

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

**Date:** 12 September 2011

**Public Authority:** Department for Business, Innovation and Skills  
**Address:** 1 Victoria Street  
London  
SW1H 0ET

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to the allocation of funding for road changes at Birmingham Airport to allow for the expansion of the airport's runway. During the Commissioner's investigation the Department for Business, Innovation and Skills (the "BIS") disclosed the previously withheld information.
2. The Commissioner's decision is that the BIS did not meet the requirements of regulation 5 of the EIR, in that the requested information was not disclosed to the complainant within twenty working days.
3. As the requested information has now been disclosed to the complainant the Commissioner does not require the public authority to take any steps.

**Request and response**

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4. On 12 April 2011 the complainant wrote to the BIS and requested information in the following terms:

*"I would like to formally request under the Environmental information regulations for sections of documents supplied to BIS related to the bid by Birmingham city council for works near [Birmingham Airport].*

*1) the executive summary of application section*

*2) Program description section*

*3) Without RFG support section*

*4) Governance and Capability section*

*I am not requesting the sections of 'sustainable Private sector growth' or 'cost benefit' as these would contain significant amounts of financial information."*

5. The BIS responded on 13 May 2011 and confirmed that it held relevant information. In relation to the requested information that was environmental, it stated that this was exempt under regulation 12(5)(e) of the EIR. In relation to the requested information that was not environmental, it stated that this was exempt under sections 41(1) and 43(2) of the FOIA.
6. Following an internal review the BIS wrote to the complainant on 13 June 2011. It upheld its previous decision to withhold the requested information under regulation 12(5)(e) (EIR), and sections 41(1) and 43(2) (FOIA).

### **Scope of the case**

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7. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. On 19 August 2011 the BIS contacted the Commissioner and informed him that after reviewing the request again it had now decided to disclose the requested information. It confirmed that this disclosure had now been made.
9. Consequently, on 31 August 2011 the Commissioner wrote to the complainant and asked him whether he was now content to withdraw his complaint. The complainant contacted the Commissioner on the same day and stated that he was not. On the following day the complainant stated that he wished the Commissioner to issue a formal decision notice on the delay in him obtaining the requested information.
10. Therefore the scope of this case is to consider whether the BIS has complied with the requirements of regulation 5 of the EIR, and section 10 of the FOIA (if any of the requested information is not environmental information).

## Reasons for decision

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### Regulation 2

11. The Commissioner has considered whether the requested information is environmental information as defined by the EIR.
12. In this case the request focuses on information relating to an application for funding for a road improvement plan – which would include (amongst other things) altering the course of the road.
13. Bearing this in mind, the Commissioner considers that this information falls within regulation 2(1)(c) of the EIR, in that it is 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 Commissioner therefore considers all of the requested information is environmental information.

### Regulation 5

14. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of request.
15. The complainant submitted his request for information on 12 April 2011. The BIS did not provide the complainant with the requested information until 18 August 2011. Consequently the Commissioner finds that the BIS has breached regulation 5(2) of the EIR, in that this information was not provided to the complainant within 20 working days.
16. As the Commissioner has decided that all the information is environmental (and as such is exempt from disclosure under the FOIA), he has not gone on to consider section 10 of the FOIA.

## Right of appeal

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17. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

18. 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.
19. 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** .....

**Pamela Clements**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**