IN THE FIRST-TIER TRIBUNAL **EA/2012/0105**
GENERAL REGULATORY CHAMBER
[INFORMATION RIGHTS]

ON APPEAL FROM:

Information Commissioner's Decision Notice: FS50397506
Dated: 27 March 2012

Appellant: DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS

Respondent: THE INFORMATION COMMISSIONER

Second Respondent: TERESA PORTMANN

Date of hearing: 5 October 2012 (Panel deliberations 11 October 2012)

Date of Decision: 13 November 2012

Before

Annabel Pilling (Judge)
Michael Hake
and
Nigel Watson

Subject matter:

Environmental Information Regulations 2004
Exceptions, Regs 12(4) and (5) – Request relates to unfinished material (4)(d)
Exceptions, Regs 12(4) and (5) – Internal communications (4)(e)
Exceptions, Regs 12(4) and (5) – Course of justice (5)(b)
Exceptions, Regs 12(4) and (5) – Protection of the environment (5)(g)

Representation:

For the Appellant:	Ewan West
For the Respondent:	Robin Hopkins
For the Second Respondent:	Teresa Portmann

Decision

For the reasons given below, the Tribunal refuses the appeal and issues a Substituted Decision Notice.

Substituted Decision Notice

Dated 13 November 2012

Public Authority:
Department for Environment, Food and Rural Affairs

Address:
Nobel House
17 Smith Square
London
SW9P 3JR

The Department for Environment, Food and Rural Affairs did not deal with the request for information in accordance with the requirements of the Environmental Information Regulations 2004; it was not entitled to withhold the information requested on the basis of the exception in regulation 12(4)(d), 12(4)(e), 12(5)(b) or 12(5)(g).

The information requested must (subject to the limited redactions identified in the Tribunal's decision) be disclosed to the Second Respondent within 35 calendar days.

Reasons for Decision

Introduction

1. This is an appeal against a Decision Notice issued by the Information Commissioner (the 'Commissioner') dated 27 March 2012.

2. The Decision Notice relates to a request made by the Second Respondent on 25 February 2011 for a information concerning a non-formal consultation launched on 21 February 2011 by which the Department for Environment, Food and Rural Affairs ('Defra') invited views on a new or revised English Scallop Order.

3. Commercial scallop fishing is one of the UK's most valuable fisheries. It is not a highly regulated industry but it is subject to EU law requirements and was governed domestically by the Scallop Fishing Order 2004 from 1 February 2004.

4. Defra decided to carry out a non-formal consultation on a "package of new measures" to be included in a revised English Scallop Order. On 21 February 2011 it wrote to its chosen consultees seeking their views on the questions posed in Defra's consultation document.

5. The changes suggested in the February consultation document were in respect of:

    i) Limiting the number of dredges within 6-12 nm;

    ii) Restrictions outside 12 nm;

    iii) Restrictions in respect of attachment to dredgers;

    iv) Minimum landing sizes of scallops.

6. Ms Portmann, as one of the consultees, made her request for information on 25 February 2011:

    "Could you please explain why this is a non-formal consultation as opposed to a formal one and what the next steps will be after the closure of the consultation?

    Could you please advise where we might find the basis on which the premise for the consultation has been derived from – where has the idea come from?

    Could you please advise where the supporting evidence/advice has come from and where it may be seen, to reach the conclusion that this measures/consultation is necessary?

    Could you please advise what if any consulting is being conducted with member states with regard to measures outside

12 nm or is it the intention if found appropriate to curtain current activities that this would only affect UK vessels?"

7. Having disclosed various material, Defra withheld three pieces of information under regulation 12(4)(e) of the Environmental Information Regulations 2004 (the 'EIR') (internal communications). These three pieces of information form the subject matter of this appeal (the 'withheld information'):

    i) A "Proposal" document dated 26 November 2008 and marked "DRAFT – work in progress" at the top, with the name of the author and date August 2008 at the end with earlier documents attached as Annexes. This has been referred to generally as the "draft proposal" in this case.

    ii) A discussion paper from 2010

    iii) An email chain from November 2010 between officials at Defra, the Centre for Environment, Fisheries and Aquatic Culture ('CEFAS') and Marine Management Organisation (the 'MMO').

8. The Second Respondent complained to the Commissioner about the outcome of the request. During the Commissioner's investigation of the complaint, Defra further relied on the exception in regulation 12(4)(d) EIR (material in the course of completion). Defra provided the Commissioner with limited information to assist him with his assessment of the public interest balancing exercise.

9. During the Commissioner's investigations, Defra progressed its non-formal consultation by consulting on the evidence base for finalising its impact assessment for the proposed changes to the English Scallop Order. (The final output from the consultation and review process is the Scallop Fishing (England) Order 2012 which repeals the 2004 Order and came into force on 1 October 2012.)

10. The Commissioner issued a Decision Notice on 27 March 2012. He concluded that the information is "environmental" within the defintion at regulation 2(1)(c) EIR as it is information on a measure likely to affect the elements and factors in regulations 2(1)(a) and (b).

11. The Commissioner found that the exception in regulation 12(4)(e) did not apply; although the information constitued "communications", the inclusion of a non-government department, namely the MMO, meant that the communications could not be regarded as "internal".

12. The Commissioner found that the exception in regulation 12(4)(d) applied to the draft proposal but concluded that the public interest in maintaining the exception did not outweigh the public interest in disclosure.

13. The Commissioner therefore directed Defra to disclose all the withheld information.

The Appeal to the Tribunal

14. Defra appeals to this Tribunal. In the Notice of Appeal, Defra advances four grounds of appeal:
    i) The Commissioner erred in his assessment of the public interest in respect of the draft proposal to which the exception in regulation 12(4)(d) applied;
    ii) The Commissioner erred in concluding that the "communications" were not "internal" and therefore the exception in regulation 12(4)(e) was engaged;
    iii) Two further exceptions were engaged in respect of parts of the withheld information, namely regulation 12(5)(b) (course of justice) and 12(5)(g) (protection of the environment);
    iv) Some of the withheld information is outside the scope of the request.

15. The Tribunal joined Ms Portmann as Second Respondent.

16. The Tribunal was provided in advance of the hearing with an agreed bundle of material, and written submissions from the parties. We were also provided with a small closed bundle which was not seen by Ms Portmann; this contained the withheld information and a full witness statement from Gavin Ross of Defra. A redacted copy of his statement appeared in the agreed bundle. Some further parts of his statement were disclosed to Ms Portmann at the hearing. On the day of the hearing we were also provided with a bundle of authorities. Although we cannot refer to every document in this Decision, we have had regard to all the material before us.

Evidence

17. Gavin Ross of Defra gave evidence before us, in both open and closed sessions. He adopted the contents of his witness statement and was then cross-examined by both the Commissioner and Ms Portmann who was not legally represented and had clearly spent time on the presentation of her case.

Regulation 12(4)(e) EIR

18. Defra submit that the entirety of the withheld information falls within the exception in regulation 12(4)(e) EIR. This provides that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal documents. Defra advance six reasons why the MMO should be regarded as "internal" to Defra.:
    i) the wording of regulation 12(8) provides a non-exhaustive clarification of what is meant by "internal communications";
    ii) the EIR are to be interpreted purposively to give effect to the Directive;
    iii) the relationship between the MMO and Defra is such that the MMO should be regarded as "internal";
    iv) the MMO had "internal" responsibilities;

v) the Commissioner failed to ask the obvious question whether, on the facts of the case, there were grounds to justify regarding the communications as being "internal";

vi) reliance on earlier decisions of this Tribunal and the lack of any standardised test.

19. Defra further submits that, even applying a presumption in favour of disclosure as it is obliged to do by regulation 12(2) EIR, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

20. The Commissioner found that the exception was not engaged as the withheld information had been communicated to a non-departmental public body, namely the MMO. He referred to regulation 12(8) EIR which provides that *"for the purposes of paragraph (4)(e), internal communications includes communications between government departments."*

21. Before us, Mr Ross gave evidence in respect of Defra's firm belief and the MMO was "internal" for these purposes because of the contents of the information communicated and the context in which it was created.

22. He set out in detail in his witness statement the basis for this belief and expanded on this further in answer to questions from the Commissioner, Ms Portmann and the Tribunal.

23. He explained that the MMO is the successor to the Marine and Fisheries Agency (the 'MFA') which was an executive agency of Defra. The MMO has a wide range of responsibilities. It is responsible for compliance with and enforcement of fisheries measures and policies, and, in this role, a key adviser on marine issues and informing policy at both the EU and national level. As the principal regulator as well as the delivery body, the MMO delivers functions on behalf of a number of Government departments. For example, it has been vested with the

marine-related powers and functions of the Department of Energy and Climate Change as well as the Department for Transport. It takes forward the policies and objectives of a wide range of Government Departments through its role in developing and delivering marine plans, as delegated to it.

24. The MMO also has responsibility for a range of marine management activities and powers to enforce marine legislation and respond to marine emergencies under the Marine and Coastal Access Act 2009.

25. Defra submits that in relation to the withheld information, the MMO was exercising its statutory functions on behalf of a government department and that it is clear from the withheld information that, on the face of the correspondence, it was intended to be "internal" when considering the circumstances and the intention behind the protection afforded to "internal communications".

26. We agree with the Commissioner that these considerations do not suffice to render the communications "internal", particularly given the need to interpret the exceptions under the EIR restrictively[1]. However Defra, or the MMO, viewed their relationship, as Ms Portmann observed, the MMO was deliberately established as a non-departmental public body rather than as a departmental one, or a government agency. We disagree with Defra's submission that it would be a strange outcome if the result of a change in the machinery of Government were to have the effect of rendering formerly "internal" communications "external" when in substance the nature of the dialogue between the parties was materially unaltered. The "change in machinery" was far wider than simply renaming the MFA the MMO. The MMO has separate accountability and can be called before a select committee for example. If Parliament had intended a non-departmental public body in general, or the MMO specifically, to be

[1] See Article 4(2) of Directive 2003/4/EC which the EIR implement.

included within the definition in regulation 12(8) EIR as to the extent of "internal" in the governmental context it would have done so in the framing of the regulations or by amending them at a later date. This is entirely consistent with the sea change brought about by the introduction of the Freedom of Information Act 2000 and the EIR.

27. Because we do not find the exception in regulation 12(4)e) to be engaged in respect of any of the withheld information we have not gone on to consider the question of where the public interest lies.

Regulation 12(4)(d) EIR

28. The Commissioner agreed with Defra that the exception in 12(4)(d) is engaged in respect of item i) of the withheld information, which is described as a "draft proposal document". Defra also rely on this exception in respect of passages marked in yellow in the email chain and the 2010 discussion document, on the basis that these passages refer to proposals that had been considered but were not being pursued in the consultation to which the request for information relates.

29. Regulation 12(4)(d) EIR provides that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.

30. In respect of the "draft proposal document" Mr Ross explained that it had been created before he began work in the relevant department and he could not give much assistance in respect of its origins save that his understanding was that it was a "kick off" document. Although in his witness statement he refers to it as an "unfinished document" he appeared to accept before the Tribunal that no further versions of this document existed.

31. We do not agree with the Commissioner or Defra jn respect of this document and do not consider that it does amount to an “unfinished document” or “material in the course of completion”

32. Mr Ross referred to the document as a “draft proposal” but it was not, in fact, a draft document at all but a finished document written to discuss the matters identified in paragraph 1. Placing the word “draft” at the top of each page (including separate annexes dated January 2007, October 2007 and February 2008) does not change its status to that of an unfinished document.

33. By the time of the request in February 2011 the proposal process the document addresses had been completed and the consultation document had been issued. We do not consider therefore that it could be regarded as a work in progress. We do not conclude that the exception in regulation 12(4)(d) applies to the “draft proposal document”.

34. In any event, for the reasons given below, we would have concluded that the public interest in disclosure far outweighs any public interest in maintaining the exception.

35. In respect of the relevant passages marked in yellow within the withheld information, we accept on the balance of probabilities that on the evidence of Mr Ross about the development of the consultation process, these matters were not part of the consultation in 2011 but were proposals still under consideration and “work in progress”, or proposals that were no longer being pursued. We accept therefore that in respect of these passages the exception in regulation 12(4)(d) is engaged.

36. We have therefore gone on to consider the public interest arguments in respect of this information.

General Principles

37. The Tribunal expressed concern during the hearing that Defra appeared to have failed to acknowledge or apply the presumption in favour of disclosure in regulation 12(2) EIR. We have borne this in mind when considering where the public interest lies in respect of this information.

38. The following principles, drawn from relevant case law, are material to the correct approach to the weighing of competing public interest factors. We remind ourselves that the principles established by these cases do not form a rigid code or comprehensive set of rules and we are, of course, not bound by decisions of differently constituted Panels of this Tribunal, and regard them as guidelines of the matters that we should properly take into account when considering the public interest test and remind ourselves that each case must be decided on its own facts.

    (i) The "default setting" is in favour of disclosure: information held by public authorities must be disclosed on request unless the EIR permits it to be withheld;

    (ii) The balancing exercise begins with both scales empty and therefore level. The public authority must disclose information unless the public interest in maintaining the exception outweighs the public interest in disclosing the information;

    (iii) The balance of public interest factors must be assessed *"in all the circumstances of the case"*. This will involve a consideration of both direct and indirect consequences of disclosure, including "secondary signals" such as loss of frankness and candour, and the damaging effect of disclosure on difficult policy decisions;

    (iv) Since the public interest must be assessed in all the circumstances of the case, the public authority is not permitted to maintain a blanket refusal in relation to the type of information

sought. Any policy that the public interest is likely to be in favour of maintaining the exception in respect of a specific type of information must be applied flexibly, giving genuine consideration to the particular request.

(v) The assessment of the public interest in maintaining the exception should focus on the public interest factors associated with that particular exception and the particular interest which the exception is designed to protect;

(vi) The public interest factors in favour of maintaining an exception are likely to be of a general character. The fact that a factor may be of a general rather than a specific nature does not mean that it should be accorded less weight or significance. *"A factor which applies to very many requests for information can be just as significant as one which applies to only a few. Indeed, it may be more so."* (per Keith J at paragraph 34, *Home Office and Ministry of Justice v Information Commissioner* [2009] EWHC 1611 (Admin)).

(vii) Considerations such as openness, transparency, accountability and contribution to public debate are regularly relied on in support of a public interest in disclosure. This does not in any way diminish their importance as these considerations are central to the operation of the EIR (and the FOIA) and are likely to be relevant in every case where the public interest test is applied. However, to bear any material weight each factor must draw some relevance from the facts of the case under consideration to avoid a situation where they will operate as a justification for disclosure of all information in all circumstances (*Department for Culture Media and Sport v Information Commissioner* EA/2007/0090 (*'DCMS'*) at paragraph 28)

(viii) The relevant time at which the balance of public interest is to be judged is the time when disclosure was refused by the public

authority, not the time when the Commissioner made his decision or when the Tribunal hears the Appeal (see *CAAT v Information Commissioner and Ministry of Defence* EA/2006/0040 at paragraph 53).

(ix) The "public interest" signifies something that is in the interests of the public as distinct from matters which are of interest to the public (*Department of Trade and Industry v Information Commissioner* EA/2006/0007 at paragraph 50).

(x) If more than one exception is engaged, it is necessary to consider the aggregate public interest in maintaining all of the exceptions relied upon: *Office of Communications v Information Commissioner* [2009] EWCA Civ 90.

39. The public interest in maintaining the exception in regulation 12(4)(d) is said by Defra to be in avoiding setting a precedent of disclosing such documents in order to avoid the following:

i)what is commonly referred to as the "chilling effect" by changing the robust and professional approach taken by those whose views are recorded in fear of future public disclosure; and

ii) the distraction from the issues about which Defra did seek consultation.

40. We were not persuaded that the "chilling effect" argument carries any weight in this case. An assessment of the "chilling effect" can be based only upon the very limited submissions made by the parties, against a background of previous decisions of this Tribunal rejecting many such claims, which were supported by evidence, on the grounds, inter alia, that it was the passing into law of the FOIA and the EIR that generated the chilling effect, no public authority (and this included senior civil servants giving frank advice on matters of significant sensitivity) could thereafter expect that information would automatically remain confidential, and that reliance could be placed on the

robustness of those working for public authorities to continue to give robust advice even in the face of a risk of publicity. Each case is to be decided on its own facts. We therefore do not give any significant weight to this as a factor in favour of maintaining the exception in this case.

41. Defra concedes that proposed legislative change will engage the public interest and that there may be a specific public interest in scallop fishing. It criticises the Commissioner for attaching too much weight to the public interest in decisions to instigate legislative change and submits that greater weight should have been attached to the public interest in maintaining the exception because Government policy was still evolving at the relevant time paying particular regard to the public interest in maintaining a safe space for proposals to be discussed.

42. In addressing the level of "safe space" required in the particular circumstances, Defra submits there is relevance in the fact that there had been a change of Government between the 2008 "draft proposal" and the 2011 consultation, that the consultation was still in progress at the time of the request for information, that the relevant passages relate to matters that were not part of the consultation and that disclosure of these passages would risk drawing the Government into a premature and ill-informed public debate.

43. The Commissioner accepted that, in general, the safe space argument is one which should be given considerable weight but submits that the strength depends on the particular facts of the case. We have had regard to the reasoning of this Tribunal in *Department of Health v Information Commissioner and others* (EA/2011/0286 and 0287) at paragraph 28 and *Chagos Refugees v Information Commissioner and Foreign and Commonwealth Office* (EA/2011/0300) at paragraph 116.

44. Ms Portmann submitted that the consultation in February came "out of the blue" to the scallop industry. She struggled to understand why there was the need or pressure to change the existing Order.

45. In relation to the passages in the 2008 "draft proposal document", this was a document over two years old at the time of the request. The other passages said to fall within this exception are in the documents from November 2010.

46. There were no further documents before us, or said to exist at all, to illustrate the process by which matters raised in the 2008 draft proposal document did not make it through to the consultation process. Mr Ross suggested that there had been *"extensive internal consultation/discussion with people such as MMO and enforcement officers over a period of time"* and that these were the proposals that best delivered the needs and other proposals that had been looked at were inappropriate for various reasons.

47. The difficulty here is that Defra submits that the public interest in disclosure was adequately addressed by the consultation exercise. The consultation document in February 2011 contained discussion and opinion but no evidence upon which these proposals were being advanced. Mr Ross conceded when answering questions from the Commissioner that giving consultees as much information as possible would be helpful to get their views, although, in his opinion, there would be no improvement to the quality of input if Defra were to disclose what had been considered and rejected by the time the consultation document was put together.

48. We agree with Ms Portmann that it is difficult to engage in the consultation process in any meaningful way without knowing the options that were considered in 2008 but were not taken forward in the 2011 consultation process and why. There is a reasonable expectation that any consultation would be done when there is still time and opportunity for those consulted to influence policy.

49. We are not satisfied they were "live" at the time of the request, no need therefore to protect this "safe space" and consider that there is strong public interest in understanding what options had previously been considered. That public interest was strong at the time of the request, contributing to a fully-informed consultation exercise. We agree with the Commissioner and Ms Portmann that consultees should have been able to ask, for example, why particular options were considered in 2008 but not deemed suitable in 2011.

50. We are not persuaded by Defra that the public interest in maintaining the exception outweighs the public interest in disclosure in respect of all the passages marked in yellow in the withheld information. This information must therefore be disclosed.

Regulation 12(5)(b) and 12(5)(g) EIR

51. Before the Tribunal Defra relied, as it was entitled to, for the first time on two further exceptions. It submits that parts of the "draft proposal document" and the discussion document fall within the exceptions in regulations 12(5)(b) and (g) EIR.

52. Regulation 12(5)(b) EIR provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.

53. Regulation 12(5)(g) EIR provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the protection of the environment to which it relates.

54. Broadly, there are two bases for Defra's argument, namely that the withheld information attracts legal professional (or legal advice) privilege (passages marked in green) and/or that its disclosure would risk undermining the enforcement of the laws governing sustainable

and environmentally acceptable scallop fishing (passages marked in blue and green).

55. In respect of 12(5)(b) EIR, Defra submits that the exception is engaged in two regards:

    i) Certain information is covered by legal advice privilege;

    ii) Disclosure would prejudice the MMO's ability to investigate and prosecute offences under the English Scallop Order 2004 and the Sea Fish (Conservation) Act 1967.

56. Our attention was drawn to the case of *Department for Communities and Local Government v Information Commissioner* [2012] UKUT 103 (AAC) in which the Upper Tribunal considered the general approach to be taken in determining whether the exception in regulation 12(5)(b) EIR could be applied. In particular, it is necessary to determine that the course of justice would be adversely affected by the disclosure of material covered by legal advice privilege and, at the material time, the adverse effect must be more probable than not.

57. This Tribunal has concluded in a number of cases that the "course of justice" covers legal professional privilege as the exception exists, in part to ensure that there should be no disruption to the administration of justice. We agree that this is a fundamental element in the administration of justice, based on the need to obtain legal advice and assistance, and to ensure that all things reasonably necessary in the shape of communication to the legal advisers are protected from production or disclosure in order that legal advice may be obtained safely and sufficiently. The circumstances in which legal professional privilege can be claimed have been analysed fully in *Three Rivers District Council and Others v Governor and Company of the Bank of England* [2004] UKHL 48.

58. We do not need to review the authorities, starting with the line of cases beginning with *Bellamy v Information Commissioner and Department*

for Trade and Industry (EA/2005/0023) on this well documented issue. We agree that disclosure of information that is subject to legal professional privilege would have an adverse effect on the course of justice simply through the weakening of this important doctrine. This would, in turn, undermine a legal adviser's capacity to give full and frank advice and discourage the seeking of legal advice. Disclosure would inhibit the ability of the public authority to make its own decision and consider its own position with the benefit of legal advice.

59. The Commissioner agreed that the passages marked in green appear to attract legal professional privilege and that the exception in regulation 12(5)(b) EIR is engaged. Having examined those passages in detail, we do have some concern whether each can be regarded as falling within the exception (for example, where the source of the information is unclear) however we accept on the balance of probabilities that the exception is engaged and therefore go on to consider the public interest.

60. We do recognise that there is not and should not be any automatic presumption against disclosure for information which carries legal professional privilege. By making regulation 12(5)(b) EIR (and section 42 of FOIA) subject to balancing the public interest in disclosure, Parliament clearly rejected the view expressed in some judgments that the public interest in obtaining legal advice in confidence automatically prevails over almost any other interest. Parliament has done exactly what the House of Lords in *R v Derby Magistrates Court, ex parte B* [1995] 4 All ER 526, per Lord Taylor, said was required to change the absolute nature of legal privilege, it has added a public interest balancing exercise.

61. We have reviewed the previous decisions of the Tribunal that have been provided to us, although we do not consider it necessary or helpful to analyse them in this Decision. We have also read carefully the judgment of Wyn Williams J in *Department for Business Enterprise and Regulatory Reform v O'Brien and The Information Commissioner*

[2009] EWHC 164 (QB) and consider that where it is established that legal professional privilege attaches to a document there is an in-built public interest in non-disclosure which itself carries significant weight.

62. The proper approach for the Tribunal is to acknowledge and give effect to the significant weight to be afforded to the exception; ascertain whether there are any particular or further factors which point to non-disclosure and then to consider whether the features supporting disclosure (including the underlying public interests which favoured disclosure) are of equal weight at the very least.

63. For the reasons given in the annex to this decision, we conclude that the public interest in disclosure outweighs the public interest in maintaining the exception.

64. In respect of the passages marked in blue, Defra submits these parts of the withheld information fall within the exceptions in both regulation 12(5)(b) and 12(5)(g) EIR as disclosure would prejudice the MMO's ability to investigate and prosecute offences under the English Scallop Order 2004 and the Sea Fish (Conservation) Act 1967. In turn, this difficulty in enforcement would, if exacerbated by disclosure of this information, adversely affect the protection of the environment.

65. For the reasons given in the annex to this decision, we do not accept Defra's argument about enforcement problems. Like the Commissioner, even if we are wrong about the exception being engaged, we would have concluded that the public interest in disclosure far outweighs any public interest in maintaining the exception.

Outside scope of request

66. Defra also submits that a number of passages within the withheld information fall outside the scope of the request for information and

therefore do not fall to be disclosed even if no exception is engaged and regardless of any public interest considerations.

67. We have reminded ourselves of the wording of the original request for information and looking at the content of the withheld information we are satisfied that the passages marked in grey do not fall within the scope of the request and do not therefore have to be disclosed.

Conclusion and remedy

68. We therefore refuse this Appeal.

69. Defra is not entitled to withhold the information requested on the basis of the exception in regulation 12(4)(d) and / or regulation 12(4)(e) and / or regulation 12(5)(b) and / or regulation 12(5)(g) EIR and must now disclose the withheld information, save for the limited redactions identified below.

70. The material marked in grey in the withheld information does not fall within the scope of the request and need not be disclosed.

71. The parties have agreed that certain names, marked in red, are to be redacted from the information to be disclosed.

72. Our decision is unanimous.

Signed Judge Pilling

13 November 2012