

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

Decision notice

Date: 23 January 2023

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

Address: Nobel House
Area 5B
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested Defra to disclose a list of all 1-2-1 meetings with farmers in relation to the Catchment Sensitive Farming (CSF) programme. Defra refused to comply with the request citing regulation 12(4)(b) (manifestly unreasonable) of the EIR.
2. During the Commissioner's investigation it was established that the requested information is in fact not held by Defra. The Commissioner's decision is therefore that Defra does not hold the information and should have cited regulation 12(4)(a) of the EIR instead. As it cited the incorrect exception, the Commissioner has recorded a breach of regulation 14(3) of the EIR in this case.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 5 November 2021, the complainant wrote to the Defra and requested information in the following terms:

"I would like to request a list of all the 1-2-1 meetings that have taken place as part of the Catchment Sensitive Farming meetings.

The meetings are mentioned here:

<https://www.gov.uk/government/news/funding-boost-for-farmers-to-tackle-water-pollution>

"The programme – which is a partnership between Defra, Natural England and the Environment Agency – provides free 1-2-1 advice to farmers to help them reduce water and air pollution through management of farmyard manure and soils among other things."

For each list entry I would like to know.

-Date of meeting

-The companies/individuals that attended

Topics that were discussed

I would like all data in Excel format.

I would like all data to be as up to date as possible."

5. Defra responded on 2 December 2021 refusing to comply with the request under regulation 12(4)(b) of the EIR.
6. The complainant requested an internal review on 3 December 2021. They questioned Defra's interpretation of the request and quoted again the request for information as detailed above in paragraph 4.
7. Defra carried out an internal review on 2 February 2022. It upheld its application of regulation 12(4)(b) of the EIR.

Scope of the case

8. The complainant contacted the Commissioner on 8 March 2022 to complain about the way their request for information had been handled.
9. The Commissioner obtained further submissions from Defra and it was from these that it was established that Defra does not hold the requested information. The Commissioner agrees that Defra does not

hold the information and therefore regulation 12(4)(a) of the EIR should have been claimed. The following section of this notice will explain why.

Reasons for decision

Regulation 12(4)(a) – information is not held

10. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when the request is received.
11. In its submissions to the Commissioner Defra explained that the CSF is a partnership between Defra, Natural England (NE) and the Environment Agency (EA) which has been running since 2006. The CSF partnership is responsive to policy changes and therefore works closely with multiple directorates and teams across Defra to deliver a comprehensive advice and support service to farmers across England. The partnership works collaboratively through multiple weekly meetings and monthly Partnership Management Group meetings, which are well attended. It confirmed that CSF is delivered through Catchment Sensitive Farming Advisors (CSFAs) who build relationships with farmers through 1-2-1 meetings. It stated that NE lead on the delivery of the CSF partnership and employ and manage the CSFAs.
12. Defra outlined further that farmer meetings are carried out by CSFAs who are managed by NE. Records of farmer meetings and topics discussed are owned and therefore held by NE. The information is not held on behalf of Defra and Defra does not hold the requested information itself.
13. At the time of the refusal notice and internal review it read the request to include all the internal and external Defra meetings discussing the policy and delivery of CSF. It was from this interpretation that it sought to rely on regulation 12(4)(b) of the EIR.
14. The Commissioner does not agree that this is what the complainant asked for. Based on the specific wording of the request, the request is limited to the 1-2-1 meetings with farmers. It does not extend to include the internal and external policy and delivery meetings Defra does hold records of.
15. Defra has now explained that it does not in fact hold this information and this is because NE's CSFAs carry out these meetings; not Defra and Defra has no involvement in them at all. Defra should therefore have relied on regulation 12(4)(a) of the EIR instead and explain this to the

complainant. It should have also advised the complainant to direct their request to NE.

16. The Commissioner is satisfied that Defra does not hold this information and therefore 12(4)(a) of the EIR does apply.
17. Technically, regulation 12(4)(a) is subject to the public interest test. However, the Commissioner considers this is a pointless exercise to carry out when the public authority does not hold the information. It is not possible to consider arguments for and against disclosure, when the information is not held.
18. As Defra did not interpret the request correctly it did not cite the correct exception when it responded to the request. The Commissioner has therefore found Defra in breach of regulation 14(3) of the EIR.

Right of appeal

19. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

20. 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.
21. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF