



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 6361
Date: 28 March 2014

Dear

REQUEST FOR INFORMATION: 13 NOVEMBER 2013 LETTER TO HEREFORDSHIRE AND WORCESTERSHIRE COUNCILS

As you are aware, we have handled your request for a copy of Mr Atkinson's 13 November 2013 letter to Herefordshire and Worcestershire Councils as a request under the Environmental Information Regulations 2004 (EIRs). 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).

The letter you have requested is in the attached document called *20131113 Letter re VBC Review.pdf*.

Exceptions Engaged

You will see that we have redacted certain pieces of information from the letter as allowed by the EIRs.

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

This exception has been engaged (where shown) because the sentiments expressed were an initial view as part of the work in progress dialogue between the authorities and Defra (and HM Treasury). You will see that Annex 1 to the letter, at paragraph 2 of the background, says that "At this stage, the VBC option analysis is still being refined by the Councils incorporating different funding options for the EfW variation option". As the option analysis were still being refined at that time, we are applying this exception to the document as shown.

Regulation 12(5)(e) – commercial confidentiality

This exception has been engaged to redact information of a sensitive commercial nature. These paragraphs (as shown) hold information of a sensitive commercial nature where



disclosure could be harmful to the relationship between the County Councils of Herefordshire and Worcestershire and Defra.

Regulation 13 Personal data

As regards the names of officials, this personal data is being withheld as the information falls under the exception in regulations 12(3) and 13(2)(a)(i) of the EIRs, which relate to personal data relating to third parties. Regulation 13(2)(a)(i) 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 poses a risk to the neutrality of the civil service, the names would add nothing to the public's understanding of this matter and the public authority's accountability does not require release of names. Consequently, we believe that regulations 12(3) and 13(2)(a) (i) of the EIRs exempt the information from disclosure.

Public Interest Test

In applying the above named 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 relating to the development and review of the Councils' Variation Business Case, in that it ensures transparency in the dealings between Defra and the participants in this project in a fair and transparent process. However, we also recognise that those who have dealings with WIDP can do so with the assurance that confidences will be respected where there is no overriding public interest in breaching confidence.

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

We recognise that there is a public interest in disclosure of information concerning the review of the Variation Business Case. The factors which we have considered in favour of disclosure are:

- Disclosure may contribute to the accountability and transparency of the local authorities with regard to the decisions they take; and
- Disclosure may allow individuals to better understand decisions made by the local authorities, and may encourage public debate;

The factors against disclosure which we have considered are:

- There is a very strong public interest in public authorities being able to carry out their wider obligations fully and effectively so that the needs of the communities they serve are fulfilled;
- the information is being refined and premature release may prejudice any subsequent decisions and changes; and
- Premature release of the unfinished information may be misleading if subsequent decisions or changes materially affect that information. .

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 the WIDP Programme Office.

Yours sincerely

WIDP Programme Office

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 or logos) 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