

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

### **Decision Notice**

**Date:** 31 August 2017

**Public Authority:** Department of Agriculture, Environment and Rural Affairs

**Address:** Dundonald House  
Upper Newtownards Road  
Belfast  
BT4 3SB

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

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1. The complainant requested information relating to a Ministerial briefing. The Department of Agriculture, Environment and Rural Affairs provided some information but the complainant believed that one further document ought to have been disclosed. The complainant requested an internal review but the Department has failed to communicate the outcome of that review within the statutory time allowed.
2. The Commissioner's decision is that the Department has failed to comply with regulation 11(4) of the EIR, and requires the public authority to take the following steps to ensure compliance with the legislation.
  - Communicate the outcome of the internal review to the complainant.
3. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

#### **Request and response**

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4. On 8 April 2017 the complainant submitted the following request to the Department:

*"Under Freedom of Information please can I be provided with all*

*correspondence, notes of meetings and records of conversations between NIEA and representatives of W&J Chambers Ltd which informed the claims made by the Department in paragraph 10 of its briefing to the Minister on 29 November 2016 - Your ref: SUB 1394/2016"*

5. The Department responded to the request on 12 May 2017. The Department stated that it had identified one document relevant to the request, and it disclosed this document to the complainant. On 27 May 2017 the complainant wrote to the Department to request an internal review:

*"I wish to request an internal review, specifically to request a copy of the e-mail from [named individual] to [named individuals] and copied to [named individuals], sent on 22 November 2013 at 15:35 - Subject: "Chambers Concrete - Drumahoe".*

*Whilst it clearly forms part of the correspondence chain requested on 8 April 2017 it has not been made available to [name of complainant]."*

## **Scope of the case**

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6. On 30 July 2017, the complainant wrote to the Commissioner to complain that he had not yet received the outcome of the internal review from the Department.
7. The Commissioner contacted the Department on 10 August 2017 to remind it of its obligations under the EIR. The Commissioner advised that, if the Department did not communicate the outcome of the internal review to the complainant within ten working days, she would issue a decision notice.
8. The complainant confirmed to the Commissioner on 25 August 2017 that he had not received any further response from the Department.

## **Reasons for decision**

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9. Regulation 11 of the EIR provides that the applicant may make representations to a public authority if he or she believes that the authority has failed to comply with the EIR. Regulation 11(3) states that:

*"(3) The public authority shall on receipt of the representations and free of charge –*

*(a) consider them and any supporting evidence produced by the applicant; and*

*(b) decide if it has complied with the requirement."*

10. Regulation 11(4) further states that:

*"A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations."*

11. In this case the complainant requested an internal review on 27 May 2017. The Department has clearly not communicated the outcome of the internal review to the complainant within the 40 working days allowed by regulation 11(4); accordingly the Commissioner finds that the Department has failed to comply with the relevant provision of the EIR. The Commissioner notes that the complainant has merely asked the Department to provide one document that was not addressed in the initial response; he is not asking the Department to conduct a substantive review of its decision. Therefore the Commissioner does not see why the Department has been unable to meet the statutory time for conducting an internal review in this case.

## Right of appeal

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12. 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 739 5836  
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)

13. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Tribunal website.
14. 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** .....

**Sarah O’Cathain**  
**Senior Case Officer**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**