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Your reference:

Our reference: NIW 418-10-11

Date 04 February 2011

Dear Mr McAree

Freedom of Information Act 2000

Thank you for your recent Freedom of Information request asking for a list of the updates/changes made to the NI Water website during December 2010

After careful consideration, I am unable to disclose information which is not already in the public domain pertaining to the above in accordance with the exemption provided for in Section 36 of the Freedom of Information Act –Prejudicial to the Effective Conduct of Public Affairs.

Section 36(2) (c) of the Freedom of Information Act provides that information is “exempt information” within the meaning of the Act if, in the reasonable opinion of a ¹‘qualified person’, its disclosure would prejudice or be likely to prejudice the effective conduct of public affairs.

The Public Interest Test attached as Annex A refers.

You have the right to request that NI Water formally review this response within two calendar months of the date of this letter. If you wish to do so, please write to NI Water Information Management Unit, 15th Floor, Windsor House, 9 - 15 Bedford Street, Belfast. BT2 7LT

If after such an internal review you are still unhappy with the response, you have the right to appeal to the Information Commissioner at Wycliffe House, Water Lane, Wilmslow, CHESHIRE SK9 5AF, who will undertake an independent review.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

The supply of information under the Freedom of Information Act (FOIA) does not give the recipient or organisation that receives it the automatic right to reuse it in any way that would infringe copyright. This includes, for example, making multiple copies, publishing and issuing copies to the public. Permission to re-use the information must be obtained in advance from NI Water.

Yours sincerely

John Collins

Information Manager
Northern Ireland Water

As you may be aware, the Northern Ireland Authority for Utility Regulation (NIAUR) has been tasked to undertake a formal investigation into NI Water's performance during the recent major freeze/ thaw incident, the terms of reference of which are available at the link below.

http://www.uregni.gov.uk/uploads/publications/Terms_of_Reference_-_NI_Water_investigation_-_7111.pdf

Under the Freedom of Information Act disclosure of information to an individual is considered disclosure to the public at large. NI Water have genuine concerns that the information you wish to be captured, could potentially prejudice the progress and outcome of the Utility Regulator's ongoing investigation.

It is foreseeable that given the considerable public and media interest in matters relating to the ongoing investigation that any significant media comment and speculation generated from such disclosure could impact on NI Water having to divert resources towards management of such matters.

The exemption provided for in Section 36 of the Freedom of Information Act is qualified and so in deciding whether or not to disclose the information requested NI Water must consider the public interest. The Information Commissioners Office considers that information requested should be released unless the public interest weighs in favour of withholding such information.

There is a public interest in the information requested being released because this may:-

- promote accountability and transparency by NI Water;
- lead to increased trust and engagement between citizens and Government and improve citizen confidence that decisions are taken on the basis of the best available information;

The public interest is however also to be served by:-

- A free and frank exchange of views between NI Water, its various Stakeholders and chiefly its sole Shareholder the Department for Regional Development (DRD) for the purposes of deliberation. The release of the information indicated could prejudice those relationships and the prospect of the open exchange of views etc. Premature disclosure of information pertaining to the investigation, whilst the investigation is ongoing, could potentially result in closing off options through adverse public reaction. This would result in NI Water not being able to fully discharge its duties of governance of public funds and the provision of the public services for which the Company is mandated.
- Good Government depends on good decision making and this needs to be based on the best advice available and a full consideration of all the options without fear of premature disclosure.

For these reasons, the ¹'qualified person' for NI Water has decided that the public interest favours the withholding of the information requested.

NI Water is minded of the fact that the sensitivity of the information requested may decrease over time and that this information may be suitably released in the future.

¹ Section 36 requires a determination by a 'qualified person'. It is the only exemption in the Freedom of Information Act that has this provision. The exemption under Section 36 will only apply if the reasonable opinion of a qualified person is that one of the forms of adverse effect specified in the Public Interest test for Section 36 above would follow from disclosing the information. In relation to information held by Government, the qualified person must be a Minister. For Northern Ireland Water the qualified person is the Chief Executive.

