



Department
for Environment
Food & Rural Affairs

Nobel House
17 Smith Square
London SW1P 3JR

T: 08459 335577
helpline@defra.gsi.gov.uk
www.defra.gov.uk

Our ref: RFI 5571

Date: 13 August 2013

Dear

REQUEST FOR INFORMATION: CORRESPONDENCE BETWEEN WORCESTER COUNTY COUNCIL AND DEFRA

Thank you for your request for Correspondence between Worcester County Council and Defra in relation to site incinerator in green belt near Hartlebury, which we received on 18 June. You helpfully narrowed down your request on 26 June as follows: "Details of letters and emails between Worcestershire County Council and Defra relating just to the PFI Waste Contract between Hereford and Worcestershire and it's Contractor Mercia Waste Management. Also these same details relating to the Variation Business Case. I would ask that this information dates from March 1st 2011 to date" (i.e. 26 June).

As you know, we have considered your request under the Environmental Information Regulations 2004 (EIRs).

I enclose a copy of the information which can be disclosed:

- Correspondence Redacted. pdf
- 20130514 Indicative Outline of VBC.pdf

The remainder of the information requested is being withheld as it falls under the following exceptions as allowed by the EIRs.

Regulation 12(4)(d) – unfinished information/documents

Some of the attachments to the emails are draft and incomplete documents and have been redacted as the policy is still being formulated and has not yet been agreed by all



parties.

Regulation 12(5)(e) – commercial confidentiality

You will see that some emails have been redacted to remove information of a commercially sensitive nature, along with some of the attachments referred to. These emails and documents hold sensitive commercial information and disclosure would be harmful to the relationship between the Councils and ourselves, and between the Councils and their contractor.

Regulations 12(3) and 13(1) – withholding personal data relating to third parties

This personal data is being withheld as the information falls under the exception in regulations 12(3) and 13(1) of the EIRs, which relate to personal data relating to third parties. Regulation 13(1) of the EIRs exempts from disclosure personal data relating to third parties where disclosure would breach the Data Protection Act 1998 (DPA). In this case, we believe that disclosure of the information would breach the first data protection principle in Schedule 1 of the DPA in two ways. First, disclosure would not constitute 'fair' processing of the personal data and, second, disclosure would not satisfy any of the conditions for data processing set out in Schedule 2 of the DPA. In particular we do not consider that there is a legitimate interest in disclosure in this case. Release of names of junior officials would add nothing to the public's understanding of this matter, and although there is a legitimate interest in disclosure as it would serve to promote even greater transparency and accountability, this interest has been met through the disclosure of the process through which the report was produced, to inform the Secretary of State's decision. Consequently, we believe that regulations 12(3) and 13(1) of the EIRs exempt the information from disclosure and therefore we have concluded that, in all the circumstances stated above, the information should be withheld.

The Public Interest Test

In applying these exceptions we have had to balance the public interest in withholding the information against the public interest in disclosure. We recognise that there is a public interest in disclosure of information concerning dealings with Herefordshire and Worcestershire Councils and Defra, relating to the waste PFI project, to ensure that it is a fair and transparent process and give others the opportunity to challenge any decisions or outcomes therein.

On the other hand, there is a strong public interest in withholding the information as discussed below.

Regulation 12(4)(d) – unfinished information/documents

There is a strong public interest in withholding the information because it is incomplete and not wholly accurate whilst being revised. A public authority needs a safe space to ensure

that the information that it is preparing is up to date and accurate. Premature disclosure of incomplete (and sometimes incorrect) information has the ability to seriously mislead readers and is, therefore, not in the public interest.

Regulation 12(5)(e) – commercial confidentiality

The WIDP Programme Office is aware that there is always a public interest in ensuring transparency in the dealings between the various participants in projects of this nature, ensuring that best value for money is achieved. However, there is also a strong public interest in ensuring that, for their part, those who have dealings with Defra can do so in the assurance that confidences (and commercially confidential information) will be respected where there is no overriding public interest in breaching confidence. This helps to engender an environment where participants would feel free to discuss sensitive and confidential issues – facilitating genuine openness and collective buy-in to the aims and objectives of the project. This would further the public interest in ensuring that best value for money savings are identified and realised.

Therefore, there is a strong public interest to ensure that where there is no valid justification for release, we would not place commercially sensitive information in the public domain which would cause harm to the legitimate economic interests of any parties involved in the project.

Therefore, we have concluded that, in all the circumstances of the case, the public interest withholding the redacted information outweighs the public interest in favour of disclosure; hence the information should be withheld.

In keeping with the spirit and effect of the EIRs, and in keeping with the government's Transparency Agenda, all information is assumed to be releasable to the public unless exempt. Therefore, the information released to you will now be published on www.gov.uk together with any related information that will provide a key to its wider context. Please note that this will not include your personal data.

I attach Annex A, which explains the copyright that applies to the information being released to you.

I also attach Annex B giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter, please contact me.

Yours sincerely

A handwritten signature in black ink that reads "David Watts". The signature is written in a cursive style and is set against a light blue rectangular background.

David Watts

Programme Manager

WIDP Programme Office

Email WIDP.programmeoffice@defra.gsi.gov.uk

Annex A

Copyright

The information supplied to you continues to be protected by copyright. You are free to use it for your own purposes, including for private study and non-commercial research, and for any other purpose authorised by an exception in current copyright law. Documents (except photographs) can be also used in the UK without requiring permission for the purposes of news reporting. Any other re-use, for example commercial publication, would require the permission of the copyright holder.

Most documents produced by Defra will be protected by Crown Copyright. Most Crown copyright information can be re-used under the [Open Government Licence](#). For information about the OGL and about re-using Crown Copyright information please see [The National Archives website](#).

Copyright in other documents may rest with a third party. For information about obtaining permission from a third party see the [Intellectual Property Office's website](#).

Annex B

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 Mike Kaye, Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: requestforinfo@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