

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 26 March 2019

Public Authority: Department for Environment Food and Rural Affairs (Defra)

Address: Area 4A, Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant made a request to Defra for briefing notes and information given to Therese Coffey which include references to fly-tipping. Defra provided some information in response to the request but refused to disclose some information under regulation 12(4)(e) EIR.
2. The Commissioner's decision is that Defra correctly applied regulation 12(4)(e) EIR to the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 6 February 2018 the complainant requested information of the following description:

"Please provide me with a copy of all of the briefing notes /information given to Therese Coffey which include references to fly-tipping.

These should cover the period from her most recent appointment as Undersecretary of State for Environment, Food and Rural Affairs to the present.

Please include the whole of each document not just extracts.

Where an item is not dated please provide the date it was provided / written"

5. On 2 March 2018 Defra responded. It refused to comply with the request under regulation 12(4)(b) EIR as it considered it to be manifestly unreasonable.
6. On 5 March 2018 the complainant made a refined request for information:

"Please let me have copies of the written briefings given to Minister Coffey by DEFRA in the last 6 months on fly-tipping"
7. On 10 April 2018 Defra responded. It provided some information in response to the request but refused to disclose some information under regulation 12(4)(e) EIR.
8. The complainant requested an internal review on 12 April 2018. Defra sent the outcome of its internal review on 17 October 2018. It upheld its application of regulation 12(4)(e) EIR.

Scope of the case

9. The complainant contacted the Commissioner on 23 October 2018 to complain about the way the request for information had been handled.
10. The Commissioner has considered whether Defra was correct to apply regulation 12(4)(e) EIR to the withheld information.

Reasons for decision

Regulation 12(4)(e)

11. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information to the extent that the request involves

the disclosure of internal communications. It is subject to a balance of public interest test.

12. The Commissioner's published guidance¹ on this exception addresses the issue of internal communications. Essentially, an internal communication is a communication that stays within one public authority. Once a communication has been sent to someone outside the authority, it will generally no longer be internal.
13. Defra has confirmed that the seven briefings and information for the Minister Therese Coffey were drafted by Defra civil servants and were shared only within Defra. It provided the Commissioner with a copy of the withheld information.
14. The Commissioner considers that the information withheld under this exception can properly be classed as internal communications. She has therefore gone on to consider the public interest test in relation to this information.

Public interest test

Public interest in favour of disclosure

15. There is a public interest in disclosure of information concerning enhancing enforcement against fly-tipping.
16. It is in the public interest to disclose this information, especially given the rising number of incidents nationally of this anti-social, environmental crime.

Public interest in favour of maintaining the exception

17. The Resources and Waste Strategy, which was the live policy to which the withheld information relates, was due to be published towards the end of 2018. At the time of the request internal dialogue around the policy was still ongoing and the policy intentions were still very much in development prior to the publication of the strategy.
18. Defra acknowledged that the complainant had suggested that it could have provided more purely factual information. Defra's disclosure of

¹ https://ico.org.uk/media/for-organisations/documents/1634/eir_internal_communications.pdf

the January 2018 factsheet, which included links to further factual information, goes a good way towards meeting the public interest in information about fly-tipping. Details about what the government had done and its plans were included in the fly-tipping fact sheet. Most of the facts, figures and key messages included in the briefings are available in the official fly-tipping statistics at:

<https://www.gov.uk/government/statistics/fly-tipping-in-england>

Defra also provided the complainant with a note on the information being withheld which sets out where the factual information used in the briefings can be found in the published information referred to above.

19. It argued that there remains a strong public interest in withholding the briefings because Ministers and government officials should have the necessary space to think in private to formulate policy. It is necessary for Defra to have the space to do this away from public scrutiny. The policy-related material in the withheld information was still being used to inform the development of policies to tackle fly-tipping, and key decisions on those policies at the time of the request remained to be made by both Defra and the other departments involved. If this information was to have been released at the time of the request it would risk misleading the general public and have a detrimental impact on this policy area prior to the publication of the Resources and Waste Strategy towards the end of 2018.
20. Disclosure of the information would be likely to reduce the candid nature and quality of advice in briefings from policy officials to Ministers. It is essential that such internal communication remains protected, so that Ministers can continue to receive candid and robust advice from their officials. Going forward it is important that officials are able to continue to communicate internally.

Balance of the public interest

21. The Commissioner considers that there is a very strong public interest in Defra operating in an open and transparent way. There is substantial public interest in preventing environmental crime and therefore in this government strategy which strengthens the public interest in disclosure.
22. In this case Defra has explained that at the time of the request the policy relating to the Resource and Waste Strategy was live and ongoing and was due for publication towards the end of 2018. The Commissioner is aware that this was published in December 2018.
23. The fact that the policy was still very much live at the time of the request provides weight to the argument that Ministers and

government officials required a 'safe space' to deliberate and discuss the issue internally to develop the government's policy on tackling fly-tipping as key decisions remained outstanding at the time of the request.

24. Given the timing of the request, the Commissioner considers that the public interest in preserving Defra's 'safe space' outweighs the public interest in disclosure in this case.

Right of appeal

25. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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.....

Gemma Garvey
Senior Case Officer

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