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Marie Milet

By email: [request-801318-40387a4b@whatdotheyknow.com](mailto:request-801318-40387a4b@whatdotheyknow.com)

Our ref: EIR2021/25766

11 November 2021

Dear Marie Milet,

**REQUEST FOR INFORMATION: Consultation on Biodiversity Gain: Updating Planning Requirements**

Thank you for your request for information of 20 October 2021 about a consultation on biodiversity gain. 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).

Your information request and our response are set out below.

*I would like to make the following request under the Environmental Information Regulations 2004 ("EIRs"):*

*All responses to the following consultations. You can exclude responses from individual members of the public.*

*"Biodiversity gain: updating planning requirements" which ran from December 2018-February 2019*

We want to be as open as possible in answering requests. The EIRs also require us to provide advice and assistance to help people obtain the information they are looking for and make good use of the EIRs.

Unfortunately, your request is very broad and covers a large amount of information. Gathering and reviewing all 470 consultation responses would involve a significant cost and diversion of resources from the Department's other work.

By virtue of regulations 12(1) and 12(4)(b) of the EIRs, Defra may refuse to disclose environmental information if the request for the information is manifestly unreasonable and, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

We consider that your request is manifestly unreasonable under regulation 12(4)(b) on cost grounds and, having carried out the above public interest test, we have concluded that, in all the circumstances of the case, the public interest falls in favour of maintaining the exemption.

In reaching our decision with respect to the public interest, we considered the following matters.

We recognise that there is a public interest in the disclosure of information. We have published a summary of all consultation responses received in December 2019. We understand that release of information aids accountability and transparency of government and any further public understanding of the issues involved. However, we consider this is outweighed by the stronger public interest in maintaining the exception.

Your request is broad in nature across a consultation document that asked 45 questions. We would need to go through each of the 470 responses to identify if these were from individuals and review the remaining content to check if there are any sensitivities over the release of the remaining responses. It would involve a significant burden for Defra to process and we would have to divert resources from the provision of public services, i.e. the department's core functions, to fully answer your request. On that basis we estimate it would take well in excess of 24 hours to review and consider the information requested. We have therefore concluded that due to this burden the public interest in withholding the requested information, for the reasons outlined, outweighs the public interest in its disclosure.

Regulation 9 of the EIRs requires public authorities to provide advice and assistance to applicants where reasonable.

The best way we can help you is to ask you to consider narrowing down your request to focus more clearly on the precise information you are seeking. We suggest that you:

- limit your request to responses from no more than five specific respondents. The government published a summary of all 470 consultation responses received to the Biodiversity Net Gain consultation in 2019. This can be found here [Biodiversity net gain: updating planning requirements - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/biodiversity-net-gain-updating-planning-requirements). A list of all organisations that responded to the consultation is included on pages 86-90.

Please note that we will handle your modified request as a new request. The 20-workingday timescale for responding to requests will therefore commence from the date that we receive the modified request. We also note that you do have two other information requests recently submitted to Defra that are currently being processed.

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

**Jo Collinge**  
**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 Andrew Mobsby, Head of Information Rights via email at [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 using the following link:

<https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>