

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 July 2017

**Public Authority:** Bangor University  
**Address:** Bangor  
Gwynedd  
LL57 2DG

#### Decision (including any steps ordered)

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1. The complainant requested the source code for a number of software packages and associated dictionaries. Bangor University ('the University') withheld the information requested under section 43(2) of the FOIA. The Commissioner's decision is that the University has correctly applied section 43(2) to the request. The Commissioner does not require any steps to be taken.

#### Request and response

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2. On 26 January 2016, the complainant wrote to the University and requested information in the following terms:

"Yn olaf nodaf eich bod wedi tynnu nifer o adnoddau oddi ar yr hen wefan e-gymraeg.org.uk megis Cysgliad i'r Mac. Fel un sydd wedi defnyddio'r meddalwedd yma rwy'n ymwybodol eich bod wedi ei rhyddhau dan delerau gymharol haelionus ynghyd a rhan o'r cod dan y GPL. O ganlyniad i dynnu'r adnodd, gan nodi bod Bwrdd yr Iaith wedi gosod amodau penodol yn rhan o'r grant, gofynnaf dan Ddeddf Rhyddid Gwybodaeth am god ffynhonnell Cysill a Cysgeir i'r Mac, y geiriaduron a'r data cysylltiedig".

(Finally I note that you have removed a number of resources from the old website e-gymraeg.org.uk such as Cysgliad for the Mac. As one who has used this software I am aware that you released it under

comparatively generous terms together with part of the code under the GPL. Following the removal of the resource, noting that the Welsh Language Board set out specific conditions as part of the grant, under the Freedom of Information Act I request the source code for Cysill and Cysgeir for the Mac, the dictionaries and related data).

3. The University responded on 19 February 2016 and advised that the Source Code for Cysill and Cysgeir for the Mac was available from a particular website. The University explained that the code was released under a BSD (Berkley Software Distribution) license, not GPL (General Public Licence) and that the dictionaries and related data were not included under the terms of the license or under the terms of the relevant grant. The University stated that it considered the source codes for the dictionaries and related data to be sensitive commercial information, and as such the information was exempt under section 43(2) of the FOIA.
4. On 23 February 2016 the complainant wrote to the University and requested an internal review into its decision to withhold the information requested.
5. The University provided the outcome of its internal review on 14 June 2016 and upheld its decision that the requested information was exempt under section 43 of the FOIA.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 12 September 2016 to complain about the way his request for information had been handled.
7. The scope of the Commissioner's investigation into this complaint is to determine whether the University should disclose the information requested.

### **Reasons for decision**

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#### **Section 43 – commercial interests**

8. Section 43(2) of the FOIA provides an exemption from disclosure of information which would or would be likely to prejudice the commercial interests of any person (including the public authority holding it).
9. Broadly speaking, section 43(2) protects the ability of a party to participate competitively in a commercial activity, for example the purchase and sale of goods or services. The successful application of section 43(2) is dependent on a public authority being able to demonstrate that the following conditions are satisfied –
  - Disclosure of the requested information would, or would be likely to, prejudice the commercial interests of any party (including the public authority holding it).
  - In all the circumstances, the weight of the public interest in maintaining the exemption outweighs the public interest in disclosure.

*The University's position*

10. The University explained to the Commissioner that:

"Cysill and Cysgeir are part of the Cysgliad software compendium, copyright of Bangor University 2001-2017. Cysgeir is a Welsh spelling, grammar checker and thesaurus. Cysgeir an electronic Welsh/English dictionaries. Cysgliad is a software package combining Cysill and Cysgir to check spellings, mutations and other grammar rules, dictionaries, thesaurus and verb conjugator. Cysgliad was released by the Language Technologies Unit, Canolfan Bedwyr in 2004 for the PC. In accordance with the Welsh Language Boards' grant conditions, the version for the Mac was released free of charge in 2007 with the Mac interface component being released on a BSD licence, downloadable from [http://www.cysgliad.com/mac/index\\_en.html](http://www.cysgliad.com/mac/index_en.html)"

The University confirmed that the complainant had been informed of the publicly available Mac interface link.

11. The withheld information comprises the Cysill source code and Cysill data and Cysgeir components including the dictionaries and associated data. The University considers that disclosure of the withheld information would prejudice its own commercial interests.
12. The original development of the Cysgliad PC software was part-funded by a grant from the Welsh Language Board (2004) as was the later development of the Mac version (2007). However, since that time the University has received no further grant aid for the Cysgliad software,

and its subsequent support and development. Cysgliad for the PC needs constant upkeep from staff working with the University's Language Technologies Unit ('the Unit'), as Microsoft release new versions of Windows and Office software.

13. The University explained that the Cysgliad compendium software for the PC is a commercial product for computers with Windows operating systems. 37,698 licences have been sold to date (5,497 home versions and 32,201 network licenses). The value of the network licenses to date has been £260,496. The University only holds records of sales for the home version since 2008 and to date these sales have amounted to £55,012.
14. In addition, key components of the Cysgliad software and data have been separately commercially licenced to Microsoft Corporation for their Welsh spellchecker for Microsoft Office (without the grammar component) as far back as 2005, and to the BBC since 2009 for their LearnWelsh dictionary and language learning games. In addition components have been used in other products which have been developed by the Unit through grant funding and commissions. The University explained that the availability of the various components were instrumental in winning these grants and commissions, as highlighted below:

“For example, the lemmatizer and dictionary data which is built from Cysill and Cysgeir components is a key element in the electronic dictionaries in the Welsh National Terminology Portal (<http://termau.cymru/?lang=en>); the corpora in the Welsh National Corpora Portal (<http://corpws.cymru/?lang=en>); the Vocab, Part of SpeechTagger and other resources in the Welsh National Language Technologies Portal (<http://techiaith.cymru/?lang=en>)”
15. All monies received through the sale of licences for Cysgliad for the PC software go towards paying the salaries of staff working within the Unit. The Unit is a self-funded research unit within Canolfan Bedwyr – the University's Centre for Welsh Language Services, Research and Technology. The Unit has four full time and two part time members of staff. It receives no core funding from the University and is entirely dependent on revenue received from software licenses, grant capture and commissions to pay staff salaries and research activities.
16. The Unit has made significant investments over time in obtaining, verifying, improving and presenting the data. The software is one of the most licensed products in Wales in support of the Welsh Language. Together with other software produced by the Unit, Cysgliad for the PC has helped the University reach the top of a software licence table for UK universities.

17. The University holds the intellectual property rights ('IP rights') for the software and backstop database. Although copyright for the published dictionaries (in paper format) resides with the individual copyright holders who produced the dictionaries, the IP rights for Cysgeir database (which holds the data in electronic form) belong to the University. As such, the University asserts that it comes under the rules of the Copyright and Rights in Database Regulations 1997 ('the 1997 Regulations'). Section 16 of the 1997 Regulations provides that database right is infringed if an individual extracts or re-utilises all or a substantial part of the contents without consent. It is the dictionary databases that the University believes should not be made public as significant resources have been invested in their design and implementation and these have never been made public. The University explained that with database rights, non-commercial research is only permitted where the database has already been public. The University also confirmed that all of the dictionaries except the Cysgeir one are available for sale in paper format.
18. The University advised the Commissioner that it is aware from open social media postings that the complainant in this case has indicated his wish to develop languagetool - a rival product to Cysill. The University explained that languagetool (<https://languagetool.org/>) refers to a specific open source spelling and grammar checker which is similar to its Cysill software which can be developed for any language by the open source community. Languagetool needs language-specific rules and data for it to work with a specific language. The University is of the view that this is the purpose behind the request.
19. The University is aware that the FOIA does not affect copyright and IP rights. However, it pointed out that this case relates to software IP rights and referred to the fact that there had been numerous court cases involving software companies being accused of infringing the copyright of others. These cases are very expensive and time consuming and the University referred to the ongoing dispute between Oracle and Google<sup>1</sup> as an example of this. The University advised that many smaller software companies have ceased trading because of copyright infringement and their inability to match the resources and monies that large companies are able to bring to bear in such court cases. The University stated that it does not have the finance or resources to police its IP interests in such a case. The University has concerns over misuse of its IP by both individuals and large international companies such as Google, Facebook or Microsoft who have all in the past interacted with it regarding its software and data.

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<sup>1</sup> <https://www.theguardian.com/technology/2016/may/26/google-wins-copyright-lawsuit-oracle-java-code>

20. The University considers that if the withheld information, for which it holds the IP rights, was disclosed it would allow other persons/ organisations to develop products using the information in question. As it does not have the finance and resources required to effectively "police" breaches of its IP rights the University asserts that disclosure would impact on the revenue received from sales of the package. As the Unit is dependent on revenues from software licences disclosure would result in significant impact on the financial viability of the Unit.

*The complainant's position*

21. As referred to in paragraph 2 of this notice, in his initial request the complainant stated the following:

"Yn olaf nodaf eich bod wedi tynnu nifer o adnoddau oddi ar yr hen wefan e-gymraeg.org.uk megis Cysgliad i'r Mac. Fel un sydd wedi defnyddio'r meddalwedd yma rwy'n ymwybodol eich bod wedi ei rhyddhau dan delerau gymharol haelionus ynghyd a rhan o'r cod dan y GPL. O ganlyniad i dynnu'r adnodd, gan nodi bod Bwrdd yr Iaith wedi gosod amodau penodol yn rhan o'r grant, gofynnaf dan Ddeddf Rhyddid Gwybodaeth am god ffynhonnell Cysill a Cysgeir i'r Mac, y geiriaduron a'r data cysylltiedig".

(Finally I note that you have removed a number of resources from the old website e-gymraeg.org.uk such as Cysgliad for the Mac. As one who has used this software I am aware that you released it under comparatively generous terms together with part of the code under the GPL. Following the removal of the resource, noting that the Welsh Language Board set out specific conditions as part of the grant, under the Freedom of Information Act I request the source code for Cysill and Cysgeir for the Mac, the dictionaries and related data).

22. The University advised the Commissioner that the statement above contains inaccuracies. The website e-gymraeg.org.uk was taken down as part of a rationalisation exercise to reduce the number of website addresses the University owns, and resources were moved to other current websites. As referred to in paragraph 10 of this notice, the University informed the complainant of the new web address for Cysgliad for the Mac. It considers that in doing so, it complied with the part of the request that it was able to.
23. The University confirmed that the resources referred to by the complainant were never released under GPL licence. The licence in question is BSD which is more generous in nature. The University advised that whereas GPL stipulates that any developer using the licence has to release their code in a similar manner, BSD has no such constraints. The grant which the University received from the Welsh

Language Board relating to the software development included stipulations covering free distribution of the Cysgliad Mac version, and the Cysgliad for the Mac interface component (the only part of the package which was different from the PC version). However, the University confirmed that the grant conditions did not include any provision relating to the source code for its Cysill and Cysgeir components, the dictionaries or any other associated data, ie the withheld information.

24. In his internal review request, the complainant pointed out that copyright did not prevent information being released under the FOIA. He also said that "Er hyn nodal nad oes hawlfraint ar eiriaduron electronig, yn ei le, Rheoliadau Hawlfraint a Hawliau Cronfeydd Data 1997 sy'n berthnasol" (I note however that there is no copyright on electronic dictionaries, in its place, the Copyright and Rights in Databases Regulations 1997 apply). The complainant asserts that as the copyright belongs to the University it could not be used commercially by another person. He also considers that there is a public interest in allowing the public to scrutinise the quality of Cysill.

*The Commissioner's position*

25. In order for a prejudice based exemption such as section 43(2) to be engaged the Commissioner considers that three criteria must be met:
- Firstly, the actual harm which the public authority alleges would – or would be likely – to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.

26. The Commissioner is satisfied that the first limb is clearly met given that the nature of prejudice envisaged to the University's interests are ones that fall within the scope of the exemption provided by section 43(2).
27. With regard to the second and third limbs, the Commissioner notes that the University considers that disclosure of the withheld information, which is subject to IP rights that it holds, would allow others to develop products using the information. This would impact on the revenue it receives through the commercial sale of the products in question, and in turn would be likely to lead to the demise of the Unit, which is self-funded.
28. The Commissioner's guidance on intellectual property rights and disclosures under the FOIA<sup>2</sup> makes it clear that copyright does not prevent information being disclosed under the FOIA. Copyright will still apply to the information once it has been disclosed. The person receiving the information is still obliged, by law, to respect the rights of the copyright owner. If they do not, the copyright owner can seek damages or an injunction in the same as they could for any infringement of copyrights. However, there will be occasions where requested information is covered by copyright and has a commercial value and copyright will not protect commercial interests following its disclosure.
29. In this case the University holds the IP rights in the software and backstop database and considers that the IP rights for the Cysgeir databases comes under the rules of the 1997 Regulations.
30. Database rights protect the significant work that goes into gathering the material which is included in a database, verifying and presenting that information and also maintaining the database. These rights are established under the 1997 Regulations, whilst the definition of what constitutes a database is contained in the Copyright Design and Patents Act 1988 (the CDPA').
31. Section 3A of the Copyright Design and Patents Act 1988 defines a "database" as  
  
"(1) In this Part "database" means a collection of independent works, data or other material which –
  - (a) are arranged in a systematic or methodical way, and
  - (b) are individually accessible by electronic or other means."

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<sup>2</sup> [https://ico.org.uk/media/for-organisations/documents/1150/intellectual\\_property\\_rights\\_and\\_disclosures\\_under\\_the\\_foia.pdf](https://ico.org.uk/media/for-organisations/documents/1150/intellectual_property_rights_and_disclosures_under_the_foia.pdf)



32. The Commissioner's guidance on intellectual property rights states at paragraph 32 that:

"... databases relate to existing information that has been gathered together and presented in a way that makes it more useful. The database is then protected by the Database Regulations, which recognise that the effort in gathering the material to be included in the database, and subsequently maintaining the database, warrants protection."

33. The 1997 Regulations provides details of when database rights will arise. Regulation 13(1) states that:

"(1) A property right ("database right") subsists, in accordance with this Part, in a database if there has been a substantial investment in obtaining, verifying or presenting the contents of the database."

34. In the Commissioner's view this means that a public authority will need to show that the creator of a database has invested substantial effort in obtaining, verifying, presenting and maintaining the information included in a database. This will be judged on both the amount of work and how difficult the work is, so it can be evaluated both quantitatively and qualitatively.

35. The leading case from the European Court of Justice on database rights is *The British Horseracing Board Ltd and Others v William Hill Organisation Ltd* [2004] EUECJ C-203/02 (09 November 2004). In that case, the European Court of Justice stated that the expression "investment in ... the obtaining ... of the contents' of a database" :

"... must be understood to refer to the resources used to seek out existing independent materials and collect them in the database. It does not cover the resources used for the creation of materials which make up the contents of a database." (para 42)

36. Database rights are infringed when a substantial part of the database is used without permission of the right holder. The Commissioner's considers that the reference to 'substantial part' can refer to the volume of information or the significance of the part extracted, in relation to the database as a whole.

37. The Commissioner notes from the European Court of Justice's decision, referred to above, that for database rights to be engaged a substantial amount of effort must have been invested in seeking out existing independent materials and collecting them in the database.

38. The Commissioner, having been provided with a sample of the information that the University holds, accepts that the requested

information is contained in a database. In addition, the Commissioner accepts that the dictionary databases comprise existing information (the published dictionaries) which the University has collected and reproduced in an electronic format for use within the Cysgliad software compendium. Further, based on the University's representations the Commissioner accepts that it has invested a significant amount of time in gathering and presenting the data. The Commissioner therefore believes it is protected by the 1997 Regulations.

39. For the Commissioner to be satisfied that the University has successfully engaged section 43(2) of the FOIA she has to be satisfied that disclosure would adversely affect its identified IP rights. In practice this means that a person or organisation would want to exploit the requested information (in other words that there is a potential market for it), could do so successfully and such infringements would go undetected or could not be protected.
40. The Commissioner is satisfied that the University owns the IP rights to the requested information. Based on the evidence available, she is also persuaded by the arguments advanced by the University that it would suffer some real loss by disclosure or that there is a potential commercial market for the information that individuals or organisations would want to exploit. The Commissioner also accepts the University's representations that the harm or loss to its commercial interests could not be easily prevented by enforcing its IP rights.
41. Based on the above, the Commissioner is satisfied that disclosure of the withheld information would prejudice the University's commercial interests, and section 43(2) is engaged in relation to the withheld information

### **Public interest test**

42. The exemption under section 43(2) of the FOIA is qualified which means that the information in question should only be withheld where the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of disclosure**

43. The University accepts that there is a public interest in transparency and accountability relating to the way that it operates. It acknowledges that disclosure of information around the Cysgliad produce would better inform the general public in relation to how the University operates in terms of its self-funding units and the unique work being undertaken in relation to the Welsh Language. The University is of the view that it has

"already fulfilled this aspect of the request by signposting the requestor to various freely available resources".

44. The complainant considers that disclosure of the requested information would allow the public to scrutinise the quality and weaknesses of Cysill.

### **Public interest arguments in favour of maintaining the exemption**

45. The University asserts that:

"disclosure of this information, related to a commercial product for computers with Windows operating systems, is likely to affect the future commercial interests which operates in a competitive environment during a very challenging financial period".

46. Disclosure would require the University to litigate against individuals and organisations for breaches of its IP rights.
47. The University is of the view that disclosure would lead to a consequential loss of trust with commercial organisations, for example with the Microsoft Corporation with whom it separately licenses for use of its product with Microsoft Office. This would in turn possibly adversely affect future commercial applications for the product.
48. The University considers that disclosure poses a credible threat to the whole future of the Unit and its staff, as it is entirely dependent on revenues from software licenses, grant capture and commissions to pay for staff salaries and research activities. It is not in the public interest to jeopardise its future income and the future of the Unit.

### **The balance of the public interest**

49. The fact that a prejudice-based exemption is found to be engaged means that the Commissioner has accepted that disclosure of the information in question would have a prejudicial effect on the specified interest. The purpose of the public interest test is not to repeat the arguments about prejudice, but to assess the weight that should be attached when balancing the arguments in favour of disclosure and in favour of maintaining the exemption.
50. In this case the Commissioner has accepted that disclosure would prejudice the University's commercial interests. Since this is the higher level of prejudice, the weight it carries is greater than would be the case if the Commissioner found that prejudice would be likely to be caused.
51. The Commissioner has carefully considered the competing public interest arguments in this case. The Commissioner acknowledges that disclosure of the withheld information would increase the public's understanding of

the work of the Unit. Disclosure would also allow the public to consider the quality and weaknesses of the software package. Accordingly the Commissioner recognises that there is a legitimate interest in disclosure of the requested information. However she accepts that the publicly available information which the University has signposted the complainant to goes some way to meeting this public interest argument.

52. The Commissioner is persuaded that the arguments in favour of maintaining the exemption are more compelling. The University has argued that disclosure of the information in this case would allow others to copy a product that it has invested time and money in and it would be very difficult for it to police its IP rights. This outcome would jeopardise its future income and the future of the self-funded Unit. It would also lead to a loss of trust it has built up with commercial organisations who have separate commercial licenses for key components of the software.
53. For the reasons set out above the Commissioner finds that in the circumstances of this case the public interest in maintaining the exemption at section 43(2) of the FOIA outweighs the public interest in disclosing the information in question

## Right of appeal

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54. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

55. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed .....

**David Teague**  
**Regional Manager (Wales)**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Deddf Rhyddid Gwybodaeth 2000 (y Ddeddf)**

### **Hysbysiad penderfynu**

**Dyddiad:** 18 Gorffennaf 2017

**Yr Awdurdod Cyhoeddus:** Prifysgol Bangor

**Cyfeiriad:** Bangor  
Gwynedd  
LL57 2DG

#### **Y penderfyniad (gan gynnwys unrhyw gamau y gorchmynnir eu cymryd)**

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57. Gofynnodd yr achwynydd am god ffynhonnell nifer o becynnau meddalwedd a geiriaduron perthynol. Cadwodd Prifysgol Bangor ('y Brifysgol') yr wybodaeth yn ôl o dan adran 43(2) o'r Ddeddf. Penderfyniad y Comisiynydd yw bod y Brifysgol wedi cymhwyso adran 43(2) o'r Ddeddf at y cais yn gywir. Nid yw'r Comisiynydd yn gofyn i unrhyw gamau gael eu cymryd.

#### **Y cais a'r ymateb**

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58. Ar 26 Ionawr 2016, ysgrifennodd yr achwynydd at y Brifysgol gan ofyn am wybodaeth fel a ganlyn:

"Yn olaf nodaf eich bod wedi tynnu nifer o adnoddau oddi ar yr hen wefan e-gymraeg.org.uk megis Cysgliad i'r Mac. Fel un sydd wedi defnyddio'r meddalwedd yma rwy'n ymwybodol eich bod wedi ei rhyddhau dan delerau gymharol haelionus ynghyd a rhan o'r cod dan y GPL. O ganlyniad i dynnu'r adnodd, gan nodi bod Bwrdd yr Iaith wedi gosod amodau penodol yn rhan o'r grant, gofynnaf dan Ddeddf Rhyddid Gwybodaeth am god ffynhonnell Cysill a Cysgeir i'r Mac, y geiriaduron a'r data cysylltiedig".

59. Ymatebodd y Brifysgol ar 19 Chwefror 2016 gan ddweud bod Cod Ffynhonnell Cysill a Cysgeir ar gyfer y Mac ar gael oddi ar wefan benodol. Esboniodd y Brifysgol fod y cod wedi'i ryddhau o dan drwydded

BSD (Dosbarthiad Meddalwedd Berkley), nid trwydded GPL (Trwydded Gyhoeddus Gyffredinol) ac nad oedd y geiriaduron a'r data perthynol wedi'u cynnwys o dan delerau'r drwydded nac o dan delerau'r grant perthnasol. Dywedodd y Brifysgol ei bod o'r farn bod y codau ffynhonnell ar gyfer y geiriaduron a'r data perthynol yn wybodaeth fasnachol sensitif, ac felly fod yr wybodaeth yn esempt o dan adran 43(2) o'r Ddeddf.

60. Ar 23 Chwefror 2016 ysgrifennodd yr achwynydd at y Brifysgol gan ofyn am adolygiad mewnol o'i phenderfyniad i gadw'r wybodaeth y gofynnwyd amdani yn ôl.
61. Rhoddodd y Brifysgol ganlyniad ei hadolygiad mewnol ar 14 Mehefin 2016 gan gadarnhau ei phenderfyniad bod yr wybodaeth y gofynnwyd amdani'n esempt o dan adran 43(2) o'r Ddeddf.

### **Rhychwant yr achos**

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62. Cysylltodd yr achwynydd â'r Comisiynydd ar 12 Medi 2016 i gwyno am y modd yr ymdriniwyd â'i gais am wybodaeth.
63. Rhychwant ymchwiliad y Comisiynydd i'r gŵyn hon yw penderfynu a ddylai'r Brifysgol ddatgelu'r wybodaeth y gofynnwyd amdani.

### **Y rhesymau dros y penderfyniad**

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#### **Adran 43 – buddiannau masnachol**

64. Mae adran 43(2) o'r Ddeddf yn darparu esemptiad rhag datgelu gwybodaeth a fyddai'n niweidio, neu a fyddai'n debygol o niweidio, buddiannau masnachol unrhyw berson (gan gynnwys yr awdurdod cyhoeddus sy'n ei dal).
65. Yn fras, mae adran 43(2) yn diogelu gallu parti i gymryd rhan yn gystadleuol mewn gweithgarwch masnachol, er enghraifft prynu a gwerthu nwyddau neu wasanaethau. Mae cymhwyso adran 43(2) yn llwyddiannus yn dibynnu ar allu'r awdurdod cyhoeddus i ddangos bod yr amodau a ganlyn wedi'u bodloni –
  - y byddai datgelu'r wybodaeth y gofynnwyd amdani yn niweidio, neu'n debygol o niweidio, buddiannau masnachol unrhyw barti (gan gynnwys yr awdurdod cyhoeddus sy'n ei dal).

- bod pwysau'r budd cyhoeddus o blaid cynnal yr esemptiad yn drech, o dan yr holl amgylchiadau, na'r budd cyhoeddus o blaid datgelu'r wybodaeth.

*Safbwynt y Brifysgol*

66. Esboniodd y Brifysgol i'r Comisiynydd:

"Cysill and Cysgeir are part of the Cysgliad software compendium, copyright of Bangor University 2001-2017. Cysgeir is a Welsh spelling, grammar checker and thesaurus. Cysgeir an electronic Welsh/English dictionaries. Cysgliad is a software package combining Cysill and Cysgir to check spellings, mutations and other grammar rules, dictionaries, thesaurus and verb conjugator. Cysgliad was released by the Language Technologies Unit, Canolfan Bedwyr in 2004 for the PC. In accordance with the Welsh Language Boards' grant conditions, the version for the Mac was released free of charge in 2007 with the Mac interface component being released on a BSD licence, downloadable from [http://www.cysgliad.com/mac/index\\_en.html](http://www.cysgliad.com/mac/index_en.html)"

Cadarnhaodd y Brifysgol fod yr achwynydd wedi cael gwybod am y ddolen i'r rhyngwyneb ar gyfer y Mac a oedd ar gael yn gyhoeddus.

67. Yr wybodaeth sydd wedi'i chadw'n ôl yw cod ffynhonnell Cysill a data Cysill a chydannau Cysgeir gan gynnwys y geiriaduron a'r data perthynol. Mae'r Brifysgol o'r farn y byddai datgelu'r wybodaeth a gadwyd yn ôl yn niweidio'i buddiannau masnachol hi ei hun.
68. Cafodd datblygiad gwreiddiol meddalwedd Cysgliad ar gyfer cyfrifiadur personol ei ariannu'n rhannol gan grant oddi wrth Fwrdd yr Iaith Gymraeg (2004), ac felly hefyd datblygiad fersiwn ar gyfer y Mac yn nes ymlaen (2007). Serch hynny, ers yr adeg honno nid yw'r Brifysgol wedi cael rhagor o gymorth grant ar gyfer meddalwedd Cysgliad, a'i gymorth a'i ddatblygiad wedyn. Mae ar Cysgliad ar gyfer y cyfrifiadur personol angen gwaith cynnal cyson gan staff sy'n gweithio yn Uned Technolegau Iaith y Brifysgol ('yr Uned'), wrth i Microsoft ryddhau fersiynau newydd o feddalwedd Windows ac Office.
69. Esboniodd y Brifysgol fod meddalwedd compendiwm Cysgliad ar gyfer y cyfrifiadur personol yn gynnwys masnachol i gyfrifiaduron sydd â systemau gweithredu Windows. Mae 37,698 o drwyddedau wedi'u gwerthu hyd yn hyn (5,497 o fersiynau cartref a 32,201 o drwyddedau rhwydwaith). Gwerth y trwyddedau rhwydwaith hyd yn hyn yw £260,496. Dim ond ers 2008 y mae gan y Brifysgol gofnodion o werthiannau'r fersiwn cartref a chyfanswm y gwerthiannau hyn yw £55,012.



70. Yn ychwanegol, mae cydrannau allweddol ym meddalwedd a data Cysgliad wedi'u trwyddedu'n fasnachol ar wahân i Gorfforaeth Microsoft ar gyfer eu gwirydd sillafu nhw ar gyfer Microsoft Office (heb y gwirydd gramadeg) mor bell yn ôl â 2005, ac i'r BBC ers 2009 ar gyfer eu geiriadur LearnWelsh nhw a'u gemau dysgu iaith. Yn ychwanegol, mae cydrannau wedi'u defnyddio mewn cynhyrchion eraill sydd wedi'u datblygu gan yr Uned drwy arian grant a chomisiynau. Esboniodd y Brifysgol bod y ffaith bod y gwahanol gydrannau ar gael yn allweddol o ran ennill y grantiau a'r comisiynau hyn, fel yr amlygir isod:

"For example, the lemmatizer and dictionary data which is built from Cysill and Cysgeir components is a key element in the electronic dictionaries in the Welsh National Terminology Portal (<http://termau.cymru/?lang=en>); the corpora in the Welsh National Corpora Portal (<http://corpws.cymru/?lang=en>); the Vocab, Part of SpeechTagger and other resources in the Welsh National Language Technologies Portal (<http://techiaith.cymru/?lang=en>)"

71. Mae'r cyfan o'r arian sy'n dod i law drwy werthu trwyddedu meddalwedd Cysgliad ar gyfer y cyfrifiadur personol yn mynd tuag at dalu cyflogau'r staff sy'n gweithio yn yr Uned. Mae'r Uned yn uned ymchwil a hunan-ariennir o fewn Canolfan Bedwyr – Canolfan y Brifysgol ar gyfer Gwasanaethau, Ymchwil a Thechnoleg Gymraeg. Mae gan yr Uned bedwar aelod staff amser-llawn a dau aelod rhan-amser. Nid yw'n cael arian craidd gan y Brifysgol ac mae'n dibynnu'n llwyr ar refeniw o drwyddedau meddalwedd, sicrhau grantiau a chomisiynau i dalu am gyflogau'r staff a gweithgareddau ymchwil.
72. Mae'r Uned wedi buddsoddi'n sylweddol dros amser i sicrhau, gwirio, gwella a chyflwyno'r data. Mae'r feddalwedd yn un o'r cynhyrchion amlaf eu trwyddedau yng Nghymru o ran cynnal y Gymraeg. Ynghyd â'r feddalwedd arall a gynhyrchwyd gan yr Uned, mae Cysgliad ar gyfer y cyfrifiadur personol wedi helpu'r Brifysgol i gyrraedd y brig mewn tabl trwyddedau meddalwedd i brifysgolion y Deyrnas Unedig.
73. Y Brifysgol biau hawliau eiddo deallusol y feddalwedd a'r cronfeydd data y tu ôl iddi. Er mai deiliaid yr hawlfreintiau unigol a luniodd y geiriaduron biau hawlfraint y geiriaduron a gyhoeddwyd, mae hawliau eiddo deallusol cronfa ddata Cysgeir (sy'n dal y data ar ffurf electronig) yn perthyn i'r Brifysgol. Gan hynny, mae'r Brifysgol yn haeru ei bod yn dod o dan y rheolau yn Rheoliadau Hawlfraint a Hawliau Cronfeydd Data 1997 ('Rheoliadau 1997'). Mae adran 16 o Reoliadau 1997 yn darparu bod hawliau cronfa ddata yn cael eu torri os bydd unigolyn yn codi neu'n aildefnyddio'r cyfan neu ran sylweddol o'r cynnwys heb gydsyniad. Cronfeydd data'r geiriaduron yw'r hyn y mae'r Brifysgol yn credu na ddylai gael ei gyhoeddi a hynny am fod adnoddau sylweddol wedi'u buddsoddi i'w dylunio a'u rhoi ar waith, ac nid yw'r rhain wedi bod ar

gael yn gyhoeddus byth. O ran hawliau cronfeydd data, esboniodd y Brifysgol mai dim ond pan fo'r gronfa ddata wedi'i chyhoeddi eisoes y caniateir ymchwil anfasnachol. Cadarnhaodd y Brifysgol hefyd fod pob un o'r geiriaduron heblaw geiriadur Cysgeir ar gael i'w gwerthu ar ffurf papur.

74. Dywedodd y Brifysgol wrth y Comisiynydd ei bod yn ymwybodol drwy negeseuon agored yn y cyfryngau cymdeithasol fod yr achwynydd yn yr achos hwn wedi mynegi ei awydd i datblygu languagetool – sef cynnyrch i gystadlu â Cysill. Esboniodd y Brifysgol fod languagetool (<https://languagetool.org/>) yn cyfeirio at wirydd sillafu a gramadeg agored sy'n debyg i'w meddalwedd Cysill hi a all gael ei datblygu ar gyfer unrhyw iaith gan y gymuned agored. Mae ar languagetool angen rheolau iaith-benodol a data er mwyn gweithio gydag iaith benodol. Mae'r Brifysgol o'r farn mai dyna ddiben y cais.
75. Mae'r Brifysgol yn gwybod nad yw'r Ddeddf yn effeithio ar hawlfraint a hawliau eiddo deallusol. Er hynny, nododd fod yr achos hwn yn ymwneud â hawliau eiddo deallusol ynglŷn â meddalwedd a chyfeiriodd at y ffaith bod nifer o achosion llys wedi bod ynglŷn â chwmnïau meddalwedd a gyhuddwyd o dorri hawlfraint pobl eraill. Mae'r achosion hyn yn ddrud iawn ac yn llyncu llawer o amser a chyfeiriodd y Brifysgol at yr anghydfod bresennol rhwng Oracle a Google<sup>3</sup> fel un enghraifft o hyn. Dywedodd y Brifysgol fod llawer o gwmnïau meddalwedd bach wedi rhoi'r gorau i fasnachu am fod hawlfreintiau wedi'u torri ac oherwydd eu methiant i sicrhau'r adnoddau a'r arian y gall cwmnïau mawr eu defnyddio mewn achosion llys o'r fath. Dywedodd y Brifysgol nad oes ganddi'r cyllid na'r adnoddau i blismona'i hawliau eiddo deallusol mewn achos o'r fath. Mae gan y Brifysgol bryderon bod ei hawliau eiddo deallusol yn cael eu camddefnyddio gan unigolion a chwmnïau rhyngwladol mawr fel Google, Facebook neu Microsoft sydd i gyd wedi cydadweithio â hi yn y gorffennol ynghylch ei meddalwedd a'i data.
76. Pe bai'r wybodaeth a gadwyd yn ôl, y mae'r hawliau eiddo deallusol ynglŷn â hi yn perthyn iddi, yn cael ei datgelu, mae'r Brifysgol o'r farn y byddai hynny'n caniatáu i bersonau/sefydliadau eraill ddefnyddio'r wybodaeth o dan sylw. Gan nad oes ganddi'r cyllid a'r adnoddau i "blismona" achosion o dorri ei hawliau eiddo deallusol yn effeithiol, mae'r Brifysgol yn haeru y byddai datgelu'r wybodaeth yn effeithio ar y refeniw sy'n dod i law drwy werthu'r pecyn. Gan fod yr Uned yn dibynnu ar refeniw o drwyddedau meddalwedd, byddai datgelu'r wybodaeth yn arwain at effaith o bwys ar hyfywedd ariannol yr Uned.

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<sup>3</sup> <https://www.theguardian.com/technology/2016/may/26/google-wins-copyright-lawsuit-oracle-java-code>

*Safbwynt yr achwynydd*

77. Fel y nodwyd ym mharagraff 2 o'r hysbysiad hwn, yn ei gais cychwynnol, dywedodd yr achwynydd hyn:

"Yn olaf nodaf eich bod wedi tynnu nifer o adnoddau oddi ar yr hen wefan e-gymraeg.org.uk megis Cysgliad i'r Mac. Fel un sydd wedi defnyddio'r meddalwedd yma rwy'n ymwybodol eich bod wedi ei rhyddhau dan delerau gymharol haelionus ynghyd a rhan o'r cod dan y GPL. O ganlyniad i dynnu'r adnodd, gan nodi bod Bwrdd yr Iaith wedi gosod amodau penodol yn rhan o'r grant, gofynnaf dan Ddeddf Rhyddid Gwybodaeth am god ffynhonnell Cysill a Cysgeir i'r Mac, y geiriaduron a'r data cysylltiedig".

78. Dywedodd y Brifysgol wrth y Comisiynydd fod y gosodiad uchod yn cynnwys gwallau. Rhoddwyd y gorau i'r wefan e-gymraeg.org.uk fel rhan o waith rhesymoli i leihau nifer y cyfeiriadau gwefan sy'n perthyn i'r Brifysgol, a chafodd adnoddau eu symud i wefannau cyfredol eraill. Fel y nodwyd ym mharagraff 10 o'r hysbysiad hwn, dywedodd y Brifysgol wrth yr achwynydd am y cyfeiriad gwe newydd ar gyfer Cysgliad i'r Mac. Mae o'r farn ei bod, drwy wneud hyn, wedi cydymffurfio â'r rhan o'r cais y gallai gydymffurfio â hi.

79. Cadarnhaodd y Brifysgol na chafodd yr adnoddau y cyfeiriodd yr achwynydd atynt eu rhyddhau o dan y drwydded GPL erioed. Trwydded BSD yw'r drwydded o dan sylw, sy'n fwy hael ei natur. Er bod GPL yn pennu bod unrhyw ddatblygwr sy'n defnyddio'r drwydded yn gorfod rhyddhau eu cod mewn modd tebyg, dywedodd y Brifysgol nad oes cyfyngiadau o'r fath yn y BSD. Roedd y grant a gafodd y Brifysgol gan Fwrdd yr Iaith Gymraeg ynglŷn â datblygu'r feddalwedd yn cynnwys amodau ynghylch dosbarthu fersiwn Cysgliad ar gyfer y Mac, a chydran rhyngwyneb Cysgliad ar gyfer y Mac (yr unig ran o'r pecyn oedd yn wahanol i'r fersiwn ar gyfer y cyfrifiadur personol) am ddim. Er hynny, cadarnhaodd y Brifysgol nad oedd amodau'r grant yn cynnwys darpariaeth ynghylch cod ffynhonnell cydrannau Cysill a Cysgeir, y geiriaduron nac unrhyw ddata perthynol arall, sef yr wybodaeth a gadwyd yn ôl.

80. Yn ei gais am adolygiad mewnol, nododd yr achwynydd nad oedd hawlfraint yn atal yr wybodaeth rhag cael ei rhyddhau o dan y Ddeddf. Dywedodd hefyd: "Er hyn nodaf nad oes hawlfraint ar eiriaduron electronig, yn ei le, Rheoliadau Hawlfraint a Hawliau Cronfeydd Data 1997 sy'n berthnasol". Gan fod yr hawlfraint yn perthyn i'r Brifysgol, mae'r achwynydd yn haeru na allai gael ei defnyddio'n fasnachol gan berson arall. Mae o'r farn hefyd fod yna fudd cyhoeddus mewn caniatáu i'r cyhoedd graffu ar ansawdd Cysill.

*Safbwynt y Comisiynydd*

81. Er mwyn i esemptiad sydd wedi'i seilio ar niwed, megis adran 43(2), fod yn berthnasol mae'r Comisiynydd o'r farn bod rhaid i dri amod gael eu bodloni:
- Yn gyntaf, mae'n rhaid bod y niwed gwirioneddol y mae'r awdurdod cyhoeddus yn honni y byddai'n digwydd – neu'n debyg o ddigwydd – pe câi'r wybodaeth a gadwyd yn ôl ei datgelu fod yn berthnasol i'r buddiannau cymwysadwy yn yr esemptiad perthnasol;
  - Yn ail, rhaid i'r awdurdod cyhoeddus allu dangos bod rhyw berthynas achosol yn bodoli rhwng y posibilrwydd o ddatgelu'r wybodaeth sy'n cael ei chadw'n ôl a'r niwed y bwriedir i'r esemptiad ei amddiffyn. Ymhellach, rhaid i'r niwed yr honnir y bydd yn codi fod yn real, yn wirioneddol neu'n sylweddol; ac
  - Yn drydydd, mae angen sefydlu a yw lefel y tebygrwydd y ceir niwed y mae'r awdurdod cyhoeddus yn dibynnu arno wedi'i gyrraedd – hynny yw y byddai datgelu'r wybodaeth 'yn debyg' o arwain at y niwed neu y 'byddai' datgelu'r wybodaeth yn arwain at niwed. O ran y trothwy isaf, mae'r Comisiynydd o'r farn bod rhaid i'r siawns y ceir niwed fod yn fwy na phosibilrwydd damcaniaethol; yn hytrach rhaid bod yna risg real ac arwyddocaol. O ran y trothwy uchaf, ym marn y Comisiynydd mae hyn yn gosod baich trymach i'w gyflawni ar yr awdurdod cyhoeddus.
82. Mae'r Comisiynydd yn fodlon bod yr amod cyntaf yn bendant yn berthnasol o gofio bod natur y niwed a ragwelir i fuddiannau'r Brifysgol yn syrthio o fewn rhychwant yr esemptiad a geir yn adran 43(2).
83. O ran yr ail amod a'r trydydd, mae'r Comisiynydd yn nodi bod y Brifysgol o'r farn y byddai datgelu'r wybodaeth a gadwyd yn ôl, sy'n dod o dan hawliau eiddo deallusol y Brifysgol, yn caniatáu i bobl eraill ddatblygu cynhyrchion drwy ddefnyddio'r wybodaeth. Byddai hyn yn effeithio ar y refeniw y mae'n ei gael drwy wrthiannau masnachol y cynhyrchion o dan sylw, ac y byddai hynny yn ei dro yn debyg o arwain at dranc yr Uned, sy'n ei hariannu ei hun.
84. Mae canllawiau'r Comisiynydd ar hawliau eiddo deallusol a datgelu gwybodaeth o dan yn Ddeddf<sup>4</sup> yn egluro nad yw hawlfraint yn atal gwybodaeth rhag cael ei datgelu o dan y Ddeddf. Bydd hawlfraint yn dal

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<sup>4</sup> [https://ico.org.uk/media/for-organisations/documents/1150/intellectual\\_property\\_rights\\_and\\_disclosures\\_under\\_the\\_foia.pdf](https://ico.org.uk/media/for-organisations/documents/1150/intellectual_property_rights_and_disclosures_under_the_foia.pdf)

yn berthnasol i'r wybodaeth ar ôl iddi gael ei datgelu. Mae'r sawl sy'n derbyn yr wybodaeth yn dal o dan rwymedigaeth, yn y gyfraith, i barchu hawliau perchennog yr hawlfraint. Os na fydd yn eu parchu, gall perchennog yr hawlfraint geisio sicrhau iawndal neu waharddeb yn yr un modd ag ar gyfer unrhyw dor hawlfraint. Er hynny, fe fydd adegau pan fo gwybodaeth y gofynnwyd amdani'n dod o dan hawlfraint a bod iddi werth masnachol ac na fydd hawlfraint yn diogelu buddiannau masnachol ar ôl iddi gael ei datgelu.

85. Yn yr achos hwn, mae gan y Brifysgol hawliau eiddo deallusol yn y feddalwedd a'r gronfa ddata y tu ôl iddi ac mae o'r farn bod hawliau eiddo deallusol cronfeydd data Cysgeir yn dod o dan reolau Rheoliadau 1997.
86. Mae hawliau cronfeydd data yn amddiffyn y gwaith sylweddol sy'n cael ei wneud wrth gasglu'r deunyddiau a gynhwysir mewn cronfa ddata, dilysu a chyflwyno'r wybodaeth honno a chynnal y gronfa ddata hefyd. Sefydli'r hawliau hyn o dan Reoliadau 1997, ac mae diffiniad o gronfa ddata i'w gael yn Neddf Hawlfraint, Dyluniadau a Phatentau 1988 ('y CDPA').
87. Mae adran 3A o'r CDPA yn diffinio cronfa ddata fel hyn:
- "(1) In this Part "database" means a collection of independent works, data or other material which –
- (a) are arranged in a systematic or methodical way, and
  - (b) are individually accessible by electronic or other means."

88. Mae canllawiau'r Comisiynydd ar hawliau eiddo deallusol yn dweud hyn ym mharagraff 32:

"... databases relate to existing information that has been gathered together and presented in a way that makes it more useful. The database is then protected by the Database Regulations, which recognise that the effort in gathering the material to be included in the database, and subsequently maintaining the database, warrants protection."

89. Mae Rheoliadau 1997 yn rhoi manylion ynghylch pryd y bydd hawliau cronfeydd data yn codi. Mae Rheoliad 13(1) yn dweud:

"(1) A property right ("database right") subsists, in accordance with this Part, in a database if there has been a substantial investment in obtaining, verifying or presenting the contents of the database."

90. Ym marn y Comisiynydd, mae hyn yn golygu y bydd angen i awdurdod cyhoeddus ddangos bod creawdwr y gronfa ddata wedi buddsoddi ymdrech sylweddol mewn sicrhau, dilysu, cyflwyno a chynnal yr

wybodaeth a gynhwyswyd mewn cronfa ddata. Bernir hyn yn ôl maint y gwaith a pha mor anodd yw'r gwaith, felly gall gael ei gloriannu'n feintiol ac yn ansoddol.

91. Prif achos Llys Cyfiawnder Ewrop ar hawliau cronfeydd data yw *The British Horseracing Board Ltd and Others v William Hill Organisation Ltd [2004] EUECJ C-203/02 (09 November 2004)*. Yn yr achos hwnnw, dywedodd Llys Cyfiawnder Ewrop fod rhaid i'w ymadrodd "investment in ... the obtaining ... of the contents' of a database" gael ei ddeall fel pe bai'n cyfeirio at:

"... the resources used to seek out existing independent materials and collect them in the database. It does not cover the resources used for the creation of materials which make up the contents of a database."  
(para 42)

92. Mae hawliau cronfeydd data'n cael eu torri pan gaiff rhan sylweddol o'r gronfa ddata ei defnyddio heb ganiatâd deiliad yr hawliau. Mae'r Comisiynydd o'r farn y gall y cyfeiriad at 'ran sylweddol' gyfeirio at faint yr wybodaeth neu at arwyddocâd y rhan a ddefnyddiwyd, o'i chymharu â'r gronfa ddata yn ei chrynswth.
93. Ar sail dyfarniad Llys Cyfiawnder Ewrop, y cyfeiriwyd ato uchod, mae'r Comisiynydd yn nodi bod cryn ymdrech yn gorfod bod wedi'i gwneud i chwilio am ddeunyddiau annibynnol presennol a'u casglu yn y gronfa ddata er mwyn i hawliau cronfeydd data fod yn berthnasol.
94. Mae'r Comisiynydd yn derbyn, ar ôl cael sampl o'r wybodaeth sydd gan y Brifysgol, fod yr wybodaeth y gofynnwyd amdani wedi'i chynnwys mewn cronfa ddata. Yn ychwanegol, mae'r Comisiynydd yn derbyn bod cronfeydd data'r geiriaduron yn cynnwys gwybodaeth bresennol (y geiriaduron cyhoeddedig) y mae'r Brifysgol wedi'i chasglu ac wedi'i hatgynhyrchu ar ffurf electronig i'w defnyddio yng nghompendiwm meddalwedd Cysgliad. Ymhellach, ar sail sylwadau'r Brifysgol mae'r Comisiynydd yn derbyn bod y Brifysgol wedi buddsoddi cryn dipyn o amser i gasglu a chyflwyno'r data. Gan hynny mae'r Comisiynydd yn credu ei fod yn cael ei ddiogelu gan Reoliadau 1997.
95. Er mwyn i'r Comisiynydd gael ei bodloni bod y Brifysgol wedi defnyddio adran 43(2) o'r Ddeddf yn llwyddiannus, rhaid iddi gael ei bodloni y byddai datgelu'r wybodaeth yn effeithio'n andwyol ar yr hawliau eiddo deallusol a nodwyd gan y Brifysgol. Yn ymarferol mae hyn yn golygu y byddai person neu sefydliad yn awyddus i ddefnyddio'r wybodaeth y gofynnwyd amdani (mewn geiriau eraill bod yna farchnad bosibl iddi), y gallent wneud hynny'n llwyddiannus ac yr âi'r trosedd heb ei weld neu na ellid gwarchod rhag y trosedd.

96. Mae'r Comisiynydd wedi'i bodloni mai'r Brifysgol sydd biau'r hawliau eiddo deallusol i'r wybodaeth y gofynnwyd amdani. Ar sail y dystiolaeth sydd ar gael, mae'r Comisiynydd wedi'i darbwylllo hefyd gan y dadleuon a gynigiwyd gan y Brifysgol y byddai'n dioddef rhywfaint o golled wirioneddol drwy ddatgelu'r wybodaeth neu fod yna farchnad fasnachol bosibl i'r wybodaeth y byddai unigolion neu sefydliadau'n awyddus i'w defnyddio. Mae'r Comisiynydd hefyd yn derbyn sylwadau'r Brifysgol na fyddai'n hawdd atal y niwed neu'r golled i'w buddiannau masnachol drwy orfodi ei hawliau eiddo deallusol.
97. Ar sail yr uchod, mae'r Comisiynydd wedi'i bodloni y byddai datgelu'r wybodaeth a gadwyd yn ôl yn niweidio buddiannau masnachol y Brifysgol, a bod adran 43(2) yn berthnasol o ran yr wybodaeth a gadwyd yn ôl.

### **Prawf buddiant cyhoeddus**

98. Mae'r esemptiad o dan adran 43(2) o'r Ddeddf yn un amodol, sy'n golygu mai dim ond pan fo'r budd cyhoeddus o blaid cadw'r esemptiad yn drech na'r budd cyhoeddus o blaid datgelu'r wybodaeth y dylai'r wybodaeth o dan sylw gael ei chadw'n ôl.

### **Dadleuon budd cyhoeddus o blaid datgelu**

99. Mae'r Brifysgol yn derbyn bod yna fudd cyhoeddus mewn tryloywder ac atebolrwydd ynglŷn â'r modd y mae'n gweithredu. Mae'n cydnabod y byddai datgelu gwybodaeth ynghylch cynnyrch Cysgliad yn rhoi gwell gwybodaeth i'r cyhoedd am sut mae'r Brifysgol yn gweithredu o ran ei hunedau hunan-ariannu a'r gwaith unigryw sy'n cael ei wneud ynglŷn â'r Gymraeg. Barn y Brifysgol yw ei bod eisoes wedi cyflawni "this aspect of the request by signposting the requestor to various freely available resources".
100. Mae'r achwynydd o'r farn y byddai datgelu'r wybodaeth y gofynnwyd amdani yn caniatáu i'r cyhoedd graffu ar ansawdd a gwendidau Cysill.

### **Dadleuon budd cyhoeddus o blaid cynnal yr esemptiad**

101. Mae'r Brifysgol yn haeru hyn:

"disclosure of this information, related to a commercial product for computers with Windows operating systems, is likely to affect the future

commercial interests which operates in a competitive environment during a very challenging financial period”.

102. Byddai datgelu'r wybodaeth yn ei gwneud yn ofynnol i'r Brifysgol ymglyfreitha yn erbyn unigolion a sefydliadau am dorri ei hawliau eiddo deallusol.
103. Mae'r Brifysgol o'r farn y byddai datgelu'r wybodaeth yn arwain wedyn at golli ymddiriedaeth gyda sefydliadau masnachol, er enghraifft Corfforaeth Microsoft y mae'n rhoi trwyddedau iddi ar wahân er mwyn iddi ddefnyddio'i chynnyrch gyda Microsoft Office. Gallai hynny yn ei dro greu effaith andwyol ar ddefnyddio'r cynnyrch yn fasnachol yn y dyfodol.
104. Mae'r Brifysgol o'r farn bod datgelu'r wybodaeth yn creu bygythiad credadwy i ddyfodol yr Uned a'i staff, gan fod yr Uned yn dibynnu'n llwyr ar refeniw o drwyddedau meddalwedd, sicrhau grantiau a chomisiynau i dalu am gyflogau a gwaith ymchwil. Nid yw peryglu incwm yr Uned a'i dyfodol o fudd i'r cyhoedd.

### **Cydbwysedd y budd cyhoeddus**

105. Mae'r ffaith y dyfarnwyd bod esemptiad wedi'i seilio ar niwed yn berthnasol yn golygu bod y Comisiynydd wedi derbyn y byddai datgelu'r wybodaeth o dan sylw yn creu effaith niweidiol ar y buddiant penodedig. Nid ailadrodd y dadleuon ynghylch niwed yw diben y prawf buddiant cyhoeddus, ond asesu'r pwysau a ddylai gael eu rhoi wrth bwysu a mesur y dadleuon o blaid datgelu ac o blaid cynnal yr esemptiad.
106. Yn yr achos hwn mae'r Comisiynydd wedi derbyn y byddai datgelu'r wybodaeth yn niweidio buddiannau masnachol y Brifysgol. Gan mai dyna lefel uchaf y niwed, mae'r pwysau a roddir iddo yn fwy na phe bai'r Comisiynydd wedi dyfarnu na fyddai niwed yn debyg o gael ei achosi.
107. Mae'r Comisiynydd wedi rhoi ystyriaeth ofalus i'r gwahanol ddadleuon ynghylch y budd cyhoeddus yn yr achos hwn. Mae'r Comisiynydd yn cydnabod y byddai datgelu'r wybodaeth a gadwyd yn ôl yn cynyddu dealltwriaeth y cyhoedd o waith yr Uned. Byddai ei datgelu hefyd yn caniatáu i'r cyhoedd ystyried ansawdd a gwendidau'r pecyn meddalwedd. Gan hynny mae'r Comisiynydd yn cydnabod bod yna fuddiant dilys mewn datgelu'r wybodaeth y gofynnwyd amdani. Er hynny mae'n derbyn bod yr wybodaeth sydd ar gael yn gyhoeddus ac y mae'r Brifysgol wedi cyfeirio'r achwynydd ati yn gwneud rhywfaint i fodloni'r ddadl budd cyhoeddus hon.
108. Mae'r Comisiynydd wedi'i darbwylllo bod y dadleuon o blaid cynnal yr esemptiad yn fwy grymus. Mae'r Brifysgol wedi dadlau y byddai datgelu'r wybodaeth yn yr achos hwn yn caniatáu i bobl eraill gopïo cynnyrch y mae wedi buddsoddi amser ac arian ynddo ac y byddai'n



anodd iawn iddi blismona ei hawliau eiddo deallusol. Byddai canlyniad o'r fath yn peryglu ei hincwm yn y dyfodol ac yn peryglu dyfodol yr Uned sy'n ei hariannu ei hun. Byddai'n arwain hefyd at golli ymddiriedaeth y mae wedi'i chreu gyda sefydliadau masnachol sydd â thrwyddedau masnachol ar wahân ynglŷn â chhydrannau allweddol yn y feddalwedd.

109. Am y rhesymau a nodwyd uchod mae'r Comisiynydd yn dyfarnu, o dan yr amgylchiadau yn yr achos hwn, fod y budd cyhoeddus o blaid cynnal yr esemptiad yn adran 43(2) o'r Ddeddf yn drech na'r budd cyhoeddus o blaid datgelu'r wybodaeth o dan sylw.

110. Mae gan y naill barti a'r llall hawl i apelio yn erbyn yr hysbysiad penderfynu hwn i Dribiwnlys yr Haen Gyntaf (Hawliau Gwybodaeth). Mae gwybodaeth am y broses apelio ar gael oddi wrth:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Ffôn: 0300 1234504

Ffacs: 0870 739 5836

Ebost: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Gwefan: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

111. Os hoffech apelio yn erbyn hysbysiad penderfynu, gallwch gael gwybodaeth am sut i apelio ynghyd â'r ffurflenni perthnasol ar wefan y Tribiwnlys Gwybodaeth.

112. Dylai unrhyw Hysbysiad Apelio gael ei gyflwyno i'r Tribiwnlys o fewn 28 diwrnod (calendr) ar ôl dyddiad anfon yr hysbysiad penderfynu hwn.

**Llofnod .....**

**David Teague  
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Wycliffe House  
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