



Department
for Environment
Food & Rural Affairs

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xxxxx Chester

Email: request-182800-6dc8c10c@whatdotheyknow.com

Your ref:
Our ref: RFI 5953
Date: 23 January 2014

Dear Mr Chester,

**REQUEST FOR INTERNAL REVIEW: CORRESPONDENCE BETWEEN DEFRA AND
THE NATIONAL AUDIT OFFICE CONCERNING THE WASTE PFI GRANT TO SURREY
COUNTY COUNCIL / CHARLTON LANE ECO PARK**

Thank you for your email of 23 December 2013 appealing the response you received on the same day, regarding information on all correspondence between DEFRA and the National Audit Office in the period between 30 August to 30 October 2013 concerning the waste PFI grant to Surrey County Council / Charlton Lane Eco Park. We are dealing with your internal review request under the Environmental Information Regulations 2004 (EIRs).

In accordance with Defra's internal review procedures, your case has been reviewed by the Information Standards Team within Defra in discussion with colleagues who handled your original request.

Summary

We have considered your appeal, including your arguments in favour of disclosure of all correspondence between DEFRA and the National Audit Office in the period between 30 August to 30 October 2013 concerning the waste PFI grant to Surrey County Council / Charlton Lane Eco Park. We have concluded that although your case was not handled as well it could have been, or in a timely manner – for which we apologise, nevertheless regulation 12(4)(a) of the Environmental Information Regulations 2004 (EIRs) was applied correctly because the department does not hold the information you requested.

I set out below a fuller explanation of our decision.

Chronology

On 30 October 2013, you made a request for information to Defra asking: "Please provide all correspondence between DEFRA and the National Audit Office in the last two calendar



months concerning the waste PFI grant to Surrey County Council / Charlton Lane Eco Park”.

On 26 November 2013, WIDP Programme Office wrote to you to extend the time limit for responding to your request by 20 working days from the original deadline of 27 November 2013, because of the complexity of your request and the volume of the information to be searched. WIDP further advised you to expect a reply by 27 December 2013.

On 23 December 2013, WIDP Programme Office in their reply to you stated that Defra has been in contact with the National Audit Office to discuss the waste infrastructure funding scheme as part of their on-going audit investigation. However, there has not been any direct correspondence, between us and the NAO on Surrey County Council’s waste infrastructure project.

On 23 December 2013, you sent an email to WIDP Programme Office, asking for clarification why the response you had received on 26 November 2013 seems at odds with the one you received on 23 December 2013.

FOI or EIRs

Your request was handled under the EIRs. The EIRs are the applicable information access regime since your request meets the definition of environmental information in regulation 2 of the EIRs. This is because information you requested on correspondence between DEFRA and the National Audit Office waste PFI grant to Surrey County Council / Charlton Lane Eco Park, falls under measures and activities such as policies, plans, and agreements affecting or likely to affect the state of the elements of the environment.

Timeliness (regulation 5)

We have considered whether Defra complied with the requirement in regulation 5(2) of the EIRs to respond to a requester no later than 20 working days after the date of receipt of the request. On 30 October 2013, you made a request for information to Defra, logged under RFI 5953. WIDP Programme sent you a holding reply on 26 November 2013, 19 working days following receipt of your request. A substantial reply was sent to you on 23 December 2013 (within the 20-day allowable extension period). We have therefore complied with regulation 5(2), albeit that we would expect requests where we do not hold the information to be dealt with more quickly.

Refusal letter (regulation 14)

Regulation 14(1) states that if a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation: The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request and shall specify the reasons not to disclose the information requested, including any exception relied on under regulations 12(4), 12(5) or 13;

The refusal shall also inform the applicant that he may make representations to the public authority under regulation 11; and of the enforcement and appeal provisions applied by regulation 18.

In their letter of 23 December 2013, WIDP Programme Office informed you of your right to make representations and of enforcement and appeal provisions.

Defra has therefore complied with regulations 11 and 18.

Exceptions

Regulation 12(4)(a) - Does not hold the information

Regulation 12(4)(a) of the EIRs, applies to information which is not held at the time when an applicant's request is received.

Public Interest

Although regulation 12(4)(a) is a qualified exception, the Information Commissioner, who is the independent regulator for requests made under the EIRs, takes the view that a public interest test in cases where the information is not held would serve no useful purpose. Therefore, in line with the Information Commissioner's view, Defra has not conducted a public interest test in this case.

Other

In their letter of 26 November 2013, WIDP Programme Office informed you that they needed more time due to the complexity and volume of the request. What they should have made clear was that the complexity meant going through the various teams in Defra to find out if any Defra official had been engaged in communication with National Audit Office regarding waste PFI grant to Surrey County Council / Charlton Lane Eco Park during the period in question. Furthermore, the team had to go through enormous amount of paper files and electronic records to ensure that the response given to you was helpful and factual. These points should have been made clearer to you, and we apologise for that oversight.

Conclusion

Having conducted a full review of the handling of your request, we consider that the above exception applied in this case. The information you requested is not held by Defra.

I hope that you consider that this letter fully addresses your concerns. However, if you are not satisfied with the outcome of this internal review, you have the right to appeal 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>

Yours sincerely,

Mike Kaye

Head of Information Standards Team