

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

### Decision notice

**Date:** 29 November 2011

**Public Authority:** Department for International Development  
**Address:** 1 Palace Street  
London  
SW1E 5HE

#### Decision (including any steps ordered)

---

1. The complainant requested information regarding the public authority's assessment of a potential Export Credits Guarantee Department (ECGD) backed project to construct bridges in Sri Lanka.
2. The Commissioner's decision is that the information within the scope of the request is exempt from disclosure on the basis of the exception at regulation 12(4)(e) – (internal communications) of the Environmental Information Regulations 2004.
3. The Commissioner does not require the public authority to take any steps.

#### Request and response

---

4. On 1 June 2011 the complainant wrote to the public authority to request information under the Act<sup>1</sup>. The request was worded as follows:

*'I would like to request the case-by-case assessment by DfID of the following Exports Credits Guarantee Department transaction; March 2011 (under review), Sri Lanka. The project is to design, supply, and install 196 bridges in rural locations in Sri Lanka...'*

---

<sup>1</sup> Freedom of Information Act 2000

5. The public authority responded on 16 June 2011. It withheld the information identified as falling within the scope of the request (the disputed information) on the basis of the exemption at section 43(2) of the Act.
6. Following an internal review the public authority wrote to the complainant on 4 July 2011. It upheld the original decision to apply section 43(2) to the disputed information and additionally relied on the exemption at section 40(2) of the Act.

### **Scope of the case**

---

7. On 4 July 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
8. The complainant asked the Commissioner to rule on the public authority's decision to withhold the disputed information.
9. The complainant specifically submitted that 'the majority of the contents of a previous DfID assessment of a bridges in Sri Lanka project backed by ECGD have been disclosed [and] these revealed that the decision was finely balanced given Sri Lanka's debt burden. Since that decision, Sri Lanka's debt burden has increased'. He therefore argued there was a public interest in holding the UK government to account on the implementation of its responsible lending and debt sustainability policies.
10. The complainant also submitted that a 'previously backed Sri Lanka bridges project was with a British company which has since been found guilty of corrupt activities (though not in Sri Lanka)'. He therefore argued that there was a public interest in seeing what measures the public authority is taking to ensure ECGD do not support companies taking part in corruption.
11. The complainant argued that not all of the disputed information would be caught by section 43(2) and questioned why a redacted version of the disputed information was not provided by the public authority.
12. Finally, the complainant argued that the fact that the approval process and negotiations were ongoing in relation to the project increased the public interest in disclosure 'as there is a greater interest in this project and whether it receives public backing before that backing is given, as opposed to after the event when nothing can be changed'.

## Reasons for decision

---

### Disputed information

13. The disputed information consists of an email of 12 April 2011 from the public authority to Her Majesty's Treasury with the following attachments:
- Letter from [named company] to ECGD dated 9 July 2010,
  - Letter from Sri Lanka Department of External Resources dated 13 July 2010,
  - Extracts from Project Committee Report (sections 6 to 10), and
  - Letter from Sri Lanka Ministry of Economic Development to ECGD dated 29 March 2011, attaching a copy of the Project Submission and covering letter dated 9 November 2009.

### Applicable Access Regime

14. During the investigation, the Commissioner found that the disputed information constitutes 'environmental information' within the meaning of regulations 2(1)(c) and 2(1)(e) of the Environmental Information Regulations 2004 (the EIR). Environmental information is defined under regulation 2(1) of the EIR as:

*'...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;*

*(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 elements of the environment referred to in (b) and (c);'*

15. The public authority did not dispute the Commissioner's finding that the disputed information constitutes environmental information by virtue of the definitions at regulations 2(1)(c) and 2(1)(e) above.
16. The public authority however submitted that the disputed information was in any event exempt on the basis of the exceptions at regulations 12(4)(e), 12(5)(e), 12(5)(f), and 13 of the EIR. The Commissioner exercised his discretion to accept the public authority's submissions on the application of exceptions under the EIR to the disputed information.

## **Exceptions**

### 12(4)(e) – Internal Communications

17. The public authority claimed that all of the disputed information was exempt on the basis of the exception at regulation 12(4)(e).
18. By virtue of regulation 12(4)(e), a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications.
19. Regulation 12(8) of the EIR states that, for the purposes of regulation 12(4)(e), 'internal communications' includes communications between government departments.
20. As mentioned, the disputed information consists of an email and attachments from the public authority to Her Majesty's Treasury.
21. The Commissioner finds that the disputed information constitutes internal communications within the meaning of regulation 12(8) and is therefore exempt from disclosure by virtue of regulation 12(4)(e).

### Public Interest Test

22. Regulation 12(4)(e) is subject to a public interest test. The Commissioner must therefore also consider whether in all the circumstances of the case, the public interest in maintaining the

exception outweighed the public interest in disclosing the disputed information.

23. The public authority acknowledged the general public interest in transparency and openness around its decision making process which enhances accountability within government.
24. It further recognised the public interest in improving public access to the information and evidence relied on by the government to make decisions especially where the outcomes would result in the expenditure of significant sums of public money.
25. The public authority however argued that there is a strong public interest in ensuring that the government's ability to discuss matters fully and in private is not compromised. It argued that there is a very real public interest in allowing officials to have a clear space, immune from exposure to public view, in which it can take advice and debate matters with candour, free from pressures of public political debate.
26. The public authority submitted that the public interest in private thinking space was particularly relevant in this case because the ECGD is still actively considering whether to support the project and the assessment is therefore ongoing. It argued that disclosing the disputed information which includes commercially sensitive information would undermine the integrity of the project assessment and severely prejudice the significant public interest in government decisions being based on the candid sharing of information and views between officials.
27. The public authority therefore submitted that on balance, disclosure would not be in the public interest given the likely prejudicial effect it would have on the ongoing negotiation process and the project assessment.

#### Balance of the Public Interest

28. The Commissioner agrees with the complainant that there is a significant public interest in ensuring that the ECGD guarantees viable projects in countries with a sustainable debt burden supported by companies which have not been found to engage in corrupt practices.
29. The Commissioner has not seen any evidence to conclude that Sri Lanka's debt burden was considered unsustainable at the time of the request. The Commissioner is aware that this specific point was also considered by the public authority as part of its assessment of the project. He is satisfied that the outcome of the public authority's consideration in that respect did not enhance the public interest in disclosure prior to the completion of the ECGD assessment.

30. The Commissioner also disagrees that disclosing information pertinent to a yet to be finalised guarantee for a project would be a sufficient measure of the actions the public authority is taking to ensure the ECGD is not supporting companies found to have engaged in corrupt practices. Whilst the information could be useful in assessing the public authority's performance in this regard over a period of time, this limited benefit has to be weighed against the potential risks from the disclosure.
31. The Commissioner agrees with the public authority that in light of the ongoing negotiations with the ECGD, there is a significant public interest in officials having private thinking space to consider the merits and demerits of the project and maintaining the integrity of the assessment process. Disclosing the disputed information before the ECGD completes its assessment significantly increases the chances of compromising the integrity of the process. It is well documented that the United Kingdom's financial commitments to developing countries by way of loans, grants etc attracts considerable attention. It is therefore likely that in the middle of public and media scrutiny, officials would be less inclined to consider options they feel might be unpalatable to the public.
32. The Commissioner is satisfied that disclosing the disputed information would likely prejudice the ongoing assessment. He also finds that it would be prejudicial to the private internal space needed to discuss commercially sensitive matters.
33. The Commissioner therefore finds that in all the circumstances of the case, the public interest in maintaining the exception outweighed the public interest in disclosure.
34. In view of his decision above, the Commissioner did not consider the applicability of the remaining exceptions at regulations 12(5)(e), 12(5)(f), and 13.

## Right of appeal

---

35. 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: [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)

36. 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.
37. 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** .....

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