Environmental Information Regulations 2004 (EIR)

Decision notice

Date: **7 July 2021**

Public Authority: **Department for Communities**
Address: **9 Lanyon Place**
Belfast
BT1 3LP

Decision (including any steps ordered)

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1. The complainant requested from Department for Communities ("DfC") information relating to the Casement Park Redevelopment. DfC refused the request under regulation 12(4)(d) (material in the course of completion, unfinished documents and incomplete data) of the EIR. However, during the course of the Commissioner's investigation, DfC considered that much of the information could be released, and this information was subsequently disclosed to the complainant.

2. The Commissioner's decision is that the request relates to unfinished documents. Regulation 12(4)(d) is therefore engaged and DfC correctly withheld some of the information under this exception. The public interest favoured maintaining the exception.

3. The Commissioner also finds that DfC did not comply with its obligation under regulations 5(2) (duty to make information available on request) and 14(2) (time limits for refusing a request) of the EIR as DfC did not respond to the request within the statutory time limit of 20 working days.

4. The Commissioner does not require DfC to take any steps as a result of this decision.

Request and response

5. On 25 November 2019, the complainant wrote to DfC and requested information in the following terms:

   "*Tom Daly, Chairman of the Casement Park Stadium Development Project Board, has stated in a 22/11/2019 letter that the "Final draft version of the Business Case" has been submitted to the DFC. Please forward to me a copy of this by return*."

6. On 5 February 2020 DfC responded. It confirmed that it holds the information requested but stated that the documents remain in the course of completion, and withheld the information under regulation 12(4)(d) (material in the course of completion) of the EIR. DfC said that the information relates to material which is not complete.

7. On 12 February 2020 the complainant asked DfC for an internal review.

8. On 2 March 2020 DfC provided its internal review response. It maintained its original position to withhold the information under the exception cited, and said that the information is still in the course of completion.

Scope of the case

9. The complainant contacted the Commissioner on 31 May 2020 to complain about the way his request for information had been handled. Specifically, he disputes the public interest reasons for maintaining the exception.

10. The complainant also raised a concern regarding delayed responses from DfC.

11. During the course of the Commissioner's investigation of this case, DfC was asked to review the withheld information and provide further submissions for its reliance of the exception cited. DfC responded and subsequently considered that much of the information could be released. The Commissioner therefore asked DfC to disclose the information which it stated could be disclosed to the complainant. However, the complainant expressed his dissatisfaction with the release of the information. He believed it to be "*the outdated Casement Park draft business case with heavy redaction*" and he argued DfC's reliance of regulation 12(4)(d) of the EIR to the redactions.

12. The following analysis focuses on whether DfC correctly withheld the remaining requested information under regulation 12(4)(d). Also, on whether DfC complied with the procedural aspects of the EIR.

13. The Commissioner would like to indicate that she has previously issued a decision notice which concerned a request for the previous draft of the requested information – FER0569788[1]. However, the public authority had relied on a different exception.

Reasons for decision

Regulation 2(1) – environmental information

14. Regulation 2(1) of the EIR provides the following definition of environmental information:

"*…any information in written, visual, aural, electronic or any other material form on-*

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements…"

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

15. The Commissioner considers that the phrase "any information…on" should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion, a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor, etc in question.

16. Information about a plan, or a measure, or an activity, that affects or is likely to affect the elements of the environment, is environmental information. The information in this case is the final draft for the Redevelopment of Casement Park. This is an activity which is likely to affect many of the elements and factors referred to in regulations 2(1)(a) and (b) of the EIR. Activities in this case is the redevelopment of a Gaelic football stadium.

17. The Commissioner finds that the information, therefore, falls within the category of information covered by regulation 2(1)(c) as the information is on a measure affecting or likely to affect environmental elements and factors listed in regulations 2(1)(a) and (b).

18. The Commissioner is satisfied that the information is environmental information, and that DfC was correct to consider it under the EIR.

Regulation 12(4)(d) Material in the course of completion

19. Regulation 12(4)(d) of the EIR 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, to unfinished documents or to incomplete data.

20. The exception sets out three distinct categories and the information must fall within one of these for the exception to be engaged. The first category is that the request relates to material which is in the course of completion. The "material" in question may be a final policy document that is to be produced later, therefore although the requested information may be contained in a document which is in itself complete, if that document is intended to inform a policy process that is still ongoing, the information may engage the exception.

21. The interpretation of unfinished documents is more simple in that a document will be unfinished if the public authority is still working on it at the time the request is received. Furthermore, a draft version of a document will remain an unfinished document even once a final, finished version of that document has been produced.

22. Incomplete data is data that a public authority is still collecting at the time a request for information is received.

23. DfC explained to the Commissioner that the withheld information falls in the scope of the exception provided by regulation 12(4)(d) because at the time of the request, the draft for the Casement Park Full Business Case had yet to be finalised. DfC referred to the Information Tribunal case of the Secretary of State for Transport v the Information Commissioner (EA/2008/0052) in which the Tribunal found that a "*Draft Report is, by its very name and giving the words their logical meaning, an unfinished document*."

24. In response to the question of which limb of the regulation DfC is relying on, DfC confirmed that it is under the limb of unfinished documents. It stated that the document was unfinished because it was still working on it at the time of the request, and that it continues to work on the document.

25. DfC said that it considers its position has not changed since receipt of the request, and that the revised Casement Park Full Business Case is still in its draft form. It added that this is part of a wider inter-departmental decision-making process. DfC explained that "*the Ulster Council of the Gaelic Athletic Association (UCGAA) Planning Application for the project is currently live and being assessed by the Department for Infrastructure. The draft UCGAA revised Casement Park Full Business Case will be subject to an inter-Departmental process when it progresses to Department of Finance (DoF) officials to consider. When the DoF assessment is complete the document will remain in the course of completion, until it returns to DfC to await consideration by the DfC Accounting Officer and a decision by the DfC Minister."*

26. Following a request from the Commissioner for further submissions, DfC responded and said it was important to note that the document has not been drafted, endorsed or approved by DfC. It explained that the UCGAA commissioned Deloitte MCS Limited to draft the document on their behalf, and that Deloitte MCS Limited provided a copy of the document to DfC under a confidential marking. DfC said that it had consulted again with the UCGAA, and they stated that it wishes to place on record its firm position that the Draft Full Business Case should not be shared. The UCGAA had submitted the Draft to DfC "*in confidence and in good faith*". Therefore, DfC believes that the release of this Draft Full Business Case could damage the good relations between DfC and the UCGAA.

27. DfC stated that the release of much of the information has the potential to negatively impact the delivery of the redevelopment of Casement Park and by extension, the Regional Stadia Programme. This is a Northern Ireland Executive commitment in the New Decade New Approach agreement, to restore devolved government in Northern Ireland. DfC quoted "*The Executive will advance with plans to complete both the Regional and Sub Regional Stadia Programmes, including Casement Park*."

28. The Commissioner asked DfC to specify the parts of the document that it considered could be disclosed. DfC said that it revisited the Draft as did the UCGAA, and DfC provided the Commissioner with the Draft showing (using a schedule) the parts of the document which DfC and the UCGAA considered could now be disclosed. This information excludes any financial details about Casement Park. Following the disclosure of further information, the remaining withheld information largely comprises of financial data.

29. DfC said that it considers the redacted parts of the document are not current and are out-of-date. Therefore, DfC believes that this information would be misleading to the public.

30. The Commissioner is not convinced by DfC's argument with regard to misleading the public. Within the Commissioner's publicised guidance, it sets out her opinion that this argument is unlikely to carry significant weight because it should generally be possible for the public authority to put the disclosure into context. For example, DfC should be able to explain to the public that the financial parts of the document is subject to change as the project progresses.

31. DfC clarified to the Commissioner that it considers the exception is engaged, "*as the information within the document is still in draft form and indeed will never be finalised*."

32. The information which DfC disclosed is contained in the document. The remaining withheld information is also contained within the final draft version of the business case for the redevelopment of Casement Park. This is the principal Gaelic games stadium in Belfast, Northern Ireland, and serves as the home ground of the Antrim Gaelic football and hurling teams. The DfC said that the planning application for the project is currently live and is being assessed. Deliberations and decision-making processes around costs, timelines, benefits and risks are also taking place. It confirmed that the Casement Park Final Business Case continues to be in a draft form, it is incomplete and is still being developed.

The complainant's position

33. The complainant argued that the exception was not engaged and he drew the Commissioner's attention to the fact that the information contained within the documents had been relied upon to obtain Ministerial approval in 2020. The complainant said that as the evidence shows that the Business Case was completed some time ago, he informed the Commissioner that on 13 October 2020 the Minister for the Department for Infrastructure had given ministerial approval for the Casement Park Stadium project to proceed.

34. The Commissioner cannot attach weight to the arguments which correspond to whether or not the documents are finished. However, she can attach some weight to the status and use of the withheld information in terms of being relied upon to gain approval etc.

35. The complainant stated that on 6 March 2017 a revised planning application was submitted to the Planning Office, and that the Business Case for this new application is believed to be a modification of the original Business Case completed for the 2013 planning application.

36. The complainant reported that in an interview with a Belfast Telegraph reporter (published on 3 March 2020) DfC's Minister confirmed the existence of the Business Case for the revised planning application. The complainant provided the Commissioner with a copy of this article, which is also accessible online.[2] Within this article the reporter asked DfC's Minister the following question; "*So it is possible the cost could be more than £110m*?" and the Minister responded; "*It could possibly but we don't know that yet. The £110m is what is there within the business case*." The complainant believes that this is evidence that the Business Case was complete before March 2020.

37. The complainant highlighted to the Commissioner that the day before the publication of this interview on 2 March 2020, DfC provided its internal review response to the complainant's information request, it upheld its decision to withhold the information under regulation 12(4)(d) of the EIR and cited that the request related to material not yet completed.

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[2] https://www.belfasttelegraph.co.uk/sport/gaa/new-minister-deirdre-hargey-is-committed-to-rebuilding-casement-park-39008401.html

38. The Commissioner is satisfied that the information requested in this case can be categorised as unfinished documents, and that the exception at regulation 12(4)(d) is therefore engaged. In view of this, the Commissioner has gone on to consider the public interest test.

Public interest test

39. As is stated in regulation 12(1) of the EIR, the exceptions at the subsections of regulation 12(4) are subject to the public interest test. That is, a public authority may only refuse to disclose information under a regulation 12(4) exception if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

40. When carrying out her assessment of the public interest test, the Commissioner must take into account a presumption in favour of disclosure as required in regulation 12(2) of the EIR.

41. As stated in the Upper Tribunal decision Vesco v Information Commissioner (SGIA/44/2019), "*If application of the first two stages has not resulted in disclosure, a public authority should go on to consider the presumption in favour of disclosure…" and "the presumption serves two purposes: (1) to provide the default position in the event that the interests are equally balanced and (2) to inform any decision that may be taken under the regulations*" (paragraph 19).

Public interest arguments in favour of disclosure

42. The complainant provided a number of arguments in favour of disclosure. He stated that the Business Case for the proposed Casement Park development was finalised some years ago, and that the original planning application for this project was submitted to the Planning Office on 19 June 2013. This was approved by the then Minister for the Department of Environment. In December 2014, following a legal challenge, the planning approval decision was quashed by the High Court, it was held that they acted unlawfully in approving the project.

43. The complainant argued that information is being withheld from the public until the Business Case is released. He considers major issues i.e. increased traffic and off-street parking in the constrained area of Casement Park are being withheld. He also argued that small business's trading in West Belfast are being denied the right of objection to plans the Casement Park developer may have to open business pods and shops within the new development.

44. The complainant further argued that local residents with homes backing onto the boundary wall of Casement Park, are also being denied knowledge of the developer's business intentions for the site.

45. The complainant disagrees that "*approval could be given for a project costing £110 million in the absence of a sound Business Case to support it*." He argued against DfC's reasons of why the full Business Case for this proposed development on the Casement Park should not be released immediately.

46. The complainant believes that the information – Casement Park Full Business Case should be published unedited immediately, and "*before any possible site construction would commence, to allow for full public consultation on the impact to the community and environment*."

47. Further to the disclosure of the partial information, the complainant argued that the remaining information which DfC redacted and withheld under the exception was incorrect, and he listed his reasons to the Commissioner. The complainant is of the view that the full unredacted 2019 draft business case should be disclosed.

48. DfC acknowledged that there is always a general public interest in disclosing environmental information and that there is considerable public interest in the redevelopment of the Casement Park Stadium. DfC said that it is committed to promoting accountability and transparency in the spending of public money.

49. It also argued that accurate data should be disclosed to enable the public to understand how money is being spent. Disclosure, it said, would allow more effective public understanding and participation in decision-making. It would also demonstrate value for money and making best use of resources.

50. The Commissioner understands that, given the impact that work on the stadium may have on the local community, the strength of the public interest in transparency and accountability in this case cannot be underestimated. She also understands that the redevelopment of Casement Park has been controversial and has included various legal challenges and sustained public debate.

Public interest arguments in favour of maintaining the exception

51. DfC put forward a number of arguments in favour of maintaining the exception at regulation 12(4)(d) of the EIR.

    1. "*The information relates to a draft of the UCGAA revised Casement Park Business Case, which is not yet finalised.*

    2. *At the time of [the complainant's] request, consideration of options was ongoing, and rigorous and candid assessment and evaluation was being undertaken. This continues to be the case and will be for some time in the future;*

    3. *Government must be able to undertake a full consideration of all of the options, this requires a private space in which to carry out rigorous option appraisals and scenario planning. In this context, disclosure of draft material may close off discussion and the development of better options.*

    4. *To disclose the draft business case information at this time would prejudice protection of the Department's internal and inter-Departmental deliberations and decision-making processes as inaccurate information around costs, timelines, benefits and risks would be placed in the public domain and potentially create misinformed public expectations and external pressure to pursue an obsolete course of action. There is also the potential to prejudice any future competitive procurement process.*

    5. *The release of draft material into the public domain would distract public debate away from the substantive issues that the information relates to.*

    6. *There is a strong public interest in ensuring that the Department has a safe space to work candidly and freely without being concerned that information could be released in an unfinished form where it could potentially be misleading. It is not in the public interest to disclose information reflecting options before officials have been allowed to assess and consider all the available options, conduct discussions and consider all available information before making decisions. These actions must be conducted with the confidence that there is no risk that those discussions, deliberations, evaluations and considerations will be disclosed prematurely.*

7. *There is a significant risk that disclosure of the requested information could close off discussion or prejudice Departmental or inter-Departmental decision making processes; releasing obsolete, inaccurate information may give undue focus to that information and result in discussion around the changes or updates to the document rather than around the information contained in the final version.*

8. *If the incomplete, detailed information enters the public domain, then value for money considerations that are not yet concluded could become the subject of protracted public or political debate that may not give due consideration to the wider issues of NI Executive policy, Departmental priorities and/or economic advantages or disadvantages.*

9. *The inter-departmental assessment of the UCGAA revised Casement Park draft Full Business Case requires full and proper procedural analysis and widespread public or political debate of incomplete detail could result in external pressure to conclude decisions that are premature, or incorrect. It is imperative that the processes of assessment and decision making of large scale, complex projects are afforded protection from external influence to ensure that the decisions remain robust in the event of potential future legal challenge.*"

52. DfC accepts that there is an inherent public interest in disclosure of environmental information. However, it argued that there is a legitimate public interest to be served in disclosure of information which "*without doubt*" will be subject to change. DfC stated that at the time of the request (and currently), the information was subject to multiple inter-dependent variables which have the potential to prolong the timeline for finalising the draft Full Business Case and change the details within the document.

53. DfC listed these variables to the Commissioner and although they are not limited to, it included the overall cost for the final project; updates within the business case; planning decisions.

54. DfC explained that the conclusions of these multiple, inter-dependent variables will be considered when the responsible parties are making the future decisions which are required prior to finalisation of the Full Business Case. Therefore, DfC said that it is not possible to estimate a date for the finalisation of the revised UCGAA draft Full Business Case at this time.

55. DfC said it recognises that the significance of the potential investment in the Casement Park Stadium, creates a legitimate public interest in the public being sufficiently informed to participate in, and comment on the decision-making process.

56. DfC also said that it acknowledges the importance of public participation in decision-making. However, if the DfC Minister approves the expenditure in the Full Business Case, then the opportunity may arise for public participation to take place.

57. Within the DfC's further submissions to the Commissioner, it said that it "*considers that those aspects requiring redaction are not considered current or are no longer up-to-date and, as such, do little more than mislead the public into thinking that they are factual.*" The DfC also reported that "*The Coronavirus pandemic has also had a major impact on much of the draft business case and the Department considers that a high level of re-consideration will be required by the UCGAA before it submits a further revised draft business case.*"

58. DfC argued that maintaining the exception will provide some protection from having to spend time and resources in explaining/justifying ideas that are not and may never be final. DfC said that its reliance on the exception allows it to finish ongoing work without interruption from external influences, and that it needs to delay disclosure until a final completed version of the Full Business Case can be made available.

59. DfC is of the view that it would not serve the public interest to disclose information that is still in the course of deliberation/completion and major change. It considers that this would be interfering with the future consultation process and Northern Ireland Executive discussions and approvals.

60. DfC was asked to provide evidence that it had taken proper account of the explicit presumption in favour of disclosure of environmental information set out at regulation 12(2) of the EIR. DfC responded and said that "*There is no presumption in favour of disclosing misleading information. The FBC is based upon a number of assumptions around the outstanding Planning decision, legal advice on procurement and conclusion of the funding agreement for the increased cost. Therefore it is considered misleading to disclose information that when reported, could be interpreted as precise and conclusive which, in its current draft, the FBC is neither.*"

61. Although DfC said that it accepts that there is a presumption in favour of disclosure under the EIR, and understands that Casement Park redevelopment may have significant impact on local communities, DfC considers that there are strong public interest arguments in favour of maintaining the exception.

62. It said that it has given weight to the need for the GAA to engage and consult with the DfC in a 'safe space' and without the 'chilling effect' which is likely to flow from the disclosure of material in the course of completion. It explained that there are times when a 'safe space' is needed to allow them to formulate policy, debate live issues and reach decisions without being hindered by external comment and/or media involvement. Therefore, the DfC's view is that this is required regardless of any impact that the disclosure of information may have.

63. DfC believes that there would be a prospect that interested parties would be vastly misled should the redacted information be disclosed. It explained that the information could be interpreted as precise and conclusive when it is still unfinished. DfC included examples such as ongoing data and document review processes and potential details of recommendations to justify its argument. It said that disclosure of information reflecting options before officials have been allowed to assess and consider all the available options, all available information, and conduct discussions before making decisions, is not in the public interest. DfC said that "*These actions must be conducted with the confidence that there is no risk that those discussions, deliberations, evaluations and considerations will be disclosed prematurely*."

Balance of the public interest arguments

64. The Commissioner considers there are strong public interest arguments in favour of maintaining the exception. However, she does not accept that releasing information that is in draft format and is not yet finalised would be likely to result in misleading the public. The Commissioner strongly rejected this argument in a previous case; decision notice FER0760225 – paragraph 22. She considered that the public can be trusted to understand the difference between a draft format and a finalised document, and in any event DfC could decide to publish explanatory information if it considered the information to be unclear.

65. The Commissioner acknowledges that disclosure of a working draft is not in the public interest, and that DfC need a safe space to work freely in conducting appraisals and planning. It is clear that the details within the document would undergo changes during the verification process, and that releasing this prematurely could hinder DfC's planning process. However, and as mentioned in paragraph 30 of this notice, it should generally be possible for DfC to put the disclosure into context, i.e. by explaining to the public that there are parts of the document (financial) which is subject to change during progression of the project.

66. The Commissioner understands that if unfinished information was disclosed, it could become the subject of public or political debate. Specifically, with regard to considerations about value for money, as the unfinished document may not include details of wider issues concerning this point. However, the Commissioner is sceptical of the DfC's argument that disclosure would distract public debate away from the issues that the information relates to. She accepts that it is a matter of public record that the redevelopment of Casement Park has been controversial, including various legal challenges and sustained public debate. Also, the Commissioner considers that it is for DfC to inform the public if it is concerned about information which it believes to be misleading.

67. The Commissioner accepts that disclosing unfinished information could lead to difficulties in DfC's relationship with the UCGAA. This would mean that resources would be diverted to then manage this relationship.

68. The Commissioner accepts that there is always a general public interest in issues that have the potential to affect the elements of the environment.

69. The Commissioner understands that, given the impact that the withheld information in this case may have on the local community, the strength of the public interest in transparency and accountability in this case cannot be underestimated. However, the Commissioner is of the view that equally, there are strong public interest arguments in favour of maintaining the exception.

70. The Commissioner has given some weight to the general principles of achieving accountability and transparency through disclosure of information held by public authorities. In finding that regulation 12(4)(d) is engaged, the Commissioner accepted that the information requested is unfinished documents which is still in the course of completion. She considers that this argument is relevant when considering the public interest, because there is little public interest in releasing information which DfC knows to be incomplete and inaccurate. It is important to protect the deliberation and decision-making process, this allows the public authority to formulate policy, debate live issues and reach decisions without any obstruction by external comment or media involvement.

71. The Commissioner understands that there is a strong public interest in disclosing information relating to a project costing approximately £110 million. She is of the view that although the information is incomplete, it would still have the effect of educating the public better about how the DfC has progressed the project to date. It could provide assurance regarding value for money or it could raise questions.

The Commissioner's conclusion

72. The Commissioner has observed that within the submissions regarding its reliance of regulation 12(4)(d) of the EIR, DfC stated that the information contained in the document "*will never be finalised*" (paragraph 31 of this notice). The Commissioner's decision here is based on the particular circumstances of this request, the stage the project was at when the request was submitted to DfC. It is therefore important to express that the Commissioner expects DfC to consider future requests for information on its own merits.

73. Having reviewed the withheld information and considered the public interest arguments and their relative weight, in all the circumstances of this case, the Commissioner's opinion is that the disclosure of information relating to material in the course of completion would frustrate the process of preparing the redevelopment, and inhibit DfC's ability to carry out this work. This is the activity which the exception is formulated to protect.

74. Accordingly, the Commissioner gives more weight to the need for interested parties to engage and consult with DfC in a 'safe space' and without the 'chilling effect' which is likely to flow from the disclosure of material in the course of completion. The Commissioner acknowledges the complainant's arguments about DfC's citing of 'safe space' and 'chilling effect', and she has noted his reasons for disputing DfC's explanations for withholding the information, however, the Commissioner maintains her view on this.

75. In light of the above, and mindful of the timing of the request, the Commissioner is satisfied that regulation 12(4)(d) was applied appropriately and that the public interest in maintaining the exception outweighs the public interest in disclosure.

76. As set out in paragraph 40 of this decision notice, regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.

77. The Commissioner's view in this case, is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. The Commissioner has taken proper account of the presumption in favour of disclosure but she finds that the public interest in favour of maintaining the exception is still stronger.

78. Therefore, the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that regulation 12(4)(d) was applied correctly. This means that DfC was not obliged to disclose the remaining withheld information.

Procedural matters

Regulation 5(1) – duty to make information available on request

79. Regulation 5(1) of the EIR states that "*a public authority that holds environmental information shall make it available on request*." This is subject to any exceptions that may apply.

Regulation 5(2)

80. Regulation 5(2) of the EIR requires environmental information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

81. In this case, the request for information was submitted on 25 November 2019. On 21 January 2020 DfC replied to the complainant and apologised for the delay, it explained that due to staff illness, the relevant officer remained absent from the office.

82. On 5 February 2020, DfC provided its response to the request. This is 49 working days which falls outside of the statutory time limits. DfC therefore breached regulation 5(2) of the EIR by not providing a response within 20 working days. The breach also applies in respect of the information which was disclosed to the complainant following the Commissioner's intervention. DfC had accepted that regulation 12(4)(d) is not engaged to parts of the information, DfC should have therefore disclosed that information within the 20 working day time limit.

Regulation 14(2) – time limits for refusing a request

83. Regulation 14(2) of the EIR states that if a request for environmental information is refused by a public authority, the refusal shall be made "*as soon as possible and no later than 20 working days after the date of receipt of the request*".

84. The Commissioner has found a regulation 14(2) breach because the response of 5 February 2020 was a refusal notice, which was not issued within 20 working days.

Right of appeal

85. 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: 0116 249 4253
Email: grc@justice.gov.uk.
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

86. 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.

87. 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 ……

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF