

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 22 January 2024

Public Authority: Department for Environment Food and Rural Affairs (Defra)

Address: Seacole Building, 4th Floor, 2 Marsham Street, London, SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested Defra to disclose records of conversations conducted between 5 September 2022 and 7 February 2023 where there is discussion about reducing the planned scale of future domestic biomass supply for electricity generation. Defra refused to disclose the requested information citing regulation 12(4)(e) of the EIR.
2. The Commissioner's decision is that Defra is entitled to refuse to disclose the requested information in accordance with regulation 12(4)(e) of the EIR.
3. The Commissioner does not require further steps.

Request and response

4. On 10 March 2023, the complainant wrote to Defra and requested information in the following terms:

"I would like to request records of conversations conducted between 5th September 2022 and 7th February 2023 where there is discussion

about reducing the planned scale of future domestic biomass supply for electricity generation, involving the following people:

1. Two or more Heads and/or Deputy Heads of the Land Use Change, Net Zero & Carbon Budgets Strategy and Biomass Policy teams.

AND/OR:

2. The Rt Hon Lord Benyon.

By "records of conversations" I mean:

1. Correspondence such as written letters and emails, as well as any minutes, transcripts, and recordings of calls. For each example of correspondence, please provide the date and time it occurred, and where possible, the names of all correspondents and people party to that correspondence, for example if copied in on an email, or present in the room or on a call.

2. Agendas and minutes/transcripts from virtual and in-person meetings. Please include the date, time, and attendee list of each meeting where possible, as well as any documentation handed out, presented or shared during that meeting, such as presentation slides, flyers, written reports, etc. If there are recordings of meetings, please include them."

The complainant further clarified as follows:

"Just a quick further clarification as I've realised I may not have used the correct titles here in my request - by 'Heads' and/or 'Deputy Heads', can you include 'Directors' and/or 'Deputy Directors'?"

5. Defra responded on 4 April 2023. It refused to disclose the requested information citing regulation 12(4)(e) of the EIR.
6. The complainant requested an internal review on 4 May 2023.
7. Defra carried out an internal review and notified the complainant of its findings on 23 June 2023. It upheld its application of regulation 12(4)(e) of the EIR.

Scope of the case

8. The complainant contacted the Commissioner on 18 August 2023 to complain about the way their request for information had been handled. They dispute how Defra has balanced the public interest test and consider there are very significant public interest arguments that warrant the disclosure of the requested information.

9. The Commissioner considers that the scope of his investigation is to establish whether or not Defra is entitled to rely on regulation 12(4)(e) of the EIR.

Reasons for decision

Regulation 12(4)(e) – internal communications

10. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications.
11. Defra confirmed that the withheld information was attached to one of six covering emails and those emails plus attachments have only been shared with other central government departments or between an executive agency and its parent department. The withheld information in its entirety can therefore be classed as an internal communication.
12. The Commissioner's guidance on regulation 12(4)(e)¹ confirms that communications between central government departments are expressly included as internal communications. Internal communications between an executive agency and its parent department are also classed as internal communications for the purposes of this exception.
13. The guidance also highlights how this is a class based exception. There is no need to consider the sensitivity of the information to engage the exception. The withheld information only needs to fall within the definition of internal communications.
14. The Commissioner has reviewed the withheld information and he is satisfied that it all falls within the definition of internal communications. As Defra has explained the covering emails confirm that the information has only been shared with other central government departments or between executive agency and its parent department. As the guidance highlights, such communications are classed as internal communications and therefore regulation 12(4)(e) of the EIR applies.

¹ [What are internal communications? | ICO](#)

Public interest test

The complainant's view

15. They believe there is a very significant public interest in the disclosure of this information. They have said that the information they requested has relevance to multiple Ofgem investigations, almost £2 billion annual subsidies, and the UK's ability to meet legally binding emissions targets. But in their view the requested information did not relate immediately to any fixed government decision-making, merely the research and discussions informing the preparation of multiple modelled scenarios included within the now-published Biomass Strategy.
16. For this reason, they do not agree that the public interest in disclosure is less than the public interest in protecting Defra's internal "frankness and candour". They also confirmed that Defra has applied a blanket approach to non-disclosure and has not considered redaction. It has also not provided any specific explanation about the sensitivity of different documents or communications. They do not agree that the requested information was leading to a definite or legislative decision but instead to what they described as multiple modelled scenarios that have since been published in the Biomass Strategy.
17. The complainant believes Defra's arguments on the 'chilling effect' seem weak if they were always going to be presenting various scenarios, rather than indicating government support for one option over another. They consider it is unlikely that any information disclosed would mislead the public or be misinterpreted by the media.

Defra's view

18. It stated that it recognised the public interest in information relating to biomass supply and that releasing such information helps with accountability and transparency in government. Defra confirmed that it is also conscious that biomass supply is a very topical issue and disclosure of the requested information would further public understanding of this issue.
19. However, at the date of the request conversations were still ongoing internally and the discussion in the information requested had not been internally agreed and formally signed off prior to the publication of the Biomass Strategy 2023. It said that the Biomass Strategy 2023 was published by the Department for Energy Security and Net Zero on 10 August 2023 and the narrative around the two availability scenarios shared: 'the ambitious supply scenario' and the 'restricted supply scenario'.

20. It believes the 'restricted supply scenario' and the supporting narrative provides the information the complainant has requested. Defra commented that it is important to caveat that this scenario and 'the ambitious supply scenario' are not intended to be upper or lower estimates of what it expects biomass availability to be nor are they government targets for biomass production. It said that understanding future biomass availability is a complex task and one which is subject to significant uncertainties. Therefore, the information which has been requested covers a policy area that, in spite of the publication of the Biomass Strategy, is still very much live and in development within Defra, including the possible development of supply and demand-side incentives. Defra argued that it remains important for central government to retain a private thinking space in order to determine the policy implications that underpin the scale of the future domestic biomass supply away from external scrutiny, and to continue to design policy using free and frank advice to avoid influencing land use decisions by landowners based on an incomplete understanding of future policy.
21. The Commissioner recognises the public interest in disclosure - the public interest in openness, transparency and accountability and in disclosing information to the public to assist them in understanding more clearly how such important decisions are made and what is underlying the Biomass Strategy. He also notes that there is a significant public interest in the government's green energy policy and the role biomass will play in that. It already is a key component of our energy supply and is a renewable source that can be used across all three energy sectors (transport, heat and electricity), as well as non-energy sectors. There is significant public interest in understanding how the government aims to leverage that potential and in understanding clearly the advantages and disadvantages of the options available. Access to the requested information would enable the public to understand the Biomass Strategy more clearly and what discussions, deliberations and considerations took place within central government.
22. However, the timing of this request is also significant. The Biomass Strategy was not published until the August, so in March 2023 when the request was made there were still candid, free and frank discussions taking place between ministers and officials in relation to this strategy and what it should be. At the time of the request Defra and other central government departments were still actively considering its options, discussing these and finalising the strategy, which was ultimately published five months later. Despite the significant public interest arguments in favour of disclosure, there are more compelling public interests in favour of maintaining this private thinking space and ability to freely and frankly discuss policy options away from public interference, as a result of the timing of the request and what the circumstances were at that time.

23. The Commissioner agrees with Defra that there is a need for private thinking space and the space to openly, freely and frankly discuss and deliberate on policy options. This private thinking space is key to effective decision making – decisions are improved when conversations can be free and frank. If disclosure took place during this process and at a time when the issues are still live and under debate, it would be likely to jeopardise this candour, thereby decreasing the quality of future advice in an important area of work. This is not in the wider interests of the public.
24. For the above reasons, the Commissioner has decided that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exception, as a result of the timing of the request and the stage at which Defra and other government departments were at in relation to the requested information and the Biomass Strategy.

Right of appeal

25. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Samantha Coward
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