

Environmental Information Regulations 2004 (EIR)

Decision Notice

Date: 4 December 2012

Public Authority: Department of Culture, Arts and Leisure
Address: Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG

Decision (including any steps ordered)

1. The complainant requested correspondence between the Department of Culture, Arts and Leisure (DCAL) and the Department of Agriculture and Rural Development (DARD) on the ban on the sale of rod caught salmon. DCAL refused to disclose the information citing regulation 12(4)(e) of the EIR (internal communications). The Commissioner's decision is that DCAL correctly refused the request.

Request and response

2. On 16 April 2012, the complainant wrote to DCAL and requested information relating to the ban on the sale of rod caught salmon. In particular he asked for details of correspondence on the subject between DCAL and DARD.
3. DCAL responded on 18 April 2012. It stated that it was refusing to disclose the information under regulation 12(4)(e) of the EIR as this would involve the disclosure of internal communications.
4. Following an internal review DCAL wrote to the complainant on 8 June 2012. It maintained its position that the information was exempt from disclosure under regulation 12(4)(e) of the EIR.

Scope of the case

5. The complainant contacted the Information Commissioner on 11 June 2012 to complain about the way his request for information had been handled.
6. The Information Commissioner requested and received a copy of the withheld information.
7. The scope of the Information Commissioner's investigation is to determine whether the requested information has been correctly categorised by DCAL as internal communications in accordance with regulation 12(4)(e) of EIR. The Commissioner has then considered where the public interest lies.

Reasons for decision

Regulation 12(4)(e) - internal communications

8. The Information Commissioner considers that communications within one public authority will constitute internal communications for the purpose of this exception. All central government departments (including executive agencies) are deemed to be one public authority. However, communications between a public authority and a third party will not constitute internal communications except in very limited circumstances.
9. DCAL informed the Information Commissioner that the withheld documents relate to internal communications between government departments. It argued that the departments require this space to discuss in private as recognised in the Aarhus Convention.
10. DCAL also told the Information Commissioner that the release of this information to the public would inhibit open and constructive discussions between public authorities and third parties which would have a negative impact on future policy development relating to salmon conservation policy.
11. Based on the above, the Information Commissioner has considered whether the documents identified by DCAL would constitute internal communications.
12. The Information Commissioner carefully inspected the withheld information which he can best describe as a series of email exchanges and letters between various parties in DCAL and DARD.

13. Having considered the content of the correspondence the Information Commissioner is satisfied that it constitutes internal communications for the purposes of regulation 12(4)(e) of the EIR. He has therefore gone on to consider the public interest test.

Public interest test

Public interest in favour of disclosure

14. DCAL argued that it recognised that the public has a right to access information from government departments to increase its awareness of how decisions are made and the functions of government.
15. DCAL also informed the Information Commissioner that it recognised that there is a significant public interest in the management of fresh water fish populations.
16. The complainant told the Information Commissioner that there had been a lengthy delay in introducing the legislation. He argued that it was important that the public understood why there had been a delay in introducing the legislation. He argued that it was important to the members of the association he represents which numbers some 6,500 in total.
17. The Information Commissioner understands that there is a general public interest in the openness and transparency of government departments and their functions and as such attributes significant weight to this argument.

Public interest against disclosure

18. DCAL argued that the information retained is for internal communication only and that it is in the public interest that officials within public authorities have a private space within which to think in private to ensure that the formulation and development of government policy and government decision making is done well.
19. DCAL also argued that Atlantic salmon species are facing extinction across Europe and urgent salmon conservation policy is needed to protect existing stocks. It argued that it believed that the complainant represents an association wishing to influence the future salmon conservation policy in their favour. On this basis it argued that it is important that government bodies have the private space to formulate policy, free from any outside influences which may have a detrimental impact on the survival of the Atlantic salmon species.
20. The Information Commissioner accepts that there is a need for safe space in government in order that policy formulation can proceed

unhindered. Taking into account the information in this case he attributes significant weight to the arguments put forward by DCAL.

Balance of public interest arguments

21. The Information Commissioner recognises there is a public interest in transparency, openness and accountability in relation to decisions made by government to instigate change. In this case he considers the public interest is strong due to the potential impact of any decisions on the survival of the Atlantic salmon species. However, he also notes that having inspected the specific content of the withheld information it is likely to be of limited value to assisting in the public's understanding of the decisions.
22. The Information Commissioner acknowledges the safe space argument and recognises that part of the reason for needing safe space is to allow free and frank discussion. In this regard he notes that the First-tier Tribunal (Information Rights) (formerly the Information Tribunal) in a recent DfES¹ case found that ministers and officials were entitled to time and space to agree policies by exploring safe and radical options without the threat of media involvement or external scrutiny. Therefore, the Information Commissioner accepts that the need for safe space to debate and reach decisions without external comment is a valid argument.
23. The Information Commissioner recognises the public interest in preserving a safe space in which proposals can be put forward and discussed to allow the development of new legislation or policies leading to new or amended legislation. The Information Commissioner considers there is a public interest in maintaining a safe space to allow ministers and officials to provide clear views and to debate issues arising from the discussions it has with third parties which may influence the development of policy.
24. The Information Commissioner notes that the discussion about the change in legislation relating to rod caught salmon was ongoing at the time of the request. The Information Commissioner considers that disclosing copies of emails and letters between DCAL and DARD before final agreement has been reached could have a detrimental impact on DCAL and DARD in their ability to have frank exchanges.

¹ Information Tribunal reference EA/2006/0006

25. The Information Commissioner has carefully balanced the arguments for maintaining the exception against the arguments in favour of disclosure. He accepts that there is a strong public interest in assisting the public in understanding decisions made by DCAL. However, he also accepts that there is a stronger public interest in maintaining the safe space for proposals to be developed and discussed.
26. The Information Commissioner has therefore decided that the public interest in maintaining the exception outweighs the public interest in disclosure. Accordingly DCAL has correctly applied the exception at 12(4)(e) to withhold the information.

Right of appeal

27. 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

28. 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.
29. 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
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