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Mr Carroll  
(by email to [request-65759-afaabf9e@whatdotheyknow.com](mailto:request-65759-afaabf9e@whatdotheyknow.com) )

2 June 2011  
Our ref.: RFI 3984

Dear Mr Carroll

### **RFI 3984 - Information on hazardous substances in Oldbury – Rattlechain lagoon**

Thank you for your email of 4 May, in which you requested an internal review of the handling of your request for information on hazardous substances in Oldbury – Rattlechain lagoon.

In accordance with Defra's internal review procedures, we have considered your appeal in discussion with colleagues who handled your original request. We are dealing with your request under the Environmental Information Regulations 2004 (EIRs).

#### **Summary**

Although Defra did make an effort to identify the correct public authority to respond to your original request, it failed to acknowledge your original email and the follow-up email which you sent when the 20-working-day deadline expired. Defra made procedural errors, and your complaint is therefore upheld. We apologise for the oversight that led to Defra's failing to respond adequately to your request.

I set out below a fuller explanation of our decision and the information we are now in a position to provide.

#### **Chronology**

On 16 March 2011 Defra's Customer Contact Unit (CCU) received your request for information via the Whatdotheyknow.com website. An automated response was sent to you from the mailbox.

On 17 March 2011 the CCU's Business Support team forwarded your email to the Environment Agency (EA) in the belief that it would be more appropriate for the EA to provide a response.



On 22 April 2011 you contacted the CCU again via the Whatdotheyknow.com website, asking to be advised of the status of your request for information.

On 25 April 2011 the CCU emailed the EA again, asking whether the request was one for the EA to respond to.

On 4 May 2011 the EA responded to the CCU, following a brief unrecorded telephone call the previous week, explaining their position that Defra should respond and attaching a copy of a letter dated 2 April 2009 that they had sent to you, as well as additional information to be fed into Defra's response.

On 4 May 2011 you emailed Defra via Whatdotheyknow.com to request an internal review of the handling of your case. An automated response was sent to you from the CCU mailbox.

On 5 May 2011 my colleague Val Hope of the Information Rights Team sent you an acknowledgement of your request for an internal review on my behalf.

### **FOI or EIRs**

We have concluded that the EIRs are the applicable information access regime. This is because information held by Defra on hazardous substances in the lagoon would meet the definition of environmental information set out in regulation 2 of the EIRs, being information on discharges and releases into the environment and the state of the elements of the environment, here water.

### **Timeliness (regulation 5)**

We have considered whether Defra complied with the requirement in regulation 5 of the EIRs to respond to a requester no later than 20 working days after the date of receipt of the request. The only correspondence that you received from Defra was automated responses generated whenever an email is received by the CCU mailbox. Defra therefore failed to comply with the legislation.

### **The information**

Defra's Waste Programme Office has now looked into your request, which quoted a response to a Parliamentary Question. For your convenience, we include our responses to your questions below.

#### **Question (i)**

Evidence of any "analysis" [Defra] holds and when this analysis was carried out concerning how this figure was derived and reported by the former minister, given that the Environment Agency claim to have never tested for this chemical in the sludge, nor the barrels of waste reported to contain white phosphorus up to 1% by volume? Logically if the Department does not hold this information, was the minister or those briefing him making this figure up?

The response to the Parliamentary Question asked by Adrian Bailey MP and answered by former minister Dan Norris on 15 June 2009, which you referred to in



your email, was provided directly by the EA and did not include any additional briefing or policy input from Defra. However, the EA has now provided Defra with additional information as a result of the consultations referred to above under "Chronology". The figure of 0.01 per cent was derived from an analysis results table in the 1990 Cremer and Warner Report on the Rattlechain Lagoon commissioned by the Black Country Development Corporation (Table 3.8 Summary of Lagoon Sediment Contamination).

The result for elemental phosphorus in the lagoon sediments was reported as a range of 0.4 - 122.0 mg/kg in this table. The higher figure was converted to a percentage and rounded out to give 0.01 per cent.

The Cremer and Warner Report was supplied to you in April 2009 by the EA.

Question (ii)

How much yellow/white phosphorus by weight (not percentage which offers disingenuous connotations about the amount of this banned toxic rat poison) is estimated to be in the sludge in the lagoon?

Question (iii)

With the estimated human lethal dose of white phosphorus to be between 50-100mg, less than potassium cyanide, what percentage is this of the overall weight of white phosphorus contained in the Rattlechain sludge?

(ii)+ (iii) The EA has told Defra that it does not have sufficient information about the total quantity of waste in the lagoon to calculate this figure as the site was operational from 1948 to 1978 before it was licensed in accordance with the provisions in the Control of Pollution Act 1974 (and more recently under the Environmental Permitting (England and Wales) Regulations 2010).

The information is therefore not held by Defra and the exception under regulation 12(4)(a) of the EIRs is engaged. This exception provides that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received. This exception is subject to a public interest test. However, as the Information Commissioner has noted, a public interest test in respect of information that is not held would serve no useful purpose.

I hope that the above answers your letter satisfactorily. However, if you remain dissatisfied, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

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

<http://www.ico.gov.uk/complaints.aspx>



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Yours sincerely

**Brendan Walsh**  
**Head of the Information Rights Team**

