



Department  
for Environment  
Food & Rural Affairs

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[www.gov.uk/defra](http://www.gov.uk/defra)

[redacted]

Your ref: 266057  
Our ref: RFI 7483  
15 July 2015

Dear [redacted]

**REQUEST FOR INFORMATION: AIR QUALITY AND LOCAL GOVERNMENT  
(PORTSMOUTH CITY COUNCIL)**

Thank you for your request for information, which we received on 29<sup>th</sup> April, about air quality and Portsmouth City Council. We have handled your request under the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs).

You made a number of requests in relation to information that may be held by Defra. Request (1) below has been dealt with under FOI as it deals with legal costs. Requests (2, 3, 4 & 5) have been dealt with under EIR. The EIRs apply to requests for environmental information, which is a broad category of information defined in regulation 2 of the EIRs. Public authorities are required to handle requests for environmental information under the EIRs. They give similar access rights to the Freedom of Information Act 2000 (FOIA).

*(1) The total costs incurred by the Department since 2010 in preparations and research by legal staff and instructing solicitors or barristers in the following cases (given by their court citation numbers) in defending the Government against litigation by ClientEarth.*

- (a) [2015] UKSC 28*
- (b) [2012] EWCA Civ 897*
- (c) [[2011] EWHC 3623 (Admin)*

The cost for each stage or hearing referred to by those citation numbers and the total cost combining the costs for each is given below. You should note that the figures provided are based on the information we have and are accurate as far as reasonably possible. The costs do not include time spent by Defra Legal Advisers (the Department's advisory lawyers), as we do not hold information on the time spent by individual lawyers on these specific matters.

The figures given include costs in respect of litigation lawyers at the Government Legal Department (formerly Treasury Solicitor's Department), but it does not follow that Defra paid these costs specifically (to illustrate the point the Government Legal Department's provision of litigation services to Defra is now covered by a block-fee arrangement).

The figures given include VAT on Counsel fees and other disbursements. The Government Legal Department does not charge VAT on its fees.



For the purpose of accuracy and clarity, below are some further caveats specific to each stage/hearing.

### **Supreme Court**

[2015] UKSC 28; Total: £22,185.32

The request for information referred only to the latter Supreme Court hearing, and as such the above information concerns only that hearing (not the hearing which is covered by citation number [2013] UKSC 25). For the purposes of dividing the proceedings so as to produce this information, we have taken 19 November 2014 (the date of the CJEU judgment referred to in the next paragraph) as the start date for this hearing. If you want information concerning the earlier hearing, please let us know.

You may also be aware that following the earlier hearing in 2013 the Supreme Court referred some questions regarding the interpretation of the Ambient Air Quality Directive (2008/50/EC) to the Court of Justice of the European Union. That referral included a CJEU hearing and we have interpreted the request for information concerning the 2015 Supreme Court hearing as related to domestic proceedings only and not intended to include the CJEU hearing costs. Accordingly the cost of the CJEU hearing is not included in the Supreme Court figure above. If you want information on the CJEU hearing, please let us know.

The Court ordered on the 8<sup>th</sup> July that Defra must pay Client Earth's legal costs up to a maximum of £40,000, which is not included in the total figure above as this information was not held at the time of your original request.

### **Court of Appeal**

[2012] EWCA Civ 897; Total: £11,755

### **High Court**

[2011] EWHC 3623 (Admin)

Total: £30,968.50

As part of the Judicial Review legal process, certain requirements must be met including pre-action correspondence between the parties before it can proceed to the High Court stage. The cost of this pre-action correspondence is included in the High Court cost figure above.

This gives a total combined figure of **£64,908.82** for costs incurred to date on the above stages/hearings.

*(2) The "Detailed Assessment" submitted by Portsmouth City Council to the Department of Food, Environment and Rural Affairs which should have been due on 30th April 2013 but was given an extension till this year (e.g. up to 2 years overdue) by your department.*

I am writing to advise you that the information that you have requested is not held by Defra. The information is therefore exempt under regulation 12(4)(a) of the EIRs, which relates to information which is not held at the time when an applicant's request is received.

Regulation 12(4)(a) is a qualified exception, which usually means that a public authority is required to conduct a public interest test to determine whether or not information should be disclosed or withheld. However, the Information Commissioner, who is the independent regulator for requests made under the EIRs, takes the view that a public interest test in cases where the information is not held would serve no useful purpose. Therefore, in line with the Information Commissioner's view, Defra has not conducted a public interest test in this case.

*(3) The business case approved by the Secretary of State in relation to the grant of £60,000 received by Portsmouth city council in 2012 to investigate traffic management strategies and develop a Low Emission Zone (issued under Section 31 of the Local Government Act 2003) (What I am looking for is the explanation as your department saw it as to why this fitted into the Government's strategy and what you expected to see as a result of this grant being approved and by when)*

Defra paid £60,000 to Portsmouth City Council as part of the 2012/13 air quality grant programme for the following project: 'Traffic Management Optimisation – TMOP 13-14'. Under Defra's quality control procedures, Portsmouth's application was reviewed by outside consultants in order to ensure impartiality and consistency.

Funding was recommended for the following reasons:

- The overall application scored high (88%) and was particularly strong in meeting most of the priority criteria for 2012/13 in that the aim of the project was to develop effective traffic management strategies that were intended to reduce vehicle emissions within a number of local Air Quality Management Areas (AQMA) (Portsmouth has 5 AQMAs) and contribute towards improvements in emissions or concentrations of air pollutants, especially Nitrogen Dioxide (NO<sub>2</sub>).
- The use of a micro-simulation tool to test the various traffic options would provide much needed evidence for the efficacy of individual measures, and allow other local authorities to take advantage of the findings when developing their own air quality action plans.
- The scope of the project covered numerous roads and junctions, promising data and recommendations on the best traffic management and traffic control scenarios.
- The project would also contribute towards work to review and collate research and monitoring evidence that can improve our understanding of the effectiveness of air quality measures and share best practice.

As with all grant funded projects that form part of the Local Authority Grant Programme, funding is intended to help local authorities improve air quality in their local area and also provide information and evidence that can help other local authorities who may be considering using similar measures or approaches. Portsmouth City Council are expected to submit a final project report this year.

*(4) Any advice or guidance to local authorities which would have been received by the council which can support the decision by the city council to not prepare Update and Screening Assessment Reports for 2014? (This may include correspondence in response to submissions by Portsmouth City Council to "Defra on its position in relation to its position on Air quality and its reporting" from 5th November 2014).*

Following a search of our paper and electronic records, we have not found any advice or guidance to local authorities which would have been received by the Council, or provided to Portsmouth City Council specifically, that in our opinion would give rise to the view that Portsmouth City Council should not prepare an Updating and Screening Assessment Report. Local Authorities are obliged to submit annual reports (either Updating and Screening Assessments or Annual Progress Reports) to Defra by the end of April every year as part of their statutory obligations under Part IV of the Environment Act (1995).

I can confirm that to the best of our knowledge the information is not held by another public authority.

(5) *You also asked further questions regarding:*

*(a) whether the air quality zone monitored and under the responsibility of Portsmouth City Council is or is not part of the zones identified by the Commission as the basis of infraction proceedings under Directive 2008/50/EC; and*

*(b) your assessment as to the level of fines which can be passed on from the European Commission to councils who have shown a persistent failure to sustainably reduce levels of sulphur dioxide, PM10, lead, and/or carbon monoxide to a safe level like Portsmouth City Council?*

- a) Portsmouth Urban Area, the zone under which Portsmouth City Council falls is not one of the zones covered by the current infraction on Nitrogen Dioxide.
- b) While there is legislation that enables the UK Government to pass on fines to local authorities, the UK has never had to pay fines arising from an infraction and has made no assessment in this regard. We will work with the European Commission and relevant local authorities to resolve the infraction issue concerning nitrogen dioxide exceedances as quickly as possible and without recourse to fines. We are working on revised Air Quality Plans for the UK to be submitted to the European Commission by the end of the year. The UK is not being infringed under the Ambient Air Quality Directive (2008/50/EC) for any other substances.

I attach an annex giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter please contact the address below.

Yours sincerely,

[redacted]

**Information Rights Team**

[InformationRequests@defra.gsi.gov.uk](mailto:InformationRequests@defra.gsi.gov.uk)

## Annex

### Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to [redacted] , Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: [InformationRequests@defra.gsi.gov.uk](mailto:InformationRequests@defra.gsi.gov.uk)) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF