

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 12 September 2019

**Public Authority:** Welsh Government

**Address:** [Freedom.ofinformation@gov.wales](mailto:Freedom.ofinformation@gov.wales)

**Decision (including any steps ordered)**

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1. The complainant requested various pieces of information about a bat survey at a particular site. The Welsh Government disclosed some information and withheld other information under regulations 12(5)(a), 12(5)(g) and 13. The complainant did not dispute the application of any exceptions but alleged that the Welsh Government held additional information relevant to the request. The Commissioner's decision is that, on the balance of probabilities, the Welsh Government does not hold any additional information which it has not, to date, disclosed or withheld under any of the exceptions cited. However, the Commissioner finds that the Welsh Government breached regulation 5(2) of the EIR in failing to provide the requested information within the required timescale. The Commissioner does not require any steps to be take.

**Request and response**

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2. Following a response to an earlier, related request for information the complainant wrote to the Welsh Government on 14 November 2018 and requested information in the following terms:

*"A) Please will you supply the bat survey reports with any sections that prejudice "public safety" and the "protection of the environment" redacted but leaving in the science and bat/secondary observations and the methods of carrying out the surveys, including the scope of what*

*locations were visited by who, and the relevant experience and qualifications of those surveyors, and when and for how long intact.*

*You report that you have evidence of allegations that the work to seal the entrance has led to threats being made against those seeking to protect the site. What was the nature of those threats? To whom were they directed? Did they constitute risk of detriment to the safety of individuals identified in the bat reports? If there were threats of violence then I would hope you have reported these to the police to be dealt with.*

*You should be wary of allegations that may have been made for the purpose of giving you reason to withhold reports. Risk of harm or distress would not be a valid reason to withhold if the harm or distress would arise simply from discovery that the survey fell short of full professional standards and so adversely affected the professional standing of the consultant.*

*B) Please supply a copy of the Scheduled Monument Consent (SMC) application and approval for the works to seal the hole. Please include the rationale and background to the decision to approve the works while not including any provision for bat access. Please redact engineering diagrams/ details as I understand you have determined that that part of the information cannot be released.*

*C) Please provide a trail of the ecological consultant tendering process relating to these works. Please include the letter of appointment of the ecological consultancy selected, including the brief and the agreed price. During the tendering process [redacted] Ecology Ltd was asked to provide a quote for an underground bat survey. [name redacted] of Cadw later informed [name redacted] of [redacted] Ecology Ltd by email that the consultancy selected had beaten [redacted] Ecology on price for the same survey. To quote, she said "I was able to get 2 quotes for the bat survey and yours was the more expensive so we have had to go with the cheaper quote." It had been established that a comprehensive underground survey was required and [name redacted] when the nature of the survey quote accepted was questioned replied that "we are definitely after a comprehensive survey and I am confident that we will get that with our chosen specialist". I would expect all these emails to be included in your response as well as any correspondence and notes of meetings with alternative ecological consultants.*

*D) [name redacted] said that the bat survey quote was to include underground bat survey of cave passages, and later when questioned on site on Thursday 4 October 2018 she stated that such a bat survey had been carried out, please provide all documentation relating to and referring to that underground bat survey. In your response so far I have*

*seen only evidence of three bat activity surveys outside the cave in April and May 2018 plus one further activity survey outside the cave on 30 September 2018.*

*Further, [name redacted] was told by a trustee of the Pwll Du Cave Management Group that underground bat survey work had been carried out. Please supply all correspondence with PDCMG officers and trustees and with PwllDu Conservation Ltd (the landowning company) and records of meetings. If no underground bat survey was undertaken, then please confirm that this is the case.*

*E) Please disclose all correspondence and records of meetings between Cadw and PwllDu Conservation Ltd (the landowning company).*

*F) In your response in addition to leaving out correspondence on ecological consultant tendering, you have included only one email after 18 June 2018. It would appear that further correspondence is missing. Please supply copies of the missing material. As an example, the Coal Authority has revealed an email trail of 25 September 2018. In this trail, [name redacted] first asks [name redacted] of [redacted] Ecology Ltd., who supplied ecological consultancy for bat surveys on this job, to confirm in an email that he is happy for the works to proceed. In his response, [name redacted] asks if he should email NRW to let them know. Then [name redacted] sent an email to [name redacted] and [name redacted] (Coal Authority) in which she asked [name redacted] if it would be better that an email to NRW comes from Cadw. Please supply all these emails and responses including the subsequent email to NRW.*

*G) [name redacted], when questioned on site on Thursday 4 October 2018, said that NRW had approved methodology proposed for bat surveys on this job, had reviewed the subsequent bat survey reports and had then given their approval for the hole through MM189 to be sealed completely, leaving no access for bats. Please supply your documented evidence for each of these events.*

*H) In your response, you reveal an email from [name redacted] [name redacted] dated 04 May 2018. In this email [name redacted] says that the South and Mid Wales Cave Rescue organisation is "of the opinion that the cave entrance is highly dangerous and unstable, and ... subject to catastrophic collapse .. [that] may lead to the destruction of the tramway, the footpath and a significant part of the hillside around it". The email says that the Coal Authority is of the same opinion. Please supply all documentation that you hold supporting the holding of these opinions by these organisations. Please also supply copies of all documentation you hold from other organisations or authorities that*

*provide opinions on this matter, including any that offer contrary opinions”.*

3. The Welsh Government responded on 6 December 2018 and provided the information requested, subject to some redactions which were withheld under regulations 12(5)(a), 12(5)(g) and 13 of the EIR.
4. The complainant wrote back to the Welsh Government on 12 December 2018 and expressed concern that it had not disclosed all the information it held relevant to the request.
5. The Welsh Government provided the outcome of its internal review on 14 January 2019. It disclosed some additional information, including email exchanges with the complainant. It maintained that it did not hold any further recorded information relevant to the request, other than the information it considered exempt under regulations 12(5)(a), 12(5)(g) and 13.

### **Scope of the case**

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6. The complainant contacted the Commissioner initially on 14 November 2018. He then contacted the Commissioner again on 16 January 2019 following receipt of the Welsh Government's internal review response to express his dissatisfaction with its handling of the request.
7. The complainant expressed concern that the Welsh Government held additional information that it had not, to date, disclosed. The complainant did not, however, challenge the application of any exceptions that the Welsh Government has cited as the basis to withhold some information relevant to the request.
8. The scope of the Commissioner's investigation into this complaint is to determine whether the Welsh Government holds any additional information relating to the request, other than that which it has already disclosed and that which has been withheld under the exceptions it has cited (regulations 12(5)(a), 12(5)(e) and 13).

### **Reasons for decision**

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#### **Regulation 5 – Duty to make environmental information available on request**

9. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request.

10. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner consider the actions taken by the authority to check that the information is not held and any other reasons offered by the authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held, along with any representations submitted by the complainant. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
11. The Welsh Government explained that, as the subject matter relates to events that happened after it moved to full electronic filing in 2011/2012, all information held relevant to the request would be held in electronic format and so no paper records would be held. It also confirmed that all documents in both the registered file on the subject matter (named "*Cadw – MM189 - damage to tramway through excavation of new caving entrance*") and related files had been exhaustively reviewed. The Welsh Government confirmed that Cadw was the only division involved in the work in question and as such all relevant information would be held within that department. However, searches were also undertaken of the Welsh Government's electronic document and records management system (EDRMS) to establish whether any information about the site had been misfiled and to check whether any information was held by any other department.
12. Although the registered file on an issue would normally be expected to contain all relevant information, in this case, at the time of its internal review the Welsh Government recognised that an email dated 25 September 2018 had been overlooked. The email in question had been missed in the original searches because it had been incorrectly filed as it had referred to "*Tramroad repairs*" as opposed to the site names (or variations of it). In light of this the Welsh Government conducted additional searches using keywords containing multiple variations of the site name, dates and names of correspondents. Although these additional searches revealed an amount of irrelevant material it "*allowed an exhaustive check of all documents filed in locations unrelated to the registered file*". A number of emails were identified as a result of the additional searches and the information was disclosed at the time of the internal review.
13. In his complaint to the Commissioner, the complainant provided evidence to suggest that further information was held which had not been disclosed. This included:

- a. An email trail that included one he personally received from the Welsh Government on 27 February 2018. The Welsh Government held the email trail up to 17 January 2018 (which was disclosed its internal review response) but it had been unable to locate the remaining emails in the chain up to 27 February 2018.
  - b. The absence of information relating to a site visit on 1 October 2018 when ladders, ropes, hangers and bolt nuts were removed from the site. The complainant considered that there should be emails with those concerned in the activity and how the exercise was managed as well as a health and safety risk assessment, none of which had been disclosed.
  - c. In an email dated 27 February 2018 a Welsh Government official stated that:

*"As the work was potentially going to be funded by the Welsh Government we had to get multiple quotes for it – this is normal procedure for us and enables public money to be spent most effectively. I was able to get 2 quotes for the bat survey and yours was the more expensive so we have had to go with the cheaper quote".*

The Welsh Government had not disclosed the other quote referred to in this email.
14. In relation to the email chain (point (a) above) the Welsh Government accepts the emails referred to in the chain were sent and received. The Welsh Government explained that it had reverted back to the relevant officials involved in the email chain and asked them to conduct further searches, including in locations that may have been overlooked initially. The searches included inboxes, sent items and private as well as organisational wide areas of the ERDMS. Despite conducting further searches, the Welsh Government maintains that it does not hold the entire email chain.
  15. The Welsh Government explained that it has a policy in respect of the maximum size of individual mailboxes. The official involved in this case confirmed that her mailbox fills up very quickly and as such she routinely empties it on a weekly basis. This in is line with Welsh Government guidance on records management which requires officials to determine which emails needed to be retained on EDRMS as matters of record. The Welsh Government advised the Commissioner that *"following further investigations, I can confirm that officials chose to record the email of 17 January (already disclosed) to act as the substantive record of the conversation. In their view there was nothing in following emails that required retention in addition to the one already*

*filed. Thus the later emails were not filed*". The official involved in the matter explained that she was receiving a large number of emails about the subject, and because of this she made decisions as to which ones needed to be retained (on EDRMS) and which could be deleted. The request in this case was made in October 2018, over 7 months after the last email in the chain referred to by the complainant. All emails which had not been filed in the EDRMS system had been deleted by this point.

16. In respect of the site visit referred to in paragraph 13(b) of this notice, the Welsh Government explained that officials within Cadw were unaware of the visit in question. It explained that *"any removal of the ladders inside the cave would have been the responsibility of the caving community and Cadw were not consulted, and whether would they expect to have been consulted"*. In light of this the Welsh Government confirmed that it did not hold any information relevant to the site visit.
17. In terms of quotes for the bat survey (paragraph 13(c) above) the Welsh Government confirmed that it only received one written quote for the work, which was submitted by the complainant, and has been disclosed. This quote was not requested by the Welsh Government but instead came about following a site visit on 10 January 2019. A specialist at the meeting explained that he knew someone who would be able to carry out the bat survey (the complainant). The complainant then contacted the Welsh Government and submitted a written quote for the work. A second verbal quote was also received but no recorded information is held about this verbal quote. This is because in mid/late February 2018 it became clear that Cadw did not have sufficient budget to pay for the work. The landowner was informed of this and he agreed to commission and pay for the work in question. As a result of this the Welsh Government confirmed that no formal tender process was undertaken, which would have required submission of written quotes. Any additional quotes or information relating to quotes would be held solely by the landowner.
18. The Welsh Government confirmed that its Information and Communication Technology (ICT) policy does not allow members of staff to save electronic information on personal computers. All personal computers are configured in such a way to prevent any information being saved on to them. Therefore, there are no network resources where information can be saved other than the EDRMS system.
19. As mentioned above, the Welsh Government acknowledged that there may be some emails relevant to the request, including the ones referred to specifically by the complainant, that were held, but subsequently deleted as they were not considered to meet the criteria to retain as matters of record on the EDRMS system. The Welsh Government believes the emails would have been deleted within days of their receipt.

The Welsh Government confirmed that it does not have a record of their destruction as they were never chosen for retention on the EDRMS system initially. If the emails had originally been retained on the EDRMS system, a record of their destruction would be held. The Welsh Government also confirmed that it did not hold any backup copies of the emails in question. Again, had the emails been originally retained on the EDRMS system, the ability to recover them would have also been available.

20. The Commissioner is satisfied that the Welsh Government has carried out adequate searches of where relevant information would be held. The Commissioner has not seen any evidence of any inadequate search or grounds for believing there is any motive to withhold information relevant to the request. The Commissioner recognises that it is likely that additional information was previously held by the Welsh Government. However, based on the explanations provided the Commissioner believes it was destroyed in accordance with the Welsh Government's records management policy as it was deemed there was no business or regulatory need to retain the information in question.
21. Based on the searches undertaken and the other explanations provided the Commissioner is satisfied that on the balance of probabilities, the Welsh Government does not hold any further recorded information relating to the request, other than that which it has disclosed.
22. Regulation 5(2) of the EIR states that information shall be made available "*as soon as possible and no later than 20 working days after the date of the request*".
23. In this case the request was submitted on 14 November 2018 and the Welsh Government provided some information on 6 December 2018. The Welsh Government disclosed additional information relevant to the request with its internal review response on 14 January 2019.
24. In failing to provide all of the information held relevant to the request within 20 working days after the date of receipt, the Commissioner finds that the Welsh Government breached regulation 5(2) of the EIR.



## Right of appeal

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25. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

26. 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.
27. 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** .....

**Joanne Edwards**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**Cheshire**  
**SK9 5AF**