



Kellie-Marie Burston
Via Email

Our Ref: GMMC330019SW

Your Ref: EPR/BS7722ID/V010
EPR/BS7722ID/V009

Date: 30/11/23

Dear Kellie-Marie,

**Request for information under the Freedom of Information Act 2000 (FOIA)/
Environmental Information Regulations 2004 (EIR)**

Thank you for your request for information relating to Maw Green Landfill Site
EPR/BS7722ID/V010 and EPR/BS7722ID/V009 which was received on 11/10/2023.

We respond to requests under the Freedom of Information Act 2000 and Environmental
Information Regulations 2004.

Please find the link below which contains the information falling within scope of your request.
Please refer to [Open Government Licence](#) which explains the permitted use of this information.

<https://ea.sharefile.com/d-sb7d5294ae07f4d7db51d22a3bf8db56d>

Please note that this link will expire in 30 days from 30/11/23. Please save the information to
your own system.

**Please note that certain information (that which is subject to legal professional privilege
and that which is draft) has been redacted from the enclosed documents or withheld
entirely in line with the Environmental Information Regulations 2004 (EIR) non-disclosure
of environmental information exceptions.**

**You also confirmed to us on 6th November 2023: “FCC are happy to reduce the scope of
people with the EA holding information by removing reference to administrative staff and
administrative information” Therefore all administrative information has been withheld.**

As a public body under FOI/EIR, we must provide reasons for this refusal. We also share how we have considered the Public Interest for refusal and disclosure. You can find these details in the appendix below.

If you are not satisfied you can contact us within 2 calendar months to ask for our decision to be reviewed. We shall review our response to your request and give you our decision in writing within 40 working days.

If you are not satisfied following this, you can then make an appeal to the Information Commissioner Office (ICO), the statutory regulator for EIR/FOI. The address is: ICO, Wycliffe House, Water Lane, Wilmslow, Cheshire. SK9 5AF. Tel: 0303 123 1113 (local rate) or 01625 545 745 (national rate) | Fax: 01625 524 510 | Email: casework@ico.org.uk | Website: <http://www.ico.org.uk>

Yours sincerely

Sarah Walters
Customers & Engagement Officer
Greater Manchester, Merseyside and Cheshire

Direct e-mail:- inforequests.gmmc@environment-agency.gov.uk

Appendix

Relevant exceptions under the Environmental Information Regulations 2004 (EIR)

Drafting documents and private thinking

The exceptions that apply to drafting documents and private thinking information are:

EIR Regulation 12(4)(d) Drafts

A public authority may refuse to disclose information to the extent that – (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.

and

EIR Regulation 12(4)(e) Internal communications

A public authority may refuse to disclose information to the extent that – (e) the request involves the disclosure of internal communications. ‘Internal communications include internal emails, attendance notes, minutes of meetings, records of phone conversations, recommendations, and briefing notes etc.

EIR Regulation 12(4)(d) applies because the request relates to material which was still in the course of completion, to unfinished documents or to incomplete data. The final Permit Variations and Decision Documents are published on the Public Register. In relation to the supply of any draft documents, the effect of disclosing this information would be to provide information which has changed significantly, and would therefore confuse the public or distract from the issue by re-visiting outdated discussions.

Legal proceedings and investigations

The exception that applies to this information is:

EIR Regulation 12(5)(b) Legal proceedings and investigations

A public authority may refuse to disclose information to the extent that its disclosure would adversely affect – (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.

EIR Regulation 12(5)(b) applies because disclosure would adversely affect the course of justice as some of the information requested attracts Legal Professional Privilege (LPP). This exception protects advice given by a lawyer to a client and confidential communication between them about that advice. Compromising the EA's ability to consult with our legal advisors and act on their advice would negatively impact the National Permitting Service's ability to determine permits. Consequently, we are unable to provide you with the legal advice provided by an EA lawyer on the variation, since the advice is an internal communication and is subject to LPP.

EIR Regulation 13(1) Personal Data

The Environment Agency cannot disclose the requested details about individual employees. The exception that applies to the withheld personal information is as follows:

This information is personal data and to disclose it would breach the first data protection principle of the UK General Data Protection Regulation (UK GDPR) and Data Protection Act 2018 (DPA 2018).

The First Data Protection Principle requires that we are fair to individuals when we collect, hold and use their personal data. Our employees have a reasonable expectation that their personal data held by their employer will remain confidential, so it would be unfair to disclose the requested information.

In this case it would be unfair to disclose information that would identify individuals. The information requested is therefore exempt due to Regulation 13(1) of the Environmental Information Regulations 2004, which explains that:

***“To the extent that the information requested includes personal data of which the applicant is not the data subject, a public authority must not disclose the personal data if—
(a) the first condition is satisfied...”***

The ‘first condition’ referred to above is further explained in Regulation 13(2A):

“The first condition is that the disclosure of the information to a member of the public otherwise than under these Regulations—

(a) would contravene any of the data protection principles...”

The Public Interest Test

We have weighed the public interest factors in favour of maintaining the exceptions and find that they outweigh the public interest factors in disclosing the information. In carrying out the public interest test, we have considered both the arguments for and against disclosure:

1. Factors in favour of releasing the information

- **General presumption of openness.**

The EA only withholds information if it is sure that disclosure would more likely than not cause substantial harm. We consider that there would be significant harm if the requested information were to be disclosed to the world at large as it would harm our ability to seek free and frank legal advice, would prejudice our ability to determine permits in confidence and potentially mislead the public, and could result in prejudicing the course of justice and the permitting process.

- **General need to promote accountability and transparency.**

We believe that there is a general need to promote accountability and transparency in the way the EA regulates and makes decisions. We consider that there is a strong public interest in being able to demonstrate to the public that we comply with our legal obligations under the EIR legislation. We consider our EIR obligations to have been met by the detailed response we provided to you in the Decision Documents accompanying the Permit Notices issued on 20 July 2023 and 05 October 2023. These documents are on the public register, and the Decision Documents outline in considerable detail the decision-making processes leading to the content of the permit variation.

- **Contribution to effective running of the public sector.**

We recognise there is a public interest in scrutinising whether appropriate decisions are being taken in relation to our regulation of the environment and our decision-making processes. However, we consider releasing this information would prejudice the effective

running of the EA. It is very much in the public interest to safeguard the principle of LPP, and the important principle of following processes and procedures set down in law for dealing with legal disputes as it furthers the interests of justice.

2. Factors in favour of withholding the information

- **The strength of exemptions under EIR.**

We consider that the exceptions that we are relying upon provide strong grounds for withholding the requested information as these seek to uphold the longstanding common law principle of LPP and confidentiality. The principle exists to protect the rights of clients to seek and obtain advice from their legal advisers so that they can take fully informed decisions. We consider there to be a very strong public interest in safeguarding legal principles and procedures, and these should not be undermined by disclosures under freedom of information legislation.

- **Contribution to effective running of the public sector.**

We consider releasing information subject to LPP would prejudice the effective running of the EA. We consider it is very much in the public interest to safeguard openness in all communications between client and lawyer to ensure access to full and frank advice. We believe that release would make it difficult for the EA to operate effectively as it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion.

The EA needs to be able to maintain the ability to seek legal advice in confidence and without the advice being subsequently disclosed to the world at large as this could impact the way in which we carry out our statutory duties and obligations, including permitting. The abilities of the National Permitting Service in issuing permits would otherwise be compromised. There is a strong public interest in preventing this from happening. Further, as we have already provided you with the Decision Documents outlining the decision-making process in this variation, we do not consider there to be a strong public interest in the disclosure of the legal advice, internal communications or drafting processes as it will not add anything further to the information which was comprehensively covered in the Decision Documents. In addition, drafts and previous versions of documents published on the Public Register have the potential to confuse or mislead the public.

Release of draft documents which have been superseded would distract public debate away from the substantive issues and instead focus on secondary issues such as any deficiencies

in the information or the difference between draft proposals and a final version. There is a real risk that public debate would be distracted and therefore seriously impact the ongoing debate surrounding the issuing of the permit.

We consider the release of internal communications which are subject to LPP would harm the quality of internal discussions in the future as a public authority would be deterred from even seeking legal advice for fear it would later be disclosed. It is well established that any encroachment on the protection afforded by LPP damages the confidence of public bodies in its efficacy. Therefore, significant weight is attached to the role which LPP plays in our justice system and there must be a compelling reason to justify denying a public authority the right to rely on its protection. We do not consider there to be a compelling reason in this case.

We consider that there is a strong public interest in ensuring the effective running of the public sector. Disclosure of internal communications and draft documents that were never created for the purpose of sharing with any third parties is harmful and would impact upon our ability to carry out our business. When having discussions, we need to be able to consider all the information and options that may be potentially relevant in the decision-making process, and for this a 'safe space' is essential. This allows for the 'free and frank' exchange of views and opinions.

In conclusion, considering the strength and number of grounds in the legislation, we therefore find that the factors in favour of withholding information outweigh the public interest factors in disclosing the information and therefore conclude that the Public Interest Test supports the withholding of this information.