



Department for Transport

Greg Marsden
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Our Ref: E0020915

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Environmental Information Regulations (EIRs) Complaint – E0020915

Dear Greg Marsden,

I am replying to your request, received on the 1st May 2022, for an internal review of the Department's response to your EIR request. You originally asked for information concerning the assumed levels of road traffic and electric vehicle assumptions used in the 'Decarbonising Transport: A Better, Greener Britain' report.

The Department's reply sent on the 4th April 2022 confirmed that it held relevant recorded information but was withholding it in reliance on the exception at regulation 12(4)(e) of EIRs covering the disclosure of internal communications. On balance the Department decided that the public interest test for withholding the information outweighed that for disclosure.

In your request for an internal review you set out a number of grounds for appeal.

Your request for a review has been passed to me to deal with as I had no involvement in the handling of your original request.

I wrote to you on the 30th May 2022 to advise you that I needed to extend my deadline for reply. My review is now complete and I can provide the following response.

In reaching my decision I have carefully considered your original request, the Department's response, the points you raised in your complaint and reviewed relevant Information Commissioner's Office (ICO) guidance.

Scope of the Review

The scope of my review is to establish whether or not the Department was correct to rely on the internal communications exception at regulation 12(4)(e) of the EIRs and if so whether on balance the public interest test favoured withholding.

Findings

I have contacted the team that handled your original request and asked them to send me a sample of the withheld information. They have sent me two documents; some power point slides and an excel data book. Having reviewed these I am content that your request was rightly handled under the Environmental Information Regulations (EIRs) given the nature of the information contained within these documents.

In your internal review request you said, *'The information that I am requesting should not be classified as an internal communication'*. According to ICO guidance on the exception, the concept of a communication is broad and will encompass any information someone intends to communicate to others, or even places on file (including saving it on an electronic filing system) where others may consult it. It will therefore include not only letters, memos, and emails, but also notes of meetings or any other documents if these are circulated or filed so that they are available to others.

The team have also confirmed that the information that you seek has not been shared with external parties outside of government and that it is still being used to formulate and develop 'live' Government policy on this subject. Taking everything into consideration I am content that the information is an internal communication and the exception is therefore engaged.

EIR - Regulation 12(4)(e) – Internal Communications Exception

The ICO's guidance acknowledges that a wide range of internal documents will be caught by the exception although in practice the application of the exception will be limited by the public interest test. I have therefore gone on to consider the balance of the public interest in disclosing / withholding the information that you seek.

Public Interest Test

Even though the exception is engaged it doesn't mean that the information cannot be released if the public interest in disclosure outweighs that for withholding.

I have reviewed the Department's public interest arguments for disclosure and I agree with all of them. I would also add that there is always some public interest in environmental matters. Disclosure would allow the public to scrutinise the underlying information for the report and may allow them to participate in the policy making process.

I have also reviewed the Department's public interest arguments for withholding and I agree with all of them. 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. As mentioned above the information is still being used to formulate and develop 'live' Government policy on this subject and this is a strong argument for not releasing the information at this time. The ICO guidance acknowledges that public authorities need a safe space to develop ideas, debate live issues and reach decisions away from external interference and distractions. The need for a safe space will be strongest when the issue is still 'live' as in this case.

Officials would also be reluctant to participate in discussions on this subject and provide free and frank views and advice if they felt that these would be routinely placed into the public domain. This would damage the quality of advice and lead to poorer decision making which is clearly not in the public interest.

It is my view that on balance the public interest in maintaining the exception outweighs the public interest for disclosure.

Summary

In summary, taking everything into consideration, I am content that the Department was right to refuse your request in reliance on the exception at regulation 12(4)(e) of the EIRs covering internal communications and that on balance the public interest test favoured withholding. I uphold the Department's decision.

Next Steps

If you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: <https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>

Yours sincerely

Ivan Pocock
Information Rights Team