

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

Decision notice

Date: 27 September 2011

Public Authority: Department for Regional Development
Address: Clarence Court
10 – 18 Adelaide Street
Belfast
BT2 8GB

Decision (including any steps ordered)

1. The complainant has requested information about sub-contractors on a specific maintenance contract.
2. The Information Commissioner's decision is that the Department for Regional Development (DRD) incorrectly handled the request under FOIA and should have handled it under EIR. However, having considered the complaint the Information Commissioner has determined that DRD was correct in refusing the request on the grounds that it does not hold the information.
3. The Information Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 2 June 2010, the complainant wrote to DRD and requested information in the following terms:

"Term contracts for Environmental Maintenance 2010: EMN1 Northern Division.

- 1) *Confirmation of all subcontractors engaged by the Principal Contractor (Roads Safety Contracts Ltd) in relation to this contract on grass cutting, weed control and gully cleaning operations for each section within the Division."*

5. DRD responded on 25 June 2010 and told the complainant that it had considered the request under FOIA and that the requested information was not held.
6. On 21 September 2010 the complainant requested an internal review of that decision but this was not completed until intervention by the Information Commissioner. DRD concluded its internal review on 1 July 2011. DRD told the complainant that it did not hold the information as requested on 2 June 2010.

Scope of the case

7. The complainant contacted the Information Commissioner to complain about the way her request for information had been handled. The complainant told the Information Commissioner that she was unhappy that DRD did not explain why it did not hold the information as she believed that this information should be held.
8. The Information Commissioner notes that a number of other complaints have been made by the complainant relating to similar requests for information. At the time of writing this decision notice those complaints are subject to ongoing investigations and therefore will not be discussed in this notice.
9. During the course of his investigation the Information Commissioner determined that the request had been handled under the incorrect access regime by DRD as it should have been dealt with under the Environmental Information Regulations 2004 and not FOIA.
10. The scope of this investigation is therefore to determine whether, at the time of making the request, the information was held by DRD.
11. During the course of his investigation the Information Commissioner has sought and received clarification on a number of points from the complainant and DRD.

Reasons for decision

12. The Information Commissioner firstly considered whether DRD had correctly assessed the information as it was his view that the information could be defined as environmental information.
13. The Information Commissioner considered the wording of the request and having made an objective reading of it considers that the

information requested can be defined as environmental information for the purposes of regulation 2(1) of EIR.

14. The complainant asked for names of sub-contractors engaged by the principal contractor on environmental maintenance activities such as grass cutting, weed control and gully cleaning. The Information Commissioner understands that the contractor information can be defined under regulation 2(1)(c) as a measure or activity, in this case a contract, affecting or likely to affect the state of the elements as defined under regulation 2(1)(a), in this case the landscape.
15. Accordingly, the Information Commissioner determined that DRD was incorrect to have handled the request under FOIA and that it should have handled the request under EIR.
16. As DRD had relied on section 1(1)(a) of FOIA to inform the complainant it did not hold the request, the Information Commissioner considered whether the equivalent part of EIR applied in this case.
17. Regulation 12(4)(a) of EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when a request is received.
18. On 2 June 2010 the complainant requested:

*"Term contracts for Environmental Maintenance **2010**: EMN1 Northern Division.*

1) Confirmation of all subcontractors engaged by the Principal Contractor (Roads Safety Contracts Ltd) in relation to this contract on grass cutting, weed control and gully cleaning operations for each section within the Division."
19. DRD refused to disclose the information as it stated that it did not hold it. The Information Commissioner considers that the arguments put forward by DRD under section 1 of FOIA are equally relevant for regulation 12(4)(a) which is the equivalent section of EIR.
20. DRD told the Information Commissioner that in some circumstances it would hold the names of sub-contractors, but that in relation to this request for the information specifically about the 'EMN1 Northern Division' contract it did not hold the requested information.
21. In order that the Information Commissioner could understand DRD's reasoning that it did not hold information relevant to the specific contract in this case, but that it might in relation to other contracts, he asked DRD to provide further explanation of its procedures regarding the recording and handling of contracting and sub-contracting

information together with detail of the efforts made by DRD to establish whether the requested information was held.

22. DRD provided a comprehensive explanation to the Information Commissioner of why, in the circumstances of this particular request, the information was not held by it.
23. Based on all of the information before him, and having considered the wording of the request, on the balance of probabilities the Information Commissioner accepts the arguments put forward by DRD that at the time of the request it did not hold the information.

Other matters

Internal review

24. The Information Commissioner notes that there was delay in completing an internal review of the request. On this point the Information Commissioner previously handled this issue under reference FS50398707 which resulted in DRD conducting an internal review on 1 July 2011. Therefore, DRD has already been advised on its obligations on conducting timely reviews.

Right of appeal

25. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

26. 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.
27. 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

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