

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

**Decision Notice**

**Date:** 17 June 2013

**Public Authority:** Department for Regional Development  
**Address:** Clarence Court  
10-18 Adelaide Street  
BELFAST  
BT2 8GB

**Decision (including any steps ordered)**

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1. The complainant requested information relating to meetings between the Department for Regional Development (DRD) and a named contractor. DRD provided some information but advised that it did not hold the remainder of the requested information. The Commissioner is satisfied that, on the balance of probabilities, DRD does not hold any relevant information which it has not provided to the complainant. The Commissioner does not require any steps to be taken by the public authority.

**Request and response**

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2. On 21 August 2012 the complainant requested the following information from DRD:

*"...all DRD RS minutes of meetings (pre-start, interim and contract conclusion) held with the then Contractor for the works John McQuillan (Contracts) Limited in respect of Environmental Maintenance EME2 2010 (Belfast South, North Down and Castlereagh), which was terminated, optioned out or not renewed after the 1<sup>st</sup> year."*

3. DRD responded on 24 September 2012. DRD stated that it had held five such meetings, and that no formal minutes had been taken. DRD did however provide notes from three of the five meetings, but said that it did not hold any further information.

4. The complainant requested an internal review on 26 September 2012. She also made a further request for the names of individuals who attended the two meetings where DRD denied holding any information.
5. DRD provided the complainant with the outcome of its internal review on 21 November 2012. DRD upheld its position that it had provided all the information it held and did not hold any further information relevant to either request.

### **Scope of the case**

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6. On 12 December 2012 the complainant asked the Commissioner to make a decision as to whether or DRD had handled her request correctly. The complainant told the Commissioner that she did not believe DRD's assertion that it did not hold any further information, as she did not accept that DRD had not recorded the meetings. The complainant alleged that the explanation provided by DRD was "*false and not reliable*".
7. In support of her position the complainant referred to a First-Tier Tribunal decision which dealt with a previous complaint made by the complainant about DRD<sup>1</sup>. In that case DRD had claimed it did not hold information which was held by a contractor, and the Tribunal found that under section 3(2) of the EIR, the information was held by the contractor on DRD's behalf.
8. The Commissioner notes that the request in that case was for the names of sub-contractors. DRD did not dispute that the information existed; the question was who held the information for the purposes of the EIR. In the present case DRD claims that the requested information does not actually exist. Therefore the Commissioner finds the Tribunal decision to be of limited assistance in this case.
9. The Commissioner's investigation in this case was limited to whether or not DRD held further information relevant to the request which had not been provided to the complainant.

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<sup>1</sup> Appeal no EA/2011/0246

## Reasons for decision

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10. Regulation 5 of the EIR provides that a public authority must provide information in response to a request unless any of the exceptions to disclosure apply. Regulation 12(4)(a) provides an exception where the public authority does not hold the requested information, and although DRD did not cite regulation 12(4)(a) it did state that it did not hold any further information which had not already been provided.
11. In considering whether information is held, the Commissioner uses the civil standard of proof, i.e. whether it is likely or unlikely on the balance of probabilities. This approach has been supported by the Tribunal in a number of previous cases. In assessing this case the Commissioner will consider the extent and quality of the authority's search for the requested information, any other explanations provided, and the complainant's reasons for believing that the information is held.
12. The complainant has argued that DRD holds the information because it is required to do so. In her request for an internal review dated 26 September 2012 the complainant referred to Clause 79 of the Conditions for Contract relating to the Term Contract for Environmental Maintenance 2010:

*"At six monthly intervals during the Term there shall take place a meeting between the Employer, the Engineer and the Contractor to discuss their performance during the Term. The meeting shall be treated as a formal minuted meeting. The meeting shall be an added opportunity to formally discuss*

- 1) *Contract performance*
- 2) *Requirements for improvement in performance*
- 3) *Potential for agreed Contractor and/or Contract innovation and*
- 4) *Potential for agreed changes to the Contract."*

13. In its internal review letter dated 21 November 2012 DRD accepted that it ought to have held formal and minuted meetings, but acknowledged that it had not done so:

*"I appreciate that the requirements in Clause 79 of the Conditions of Contract, and your previous EME2 Contract experience, support the contention that formal and minuted meetings **should** have occurred in the case of EME2 2010. Such formal and minuted meetings would have ensured that the Department could meet your request for DRD Roads Service minutes. However this was not the case and DRD Roads Service does not hold any minutes or other records of these meetings."*

14. The Commissioner asked DRD how it had searched for the requested information, and how it had satisfied itself that no further information was held. DRD explained that the relevant business area, Roads Service Eastern Division, had identified recorded information confirming that four of the five meetings had taken place. Three meetings (19 February 2010, 15 March 2011, and 15 April 2011) were identified in file notes, and one (5 November 2010) in a diary entry. For one meeting, that of 19 March 2010, Roads Service staff did not record any information; however, information relating to that meeting was recorded in a letter from the contractor. DRD confirmed to the Commissioner that this information had been provided to the complainant.
15. In relation to the search itself, DRD explained that staff in Roads Service Eastern Division checked their own records for minutes or other notes when the original request for information was received. The previous Eastern Division Network Maintenance Manager (Engineer for the Contract in 2010) was also contacted.
16. DRD explained that it also conducted a search of its electronic records management system for documents associated with the EME2 2010 contract. This search did not identify any information which had not already been provided to the complainant.
17. In light of the above the Commissioner is of the view that DRD conducted an adequate search for the requested information. DRD searched for physical and electronic files, and contacted a former member of staff. The Commissioner has seen no evidence to suggest that DRD sought to conceal any relevant information, and on the balance of probabilities he is satisfied that DRD does not hold any further information which is relevant to the request.
18. The Commissioner has also considered whether, if he were to uphold the complaint, he could specify any steps that DRD could be required to take. However the Commissioner is of the view that there is nothing more he can oblige DRD to do in relation to the complainant's request. The Commissioner understands the complainant's frustration, as DRD has itself accepted that it ought to hold the information. DRD advised the Commissioner that it has reminded relevant managers to ensure that, where required by the Conditions of Contract, appropriate formal minuted meetings be held, and the minutes stored electronically. However, the complainant's wider issue about record keeping is beyond the scope of this decision notice.
19. In conclusion, although the Commissioner acknowledges the complainant's arguments, he finds, on the balance of probabilities, that DRD does not hold any further information which has not been provided

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to the complainant. Therefore the Commissioner finds that DRD complied with regulation 5 of the EIR.

## Right of appeal

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20. 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 1234 504

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)

21. 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.
22. 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**