



Department
for Environment
Food & Rural Affairs

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Our ref: RFI 6759

22 August 2014

Dear [REDACTED],

**REQUEST FOR INFORMATION: WASTE EXEMPTION KNOWN AS T17 ALLOWING
THE CRUSHING OF WASTE FLUORESCENT TUBES**

Thank you for your request for information, which we received on 17 July, about the proposed changes to the T17 waste exemption. As you know, we have handled your 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. These regulations give similar access rights to the Freedom of Information Act 2000 (FOIA).

I attach a copy of the information which can be disclosed.

Specifically, the following meetings took place:

- 17 January 2014: We had a meeting with the Environment Agency and operators of permitted Lamp Recycling 'Fixed Installation' sites in the UK who raised their concerns regarding the environmental and health & safety impacts of carrying out hazardous waste treatment in uncontrolled environments and the mobile crushing technique's ability to meet BATRRT requirements. The action note for this meeting is included in attached information.
- 12 February 2014: We had an internal meeting with our evidence team to gain a clear understanding of the mercury/mobile lamp crusher policy issues and set out options for obtaining additional knowledge/independent evidence on the subject. Minutes were not taken for this meeting.
- 16 July 2014: We had another internal meeting with the evidence team to discuss next Steps for evidence work to support the regulation and policy on Mercury Risks from Mobile Crushers. Minutes were not taken for this meeting. The agenda included a literature review and feedback from HSE, questions around new evidence required, what that evidence should look like and managing and resourcing any evidence activities.



We are still in the very early stages of reviewing the T17 exemption and we would welcome your contribution in this process. We have not yet received any legal advice from our lawyers that falls within the scope of your request.

Following careful consideration, we have decided not to disclose some of the information that you have requested.

Some of the information that you have requested, which is held by Defra, is exempt from disclosure under regulations 12(4)(d) which relates to material which is still in the course of completion, unfinished documents or to incomplete data and 12(4)(e) which relates to information consisting of internal communications. In applying these exceptions at regulations 12(4)(d) and 12(4)(e) of the EIRs, we have had to balance the public interest in disclosure against the public interest in withholding the information.

We recognise that there is a public interest in disclosure of information concerning the proposed changes to T17 waste exemption as disclosure would help the public see how decisions are made. However there is also a strong public interest in withholding the information, which I set out below in relation to the application of each of these exceptions.

Regulation 12(4)(d)

The consultation document and impact assessment are still in draft and are therefore incomplete documents. There is a strong public interest in withholding the information because disclosure of the incomplete and potentially incorrect information would likely mislead readers. In this case, disclosure of these draft documents could lead to the policy intentions being misunderstood, which would affect initiatives to review and improve existing policies. Therefore, disclosure would not be in the public interest.

Regulation 12(4)(e)

It would not be in the public interest to disclose internal communication because disclosure would harm the way Defra officials make decisions or give advice. There is a strong public interest in 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. This retains the impartiality of the civil service, which might be undermined if advice was routinely made public as there is a risk that officials could come under political pressure not to challenge ideas in the formulation of policy, thus leading to poorer decision making, which would not be in the public interest. It would not be in the public interest to disclose initial views and sometimes inaccurate exchanges between officials about the potential environmental impact of the waste activities that are carried out under this exemption. Officials need thinking space in order to gain greater understanding of the fluorescent tubes treatment and recycling market in England.

Conclusion of public interest test in relation to the exceptions at regulations 12(4)(d) and 12(4)(e)

Taking into account the arguments for and against disclosure in relation to the application of the exceptions at regulations 12(4)(d) and 12(4)(e) to the internal communications and draft documents mentioned above, we have concluded that the public interest in maintaining the exceptions outweighs the public interest in disclosure. Therefore, we have concluded that the information should be withheld.

In addition, names of Defra and Environment Agency staff are being withheld under regulations 12(3) and 13(1) (third party personal data) of the EIRs, as the information constitutes personal data relating to third parties. Names of staff are personal data. Regulations 12(3) and 13(1) of the EIRs provide that personal data relating to third parties is exempt information if disclosure would breach the Data Protection Act 1998 (DPA). We consider that disclosure of this information is likely to breach the first data protection principle in Schedule 1 to the DPA, which relates to the fair and lawful processing of personal data, 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 to the DPA. Therefore, we have concluded that this information is exempt from disclosure under regulation 12(3) and 13(1) of the EIRs.

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 address below.

Yours sincerely,


Defra FOIA and EIRs Team
Informationrequests@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.

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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