

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 March 2025

Public Authority: Agri-Food & Biosciences Institute
AFBI Headquarters
Newforge Lane
Belfast
BT9 5PX

Decision (including any steps ordered)

1. The complainant requested all internal AFBI (Agri-Food & Biosciences Institute) communications with DAERA (Department for Agriculture and Rural Affairs of Northern Ireland) concerning the move of projects from AWP (Assigned Work Programme) to the E& I (Evidence and Innovation) funding programme. The AFBI refused the request citing section 36 (prejudice to the effective conduct of public affairs) of the FOIA.
2. The Commissioner's decision is that the requested information is environmental information within the definition at regulation 2(1)(c) of the EIR. AFBI should therefore have considered the request under the EIR.
3. The Commissioner requires AFBI to take the following steps to ensure compliance with the legislation.
 - Reconsider the request under the provisions of the EIR and issue a fresh response to the complainant.
4. The AFBI 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.

Request and response

5. On 4 March 2024, the complainant wrote to the AFBI and requested the following information:

“...a copy of all internal AFBI communications and all communications with DAERA (meeting minutes, emails, letters, memos and any other conceivable materials) concerning the move of project/s from the AWP to the E& I funding programme in the last 5 years.”
6. The AFBI responded on 23 April 2024. It refused to provide the requested information citing section 36(2)(b)(ii) (the free and frank exchange of views for the purposes of deliberation) of the FOIA.
7. Following an internal review the AFBI wrote to the complainant on 31 July 2024. It informed the complainant that it was upholding its original decision to refuse the complaint on the basis of section 36(2)(b)(ii).

Background

8. The complainant informed the Commissioner:

“I am now aware that only one project (the Long Term Ecological Research project) had been identified at the time of my request to move between mechanisms. This is a project that includes water quality monitoring (e.g. nutrients such as phosphorus and nitrogen) of Lough Erne, Lough Neagh and its inflowing/outflowing rivers. ...

Lough Neagh is a drinking water resource for 40% of NI... and the impartial monitoring of pollution.”
9. The AFBI provided the following background information in respect of the request to the Commissioner:

“The request deals with senior management consideration of funding options for an ongoing research or surveillance activity known as the long-term ecological research or LTER programme. This programme includes water quality monitoring work in the Lough Neagh catchments and has been under way for a significant number of years, contributing to the strategic objectives of the Department for Agriculture, Environment and Rural Affairs (DAERA).

The programme has been funded as part of the assigned work programme or AWP – scientific activities undertaken at the request of and funded by DAERA. AWP funding is managed in two strands – scientific services (often referred to simply as 'AWP') and the evidence and innovation or E&I programme...

The programme of work was until 2021 funded as part of the E&I strand. It was then redesignated as suitable for funding as part of the scientific services strand. In early 2023, DAERA proposed re-assigning LTER to the E&I strand.

No change to the nature or extent of the work commissioned was contemplated.

Discussions as to the appropriateness of the alternative funding streams continued through 2023 and 2024. No decision on DAERA's proposal to reassign LTER to E&I has at this time been taken."

Scope of the case

10. The complainant contacted the Commissioner on 28 August 2024 to complain about the way their request for information had been handled. They were not satisfied with the AFBI's use of section 36 or that the public interest was weighted in favour of withholding the information.
11. The Commissioner would point out that the requester is an AFBI employee and was either directly sent some of the email correspondence identified as withheld information by the AFBI, or copied into it. This information will not form part of the Commissioner's investigation.
12. In his correspondence to the AFBI, the Commissioner asked it to consider whether any or all of the requested information would be likely to be environmental information as defined under regulation 2 of the EIR.
13. In its submissions to the Commissioner, the AFBI confirmed that it does not consider that any of the information would fall within the category of environmental information as defined by regulation 2 of the EIR and maintained its reliance on section 36(2)(b)(ii) of the FOIA.
14. The scope of the Commissioner's investigation is to consider whether the request for information has been correctly handled, including whether or not the information is environmental.

Reasons for decision

Is the requested information environmental?

15. Regulation 2(1) of the EIR defines environmental information as being information 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)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
16. The AFBI provided a copy of the withheld information to the Commissioner. This comprises of the following:
- Relevant sections of Minutes of E & I meetings for March, April, May, June, August, October and November 2023 which include discussion of the possible transfer of funding of LTER back from AWP to E&I.

- A handwritten journal page dated 7 December 2023 which appears to be discussing the pros and cons of the different funding sources for LTER.
 - Email chains regarding the potential changing of funding of LTER and outlining its functions.
 - A letter dated 23 March 2023 regarding the possible changing of funding of LTER.
 - Summary Cover Paper for AFBI meeting entitled 'LTER Future Designation' and dated December 2023.
 - Appendix 1 to Summary Cover Paper (Minutes of LTER meeting 24/07/2020)
 - Appendix 2 to Summary Cover Paper (Sampling locations in Lough Neagh) .
 - Spider diagram – LTER objectives
17. Whilst not divulging the contents of the withheld information, the Commissioner considers that the above information contains significant detail regarding the nature of the work undertaken by the LTER whose full name, (Long-term Ecological Research) programme suggests that the information is likely to be environmental.
18. Additionally, the functions of the LTER is monitoring the quality of the water of Lough Erne and Lough Neagh and its inflowing and outflowing rivers. The impartial monitoring of pollution has implications for public health as Lough Neagh provides drinking water for approximately 40 per cent of the population of Northern Ireland.¹ This includes the monitoring of nutrients such as phosphorus and nitrogen which has implications for plant life and fish living in the waters, with any changes likely to impact its delicate ecological balance.
19. The work of LTER is clearly therefore environmental in nature.
20. During the course of the Commissioner's investigation, the Commissioner asked the AFBI to consider whether at least some of the withheld information would fall to be considered under regulation 2(1)(c) of the EIR.

¹ [Your water is safe to drink - Northern Ireland Water](#)

21. The AFBI informed the Commissioner that:

"While it may be that a change of funding could be such a 'measure', no change in funding arrangements has in fact occurred.

No new plan, programme, or activity, and no change to any existing plan, programme or activity, has been undertaken. In the circumstances, AFBI maintains its position that the information requested relates to internal discussions around potential funding models and not to any 'measure' with actual or potential environmental impact and is therefore not environmental information."

22. The Commissioner also contacted the complainant to confirm whether this was their understanding of a possible change of funding programmes for LTER or whether there would be potential implications to the LTER programme itself if funding was to revert back to the E&I stream.
23. The complainant informed the Commissioner that work funded via the E & I funding stream is considered to be non-statutory or non-essential, whilst work funded from the AWP, although subject to renewal, is considered to be statutory or essential. They therefore believe that work funded via E& I is less secure than work funded via the AWP.
24. The Commissioner also notes that the AFBI confirmed above that a change of funding could be a 'measure' (as defined under regulation 2(1)(c) of the EIR. The Commissioner would point out, that the fact that no decision has been made regarding the change of funding is not the point. The relevant consideration is whether the change that is under consideration has the potential to impact on the LTER programme itself.
25. In the Commissioner's view, the change of funding from a statutory to non-statutory source implies that the funding for LTER would be less secure, giving rise to the potential that the current levels of funding LTER may vary. This would lead to changes in the amount of monitoring of the water quality as discussed throughout this notice, with implications for the levels of pollution in the water.
26. The Commissioner is therefore of the view that the change of funding of LTER constitutes a 'measure' as defined under regulation 2(1)(c) of the EIR and that the withheld information falls within the definition of environmental information.
27. As the Commissioner is satisfied that the request should have been dealt with under the EIR, he now requires Cleveland Police to issue a fresh response to the request under the EIR.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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.

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