

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

Date: 17 October 2024

Public Authority: Welsh Office

Address: Gwydyr House
London
SW1A 2NP

Decision

1. The Commissioner's decision is that at the time of the request the Welsh Office was entitled to withhold some of the information the complainant has requested ("the withheld information") under regulations 12(5)(e) and 13 of the EIR, which concern commercial interests and personal data of third parties.
2. The Commissioner's decision is also that some of the requested information does not fall under the above exceptions and the Commissioner considers that this should be disclosed to the complainant.
3. The Commissioner orders the Welsh Office to take the following steps to ensure compliance with the legislation:
 - To disclose the information to which neither regulation 12(5)(e) nor regulation 13 of the EIR applies, i.e. that information which it has not highlighted in either green or blue in the most recent copy provided to the Commissioner.

4. The Welsh Office must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background to the request

5. In 2023 the UK Government and the devolved administrations ran a consultation exercise on the zero emission vehicle (ZEV) mandate¹ wherein the commitment was made that all new cars and vans would be zero emission at the tailpipe by 2035. The exercise informed government thinking on regulating the minimum pace of the ZEV transition, ensuring an adequate supply of vehicles and providing investment certainty for the deployment of supporting infrastructure. Between May and June 2023 the Secretary of State for Wales met with vehicle manufacturers and energy companies to discuss the business ramifications of the ZEV mandate and measures needed to build the infrastructure to support greener industry.

Request and response

6. On 2 December 2023, the complainant made the following request for information:
 - i. 20/6/23 - David TC Davies met with Aston Martin to discuss e-fuels
 - ii. 23/5/23 - David TC Davies met with Toyota to discuss Toyota's modelling on the impact of the proposed Zero Emissions Vehicle mandate policy.
 - iii. 13/3/23 - David TC Davies met with Shell to discuss decarbonisation in South Wales
 - iv. 7/3/23 - David TC Davies met with Hynet to discuss HyNet's hydrogen project proposals for the North West
 - v. 25/2/23 - David TC Davies met with Tata Steel Europe to discuss Tata Steel current operations and plans for the future

¹ <https://www.gov.uk/government/consultations/a-zero-emission-vehicle-zev-mandate-and-co2-emissions-regulation-for-new-cars-and-vans-in-the-uk/outcome/zero-emission-vehicle-zev-mandate-consultation-summary-of-responses-and-joint-government-response>

1. I am writing to request documents related to each of these meetings, including but not limited to:
 - a. Agendas
 - b. Minutes
 - c. Briefing notes
 - d. Readouts
 - e. Other meeting memoranda
2. I am also writing to request copies of correspondence generated between David Davies and the respective parties to these meetings in the months of March, April, May and June 2023.

I ask that correspondence include, but not be limited to:

- a. Letters
- b. Emails and attachments
- c. Text messages
- d. WhatsApp messages

I would prefer to receive all information in electronic format and in machine-readable formats such as .xls where applicable. I would be grateful if you could acknowledge receipt of this request. Thank you for the time and energy you will invest in preparing a response."

7. The Welsh Office responded to the request on 29 January 2024. It stated that it did hold some information relevant to part 1 of the request, but refused to disclose it, citing regulation 12(5)(e) of the EIR. In respect of the remaining requested information, it stated that it did not hold information relevant to part two of the request.
8. The complainant sought an internal review of the Welsh Office's handling of their request on 7 February 2024. A response to this was provided on 15 March 2024. The reviewer upheld the application of regulation 12(5)(e).

Reasons for decision

Does regulation 12(9) apply to the withheld information?

9. Regulation 12(9) states that, "to the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs 12(5)(d) to (g)".
10. This means that where the information relates specifically to emissions, the exemption in regulation 12(5)(e) cannot be applied.

11. Before considering regulation 12(5)(e), the Commissioner must first address whether the withheld information is directly linked to emissions.
12. The Commissioner has considered the withheld information in line with his guidance on regulation 12(9).
13. The Commissioner notes that the withheld information does not directly relate to emissions from vehicles and from fuel energy used in industry, but rather, measures which are being planned and implemented to reduce such emissions.
14. As such, the Commissioner considers that the information does not represent environmental information as defined by regulation 2(1)(b), but instead represents that as defined by regulation 2(1)(c) as it is information on measures and activities likely to affect levels of emissions and therefore the elements of the environment e.g. air. The Commissioner's guidance explains that regulation 12(9) will only be relevant if the information falls squarely within the definition of environmental information under 2(1)(b). This is in line with the Upper Tribunal's decision in *GW v Information Commissioner, the Local Government Ombudsman and Sandwell Borough Council* (GIA/4279/2012).
15. Having considered the above, the Commissioner is satisfied that the information does not relate to emissions, and that regulation 12(9) does not apply to the information. He has now gone on to consider whether regulation 12(5)(e) has been correctly engaged.

Is regulation 12(5)(e) engaged?

16. Information can be withheld under regulation 12(5)(e) of the EIR if disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
17. The Commissioner has considered four tests:-

Is the information commercial or industrial in nature?

18. The withheld information includes details of how the ZEV mandate would affect vehicle production and the consequent impact on the business plans of certain parties to the meetings.
19. In the case of other parties to the meetings, the withheld information includes details of their efforts to build the infrastructure needed to support greener industry. This information includes material on the

public and private financing of green initiatives as well as the practical aspects of building a hydrogen production plant.

20. As the withheld information concerns manufacturing processes, public/private financing and business planning the Commissioner accepts that it is both industrial and commercial in nature.

Is the information subject to a duty of confidence provided by law?

21. The withheld information was generated in preparation for, or as an outcome of, private meetings between the Secretary of State for Wales and representatives from various businesses.
22. The Welsh Office has informed the Commissioner that, in accordance with government transparency commitments, summary details of these meetings have already been published by it on the GOV.UK website². Whilst those in attendance may have expected high-level details of the meetings to be disclosed, it does not necessarily follow that they would expect comprehensive accounts to be similarly disclosed.
23. The Welsh Office went on to state that the topics discussed at these meetings were of genuine concern to the business interests of the private companies and to the policy interests of government departments and as such the information cannot be classed as trivial. There is no evidence to suggest that comprehensive accounts of these meetings have been publicly disclosed and therefore the Wales Office has determined that the information retains the necessary quality of confidence.
24. The Welsh Office also stated that the withheld information includes material which was shared under an explicit expectation of confidence, namely briefing material provided by the Department for Energy Security and Net Zero (DESNZ) which was not to be shared at the meetings. The withheld information also includes information pertinent to the business interests of several private companies which was shared by the companies under an implied expectation of confidence.

² Jan-Mar 2023: <https://www.gov.uk/government/publications/oss-w-ministerial-gifts-hospitality-travel-and-meetings-january-to-march-2023> & Apr-June 2023: <https://www.gov.uk/government/publications/oss-w-ministerial-gifts-hospitality-travel-and-meetings-april-to-june-2023>

25. Given the nature of the information and the manner in which it was shared, the Commissioner concludes that that the requested information is subject to the common law duty of confidence.

Is the confidentiality required to protect a legitimate economic interest?

26. The Welsh Office stated the following:-

- In the case of certain parties to the meetings, disclosing the withheld information is considered detrimental to their economic interests in so far as it would reveal to their overseas competitors the limitations the ZEV mandate would place on their manufacturing capabilities.
- In the case of other parties to the meetings, disclosing the requested information would provide their competitors with a detailed account of their current work and future plans for decarbonising industrial processes. This information includes comments on: the practical challenges of carbon capture and storage, US/EU threats to international investment and the level of public sector engagement/funding needed to support their business endeavours.
- In the case of the Welsh Office and DESNZ, disclosing the requested information would be considered a breach of confidence, damaging the relationship of trust built between public and private sector bodies and deterring the sharing of similar information in the future. If the flow of such information is curtailed then the departments would be less equipped to implement effective economic policies which deliver value for money whilst also meeting government targets for greener industry.

27. The Commissioner is satisfied from the above that the confidentiality is required to protect the legitimate economic interests of the above parties.

Would disclosure adversely affect the confidentiality?

28. Although this is a necessary element of the exception, once the first three elements are established, the Commissioner considers it inevitable that this element will be satisfied. Disclosing truly confidential information into the public domain would inevitably harm the confidential nature of that information and would also harm the legitimate economic interests that have been identified.

Is the exception at regulation 12(5)(e) engaged?

29. In respect of some of the requested information, i.e. that information which is not highlighted in the copy provided to the Commissioner, the Commissioner does not consider that the four tests above have been satisfied. The information is purely factual in nature and does not provide any detail about the meeting or questions/concerns discussed by the various parties. Therefore the exception is not engaged, so he has ordered disclosure of that information in paragraph 3 of this notice.
30. Since the four tests have been satisfied in relation to the remaining withheld information, i.e. that information highlighted in green in the most recent copy provided to the Commissioner, the Commissioner finds that regulation 12(5)(e) of the EIR is engaged as disclosing that information would adversely affect the legitimate economic interests of the Welsh Office and the other relevant parties. He has gone on to consider the associated public interest test.

Public interest arguments in favour of maintaining the exception

31. The Commissioner is aware that the withheld information concerns the commercial interests of Aston Martin Lagonda, Toyota, Shell and Hynet North West. The confidentiality of this information is derived from the common law duty of confidence. The Welsh Office considers this information to be of commercial value and has taken measures in order for it to remain private in the interests of protecting the legitimate economic interests of the aforementioned companies.
32. The Welsh Office has previously disclosed summary level details of the aforementioned meetings within its transparency returns on the gov.uk website as detailed in paragraph 15 above. It states that disclosing additional information beyond that which was previously published is deemed to go above and beyond transparency requirements and risks jeopardising the commercial interests of the private sector counterparts of the Welsh Office.
33. The Welsh Office argues that it is not in the public interest to disclose information held under a reasonable expectation of confidence in circumstances where such disclosure has the potential to harm the economic interests of the confider. Such disclosure would damage the relationship of trust between the Welsh Office, DESNZ and Aston Martin Lagonda, Toyota, Shell and Hynet North West and potentially similar businesses, stemming the flow of such information in the future to the detriment of the ability of these government departments to meet their economic goals.

Public interest arguments in favour of disclosing the withheld information

34. The Environmental Information Regulations (EIR) have an underlying element of openness and transparency which disclosure of the requested information would endorse.
35. Disclosure of this information would provide the public with a greater understanding of business engagement at the Welsh Office, thus enabling and enriching public debate on this subject. Furthermore, release would encourage greater accountability and increase public confidence in the integrity of decision-making in this area.
36. The Welsh Office accepts that private companies seeking government support should expect some information concerning the engagement process to be released into the public domain. Such disclosure would promote transparency, encourage competition and ultimately help achieve the best value for money in the expenditure of public funds.

Balance of the public interest arguments

37. The Welsh Office has weighed the factors in favour and against the release of the requested information and determined that the public interest favours non-disclosure. It considers that disclosing this information into the public domain would breach the expectation of confidence under which the information was provided and would be to the detriment of both the private and public sector bodies to whom the information belongs.
38. The Commissioner has considered the public interest arguments. Whilst the Commissioner accepts that there is a public interest in transparency and accountability in this case, he notes there is a competing public interest in the relationship of trust between the Welsh Office, DESNZ and private companies to enable them to work together to meet their economic goals. Disclosure of the information would adversely affect this. The Commissioner also recognises that the Welsh Office has already published summary level details of the meetings and he considers that this should go towards satisfying the public interest in the topics being discussed without disclosing information provided in confidence.
39. Having considered the public interest in all the circumstances of the case, the Commissioner has therefore concluded that the public interest in maintaining the exception at regulation 12(5)(e) outweighs the public interest in disclosure of the withheld information.

Regulation 13 - personal information

40. Regulation 13 of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
41. In this case the relevant condition is contained in regulation 13(2A). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
42. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then regulation 13(2A) of the EIR cannot apply.
43. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

44. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".
45. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
46. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
47. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
48. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information does both relate to and identify the data subject(s). This is because the Wales Office has informed the Commissioner that some of the withheld information includes the personal data of junior officials, specifically their names.

49. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
50. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
51. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

52. Article 5(1)(a) of the UK GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

53. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
54. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

55. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"³.

³ Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) the EIR (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

56. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
57. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

58. The Welsh Office has classed the data subjects as 'junior officials' as they fall below the grade of senior civil servant and therefore do not hold a level of seniority which would typically warrant disclosure of their names. Such information is routinely released for senior officials but withheld for their junior counterparts.
59. These individuals were engaged in roles concerned with the development of government policy or the provision of administrative support. Whilst they may have interacted with members of the public on occasion they were primarily business facing and would have been principally responsible for providing advice and support to their senior colleagues who in turn would be ultimately responsible for making decisions and representing the department externally.
60. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

61. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
62. The Welsh Office has informed the Commissioner that it has not identified any legitimate interests in disclosure of the personal data of junior officials.
63. The Commissioner considers that, although the complainant clearly has an interest in the content of the meetings, and there is a public interest in their subject matter, the names of junior officials in and of themselves would not provide the public with any greater or more meaningful understanding of the aforementioned meetings and the complainant has not indicated a specific interest in disclosure of this particular information.
64. As the Commissioner is satisfied that there is no valid legitimate interest in disclosure of the names of junior officials, there is no lawful basis for disclosure and therefore the Welsh Office was entitled to rely on regulation 13 of the EIR to withhold the information.

Right of appeal

65. 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: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

66. 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.
67. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF