitoring dashboards
- Enforcement briefings
- Special Measures Act implementation files • Governance risk registers • Water sector reform working group papers

These are discrete records that do not require reviewing thousands of documents.

10. Failure to Consider Metadata Tagging

The Welsh Government's document management system uses metadata tags including:

- "environmental",
- "water",
- "NRW",
- "pollution",
- "governance",
- "policy",
- "correspondence".

The authority failed to use metadata to separate environmental information from FOI-only information. This is a breach of the duty to minimise burden.

11. Public Interest Test – Irrational and Incomplete

The refusal states:

"We recognise the strong public interest in transparency... However... the balance favours maintaining the exception."

The authority failed to consider:

- sewage pollution impacts,
- NRW whistleblowing failures,

• governance risks in Welsh Water/Hafren Dyfrdwy, • regulatory capture concerns, • environmental harm to rivers/coasts, • implementation of the Water (Special Measures) Act 2025, • appointment of Sir James Bevan, • increased monitoring of discharges since 2022.

These are high-weight public interest factors. Their omission renders the public interest test irrational.

12. Internal Contradiction

The authority states:

“We hold information relevant to your request.”

But also:

“It is not possible to comply... without exceeding the appropriate limit.”

If the authority has already located the information, it has already undertaken the search. The burden calculation is therefore internally inconsistent.

13. Required Outcome

I request that the internal review:

1. Withdraw the refusal notice in full.
2. Confirm FOIA s12(1) was misapplied.
3. Confirm EIR 12(4)(b) was misapplied.
4. Confirm breach of FOIA s16 and EIR Reg 9.
5. Conduct proper disaggregation of FOI/EIR material.
6. Provide a revised response addressing each of the 16 points individually.
7. Provide meaningful advice and assistance on refinement options.

14. Conclusion

The refusal notice is legally flawed, procedurally defective, and unsupported by evidence. It fails to comply with FOIA, EIR, ICO guidance, and Tribunal authority. The Welsh Government must reconsider the request in accordance with statutory obligations.

Annex B – answers to two specific questions re Whistleblowing and Regulatory Culture

1. All recorded information held by the Welsh Government evidencing how it assesses whether NRW's whistleblowing arrangements are "robust".

No such information is held; Welsh Government has not undertaken such an assessment.

2. Any internal reviews, assessments, audits, briefings, or ministerial submissions relating to whistleblowing culture within NRW from 2020–2026.

No such information is held by Welsh Government; information may be held by Natural Resources Wales. You can submit a request for such information via [Natural Resources Wales / Freedom of Information requests](#). Alternatively, I can transfer this request to it. Please inform me in writing if you wish me to undertake the latter.

Annex C – repeat signposting of information, already available in the public domain, as stated in TO/LGRRS/05410/26 and TO/HIDCC/00480/26

TO/LGRRS/05410/26: (issued 22nd July)

While the Welsh Government does not intervene in individual employment matters, we expect public bodies we sponsor, including Natural Resources Wales (NRW), to maintain robust whistleblowing policies and organisational cultures that support challenge, transparency and continuous improvement. You can find out further information about NRW's whistleblowing policies in their *Annual Report 2024-25*.

For further information on Dŵr Cymru Welsh Water's Board, governance arrangements please see the *Glas Cymru Annual Report and Accounts 2025-26*.

For information on Hafren Dyfrdwy governance arrangements please see their *annual performance report*

Governance arrangements within the water industry are primarily a matter for Ofwat as the independent economic regulator. The Water (Special Measures) Act 2025 introduced new powers enabling Ofwat to make rules relating to water company governance and senior executive remuneration, including requirements on fitness and propriety and restrictions on performance-related pay in certain circumstances.

The Water (Special Measures) Act 2025 provides regulators with additional powers intended to strengthen accountability and support improved environmental performance by water companies.

TO/HIDCC/00480/26: (first paragraph issued 30th April, second paragraph issued 10th June – NB both sets of information held the same reference number)

The Welsh Government does not have a role in approving or scrutinising individual appointments of this nature. Former civil servants and public office holders are subject to the rules of the UK Advisory Committee on Business Appointments (ACOBA). Where relevant, ACOBA provides independent advice on conditions that should apply to post-employment roles, including cooling-off periods and restrictions on contact with former departments or regulated bodies. Any advice issued by ACOBA is published on its website, and it is for the appointing organisation to ensure that any conditions are fully complied with.

You raised questions regarding customer panels and the responsible body for those panels. The powers set out in Section 1 of the Water (Special Measures) Act 2025 allow Ofwat to issue rules in relation to water company arrangements for involving consumers in decision making. The first set of rules in respect of this were issued in November 2025 and are attached for your information¹. If you have any further queries in respect to how these rules operate, you need to contact Ofwat directly.

¹ <https://documents.hf.wales.gov.uk/id:A63226790/document/versions/published>