

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

### **Decision notice**

**Date:** 13 September 2016

**Public Authority:** Department for Business, Energy and Industrial Strategy

**Address:** 1 Victoria Street  
London  
SW1H 0ET

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

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1. The complainant has requested information about the minutes from the White Rose stakeholder meeting of 18 September 2015. The Department of Energy and Climate Change (DECC) refused the request relying on regulation 12(4)(e) – disclosure of internal communications. Since requesting the information, Government matters which fell to be dealt with by DECC are now dealt with by the Department for Business Energy and Industrial Strategy (BEIS) but for the purposes of this notice reference will be to DECC rather than BEIS.
2. The Commissioner's decision is that DECC has correctly relied on regulation 12(4)(e) to refuse the request and she does not require the public authority to take any further steps.

#### **Request and response**

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3. On 16 December 2016 the complainant wrote to DECC and requested information in the following terms:

*"Please provide a copy of the full minutes of the White Rose stakeholder meeting that took place on Friday 18<sup>th</sup> September 2015."*

4. DECC responded on 19 February 2016. It refused to provide the requested information citing the following exceptions as its basis for doing so: regulation 12(4)(e) – the request involves the disclosure of internal communications.

5. The complainant requested an internal review on 22 February 2016 and DECC responded on 21 March 2016. It upheld its original position.

## **Background**

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6. The Government set up a Carbon Capture and Storage (CCS) competition with £1 billion capital funding available. The competition opened in April 2012. In March 2013 the White Rose CCS project was named as one of the preferred bidders. As part of the competition, regular discussions took place between DECC and each Competition project. The meeting held on 18 September 2015 with the White Rose Project was one such meeting. The Government was expected to take a Final Investment Decision by early 2016. In November 2015, the Government Spending Review took the decision to no longer make the funding available.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 1 April 2016 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of his request is to determine whether DECC was correct to withhold the information under regulation 12(4)(e).

## **Reasons for decision**

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9. Regulation 12(4)(e) provides that a public authority may refuse a request for environmental information if the request involves the disclosure of internal communications. Consideration of this exception is a two stage process: first it must be considered whether the request involves the disclosure of internal communications and second, this exception is qualified by the public interest. This means that the information must be disclosed if the public interest in maintaining the exception does not outweigh the public interest in disclosure.
10. Regulation 12(4)(e) is a class based exception which means that there is no need to consider the sensitivity of the information in order to engage the exception; it is only necessary to demonstrate that the information falls within the category defined by the exception.

11. The Commissioner's position is that the concept of communication in this context is broad and will encompass any information someone intends to communicate to others, or even places on file (including saving it on an electronic filing system) where others may consult it. An internal communication is also a communication that stays within one public authority.
12. In its submission to the Commissioner, DECC has set out that although the meeting dated 18 September 2015 was with external parties, the meeting was held for internal purposes only and the note of the meeting was taken by a DECC official and was neither circulated nor communicated outside of DECC. DECC asserts therefore that the note remains an internal communication for the purposes of regulation 12(4)(e).
13. Based on the evidence before her, the Commissioner is satisfied that the withheld information constitutes an internal communication and therefore the exception is engaged. She has gone on to consider the public interest arguments.
14. DECC has, in its submission to the Commissioner acknowledged that there is some public interest in having sight of the requested information given that the meeting related to one of the bidders to the Government's Carbon Capture and Storage (CCS) competition in the run up to the Government's decision to no longer make available £1billion capital support to the CCS competition. DECC had, following a previous FOI request, disclosed the agenda headings for the White Rose meeting.
15. Although acknowledging the public interest in disclosure, it is DECC's position that there is a greater public interest in protecting the 'safe space' which allows for debate away from external scrutiny and consequently in preventing a 'chilling effect' on free and frank views in the future.
16. DECC has submitted that there is a public interest in officials being able to communicate confidentially on policy development. It is DECC's position that disclosure of information such as that requested would make officials and third parties less candid and would undermine its ability to carry out effective policy development.
17. In further considering the public interest test in relation to the withheld information it is also DECC's position that disclosure of the meeting note could have jeopardised relations with White Rose during a time of sensitive discussions with DECC and that this in turn could have had an impact on the public purse and that the public interest is best served in this case by protecting the public purse.

18. DECC has also set out that the subject of the withheld information remains a live issue and that discussions are ongoing. At the time of the request DECC was involved in discussions with the preferred bidders. This involved the challenging task of managing relations with those project teams including their concerns about the decision given that a final decision had been expected in early 2016.
19. In terms of the public interest in favour of disclosure, the Commissioner recognises that there is an express presumption in favour of disclosure within EIR. She also recognises the public interest in transparency and accountability of a public authority and that this can be enhanced by disclosure of information. In this particular case she recognises that the subject matter, CCS and the situation regarding the decision to withdraw the £1billion support, means that there is heightened public interest in disclosure of the information. However, it is also her position that arguments about a chilling effect on on-going related discussions are likely to carry some weight. She considers also that the timing of a request, whether the issue is still live and the content and sensitivity of the information are key factors to take into account in attaching weight to these arguments. She notes that in this particular case the issue is still live with related discussions ongoing. There is no question that the information, in these particular circumstances, is sensitive.
20. At the time of the request, discussions were ongoing, including discussions with the White Rose Project, in light of the decision to no longer make the funding available but to ensure that the contractual elements of the project were still delivered. The discussions were financially contentious and therefore required careful handling. Disclosure of the requested information at the time of the request and since that time could have jeopardised DECC's relationship with the White Rose Project, potentially impacting on receipt of outstanding deliverables and potentially leading to tax payer exposure.
21. Therefore, given the sensitive nature of the discussions, particularly in light of the decision to no longer make available the £1billion and given that those discussions are ongoing, the Commissioner considers that the public interest lies in allowing DECC to pursue those discussions in a safe space which will allow for uninhibited views to be exchanged in order to achieve the best outcome possible.
22. Having considered the evidence available, it is the Commissioner's position that although there is significant public interest in disclosure of the information, in all of the circumstances of this case the balance of the public interest lies in maintaining the exception.

## Right of appeal

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23. 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: 0870 7395836

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

24. 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.

25. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**