

## Department for Environment, Food and Rural Affairs

Waste Infrastructure Delivery Programme (WIDP)  
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Our ref: RFI 4494

16 March 2012

### **REQUEST FOR INFORMATION: CORRESPONDENCE RELATING TO NORFOLK COUNTY COUNCIL'S WASTE PROJECT**

Thank you for your request for "all correspondence inclusive of letters, emails and minutes of meetings that relate to the decision made by the Secretary of State about the release of the Waste Infrastructure Credits between the following parties.

- 1) Defra and Norwich City Council
- 2) Defra and Norfolk County Council
- 3) Defra and Cory Wheelabrator
- 4) Defra Internal communications (inclusive of hand written notes/memos) between 24 May 2011 and 19 January 2012 inclusive".

We received your request on 20/01/2012, and as you know, we have handled it under the Environmental Information Regulations 2004 (EIRs).

Following careful consideration, we have decided not to disclose some of this information.

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

#### Defra and Norwich CC

- Letter from Claire Stephenson to Caroline Spelman of 22 December (20111222 Stephenson to Spelman.pdf)
- Letter from Claire Stephenson to John Burns (201107 Claire Stephenson to John Burns.pdf)
- Letter from Claire Stephenson to Lord Henley (201107 Claire Stephenson to Lord Henley.pdf)
- Letter from John Burns to Claire Stephenson of 19 August replying to her letters of July (20110819 Burns to Stephenson.pdf)
- Letter from Brenda Arthur to Caroline Spelman of 9 January (20120109 Arthur to Spelman.pdf)
- In addition, there was a telephone conversation between the Secretary of State and Ms Arthur. The transcript is here:

Defra's Secretary of State (SoS) has had a quick call with the Leader of Norwich CC this afternoon [Monday 16 January]. SoS asked the Leader to clarify what she should take from her letter of 9th January as regards Norwich CC's participation in the Norfolk waste strategy. The Leader replied by reiterating that Norwich CC were absolutely committed to working with the Norfolk waste partnership on Norfolk and Norwich's waste management issues. The Leader did not take the opportunity when given to her by SoS to correct her (SoS's) interpretation that the 9 Jan letter did not withdraw Norwich CC from the Norfolk waste strategy.

#### Defra and Norfolk CC

- Correspondence 2.pdf
- Correspondence between Councillor Andrew Boswell and Defra (Boswell Spelman letters)
- Ms Spelman letter to Mr Murphy of 7 November (20111107 Spelman Murphy Letter 7 Nov.pdf)
- Mr Murphy letter to Ms Spelman letter of 8 November (20111108 Murphy Spelman Letter 8 Nov)
- Ms Spelman letter to Mr Murphy of 10 November (20111110 Spelman Murphy Letter 10 Nov)
- Ms Spelman letter to Mr Murphy of 18 January (20120118 Spelman Murphy Letter 10 Nov)
- Caroline Spelman letter of 25 May 2011 to Derrick Murphy and his response dated 10 June (Correspondence around 25 May 2011.pdf)
- Derrick Murphy letter to Caroline Spelman of 10 January (20120110 Murphy to Spelman.pdf)
- Mr Murphy letter to Ms Spelman of 11 January (20120111 Murphy to Spelman.pdf)

#### **The exceptions engaged**

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

Defra has not communicated with Cory Wheelabrator. 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.

#### Regulation 12(4)(e) – disclosure of internal communications

Information covered by this exception includes correspondence between civil servants in Defra, correspondence between civil servants and Defra Ministers, and correspondence between Defra civil servants and Ministers and civil servants and Ministers in other government departments.

#### Regulation 12(5)(e) – commercial confidentiality

Disclosure of information relating to financing arrangements in respect of the Council's contract with Cory Wheelabrator and, in some cases, other contract related information e.g. contract terms, financing deal considerations and negotiations, including comments which include information about the process relating to financing, could prejudice commercial interests generally. This includes information about the procurement process/actions in relation to NCC, or other relevant 3<sup>rd</sup> parties (including banks and other financiers), which relate to financing and contract arrangements, including views of the organisations involved.

This information is commercially sensitive, and subject to contractual duties of confidentiality. It is information which is not in the public domain.

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

In respect of the information covered by regulation 12(5)(e), some of that information is unfinished e.g. some of the figures, bank terms etc included in the text of emails. This information is part of ongoing work/negotiations with financiers etc in respect of Norfolk Council's contract with Cory Wheelabrator.

#### Regulations 12 (3) and 13(2)(a)(i) - named officials

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.

For your ease, I have noted in the document *Correspondence 2. pdf* which regulation applies. For the named officials, I have noted which organisation the official in question works in.

## **Public Interest Test**

### **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 Defra and the various participants in this project, ensuring best value for money and that the award of contracts, and other dealings, is a fair and transparent process. But there is also a strong public interest in ensuring that, for their part, those who have dealings with ourselves and the Councils can do so in the assurance that confidences will be respected where there is no overriding public interest in breaching confidence.

### **Defra and Norwich CC**

All documents have been released in full.

### **Defra and Norfolk CC**

There is a public interest in maximising the Council's capacity to make well-informed decisions, by encouraging bids and discussions that are as informative as possible. As such Defra cannot divulge such information.

There is a strong public interest in maintaining the confidentiality of valuable commercial information, the disclosure of which could be potentially anti-competitive. Information that would assist the Council in evaluating bids and finalising contracts could also, coming into the hands of competitors, erode a bidder's competitive edge, or even undermine their commercial viability. These risks could deter bidders and inhibit discussions currently and in the future, narrowing choice. Again, we cannot divulge such information.

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

There is a strong public interest in withholding financial data and information that are still incomplete. A public authority needs a safe space to ensure that the information that it is preparing is up to date and accurate. Disclosure of incorrect information in the context of bids and contracts has the ability to seriously mislead readers and is therefore not in the public interest.

### **Regulation 12(4)(e) – disclosure of internal communications**

There is a strong public interest in making people aware of internal discussions so as to inform people of the process by which decisions are made in government. However, this has to be balanced with the need to provide a safe space where officials are free to consider all views and ask what are at times uncomfortable questions with no repercussions should that approach not be adopted.

There is a strong public interest test to release briefings made to Ministers. Again, it is essential that to maintain the rules and convention on the impartiality of civil servants' advice to Ministers, that both can have full and frank discussions.

In addition to the above, Defra discussed documents which included commercial and contractual information, which, as explained above, needs to be withheld to ensure that

people and companies as well as other Government departments are comfortable in their dealings with Defra to know that confidences will be maintained where there is no overriding public interest in disclosure.

Therefore, we have concluded that in all the circumstances of the case, the information should be withheld.

In keeping with the spirit and effect of the EIRs, all information is assumed to be releasable to the public unless exempt. The information released to you may now be published on our website together with any related information that will provide a key to its wider context.

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

David Watts  
Programme Manager  
WIDP Programme Office  
**Email** [WIDP.programmeoffice@defra.gsi.gov.uk](mailto:WIDP.programmeoffice@defra.gsi.gov.uk)

## **Annex A**

### **Copyright**

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## **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 within 40 working days of the date of this letter. Please write to Brendan Walsh, Head of Defra's Information Rights Team at Area1B, Ergon House, Horseferry Road, London, SW1P 2AL, (email: [informationrights@defra.gsi.gov.uk](mailto:informationrights@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, you have 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