

## Environmental Information Regulations 2004

### Decision Notice

**Date: 7 December 2009**

**Public Authority:** Department of the Environment (Northern Ireland)  
**Address:** Clarence Court  
10-18 Adelaide Street  
Belfast  
BT2 8GB

### Summary

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The complainant requested information from the Department of the Environment (the DoE) relating to an ongoing dispute between himself and the public authority. The DoE provided the complainant with some information, but advised that some information was exempt under section 42 of the Freedom of Information Act (the Act). The DoE claimed it did not hold any further information relevant to the request. During the course of the Commissioner's investigation the DoE reconsidered the request under the Environmental Information Regulations 2004 (the EIR), and argued that the withheld information was in fact exempt under regulation 12(4)(e) of the EIR. The DoE later revised this to claim that the information was exempt under regulation 12(5)(b) of the EIR.

The Commissioner's decision in this case is that the DoE acted correctly when it considered the request under the EIR. However, the Commissioner is satisfied that the withheld information comprises personal data relating to the complainant, and as such it is exempt under regulation 5(3) of the EIR. Therefore the Commissioner finds that the DoE failed to apply the correct exception to the withheld information. The Commissioner also finds that the DoE did provide the complainant with all the non-exempt information it holds.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Act. This Notice sets out his decision.
2. The EIR were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the Commissioner). In effect, the enforcement provisions of Part 4 of the Act are imported into the EIR.

## Background

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3. This complaint relates to an ongoing dispute between the complainant and the DoE. The dispute relates to the Environment and Heritage Service (the EHS, an executive agency of the DoE).
4. The complainant is of the view that the EHS acted wrongly when it held a tender process for individuals to search for and excavate archaeological features known as "burnt mounds" in County Fermanagh, Northern Ireland. This and other events resulted in extensive correspondence between the complainant, the EHS and the DoE.

## The Request

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5. The complainant made a number of requests for information to the DoE, on 10 March 2006, 27 April 2006 and 5 June 2006 respectively. The requests are summarised below, but are set out in full at Annex 1 to this Notice.

### **10 March 2006 request**

6. This request was for information relating to the discovery of a double logboat complex in Derrybrusk, Co Fermanagh, in 1994, and subsequent events relating to this discovery.
7. The DoE responded to this request on 7 April 2006. The DoE provided some information to the complainant and advised that it did not hold any other information relevant to the request.

### **27 April 2006 request**

8. This request related to correspondence between the complainant and the EHS, dating back to 1996. The complainant also requested information relating to a tender process for archaeological work which took place in 1996.
9. The DoE responded to this request on 25 May 2006, providing most of the requested information. However, the DoE advised that it did not hold any other information.

### **5 June 2006 request**

10. This request comprised 22 separate questions, all relating to archaeological finds, tender processes and related issues. In this request the complainant repeated the requests he made in his letter of 27 April 2006.
11. The DoE responded to this request on 3 July 2006. The DoE provided some information to the complainant, and advised that it was withholding one piece of

information under section 42 of the Act (information subject to legal professional privilege). The DoE further advised the complainant that it did not hold the remainder of the requested information.

12. The complainant requested an internal review on 27 October 2006. The complainant advised the DoE that he was generally dissatisfied with its responses to his requests.

## The Investigation

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### Scope of the case

13. On 2 January 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled as he had not yet received a response to his request for an internal review.
14. The complainant wrote to the Commissioner again on 26 February 2007 to advise that he had now received a letter relating to the internal review dated 20 February 2007. In this letter the DoE apologised for the time taken to conduct the review, and advised that the complainant's requests ought to have been considered under the EIR rather than the Act. The DoE considered that it had handled each request appropriately, and had provided information where it was held.
15. The complainant indicated to the Commissioner that he remained dissatisfied in a number of respects. Firstly, the complainant disputed the DoE's view that his requests fell under the EIR. The complainant also disagreed that the DoE had provided him with the information he requested, as he disagreed with the views expressed by DoE staff. Finally, in relation to the internal review itself, the complainant alleged that the DoE had been "economical with the truth".
16. The Commissioner is aware that the complainant is involved in a long-standing dispute with the DoE. However the Act and the EIR provide a means for information to be disclosed into the public domain, and a requester's possible motives for requesting information ought not to be a consideration. The Commissioner is required to make a decision as to whether a public authority has dealt with a particular request in accordance with the Act, or with the EIR. The Commissioner has not considered the voluminous correspondence between the complainant and the DoE which does not request access to recorded information held by the DoE. Therefore the Commissioner's decision in this case relates solely to the DoE's handling of the requests of 10 March 2006, 27 April 2006 and 5 June 2006 as detailed above.

### Chronology

17. The Commissioner wrote to the DoE on 14 August 2007 to request an explanation as to how it had dealt with the complainant's requests. The Commissioner also requested a copy of the information withheld under section 42 of the Act (see paragraph 11 above). The Commissioner noted that this

information was not addressed in the internal review letter of 20 February 2007, and requested an explanation in respect of this issue.

18. Despite continuing correspondence with the DoE the Commissioner did not receive a substantive response to his letter of 14 August 2007. Therefore the Commissioner exercised his powers under section 51 of the Act and served an Information Notice on the DoE on 13 November 2007. This Notice formally required the DoE to respond to the Commissioner's letter of 14 August 2007. The DoE did provide a copy of the withheld information to the Commissioner on 14 November 2007, and it responded to the Commissioner's letter on 13 December 2007.
19. In its letter of 13 December 2007, the DoE advised the Commissioner of its protracted correspondence with the complainant, which spanned a number of years. In light of the volume of correspondence, the DoE had considered relying on under regulation 12(4)(b) of the EIR. This regulation provides that a public authority may refuse to respond to a request if it determines that request as "manifestly unreasonable". However, the DoE advised the Commissioner that it had sought to assist the complainant as far as possible in the hope of bringing the correspondence to a conclusion. Therefore the DoE had not relied on this exception in relation to the complainant's requests.
20. In relation to the withheld information the DoE advised the Commissioner that, having reconsidered the requests under the EIR rather than the Act, it was of the view that the information in question was exempt under regulation 12(4)(e) of the EIR. This regulation provides an exception where the request involves disclosure of internal communications. The DoE provided the Commissioner with an explanation as to how this exception applied, and confirmed that in its view the public interest in maintaining the exception outweighed that in disclosing the information.
21. Following a change in the member of the Commissioner's staff responsible for investigating the complaint, the Commissioner sought additional information from the DoE in December 2008. The DoE provided a detailed submission to the Commissioner on 16 January 2009. At this stage the DoE advised the Commissioner that it had now identified a second piece of information which it considered fell within the scope of the request. The DoE was of the view that the information ought to be withheld in reliance on the exception under regulation 12(5)(b). This exception provides that information is exempt if its disclosure would adversely affect the course of justice.

### **Finding of fact**

22. The withheld information in this case consists of two pieces of legal advice. One dates from 1999, the other from 2005. Both were provided to the DoE by the Departmental Solicitor's Office (the DSO). The DSO is part of the Department of Finance and Personnel for Northern Ireland, and provides legal advice and services to the Northern Ireland government departments.

23. Both pieces of legal advice were obtained and provided in relation to the complainant's dispute with the DoE.

## Analysis

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### Substantive procedural matters

#### Access regime

24. The complainant has argued to the Commissioner that his requests ought to have been considered under the Act rather than the EIR, and indeed the DoE initially did so. However, the DoE subsequently decided that the requested information was in fact environmental information within the meaning of the EIR. The Commissioner must therefore decide which access regime is correct.
25. The DoE argued that the information, to the extent that it was held, fell within the definition of environmental information as set out at regulation 2 of the EIR, specifically paragraphs 2(a) and "(c). These paragraphs provide that environmental information means information on:  
  
*"(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among those elements;*  
  
*(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements"*
26. The DoE did not explain, to the complainant or to the Commissioner, how it reached its conclusion. Therefore, in reaching a view in this particular case, the Commissioner has considered the information requested by the complainant, as set out in Annex 1.
27. As set out at paragraph 3 above, the complainant's dispute with the DoE related largely to his dissatisfaction with the way archaeological activities were administered, as well as the handling of archaeological finds. The Commissioner is satisfied that the requests therefore relate to archaeological activities, and the DoE's actions in relation to these activities.
28. The Commissioner is of the view that such archaeological activities are likely to affect the elements of the environment as referred to in Regulation 2(1)(a). For example, an archaeological excavation is likely to affect the land or landscape.
29. The Commissioner notes that the complainant made numerous requests for information, and that some of these requests were for administrative information relating to internal DoE procedures. The complainant contends that his requests

related to “the performance of DOENI officials, and not at all [to] environmental information”.

30. However, the Commissioner is of the view that the only withheld information in this case does relate to archaeological activities undertaken by the complainant. Therefore the Commissioner concludes that the withheld information is environmental within the meaning of regulation 2(1)(c) of the EIR. For the reasons set out below the Commissioner accepts that the DoE has provided the complainant with all the remaining information that it holds. Therefore the Commissioner is satisfied that his decision in this case should focus on the DoE's refusal to provide the withheld information, which the Commissioner is satisfied is environmental information.

### **Information not held**

31. In his complaint to the Commissioner, the complainant disputed the DoE's assertion that it had provided all the information it held. The complainant drew the Commissioner's attention to his correspondence with the DoE, and argued that, since the DoE claimed it did not hold recorded information in relation to some of his questions, the DoE had provided inaccurate responses.
32. The Commissioner is mindful of the fact that both the Act and the EIR provide access only to recorded information which is held by the public authority at the time of the request. Authorities are not obliged under either access regime to respond to requests for unrecorded comment or opinion, although of course they may choose to do so as part of their normal business in serving the public. The complainant has indicated that he disagrees with the views expressed by departmental officials, and therefore he believes that the DoE has supplied him with inaccurate or incomplete information. However the views expressed by officials in response to comments made by the complainant do not constitute information held under the EIR, since this information was only created and recorded in response to the complainant's questions. In any event the complainant has this information since it is included in letters sent to him.
33. The DoE has provided the Commissioner with details of the searches it carried out in order to ascertain whether or not further relevant information was held. The Commissioner also notes that the DoE has invited the complainant to visit its offices to view the non-exempt information which is held. Therefore the Commissioner has seen no evidence to suggest that the DoE has wrongly claimed it does not hold information.

### **Exception claimed by the public authority**

34. The Commissioner notes that the DoE, in its refusal notice of 3 July 2006, originally refused one piece of information in reliance on the exemption under section 42 of the Act. However, in the DoE's letter to the Commissioner of 13 December 2007 the DoE indicated that it preferred to rely on the exception under regulation 12(4)(e) of the EIR (disclosure of internal communications). Further, in the DoE's letter to the Commissioner of 16 January 2009, the DoE advised that,

having reconsidered the information, it now sought to rely on the exception under regulation 12(5)(b). This exception applies where 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.

35. As explained above, the Commissioner is satisfied that the information in question is environmental information, and therefore falls to be considered under the EIR. Having considered all the arguments put forward by the DoE, and having inspected the withheld information the Commissioner has considered which exception is more appropriate in this particular case.
36. The Commissioner has carefully considered the content of the withheld information, and notes that it relates specifically to the complainant's ongoing dispute with the DoE. Therefore the Commissioner has considered whether the withheld information is in fact the personal data of the complainant.

### **Regulation 5(3): personal data of the applicant**

37. Regulation 5(3) of the EIR states that information is exempt from disclosure if it constitutes personal data of which the applicant is the data subject (see the legal annex for the full text of this provision).

38. "Personal data" is defined in regulation 2(4) of the EIR as having the same meaning as in the Data Protection Act 1998 (the DPA). Section 1(1) of the DPA defines personal data as follows:

*"personal data" means data which relate to a living individual who can be identified –*

*(a) from those data, or*

*(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

*and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."*

39. The Commissioner has therefore considered whether the requested information constitutes personal data of which the complainant is the data subject.
40. As explained at paragraph 22 above, the withheld information in this case comprises legal advice relating exclusively to the complainant's ongoing dispute with the DoE. The advice is specific to the dispute, and does refer to the complainant. Therefore the Commissioner is satisfied that the withheld information "relates to" the complainant.
41. In light of the above, Commissioner is satisfied that the requested information is personal data of which the complainant is the data subject. Therefore the Commissioner finds that the exception under regulation 5(3) is engaged in respect of the requested information.

## Procedural requirements

42. Regulation 14 of the EIR states that a public authority must serve a refusal notice if it refuses any part of a request under regulation 12(1) or 13(1). If a public authority does not hold the requested information it is technically refusing to provide the information by virtue of 12(4)(a) of the EIR, and must state this to the applicant.
43. The Commissioner accepts that the DoE did not hold some of the information the complainant requested. However the DoE did not cite the appropriate exception or regulation to the complainant as part of its refusal notice, therefore the Commissioner concludes that the DoE breached regulation 14 of the EIR.

## The Decision

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44. The Commissioner's decision is that the DoE did deal with the request in accordance with the EIR for the following reasons:
  - The DoE provided information to the complainant where it was held, and advised the complainant where the information was not held.
45. However, the DoE did not deal with the request in accordance with the EIR in the following respects:
  - The DoE did not cite the exception under regulation 12(4)(a) in relation to information it did not hold
  - The DoE failed to consider the withheld information under regulation 5(3) in that it is personal data relating to the complainant

## Steps Required

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46. The Commissioner does not require the DoE to take any further steps under the EIR.

## Other Matters

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47. Although it does not form part of this Decision Notice the Commissioner wishes to comment on the data protection issues that arise from this case.
48. The Commissioner has decided that the withheld information in this case is personal data relating to the complainant, therefore the Commissioner is of the view that this information should have been considered under the subject access provisions of the DPA.



49. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as the right of subject access. The right of subject access is not absolute, and there are a number of exemptions.
50. Schedule 7, section 10 of the DPA provides that information is exempt from the right of subject access if:

“...the data consist of information in respect of which a claim to legal professional privilege, or, in Scotland, to confidentiality as between client and professional legal adviser, could be maintained in legal proceedings”.
51. In this case the Commissioner notes that the withheld information consists of legal advice in relation to the complainant's dispute. The Commissioner considers it likely that this information would be covered by legal professional privilege and would therefore be exempt from the right of subject access under the DPA.

## Right of Appeal

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52. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 7<sup>th</sup> day of December 2009**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Annex 1: Requests for information made to the DoE

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### The 10 March 2006 request

1. All information relating to whatever steps, and on whatever dates, EHS has taken to contact the landowner of Derrybrusk about any aspect of my discovery of the components of double logboat complex on his land in 1994, and the subsequent events relating to these finds.
2. All information relating to any permission given by the owners of the double logboat complex for those components to be retained by EHS for a period exceeding the three months cited in the Historic Monuments Act (NI) 1971, Part IV, 12 (3) page 345.
3. All information relating to the costs to the taxpayer of conserving the components of the double logboat complex. In particular, regarding the larger logboat, the cost of building a "cradle" for the boat; the cost of providing a mechanical digger to lift and transport the boat; the cost of the additional manpower associated with the lifting and transport of the boat; the cost of providing a flatbed lorry to transport the boat at various stages; the cost of custom-building a steel tank (with wheels) in which the boat was submerged in carbowax: and the cost of providing a very large freeze-drying apparatus to further treat the boat; and any other conservation measures.
4. All information relating to the dates of completion of the conservation work on each of the various components of the double logboat complex.
5. All information relating to whatever steps, and on whatever dates, EHS has taken to have the various components of the double logboat complex returned to their owners upon completion of the conservation work on each component.
6. All information relating to whatever steps, and on whatever dates, EHS has taken to have the discovery of the double logboat complex, and its significance, made known to the public: in particular whatever steps have been taken by EHS to have published the detailed account of the double logboat complex contained in the discoverer's treatise submitted to EHS for publication in August 1995.

### The 27 April 2006 request

1. Can you also now under the terms of the FOI give me the accurate details of the exact pathway and fate of the unanswered confidential letter I sent to [named individual] on 5 February 1996 at his specific request?"
2. Under the terms of the FOI I request the following information that is not confidential. In particular I would like to know the names of the contractors who tendered for the 1996 Tonystick excavation, the name of the official to whom they tendered, the values of their tenders, the means by which they were made aware

of the situation at Tonystick, and the sequence of dates involved at each step, including the date of the award of the contract.

### **The 5 June 2006 request**

- A. I request the following information under the terms of the FOI Act 2000.  
How many archaeological finds is EHS, DOENI, sitting upon without informing the owners and without informing the public, in the context of the three-month rules in the 1971 HM Act and the subsequent 1995 Order?
- B. Can you now under the terms of the FOI Act 2000 give me the accurate details of the exact pathway and fate of the unanswered confidential letter I sent to [named individual] on 5 February 1996 at his specific request?
- C. Who was the official to whom tenders for the 1996 Tonystick excavation were forwarded?
- D. Can I have the information about how the contractors were made aware of the situation at Tonystick in 1996, under the terms of the FOI Act 2000?  
Was there a public advertisement?
- E. There should be an EHS log and summary of [named individual]'s 7 September 1996 phone call to me. Can I have full details of [named individual]'s phone call to me of 7 September 1996?
- F. In November 1997 and on 25 May 2006, EHS gave two different dates for the award of the contract, 13 August 1996 and 16 August 1996. Could I have the discrepancy in these dates explained by EHS documentation under the terms of the FOI Act 2000?
- G. Who gave clearance for my 1994 finds from Tonystick to be transferred to Richard Tracey? What was the date on which they were transferred, and under what claimed legal authority, and what was the date on which that claimed legal authority came into existence?
- H. Can I have all EHS information relating to [named individual]'s 1999 letter to EHS concerning my Tonystick finds?
- I. Can I have all information relating to any meetings between [named individuals] and EHS, including the dates and minutes of any such meetings as recorded and archived by EHS, in the context of the three-month rule in the HM Act?
- J. Can I have all EHS information relating to my discoveries at Moundrum, including the name of the EHS contractor who wrote the text for my Moundrum monuments, and the steps that contractor took to contact me about my discoveries?

- K. I request all EHS information relating to
- (1) the arrangements made for my BM treatise to be examined by an editor, and
  - (2) the identity of that editor, and
  - (3) the position, at the time, of my BM treatise in the EHS waiting list for publication, and the steps taken by EHS to inform me of the claims giving rise to points 1 to 3 above.
- L. Under the terms of the FOI Act 2000, I request all EHS information relating to:-
- (1) the identity of Mr B, and
  - (2) the details of the putative progress that was made towards publication of my BM treatise by EHS up to the date of the Ombudsman's report in November 1997, and the steps taken by EHS to inform me of this putative progress.
- M. I request all EHS information relating to:-
- (1) the identity of the officer who hoped to continue to work with me towards publication, and
  - (2) any contacts from that officer to me thereafter, and
  - (3) the identity of the EHS member of staff who claimed that my BM treatise was "incomplete," and
  - (4) the steps that this official took to inform me of "this information concerning me and my work that he had provided to the ex-CE, and
  - (5) the detailed nature of the further work that was undertaken by EHS on my treatise up to November 1997, and
  - (6) the steps taken by EHS to bring about contribution and co-operation from me towards publication of my treatise.
- The steps taken by EHS to inform me of the claims giving rise to points 1 to 5 above.
- N. I request all EHS information relating to the true findspot of the skull, in particular:-
- (1) the exact 8-figure grid references of the two burnt mounds near to the skull findspot, and
  - (2) the exact location of the skull findspot as conveyed to EHS by the Enniskillen CID not later than 7 March 1997 (and printed in the Impartial Reporter of 25 January 1996)-this location should also be provided as an 8-figure grid reference.
- O. I request all EHS information as to how it came about that the contractor for the Tonystick dig in 1996, Ruairi O Baoill of ADS, was unaware of the true location of the skull findspot, the location he was given the contract to dig, using taxpayers' money.
- P. I request all EHS information relating to the source, currency and exactitude of the methodology used by the CE, EHS, to quantify the likelihood of an excavation at the skull site as set out in the column to the left. Arising from this same point, I request all EHS information relating to

the “points out of ten” that pertained in advance to justify the EHS sponsored excavations at:-

- (1) Derryharney, Fermanagh, in 1996, on a site posited by Brian Williams, EHS, in a BBC interview to be a prehistoric house, and
- (2) Reyfad, Fermanagh, in 1999, supposed by the excavators in the Fermanagh Herald to be a “prehistoric ritual landscape” bearing in mind that the excavation reports revealed that both sites were modern (the first only three weeks old).

Q. I request all information as to how it came about that the CE, EHS claimed that the skull was found in Killynure bog, in particular in relation to the following facts (verifiable through the Geological Survey):

- (1) there is no bog in Killynure townland
- (2) the skull was found in Tonystick townland, where the two burnt mounds were located,
- (3) there is no bog in Tonystick townland, the skull was found in a fen (as stated, in Tonystick townland, not a bog in Killynure townland), and given that the CE, EHS was not an archaeologist, the name(s) of the person(s) who wrote this passage (in the column to the left) for the CE, EHS.

V. What disciplinary action was taken against [named individual] resulting from his failure to comply with the rules set out in EHS Regulatory and Statutory Services?

W. I request all information in any and all DOENI policy documents pre-dating September 1996 (the date of my complaint) that sanctions the EHS conduct set out in column 2, insofar as that conduct:-

- (1) makes a distinction between finds made in licensed excavations versus finds made “by chance” and the detailed criteria used to make this distinction, and
- (2) makes a distinction between a licensed excavation director and any other “finder”, as the latter is defined in the HM Act (the former is not mentioned in the Act), and
- (3) rescinds the three-month rule as set out in the HM Act for finds made in EHS-sponsored excavations, and
- (4) rescinds the common-law title of ownership to finds for finds made in EHS-sponsored excavations, and
- (5) makes a distinction, in regard to points 1 to 4, between those excavations paid for by EHS and those paid for by others. I also request all EHS information that provides the explicit legal authority (dated) giving rise to points 1 to 5 above, and further request all information as to whether any such authority is made explicit in a licence to excavate, or in an excavation director’s contract, should the latter emanate from EHS.

X. I request the information from any and all EHS, DOENI documents that expresses how the “goal of display in an appropriate institution” applied to any of my finds withheld by

EHS for over a decade.

- Y. I request all EHS information relating to all instances where EHS has taken the initiative, within the three-month rule in the HM Act 1971 (or the Historic Monuments and Archaeological Objects (NI) Order 1995)
1. to inform a landowner that EHS is holding property discovered by another person on that landowner's land, and
  2. to inform a landowner about any legal title that landowner may have to that property, and
  3. to inform a landowner that EHS wishes that property to be displayed in an appropriate institution, and
  4. to transfer that property to the landowner when the landowner found point 3 unacceptable

Conversely, I request all EHS information relating to all instances where EHS has not taken the initiative vis a vis a landowner under points 1 to 4 above, within the three-months rule.

- Z. I request all EHS information relating to any approaches pre-dating 2004 made by EHS to the landowner of Tonystick concerning any aspect of my discoveries of archaeological objects made on his land in 1994.

## Legal Annex: Relevant statutory obligations

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### Freedom of Information Act 2000

1. **Section 1(1)** provides that:

(1) Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.

2. **Section 39(1)** provides that:

Information is exempt information if the public authority holding it-

- (a) is obliged by regulations under section 74 to make the information available to the public in accordance with the regulations, or
- (b) would be so obliged but for any exemption contained in the regulations.”

### Environmental Information Regulations 2004

3. **Regulation 2 - Interpretation**

**Regulation 2(1)** provides that:

In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);



- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

#### 4. **Regulation 5 - Duty to make available environmental information on request**

**Regulation 5(1)** provides that:

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

**Regulation 5(2)** provides that:

Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

**Regulation 5(3)** provides that:

To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

#### 5. **Regulation 12 – Exceptions to the duty to disclose environmental information**

**Regulation 12(4)** provides that:

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- ...
- (e) the request involves the disclosure of internal communications

**Regulation 12(5)** provides that:

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect:

- ...
- (b) 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;

## Data Protection Act 1998

**6. Section 1(1)** provides that:

(1) "Personal data" means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.

**7. Schedule 7, section 10** provides that:

10. Personal data are exempt from the right of subject access if the data consist of information in respect of which a claim to legal professional privilege, or, in Scotland, to confidentiality as between client and professional legal adviser, could be maintained in legal proceedings.