

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 30 January 2012

**Public Authority:** Northern Ireland Water  
**Address:** Westland House  
Old Westland Road  
Belfast, BT146TE

#### **Decision (including any steps ordered)**

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1. The complainant requested information in connection with the Project Omega Public Private Partnership (PPP) that included a list of parties who applied to NI Water to pre-qualify for Project Omega, electronic copies of their bid documents, ITN (Invitation to Negotiate) submissions, construction timetables and financial models. The complainant also requested particular board packs that may have been circulated to the board of NI Water concerning the project. NI Water disclosed some of the information requested but withheld the remainder under section 12(5)(e) of the EIR.
2. The Commissioner's decision is that Northern Ireland Water correctly applied the exception under section 12(5)(e) of the EIR to the withheld information. The Commissioner also found a number of procedural breaches in relation to the handling of the request.
3. The Commissioner requires no steps to be taken.

#### **Background**

4. Northern Ireland Water (NI Water) is a Government owned company (GoCo) which is a statutory trading body owned by central government but operating under company legislation, with substantial independence from government. As a GoCo, NI Water falls under section 6 of the Act and is therefore a public authority under regulation 2(2)(b) of the EIR.
5. The Wastewater Treatment and Sludge Disposal project (Project Omega) PPP involved the upgrading of existing Wastewater Treatment

facilities in Northern Ireland and was awarded to a consortium of bidders headed up by Glen Water Ltd.

6. Three bid consortia passed the pre-qualification stage of the Omega procurement process in 2005/06. These consortia were constituted as follows, with the lead company/contact point for what was then the Department for Regional Development (DRD) Water Service highlighted in bold print<sup>1</sup>.

- (i) Glen Water Bid
  - a. Thames Water Services Ltd**
  - b. Laing Utilities Ltd
  - c. Dawson WAM
  - d. BSG Engineering
  
- (ii) Dalriada Wastewater Bid
  - a. Kelda Group PLC**
  - b. Earth Tech Engineering
  - c. Farrans Ltd
  
- (iii) Veolia Water Bid
  - a. Veolia Water UK Ltd**
  - b. OTVSA
  - c. CGE

### **Omega Contract Award - March 2007**

7. Glen Water Ltd were constituted (and registered with Companies House) and awarded the Omega Contract. At the time of constitution the shareholders of Glen Water Ltd were defined as:

- (i) Thames Water Services Ltd
- (ii) Laing O'Rourke Portfolio Solutions Ltd

### **Sale of Thames Water Services Ltd – October/November 2007.**

8. Thames Water Ltd sold Thames Water Services Ltd to Veolia Water UK Ltd. The sale also resulted in a change of name to Veolia Water Outsourcing Ltd. From this point on, the shareholders of Glen Water Ltd were therefore:

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<sup>1</sup> None of the above consortia at the time of bid were legal entities – in almost all cases of Private Finance Initiative (PFI) contracts, the winning consortium is only actually constituted as a Limited Company at the time of being awarded the contract.

- (i) Veolia Water Outsourcing Ltd
- (ii) Laing O'Rourke Portfolio Solutions Ltd

9. NI Water advised the Commissioner that it believed it was likely that the complainant in this case may already have access to the Veolia Water bid submissions through one of its shareholders (Veolia Water Outsourcing Ltd) which was part of the Veolia Water UK group of companies. The Commissioner notes that however that even if this is the case, the information is not publicly available as set out in section 6(1)(b) or the regulations.

## Request and response

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10. On 5 February 2010, the complainant wrote to NI Water requesting a set of information in connection with the Project Omega PPP. This request was made up of eight parts and included a request for a list of parties who applied to NI Water to pre-qualify for the project, electronic copies of bid documents of those parties selected to bid for the project, any bid comparison documents for the project and any papers that were available to the board of NI Water prior to the meeting at which they approved the appointment of Glen Water as the preferred bidder.
11. NI Water provided a comprehensive response to the complainant on 5 March 2010 in which it advised that, subject to a public interest test, compliance with the request would be manifestly unreasonable and relied on regulation 12(4)(b) to refuse the request. NI Water set out the indicative time and cost of complying with the request and advised that it also considered several parts of the request would also be exempt from full disclosure under 12(5)(e) of the regulations which relates to the confidentiality of commercial information.
12. On 15 April 2010, the complainant wrote to NI Water and advised that in light of the NI Water response of 5 March 2010, it had set out a revised request and did not want to "*appeal the decision*" to refuse its request. The complainant asked that NI Water treat its revised request of 15 April 2010 as a new request. This new request is the subject of this decision notice and is summarised below:

*"Please provide copies of the following information in connection with the Project Omega PPP project ("the Project") pursuant to the Regulations. In the interests of saving costs we would appreciate the provision of documents electronically where possible, not in paper form, and indeed have specifically requested this medium in one instance*

- i. A list of parties who applied to NI water to pre-qualify for Project Omega.*
  - ii. In respect of all other parties who were selected by NI Water to bid for the project, an electronic copy of their bids documents, including the ITN submissions, construction timetables and financial models.*
  - iii. Any board packs circulated to the board of NI Water prior to the meetings at which they:
    - 1. Decided to approach the project using the PPP;*
    - 2. Approved the appointment of Glen Water as preferred bidder; and*
    - 3. Agreed to financial close on the project based on Glen Water's then current bid.**
13. NI Water responded to the complainant on 14 May 2010. It stated that the request would be dealt with under the Environmental Information Regulations 2004 (the "Regulations").
14. The request was in three parts and was dealt with as follows:
  - NI Water complied with part (i) of the request in full, disclosing all the requested information.
  - NI Water provided some information requested in part (ii), namely the information relating to the Glen Water bid and relied on regulation 12(5)(e) to refuse the remainder of the requested information. NI Water went on to consider the public interest test and found on balance that the public interest favoured non disclosure.
  - NI Water advised that in relation to part (iii) of the request, the questions raised should be referred to its sponsoring body, DRD, as decisions and approvals were made by the Minister at that time. NI Water provided the complainant with the contact details for DRD's Freedom of Information Unit to facilitate this action.
15. On 8 July 2010, the complainant requested an internal review of NI Water's decision to refuse parts of its request. The internal review was completed on 6 September 2010 and upheld the original decision to except the information at part (ii) of the request under the regulations. In relation to part (iii) of the request, NI Water advised the complainant that the Project Omega Agreement was executed by NI Water's predecessor, the Water Service. The Board of NI Water only became legally operational on 1 April 2007 (after the Omega contract

was awarded) when all of the rights, assets and liabilities of the then Water Service were transferred to NI Water Ltd.

## Scope of the case

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16. On 5 October 2010, the complainant, through its solicitor, contacted the Commissioner to complain about the way its request for information had been handled.
17. The complainant considered that in continuing to refuse to provide the information requested NI Water has wrongly applied an exception under the regulations and failed to properly consider the public interest in this case. The complainant also considered that NI Water failed to properly consider part (iii) of its request at the internal review stage. The complainant advised the Commissioner it has directed its request regarding part (iii) to DRD as advised by NI Water but is of the view that NI Water may well have papers that were submitted to the NI Water Board in respect of the matters requested.
18. On 26 November 2010, NI Water provided the Commissioner with the withheld information in this case in electronic format, comprising two computer disks of withheld information and a further disk containing supporting information. For ease of reference, a representative sample of the information contained on the disks was supplied in hard copy comprising the Veolia bid (32 folders), the withheld business case and decision papers forming part three of the request (five folders) and supporting information comprising evidence of contract disputes between NI Water and the complainant (one folder) to support arguments submitted by NI Water in relation to part (iii) of the complainant's request. Whilst a hard copy of the Dalriada bid was not supplied, the Commissioner has viewed this in electronic format on the relevant disk.
19. On 2 August 2011, NI Water provided further arguments to the Commissioner outlining its reliance on regulation 12(5)(e) to part (ii) of the request. In that response, NI Water also advised that there had been some confusion in relation to its interpretation of part (iii) of the complainant's request. NI Water reiterated that the Board of NI Water had not been constituted until April 2007, which was after all the decisions had been made in relation to Project Omega. NI Water told the Commissioner that it holds copies of papers in respect of the various government departments' decision papers relating to the PPP Programme Strategic Business Case, Project Omega Preferred Bidder appointment and Project Omega Final Business Case ("the Decision Papers"). NI Water advised the Commissioner that it would also consider these decision papers would also be subject to regulation 12(5)(b).

20. The Commissioner has examined the decision papers which contain the following information:
1. The Strategic Business Case Approval comprising the Water Service PPP Strategic Business Case (of which Project Omega was part).
  2. The ITN Evaluation Reports, and a subsequent PPP Board Paper 1 on which basis the PPP Programme Board approved the appointment of Glen Water Ltd as the Preferred Bidder (as recorded in the Programme Board Meeting No. 14 Minutes which were also included).
  3. The Assured copy of the Final Business Case for awarding Project Omega to Glen Water Ltd, a Final Business Case addendum and various subsequent queries by the PPP Programme Board representatives.
21. In its response of 2 August 2011, NI Water also advised that it may at a later stage rely on regulation 12(5)(b) (Course of Justice) in relation to some of the withheld information forming part three of the complainant's request. The Commissioner has initially considered NI Water's application of regulation 12(5)(e) to parts (ii) and (iii) of the complainant's request.
22. The complainant communicated to the Commissioner its concerns that NI Water had applied the exception under regulation 12(5)(e) to all its tender information on the basis that such information was all commercially sensitive. The Commissioner noted these concerns and accepted that such a "blanket refusal" is never justifiable. Public authorities must always consider each request individually on merit. In accordance with this approach, the Commissioner wrote to NI Water asking it for detailed information-specific arguments for the exceptions upon which NI Water was choosing to rely. Following the Commissioner's intervention, NI Water considered its position and disclosed some further, previously withheld, information to the complainant. This consisted of:-
- The Veolia bid submission (relates to part (ii) of the request)
  - The PPP Strategic Business Case (relates to part (iii) of the request)
  - E-mails containing approvals from various awarding authorities (relates to part (iii) of the request)

NI Water also provided details of its arguments for applying the exception under 12(5)(b) to the remaining information still being withheld.

23. Therefore, this decision notice only concerns that information which is still being withheld ("the withheld information"), namely: -
- The Dalriada Wastewater bid submission (falling within part (ii) of the request)
  - Project Omega outline and final business cases, appendices and addendums (falling within part (iii) of the request)

## **Reasons for decision**

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24. Regulation 12(5)(e) of the EIR states that:

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

(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

25. The Commissioner considers that this exception can be broken down into four elements, all of which are required in order for the exception to be engaged:
- Is the information commercial or industrial in nature?
  - Is the information subject to confidentiality provided by law?
  - Is the confidentiality provided to protect a legitimate economic interest?
  - Would confidentiality be adversely affected by disclosure?

26. The above criteria has been applied to the withheld information.

### **Is the information commercial or industrial in nature?**

27. The Commissioner considers that for information to be commercial or industrial in nature, it will need to relate to a commercial activity. The essence of commerce is trade and a commercial activity will generally involve the sale or purchase of goods or services for profit.
28. NI Water advised the Commissioner that the information comprising the bid documents of the Dalriada Wastewater bid relates to the treatment of wastewater and the disposal of wastewater sludges, which are industrial processes undertaken for commercial gain by the contracted supplier.

29. In relation to the Project Omega Business cases, appendices and addendums, NI Water advised that the evaluation of commercial bids by NI Water (and its predecessor (DRD (NI) Water Service) is a commercial process which demonstrates the company's appetite for risk, whilst displaying their commercial acumen and so too their weaknesses. NI Water believes it also demonstrates the capability or otherwise of the professional advisors who constructed the business cases for the company and carried out much of the tender assessment and evaluation. NI Water told the Commissioner that as holistic bids, each and every redacted bid document has a commercial value in respect of the bid evaluation, and that disclosure would enable future suppliers to take commercial advantage of the client company (and its parent departments) either by structuring bids on the evaluation capability of clients/client advisors, or as NI Water believes is particularly the case for the complainant in this case, using the evaluation tools and mechanisms to gain commercial benefit through pursuit of claims to recover losses which were the applicant's risk.
30. The Commissioner is satisfied that the withheld information is commercial in nature in that the bid documents and associated decision papers relate to the treatment of wastewater and the treatment of wastewater sludges for commercial gain.

**Is the information subject to confidentiality provided by law?**

31. The Commissioner considers that "provided by law" will include confidentiality imposed on any person under the common law duty of confidence, contractual obligation or statute. There is no need under regulation 12(5)(e) for the information to have been obtained from another. The exception can therefore also cover information created by the public authority and provided to another, or to information jointly created or agreed between the public authority and a third party.
32. NI Water presented an argument to the Commissioner that as part of the ITN Procurement Phase, its predecessor, Water Service, an Executive Agency within DRD required all members of pre-qualifying bidding consortia to sign with them a confidentiality agreement. Furthermore, Clause 57 of the ITN relates to confidentiality and freedom of information and imposes a legal duty on the parties to keep confidential all relevant information.
33. NI Water has advised the Commissioner that the Dalriada Wastewater consortium has confirmed it would consider disclosure of their bid document to be a breach of confidence.
34. As the withheld information is subject to contractual obligations, the Commissioner is minded to accept that the information is subject to



confidentiality provided by law and as such there is no need to consider the common law test of confidence.

### **Is confidentiality provided to protect a legitimate economic interest?**

35. The Commissioner considers that to satisfy this element of the test disclosure would have to adversely affect a legitimate economic interest of the person (or persons) the confidentiality is designed to protect in this case, the bidding consortia comprising lead parties - Glen Water Service (Veolia Water outsourcing Ltd - formerly Thames Water), Veolia-CGE-OTVSA and Dalriada Wastewater. Since the bid submissions by Glen Water and Veolia Water have now been disclosed to the complainant, the Commissioner has only considered the arguments put forward by NI Water and Dalriada Wastewater.
36. In the Commissioner's view, it is not enough that some harm might be caused by disclosure. The Commissioner considers that it is necessary to establish on the balance of probabilities that some harm would be caused by the disclosure.
37. In accordance with the various decisions heard before the First-tier Tribunal (Information Rights), the Commissioner interprets "would" to mean "more probable than not".

### **NI Water**

38. In its submissions to the Commissioner, NI Water advised that in respect of the bid documents relating to Dalriada Wastewater in part (ii) of the request, the confidentiality was required to protect the economic interest of the bidders who considered their bids to remain confidential.
39. In relation to the decision papers (comprising the Project Omega business cases, appendices and addendums) falling within part (iii) of the request, NI Water provided the Commissioner with certain arguments that the Commissioner thought appropriate to include by way of a confidential annex to this decision notice.

### **Dalriada Wastewater consortium**

40. NI Water has advised the Commissioner that the Dalriada Wastewater Consortium and its parent company Keilda Water Services Ltd (KWS)<sup>2</sup>,

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<sup>2</sup> Earth Tech had been the lead party in this consortium but the company had subsequently been spit up and sold, NI Water approached Keilda as the second party in the consortia.

does not agree with the complainant's assertion that the passage of time has diminished the commercial confidence of the unsuccessful bidders and has confirmed it would consider disclosure of their bid document to be a breach of confidence. The Commissioner has been provided comprehensive arguments against disclosure on behalf of the Dalriada Wastewater Consortium which have been summarised below.

41. The Dalriada consortium told NI Water that its bid document consists of financial and technical information which it considers is of significant commercial value and which it believes would give a competitive advantage to any party competing against or negotiating commercial transactions with Dalriada Water or its parent company KWS. It has advised there are currently a number of these confidential competitive processes actively underway with potential contracts at stake which are worth tens of millions of pounds. Its ability to compete successfully in this marketplace is dependent on it being able to offer a distinct commercial and operational advantage relative to their rivals.
42. The Dalriada consortium has advised that its bid documentation in this case includes unique and bespoke designs and intellectual property that reflects KWS's status at the forefront of industry practice. Dalriada has advised it has invested several million pounds to generate these designs and intellectual property and that its parent company KWS currently gains a further return on this investment by utilising Project Omega material in other bids it is currently engaged in. This has the effect of mitigating the already substantial development costs of these current bids and thus adding to the commercial advantage it is able to offer to its prospective clients.
43. In conclusion, the Dalriada consortium argue that if other parties against whom KWS are currently engaged in bid activity under identical terms to the Omega process, were able to freely access and replicate the financial and technical details contained within its Omega bid, it would completely, directly and currently disadvantage KWS in its current competitive bids. Dalriada argue that this would not only remove the potential commercial advantage that KWS could offer, but would be a direct waste of the significant development and bid costs it has incurred to date.
44. As has already been stated in paragraph 36 above, the Commissioner considers it is not enough that some harm could, or might be caused by disclosure. The Commissioner considers it is necessary to establish on the balance of probabilities that some harm would be caused by the disclosure. In support of this approach, the Commissioner notes that the implementation guide for the Aarhus Convention (on which the European Directive on access to environmental information and ultimately the EIR were based) gives the following guidance on legitimate economic interests:

*"Determine harm. Legitimate economic interest also implies that the exception may be invoked only if disclosure would significantly damage the interest in question and assist its competitors"*

45. The Commissioner has considered the arguments as put forward by NI Water and the Dalriada Wastewater Consortium and accepts that the Dalriada bid submission consists of information which, both now and at the time of the request was of significant commercial value and which would give a competitive commercial advantage to any party competing against or negotiating transactions with the Dalriada Water Consortium.

**Would confidentiality be adversely affected by disclosure?**

46. NI Water advised the Commissioner that the Dalriada Wastewater consortium would consider disclosure of their bid document to be an actionable breach of the bid process by NI Water.
47. NI Water further advised that as the bids were made in 2005 it considers it reasonable to assume that by 2015, the passage of time would have rendered the confidentiality of such bids as redundant, given that proprietary technologies and business decision making tools would have moved on considerably since 2005. NI Water has advised the Commissioner that at such a juncture, and subject to the confirmation of the Dalriada Wastewater consortium, it would reconsider any exceptions applied at that time.
48. In relation to the information comprising the Dalriada bid and the decision papers, the Commissioner considers that as the first three elements of the test cited at paragraph 24 of this notice have been established, he is satisfied that disclosure into the public domain would adversely affect the confidential nature of that information by making it publicly available and would consequently harm the legitimate economic interests of the Dalriada Wastewater consortium and NI Water. He therefore concludes that the exception at regulation 12(5)(e) is engaged in respect of the Dalriada Wastewater bid documentation forming part of part (ii) of the request and decision papers comprising part (iii) of the case.
49. The Commissioner has proceeded to consider whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure. In doing so the Commissioner has considered the submissions on the public interest made by both the complainant and NI Water, taking into consideration the specific content and wider context of the withheld information.

## Public interest arguments in favour of disclosing the information

50. Regulation 12(2) of the EIR requires the public authority to apply a presumption in favour of disclosure.
51. The complainant has also referred to NI Water's reference to the existence of ongoing contractual disputes on its legitimate economic interests and accordingly, also on the public interest. The complainant argues that the purpose of the regulations is to increase transparency and accountability and that if NI Water is in breach of its contractual obligations it should be accountable for that and should not rely on an exception to avoid accountability. The Commissioner agrees that there is an inherent public interest in public authorities being transparent and accountable for their activities.
52. NI Water considered that there is a public interest in allowing bidders to know how NI Water analyses bids so that they can tailor bids to achieve the best price for the public purse, promote accountability and transparency, enable third parties to access information which may help them challenge a decision made or an action taken by NI Water; and to clarify incomplete information. The Commissioner accepts that this may be a strong argument in favour of disclosure, however he is mindful that the Glen Water and Veolia Water bid submissions have now been disclosed. Whilst he is of the view that some weight should always be given to an argument in favour of transparency and the public being informed of the full picture, he does not consider that disclosure of the Dalriada bid submission would significantly add to public understanding of the NI Water bid tender process.
53. The Dalriada consortium also argued that the withheld information is similar to information that had been subject of a previous investigation by the Commissioner in relation to NI Water's 'Project Alpha'<sup>3</sup>. In that matter, the Commissioner whilst ordering disclosure of other information in the case did not order disclosure of the contractor's proposals. The Commissioner notes that although the previous case is relevant, he is considering this case on its own merits.
54. The complainant has argued that increasing access to information about the tendering process may in fact encourage more potential suppliers to enter the market leading to more competition. The Commissioner notes that NI Water has advised it is unlikely that it will be undertaking any PPP projects in the future and therefore any disclosure would be likely to have minimal effect in this regard. The

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<sup>3</sup> ICO Case reference FS50201639

Commissioner therefore considers that this is not an argument which carries any weight. In any case, whilst the Commissioner is in favour of transparency and the public being fully informed, as stated in paragraph 52 above, he believes that disclosure of the other two bid submissions would be sufficient to encourage potential suppliers and meet that public interest aspect without anything of significance being added by disclosure of the Dalriada bid submission.

### **Public interest arguments in favour of maintaining the exemption**

55. The complainant has referred to the Commissioner's guidance on commercial interests<sup>4</sup>, in particular, highlighting the time lapse between the contract award and the request for information, arguing that it is unlikely the information to be disclosed can still be considered to be commercially sensitive and prejudicial to the interests of NI Water, nor to any third parties. The Commissioner notes however that in this case, NI Water (in respect of the decision papers) and the Dalriada Wastewater consortium (in respect of the bid documentation) has put forward strong arguments to the contrary and he therefore does not consider that this argument carries significant weight.
56. The complainant considers that the threat of legal action upon voluntary disclosure should be irrelevant and should not make the exception more applicable, arguing that how litigious a private sector partner happens to be does not make the exception more or less applicable. The Commissioner considers the underlying purpose of the exception is to protect the legitimate interest that is being protected by commercial confidentiality which in the case of the bid documents is the economic interests of the bidders. The Commissioner considers disclosure would adversely affect their economic interests and result in some sort of legal action against NI Water, and as such he has placed some weight on this argument.
57. The Commissioner accepts the arguments that disclosure in this case would allow public scrutiny of decisions made by NI Water as well increasing transparency and accountability in the spending of public money. This in turn can help to increase public understanding and participation in decisions taken by public authorities. However, the Commissioner understands that in this case the disputes are subject to a dispute resolution process which appears to be ongoing. Disclosure would most likely damage NI Water's negotiating position in such

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[http://www.ico.gov.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/AWARENES\\_S\\_GUIDANCE\\_5\\_V3\\_07\\_03\\_08.ashx](http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENES_S_GUIDANCE_5_V3_07_03_08.ashx)

processes and impact heavily on its economic interests, which would not be in the public interest.

58. The Commissioner has placed considerable weight on the arguments put forward by the Dalriada Wastewater consortium which considers that disclosure would jeopardise its commercial advantage in any future similar projects and would lead to a loss of its commercial competitiveness.
59. NI Water further advised that the public interest is not best served by the disclosure of the actual bid and detailed assessments as the bid (in this case the Dalriada Wastewater bid) would no longer be confidential. This could undermine the public sector ability to invite competitive bids from suppliers if confidential information was openly available to competitors.
60. The Commissioner accepts it would not be in the public interest to prejudice the ability of the Dalriada Wastewater consortia and NI Water to protect their economic interests by failing to maintain the confidentiality of their commercially sensitive information. He accepts there is a public interest in ensuring that the commercial confidences are not prejudiced in circumstances where it would not be warranted and proportionate.
61. The Commissioner also accepts there is some public interest in preserving trust and confidence and that disclosure of this information would damage relationships between NI Water and the Dalriada Wastewater consortium.

### **Balance of the Public Interest**

62. The Commissioner recognises there is a public interest in increasing accountability of public authorities in relation to the spending of public money and he also recognises the importance of ensuring public procurement processes are conducted in a fair and transparent manner and do not discriminate against bidders.
63. However, the Commissioner considers that it would not be in the public interest to disclose information that may have a serious financial impact on existing contracts and subsequently the public purse, as well as undermining NI Water's position on tendering for future contracts and agreements, whatever form that may take.
64. The Commissioner also recognises the need to protect commercially sensitive information particularly in relation to ongoing issues so as not to prejudice the commercial viability of contractors.
65. The Commissioner has weighed up the competing public interest arguments and has concluded that in relation to the Dalriada

Wastewater bid and the withheld decision papers relating to part (iii) of the request, the public interest in maintaining the exception at regulation 12(5)(e) outweighs the public interest in disclosure.

66. As the exception is engaged in relation to the withheld information and the public interest in maintaining the exception outweighs that in disclosing the information, the Commissioner is not required to consider the application of the exception as set out in regulation 12(5)(b).

### **Procedural requirements**

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67. Regulation 5(1) provides that environmental information shall be made available upon request. Regulation 5(2) requires a public authority to provide information as soon as possible and no later than 20 working days after the date of the request.
68. Regulation 14(1) provides that if a request for environmental information is refused, the refusal shall be made in writing and comply with the provisions of this regulation.
69. The Commissioner finds that NI Water breached regulation 14 as it failed to cite in its refusal notice to the complainant the exception under regulation 12(5)(e) which it later applied to part (iii) of the complainant's request during the Commissioner's investigation.

## Right of appeal

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70. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

71. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
72. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed** .....

**Lisa Adshead**  
**Group Manager**  
**Information Commissioner's Office**  
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