



1st April 2014

Our ref: IR 13/1691

Dear

INTERNAL REVIEW IR/13/1691 – UNDER THE ENVIRONMENTAL INFORMATION REGULATIONS 2004

Thank you for your letter of 3rd March, in which you requested a review of the Department's 31st January response to your Freedom of Information Request (13/1691).

In compliance with the Environmental Information Regulations (EIRs), I have undertaken a full review of the decision made in this case, considering the arguments for and against disclosure and any exceptions that might apply in this case.

The response that you received on 31st January 2014 explained that the Government held information but that some of it was being withheld under the following exceptions of the Environmental Information Act 2004:

- Regulation 12(4)(e) – relating to internal communication
- Regulation 12(5) (e) – relating to confidentiality of commercial information
- EIR 12(3) and 13(1) – relating to the disclosure of personal data

The exceptions under Regulations 12(4) (e) and 12(5) (e) of the EIR 2004 are qualified, and in applying these exceptions the public interest test was applied. EIR 12(3) and 13(1) are absolute exceptions, and are not qualified by a public interest test.

I have considered the application of each exception individually in response to your queries.

Personal data: EIR 12(3) and 13(1)

In your request, you highlight that some of the names and job titles have been redacted. The names that have been redacted are all members of staff below Senior Civil Service

level, or are staff employed by other organisations. Accordingly, in line with the MoJ guidance the disclosure of their personal data would be “unfair” under the Data Protection Act 1998 (DPA), and this information was therefore not disclosed.

It is our view that it can be possible to identify an individual from information such as a job title, when combined with other information already in the public domain. In these circumstances this information was therefore redacted, as disclosure would again be “unfair” under the DPA.

EIR Regulation 12(3) and 13(1) – personal data that is subject to an absolute exception and is not subject to public interest test. I find that the original decision to withhold this information under EIR was correct.

Regulation 12(4) (e) – relating to internal communication

The Department has withheld information on the basis that if disclosed, it would inhibit the discussion or debate necessary for effective policy making.

The exception was applied based on the judgement that if officials believed that if certain discussions during these meetings would be publicly disclosed, they might not speak freely on similar issues in future. To ensure effective conduct of Government business, it is important that officials be able to exchange views with Ministers and senior officials and provide advice frankly.

I accept that there are public interest arguments in favour of disclosing the information. However, much of the policy the Group was considering is still under development, hence the redactions made, which I uphold.

Regulation 12(5) (e) – relating to confidentiality of commercial information

There is a public interest in disclosure for greater transparency; there is also public interest in knowing that the EIRs ensure wider access to government information.

However, having considered the balance of the public interest, I believe the countervailing public interest in protecting commercially confidential information, and in ensuring that external commercial interests are not damaged or undermined by the disclosure of information which is not common knowledge, and which would have an adverse impact on future business, outweighs the interest in disclosure in this case. It is in the public interest that the trust between Government and business be maintained. Revealing this information may break this trust, making it more difficult for government and business to share information and work together, which runs counter to the public interest.

Conclusion

Having considered the information being withheld in the light of your request for an internal review, I have concluded that this information should continue to be withheld.

If you are not content with the outcome of the internal review, you have the right to appeal to the Information Commissioner. The Information Commissioner can be contacted at:

Information Commissioner’s Office
Wycliffe House

Water Lane
Wilmslow
Cheshire, SK9 5AF

Please remember to quote the reference number above in any future communication.

Yours sincerely

Director, Energy Development Unit