

Helen Hamilton
By email to: request-979502-
ad885598@whatdotheyknow.com

Our ref (RFI):310260
Our ref (Internal review) 313929
Date: 7 September 2023

Dear Helen Hamilton

RE: Internal review of request for information under the Freedom of Information Act 2000 (FOIA)/ Environmental Information Regulations 2004 (EIR)

Further to your e-mail (dated 12 June 2023), advising us that you are appealing our decision to refuse disclosure of the information you requested on 10 May 2023, I have conducted an internal review.

Firstly, I apologise for the delay in our response. We were awaiting information from third parties and those involved with the original decision to ensure our decision was informed correctly and did not wish to compromise the final decision of this review without gathering all of the information from the relevant parties involved.

Conclusion of the Internal Review

I note your comments were specifically in relation to the lack of documentation provided, however I have conducted an internal review on the entirety of our response and handling of your request for completeness.

The internal review concludes that the decision made to withhold information was **partially correct**.

The exceptions applied to the information were EIR Regulation 12(4)(d)- 'Material still in the course of completion, unfinished documents and incomplete data and EIR Regulation 13(1) – Personal data as set out in our letter of 9 June 2023.

EIR Regulation 12(4)(d)

It was stipulated that EIR Regulation 12(4)(d) applies because "we consider this material to be information created as part of formulating and developing policy, where the process is not complete. Releasing this information which is in draft form could be misleading to the public. Therefore, we are withholding this under EIR Regulation 12(4)(d) – Drafts "

I find that this exception was incorrectly applied to the majority of the withheld information. I have reviewed the withheld documentation and public interest factors for and against disclosure and find that the majority of the withheld information can
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be disclosed as the discussions relate to information that has already been published or are draft versions of documents that have been published such as the Cabinet Commission Report dated 2 March 2023. Further the majority of the documentation falling within scope of your request relates to general procedural/process discussions and the correspondence and documents do not directly include information awaiting to be finalised. Rather, we consider the information to be discussions surrounding the content of the finalised documents.

I enclose further correspondence between the Environment Agency and Rachael Joy via the following Sharefile link: <https://ea.sharefile.com/d-s00556325a4634f96892739bb96256d9d>

Please note, this link will expire after 28 days.

Please refer to [Open Government Licence](#) which explains the permitted use of this information.

We have redacted the names and personal details of identifiable living individuals. This information has been withheld under EIR Exception 13(1) as we are unable to provide you with information in respect of third parties, which is classed as personal data.

Relevant exceptions

The exception that applies to the withheld information is:

- EIR Regulation 13(1) – Personal data - We are unable to disclose information relating to third parties as this is personal data under the Data Protection Act 2018 (DPA 2018) and to disclose it would breach the First Data Protection Principle of the DPA 2018. The information requested is therefore exempt due to Regulation 13(1) of the Environmental Information Regulations 2004, which explains that:

“To the extent that the information requested includes personal data of which the applicant is not the data subject, a public authority must not disclose the personal data if—

(a) the first condition is satisfied...”

The ‘first condition’ referred to above is further explained in Regulation 13(2)(a):

“The first condition is that the disclosure of the information to a member of the public otherwise than under these Regulations—

(a) would contravene any of the data protection principles...”

However, I consider that EIR Regulation 12(4)(d) was applied correctly to withhold the draft early prospectus and discussions relating to this draft on the basis that it was a very early version which worked stopped on as a significantly different version

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of the prospectus was drafted being the Cabinet Commission Report, the final version of which was published on 2 March 2023. It would not be in the public

interest to disclose an early version of the published report and discussions relating to this draft as it would distract public debate away from the substantive environmental issue that the information relates to as could result in debate focusing on secondary issues such as deficiencies in the information or the difference between an early version and a final report. Further disclosure of such early discussions relating to a draft document could prejudice the quality of advice and information in the drafts hence the quality of decision-making would suffer. However, as we are an open and transparent organisation, we are releasing a later draft version of the Cabinet Commission Report (dated 2 March 2023) as this draft does not differ significantly from the final report and I do not consider would cause significant harm to the ongoing debate on the issue.

EIR Regulation 13 (1) - Personal Data

It was stipulated that the information requested is therefore exempt due to Regulation 13(1) of the Environmental Information Regulations 2004, which explains that:

“To the extent that the information requested includes personal data of which the applicant is not the data subject, a public authority must not disclose the personal data if—

(a) the first condition is satisfied...”

The ‘first condition’ referred to above is further explained in Regulation 13(2A):

“The first condition is that the disclosure of the information to a member of the public otherwise than under these Regulations—

(a) would contravene any of the data protection principles...”

This is because the information you requested contained personal and sensitive data of parties involved, whom you do not have the consent from to receive their information.

As a public regulatory body, for openness and transparency, we have released the names of EA staff members. However, we have chosen to redact personal data of individuals from external organisations as the data is personal to non-EA staff (bar Rachael Joy, Herefordshire Council), for which we do not have consent for release. Furthermore, I have redacted further information in the attached documents which we are now releasing to you as such information could constitute sensitive personal data.

As such, I consider that personal information has been withheld correctly in accordance with EIR Regulations 12(3) and 13(1) and the provisions of the Data
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Protection Act 2018 as set out in that letter.

The Public Interest Test:

We only withhold information if we are sure that disclosure would cause substantial harm.

With regards to EIR Regulation 12(4)(d), I consider that there would not be significant harm if the majority of the withheld information were to be disclosed to the public. This is because there is a strong public interest in disclosing information relating to the decision-making process (including ideas, thoughts, and potential solutions) where a final report has been published or an announcement of the decision has been made as doing so ensures openness and transparency by public authorities and promotes accountability.

We have considered the benefits of releasing the information in order to inform the public debate around this subject matter. I disagree that there is a strong public interest in withholding all the information and disagree that such information is misleading to the public. We consider that information on correspondence regarding restoring the River Wye should be released at this time as it does not risk presenting a misleading picture, or that it would result in significant harm to our ongoing decision-making relating to the issue. We also consider that much of the information is already within the public domain and can be accessed freely online.

Turning to personal data, there is no requirement to conduct a separate public interest test where the refusal relates to the exception for personal data, as is the case when considering other exceptions to disclosure under EIR. However, there is an inherent public interest test when considering whether the disclosure of personal data would be a breach of data protection legislation which balances the competing interests of privacy and transparency.

I do not consider there is a lawful basis for us to withhold all of the information. Even if the disclosure were to be unlawful it would be unfair and therefore would not change our disclosure decision.

Service levels

I also find that we did not follow our internal EIR procedures and that we did not comply with our duty to respond within the statutory timescales. We responded to your request one day after the deadline (9 June 2023). I identified that we did not send you an email informing you of the delay.

Given the above, I have identified areas for improvement and have taken some time
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to reflect upon our ways of working. One of the main learning points from this internal review, which I will share with the C&E team, initial handling of the request, it would be good practice to ensure all individuals involved within the request are sent the request at the earliest opportunity. I also consider we should inform customers when responses will be delayed to manage expectations. I further consider that we must read all guidance from the ICO and consider the legalities when applying exceptions. We apologise for this oversight error and can confirm that feedback will be given to staff and that processes will be reviewed and updated accordingly. It is important we prioritise EIRs, to help us achieve our aim to be open, transparent and provide the best customer service we can. We will review our internal C&E processes and guidance to ensure our staff are aware of managing expectations of all our customers. I would like to thank you for your patience with this matter.

Rights of appeal

If you are not satisfied with this review of our decision not to supply the requested information you can make an appeal to the Information Commissioner, who is the statutory regulator for freedom of information. The address is: ICO, Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF. Tel: 0303 123 1113 (local rate) or 01625 545 745 (national rate) | Fax: 01625 524 510 | casework@ico.org.uk | <http://www.ico.org.uk>

Yours sincerely

Customers & Engagement Specialist

For further information please contact the Customers & Engagement team on

Tel. 02084 747856

Direct e-mail:- enquiries_WestMids@environment-agency.gov.uk