

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

**Decision notice**

**Date:** 6 February 2012

**Public Authority:** The Department of Energy and Climate Change  
**Address:** 1 Victoria Street  
London  
SW1H 0ET

**Decision (including any steps ordered)**

---

1. The complainant has requested a copy of a letter from Chris Huhne, the then Secretary of State for Energy and Climate Change to George Osborne, Chancellor of the Exchequer. The Department for Energy and Climate Change (DECC) refused to provide the requested information under section 35(1)(b) of the Freedom of Information Act 2000 (FOIA) and section 12(4)(e) of the Environmental Information Regulations 2004 (EIR). During the course of the Commissioner's investigation it became apparent that the withheld information was available to access on web.archives.org which also demonstrated that it was available on www.Parliament.UK around the time of the request. In light of this, the DECC confirmed to the complainant that the letter which can be accessed on web.archives.org was the withheld information and that section 21 FOIA and regulation 6(1)(b) EIR were applicable.
2. The Commissioner's decision is that the DECC has correctly applied section 21 FOIA and regulation 6(1)(b) EIR.
3. The Commissioner requires no steps to be taken.

**Request and response**

---

4. On 8 September 2010, the complainant wrote to the DECC and requested information in the following terms:

*"At the close of a session of the House of Commons Science and Technology Select Committee this morning, 8<sup>th</sup> September 2010, the*

*committee chairman, Andrew Miller MP, produced and asked Lord Oxburgh to comment on a letter from Chris Huhne the Secretary of State for Energy and Climate Change to George Osborne, the Chancellor of the Exchequer.*

*Please provide me with a copy of this letter either electronically or on paper."*

5. The DECC provided a response to the complainant on 6 October 2010 in which it refused to disclose the information he requested on the basis of the exception contained at regulation 12(4)(e) EIR.
6. The complainant requested an internal review of the public authority's decision on 7 October 2010. The complainant also made another separate request for information on this date however this is being dealt with under a separate complaint reference number. On 9 November 2010 the public authority wrote to the complainant with the details of the result of the internal review it had carried out. It upheld its application of regulation 12(4)(e) EIR to the parts of the requested information which were environmental information. In relation to the parts of the requested information which were not environmental information it applied section 35(1)(b) FOIA.
7. During the course of the Commissioner's investigation it became apparent that the withheld information was available to access on web.archives.org which also demonstrated that it was available on www.Parliament.UK during the time period of the request. In light of this, the DECC confirmed to the complainant that the letter which can be accessed on web.archives.org was the withheld information and that section 21 FOIA and regulation 6(1)(b) EIR were applicable as the information was readily accessible to the complainant.

### **Scope of the case**

---

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner will consider whether or not regulation 6(1)(b) and section 21 were correctly applied in this case.

### **Reasons for decision**

---

10. The DECC has specified that certain parts of the withheld letter would be classed as environmental information. Some of the withheld letter has

therefore been dealt with under EIR and some has been dealt with under FOIA.

11. After considering the withheld information the Commissioner is satisfied that parts the letter would be classed as environmental information. He does therefore consider that those parts of the letter should be dealt with under EIR and the rest should be dealt with under FOIA.

### **Section 21 and Regulation 6(1)(b)**

12. Section 21 states that:

"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."

13. Regulation 6(1)(b) states that:

"Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

(b) The information is already publicly available and easily accessible to the applicant in another form or format."

14. On 4 November 2011 the Commissioner became aware that the withheld information could be accessed on web.archives.org using a link which was provided to the Commissioner.
15. This also showed that the withheld letter had been available on UK.Parliament during the time period of the request.
16. On 16 December 2011 the DECC wrote to the complainant to confirm that the withheld letter could be accessed on web.archive.org using the above mentioned link. It also confirmed that the letter had been published in error during the time period of the request on www.Parliament.UK . However it confirmed that it had not been aware that the withheld letter was available on www.Parliament.UK at the time of the request. It confirmed that as the letter was readily accessible to the complainant it wished to rely upon section 21 FOIA and regulation 6(1)(b) EIR and therefore it was not required to provide the complainant with the requested letter.
17. The Commissioner considers that the withheld letter is readily accessible to the complainant and therefore section 21 FOIA and regulation 6(1)(b) EIR were correctly applied in this case. The Commissioner recognises that section 21 and regulation 6(1)(b) were applied late in this case, however as the DECC were not aware that the requested letter could be accessed on web.archive.org until November

Reference: FER0369838

2011, and as the complainant is now aware that the letter can be accessed at the link set out above, he considers that it is reasonable to accept the late application of the exemption and the exception in this case.

## Right of appeal

---

18. 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)

19. 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.
20. 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**