

Email: request-887286-38b72523@whatdotheyknow.com

10 October 2022

Dear Mr Clarke,

Internal Review: Environmental Information Regulations (EIR) (2004)

Thank you for your email dated 13 September 2022, requesting an internal review of our decision to refuse ATI-23791a under EIR (2004) Regulation 12(4)(e) internal communication and Regulation 12(4)(d) information in course of completion.

I have outlined your reasons for an internal review below;

- *Referring to Regulation 12(4)(e) - if, in the present case, drafts were discussed e.g., with the owners of the site or their agents then the drafts are no longer internal documents and should be disclosed.*
- *Referring to Regulation 12(4)(d) - The argument in favour of disclosure is built into the reason given for non-disclosure. The report is no longer in course of completion. It is completed. this issue no longer applies.*

I have outlined your initial request (ATI-23791a) for information under the EIR as follows;

- *The decision document relating to the grant of a Permit to the Incinerator on Barry Docks was issued on 07/02/2018 No. EPR/AB3790ZB. Please supply me with copies of the drafts of this document.*

The purpose of an internal review is to assess how the Environmental Information Regulations (EIR) (2004) request was handled in the first instance, and to determine whether the original decision given to you was correct. This is an independent review, and I was not involved in the original decision.

I have reviewed all correspondence relating to your request, spoken to members of staff involved and reviewed the guidance on the Information Commissioner's Office website to inform my decision.

Conclusion

[What does Regulation 12\(4\)\(e\) EIR say? | ICO](#)

A public authority may refuse to disclose information to the extent that the request (e) involves the disclosure of internal communications.

NRW aims to be open and transparent when handling EIR requests as well as general correspondence. However, the ICO recognise that a public authority has the right to protect their right to private thinking space.

Draft decision documents relating to the grant of a Permit to the Incinerator on Barry Docks were not shared with any external party.

Draft documents were filed on our internal document management system so that other NRW staff members could consult it. Therefore, I conclude Regulation 12(4)(e) was applied correctly.

What does Regulation 12(4)(d) EIR say? | ICO

A public authority may refuse to disclose information to the extent that (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data

ICO guidance states that the regulation includes draft documents that are unfinished even if the final version has been produced. The draft documents that have been refused under this exception were used to facilitate decision making and was a channel for commentary.

The chilling effect should also be considered to provide the opportunity to produce frank and candid views in the decision-making process. Disclosing these drafts could impact the quality of decision making in future.

Creating draft documents is a part of the process in which NRW reaches decisions and requires a safe space to do so. We wish to protect the integrity of the decision-making process and believe drafts would not adequately inform public debate on decision making as an organisation.

The final decision document was included in the response from Access to Information team dated 13 September 2022.

Having reviewed the information in relation to your request I consider the above requirements, as outlined in the ICO guidance, have been met. Therefore, I have concluded that the refusal to provide requested information under Regulation 12(4)(d) has been applied correctly.

I now consider that I have complied with your request for an internal review. However, if you are dissatisfied with my response you are entitled to pursue this matter with the Information Commissioner's Office, details below.

Yours sincerely

Miriam Jones

Arweinydd Tîm Cwynion a FOI | Team Leader FOI & Complaints

Cyfarthrebu, Cwsmer a Masnach | Communications, Customer and Commercial Directorate

Cyfoeth Naturiol Cymru | Natural Resources Wales

Croesewir gohebiaeth yn y Gymraeg a'r Saesneg
Correspondence welcomed in Welsh and English

Information Commissioner's Office

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Officer. The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if they consider we have handled it incorrectly.

You can contact the Information Commissioner's Officer at the following address;

Wycliffe House

Water Lane

Wilmslow

Cheshire SK9 5AF.

Tel: 0303 123 113

Fax: 01625 524 510.

E-mail: casework@ico.org.uk.

Website: <http://www.informationcommissioner.gov.uk>

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