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Mr Richard Bales
request-505554-fc9377f5@whatdotheyknow

Our ref: IR2019/26100
16 May 2019

Dear Mr Bales,

INTERNAL REVIEW OF REQUEST FOR INFORMATION: Air Quality Expert Group Report

I am writing in response to your email of 26 October 2018 asking for an internal review of our handling of your request on the Air Quality Expert Group Report. We have handled your request under the Environmental Information Regulations 2004 (EIRs). I would also like to apologise for the delay in sending our response.

Your case has been reviewed by the Information Rights Team within Defra in discussion with colleagues who handled your original request. Following careful consideration, I have decided not to disclose the additional information you have requested. I can confirm that while we hold information within scope, this information is being withheld as it falls under the exception in regulation 12(4)(e) relating to internal communications. I have reviewed the public interest argument again and consider that the presumption in favour of disclosure continues to be outweighed by the harm of releasing this additional information.

Your initial request asked the following:

1. What formal sign-off procedures were required to be completed before the AQEG report was approved for publication? Were those sign-off procedures documented before / at commencement of the AQEG's work?
2. Which Government Departments, Agencies and Non-Departmental Public Bodies were required to formally sign-off before publication of the report? Please confirm the dates on which each of such sign-offs were received.
3. Were any other third parties requested to approve the report before publication was authorised? If so, please identify with dates.
4. Who gave final authorisation for the report to be published and who determined the date on which it was to be made available for public access? Please confirm the dates on which such decisions were taken and communicated.
5. Please provide copies of all correspondence between the AQEG and all other parties, relating to sign-off (or comment on) the report, during the nine months leading up to its eventual publication on 27th July, 2018.

The information requested in questions 1 to 4 was provided but in response to question 5 we redacted some details on the basis of regulations 12(3) and 13(1), as they constituted third party personal data, and withheld some information as it engaged regulation 12(4)(e). This covered internal communications involving communications between Defra officials. I understand your internal review complaint relates specifically to the information withheld under regulation 12(4)(e) and relates to internal communications.

As mentioned above, following careful consideration, I have decided to continue to withhold the information you requested in question 5. I explain this decision in some more detail below.

Regulation 12(4)(e) of the EIRs acknowledges that there will be circumstances where the public interest balance means that internal communications within a government department should not be disclosed. In applying this exception, I have to balance the public interest in withholding the information against the public interest in disclosure, noting the pre-assumption of disclosure in EIRs.

The typical arguments in favour of disclosing information include transparency and accountability. We recognise that there is a public interest in the disclosure of information concerning shale gas, as this is a sensitive issue of major environmental importance.

On the other hand, there is a strong public interest in Defra's ministers and officials having a safe space in which to operate and consider advice that contributes to the development of government policy, including in areas where policy is still being formulated. This argument is particularly strong when considering advice from the Chief Scientific Advisor (CSA).

Our original response to you stated that policy officials "would be less candid in expressing their views at the time" if they knew or thought that their communications would be disclosed after a decision had been reached. Defra staff are aware that members of the public may request access to any information that the department holds. We are also well aware of the EIRs' emphasis on the presumption in favour of disclosure. In addition, Defra makes available much of the scientific research, underlying data and associated evidence we use to make policy decisions on the appropriate publically accessible platforms. Also, we are aware of the protections that the EIRs provide in respect of sensitive information contained in internal communications around policy formulation and development but we try to use this as sparingly as possible. Recent case-law from the Upper Tribunal ([2015] UKUT 527 (AAC)) equates the protection given by regulation 12(4)(e) to the protection given to the conduct of public affairs by section 36(2)(c) of the Freedom of Information Act 2000. Judge Turnbull notes that the only limitation is that the communications must be internal ones.

The key part of the CSA's role is that he must remain able to give full, frank and impartial advice to Ministers and officials. The current incumbent combines his Government role with his position as Professor in Biology at the University of St Andrews. Officials within Defra must be able to discuss this advice without prejudice in formulating policy and plans

that may be based on that advice. Judge Turnbull, in the case I refer to above, notes that there “is no binary distinction between a policy being ‘live’ or ‘not live.’”

Therefore, we continue to argue that to disclose the disputed information via the EIRs would compromise both the policy-making process and the role of the CSA.

I hope that this letter answers your complaint 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

Please also see - <http://www.ico.gov.uk/complaints.aspx>

Yours sincerely,

Nick Teall
Head of Information Rights Team