

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

Decision Notice

Date: 10 April 2019

Public Authority: Department for Communities
Address: Lighthouse Building
1 Cromac Place
Belfast
BT7 2JB

Decision (including any steps ordered)

1. The complainant requested the projected cost of the Casement Park redevelopment scheme at the time of the request. The Department for Communities refused the request in reliance on the exception at regulation 12(4)(d) of the EIR. The Commissioner's decision is that the exception is engaged, but that the public interest in maintaining that exception does not outweigh the public interest in disclosure of the requested information.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information.
3. The public authority must take these steps within 35 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 FOIA and may be dealt with as a contempt of court.

Request and response

4. On 19 January 2018 the complainant submitted the following request to the Department:

"Under FOIA/EIR, I would like to request an update on the costs associated with the Casement Park project."

Please disclose the following:

- 1. The total amount spent on the Casement Park development project so far.*
 - 2. A breakdown of this cost.*
 - 3. The latest overall projected cost of the Casement Park redevelopment scheme upon completion."*
5. The Department issued a response on 30 April 2018. It disclosed the information requested at parts 1 and 2 of the request but withheld the information requested at part 3 in reliance on the exceptions at regulation 12(4)(d), regulation 12(5)(e) and regulation 12(5)(f) of the EIR.
 6. The complainant requested an internal review on 30 April 2018, and the Department provided him with the outcome of that review on 21 June 2018. The Department maintained reliance on the exceptions claimed.

Scope of the case

7. The complainant contacted the Commissioner on 27 June 2018 to complain about the handling of his request. The complainant asked the Commissioner to make a decision as to whether or not the information at part 3 of his request ought to have been disclosed to him.
8. The Commissioner understands that the Department has since verbally provided the complainant with a "ballpark" figure of £110million. However, the issue for the Commissioner in this case is to determine whether the Department was entitled to withhold the requested information at the time of the request, ie in January 2018.
9. During the course of the Commissioner's investigation the Department confirmed that it no longer sought to rely on the exceptions at regulation 12(5)(e) and regulation 12(5)(f). Therefore the Commissioner has only considered the Department's reliance on regulation 12(4)(d).

Reasons for decision

Regulation 12(4)(d) – material still in the course of completion, unfinished documents or incomplete data

10. Regulation 12(4)(d) states that, a public authority may refuse to disclose information to the extent that the request relates to:
 - material which is still in the course of completion;

- unfinished documents; or
 - incomplete data.
11. The exception is class-based, which means that it is engaged if the information in question falls within its scope. If the information in question falls into one of the three categories, then the exception is engaged. It is not necessary to show that disclosure would have any particular adverse effect in order to engage the exception. However regulation 12(4)(d) is a qualified exception, so the public authority must consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
 12. The fact that the exception refers to both material in the course of completion and unfinished documents implies that these terms are not necessarily synonymous. While a particular document may itself be finished, it may be part of material which is still in the course of completion.
 13. The Department advised the Commissioner that it considered the requested information to fall under each of the three categories listed in regulation 12(4)(d). It did not clarify the specific material that it considered to be in the course of completion, but said that the projected cost was subject to change as the project progressed. The Department further set out that the information was contained within documents that were in draft status, and therefore unfinished. Finally, it set out that the information was incomplete data on the basis that it had been aggregated from a series of other cost components which were themselves incomplete.
 14. The Commissioner accepts, on the basis of the information provided by the Department, that the exception at regulation 12(4)(d) is engaged. She has therefore gone on to consider the public interest.

Public interest in favour of maintaining the exception

15. The Department put forward a number of arguments in favour of maintaining the exception at regulation 12(4)(d).
 - to have disclosed the information would have resulted in the release of inaccurate, partial and misleading information;
 - the information would undergo changes during the course of the verification process and that this could be hindered by releasing this data;

- there was a strong likelihood that disclosure would make the task at hand more complex and consequently be a drain on public resources;
- there is no public benefit in releasing this information before it is completed. It would result in a premature and unverified figure that could not be considered as reliable.
- The Department had openly acknowledged that projected cost estimates were likely to increase; however the Department's budget remains unchanged at £77.5m. Any increase to the budget would have to be agreed by the NI Executive.
- Disclosure of the draft unfinished figure may result in fruitless public debate and interrogation of officials as to a position that was unadopted (First-tier Tribunal in Mersey Tunnel Users Association v Information Commissioner & Halton Borough Council);¹
- disclosing inaccurate information would lead to difficulties in the relationship with UCGAA [the Ulster Council of the Gaelic Athletic Association]; and
- more resource would have to be unnecessarily diverted to manage this relationship.

Public interest arguments in favour of disclosure

16. The Department identified a general public interest in the disclosure of environmental information, as well as considerable public interest in the redevelopment of Casement Park.
17. The Department also set out its commitment to promoting accountability and transparency in the spending of public money. However the Department said that accurate information should be disclosed in order to enable the public to understand how money was being spent.
18. The complainant also put forward a number of arguments in favour of disclosure:
 - The project was benefitting from a large amount of public money;

¹ EA/2009/0001, 11 January 2010

- The UCGAA had publicly confirmed that the project would cost more than originally forecast;² and
- The UCGAA had indicated to the Department that the project could not proceed without additional public funding.

Balance of the public interest arguments

19. The Commissioner has had regard to her published guidance³ on regulation 12(4)(d) when balancing the public interest arguments. She is also mindful of her decision in a previous case involving the Department's reliance on regulation 12(4)(d) in respect of information relating to the redevelopment of Casement Park.⁴ In that decision notice the Commissioner acknowledged the public interest in transparency and accountability carried greater weight in the context of the amount of public money involved.

"Given that the Casement Park proposal was allocated £62.5 million of this funding [this figure was correct at the time] there is a legitimate and substantial public interest in the public being sufficiently informed to participate in and comment on the decision making process. The importance of public participation in decision making is set out in Aarhus Convention from which the EIR were drawn."

20. The Commissioner's decision was that the Department had failed to provide adequate detail of its public interest arguments, and the Tribunal dismissed the Department's appeal against the decision notice.
21. In this case the Commissioner notes the Department's argument that the requested information was "inaccurate, partial and misleading". However, the Commissioner's published guidance sets out her opinion that this argument is unlikely to carry significant weight because it should generally be possible for the authority to put the disclosure into context. For example, the Department should be able to explain to the public that the projected cost of a project at a specific date is subject to change as the project progresses.

² <http://ulster.gaa.ie/wp-content/uploads/2018/02/Tuarascáil-an-Rúnaí.pdf>

³ https://ico.org.uk/media/for-organisations/documents/1637/eir_material_in_the_course_of_completion.pdf

⁴ https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1432918/fer_0569788.pdf

22. The Commissioner is also mindful that the Department verbally provided the complainant with a figure of £110million in March 2019. In this context the Commissioner cannot see how disclosure of the withheld information at the time of the request would have created a misleading or inaccurate impression. The public was aware at that time that the redevelopment of Casement Park had been significantly delayed, and the GAA had put into the public domain the fact that the projected cost has risen. The Department had also confirmed the fact that the budget for the project remained at £77.5million, The Commissioner considers that the public can be trusted to understand the difference between a budget and a projected cost, and in any event the Department could choose to publish explanatory information if it considered the matter to be unclear.
23. The Commissioner is similarly sceptical of the Department's argument that disclosure would make delivery of the redevelopment project more difficult and divert resources. It is a matter of public record that the redevelopment of Casement Park has been controversial, including various legal challenges and sustained public debate. Again the Commissioner is assisted by her analysis in the decision notice referred to at paragraph 19 above.
24. The Department has cited the Tribunal's decision in *Mersey Tunnel Users Association v Information Commissioner & Halton Borough Council* to support its argument that disclosure of the withheld information may result in "*fruitless public debate and interrogation of officials as to a position that was unadopted*". The Commissioner is disappointed that the Department has not explained or clarified what it means by this statement. First-tier Tribunal decisions, while not binding, can be of assistance in understanding how the public interest should be considered. However, since each case is considered on its own merits the Tribunal's comments on the effects of disclosure in one case may not be of particular assistance in another case with different withheld information and circumstances.
25. In the absence of clarity from the Department the Commissioner is of the opinion that disclosure of the projected cost, which is known to have increased, would actually be more likely to encourage legitimate public debate and scrutiny. The ongoing delay in progressing the project is in the Commissioner's view again likely to strengthen the public interest in informing that debate and scrutiny.

26. The Department has not explained how it considers that disclosing the projected cost at the time of the request would have led to difficulties with UCGAA. In any event the Commissioner observes that, given the amount of public money involved, both parties would have a strong shared interest in working to maintain an effective working relationship. Therefore, while the Commissioner does not dismiss this argument entirely, she considers that the weight attached is limited.
27. Finally, the Commissioner has seen no evidence that the Department has taken proper account of the explicit presumption in favour of disclosure of environmental information set out at regulation 12(2) of the EIR. Consequently the Commissioner is not satisfied that in this particular case the public interest in maintaining the exception outweighs the public interest in disclosing the requested information. The Commissioner's decision is that the information withheld under regulation 12(4)(d) ought to have been disclosed to the complainant in response to his request.

Right of appeal

28. 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@hmcts.gsi.gov.uk

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

29. 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.
30. 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

Sarah O'Cathain
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