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[Redacted]

By email: [Redacted]

Our ref: FOI2019/10351  
28 May 2019

Dear [Redacted],

### **REQUEST FOR INFORMATION: Tunnels at the Rhydymwyn MOD site**

Thank you for your request for information of 4 May 2019 about the tunnels at the Rhydymwyn MOD site. We have handled your request under the Environmental Information Regulations 2004 (EIRs).

The EIRs apply to requests for environmental information, which is a broad category of information defined in regulation 2 of the EIRs. Public authorities are required to handle requests for environmental information under the EIRs. They give similar access rights to the Freedom of Information Act 2000 (FOIA).

The information you requested and our response is detailed below.

*“RVHS used the tunnels at the Rhydymwyn MOD site, Rhydymwyn, Flintshire, for visitors last Sunday, I believe, despite Bats being in the Tunnels-FOI REQUEST*

*Please advise why were people allowed into the tunnels, despite it being unlawful under the W&CA Act.*

We are writing to advise you that the information that you have requested is not held by Defra.

As the information is not held by Defra, it is exempt under regulation 12(4)(a) of the EIRs, which relates to information which is not held at the time when an applicant's request is received. Please see below for further details on this regulation.

As part of our duty to provide advice and assistance under regulation 9 of the EIRs, whilst the recorded reasons for entering the tunnels are not held by Defra, RVHS Tunnel tours were permitted on this occasion in the North Tunnel only on the date your information request refers to, with no deviations in tour routes from the North Tunnel along any cross tunnel nor into the Central or South Tunnel. Bat Surveys up to that point in time determined the presence of bats (2 thereof). One bat was located in the Central Tunnel and one just off the Central Tunnel in one of the cross links. At that time there were no recorded bats in the North Tunnel, hence the tour being relocated to the North Tunnel for this occasion to avoid disturbance in the Central Tunnel.

The tunnels are separated by a long cross link tunnel. Following on from this tour on 15 May 2019 a further bat survey has been carried out of all areas of the tunnels by our



licenced ecologist and bat locations were found to have changed since the previous survey, and Tunnel tours are currently suspended pending agreement between Defra, RVHS and the authority NRW. Conversations are currently ongoing with this between the parties involved and Defra are optimistic that agreement can be reached.

*Did the organizers have a license from NRW to do so?*

Defra holds no information as to whether RVHS, the organisers and supervising organisation that ran the tunnel tour on the date in question, hold a valid bat licence at this time, nor was it considered necessary at that time by Defra as bats were not recorded in that North Tunnel, hence the tour being relocated from the main Central Tunnel to the North Tunnel.

The information is exempt under regulation 12(4)(a) of the EIRs, which relates to information which is not held at the time when an applicant's request is received. Please see below for further details on this regulation.

*Did the visitors were given a view of the main tunnel. By going into the tunnels at this time, the ambient air temp would have changed and could have caused harm to the bats if present.”*

Neither visitors nor RVHS volunteers were permitted into the Central Tunnel on the date you refer to in your information request. Permission was only given to access the North Tunnel. The Central Tunnel remained locked.

### **Regulation 12(4)(a)**

Regulation 12(4)(a) is a qualified exception, which usually means that a public authority is required to conduct a public interest test to determine whether or not information should be disclosed or withheld. However, the Information Commissioner's Office (ICO), who is the independent regulator for requests made under the EIRs, takes the view that a public interest test in cases where the information is not held would serve no useful purpose. Therefore, in line with the ICO's view, Defra has not conducted a public interest test in this case.

We attach an annex giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter please contact me.

Yours sincerely

[Redacted]

**Information Rights Team**  
[InformationRequests@defra.gov.uk](mailto:InformationRequests@defra.gov.uk)

## **Annex**

### **Complaints**

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 11 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Nick Teall, Head of Information Rights, Area 1E, Nobel House, 17 Smith Square, London, SW1P 3JR (email: [InformationRequests@defra.gov.uk](mailto:InformationRequests@defra.gov.uk)) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner's Office (ICO) for a decision. Please note that generally the ICO cannot make a decision unless you have first exhausted Defra's own complaints procedure. The ICO can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF