

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 16 September 2014

**Public Authority:** Department for Environment, Food and Rural Affairs (Defra)

**Address:** Area 4D  
Nobel House  
17 Smith Square  
London  
SW1P 3JR

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about communications with the Agricultural Biotechnology Council (ABC), which represents the GM crops industry. Defra provided the complainant with some information, it withheld some information under regulation 12(4)(e), regulation 12(5)(f) and regulation 13 of the Environmental Information Regulations (EIR), and it confirmed that it did not hold any further information relevant to the scope of the request under regulation 12(4)(a) EIR.
2. The Commissioner's decision is that Defra has correctly applied regulation 12(4)(a), 12(4)(e), 12(5)(f) and 13 EIR.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 16 April 2014 the complainant made the following request for information under the EIR for:
  - "i. all communications since 1 September 2012, including letters, emails and phone calls, between Defra and: (i) the Agricultural Biotechnology Council (ABC), and (ii) the ABC's member companies (BASF, Bayer CropScience, Dow AgroSciences, Monsanto, Pioneer Hi-Bred, and Syngenta)
  - ii. all meetings since 1 September 2012 between Defra and the ABC

and/or its member companies, including dates, attendees, agendas and minutes"

(The complainant clarified that the requests are for information relating to GM issues.)

5. On 17 December 2013 Defra responded. It explained that some of the requested information was not held under regulation 12(4)(a) EIR and it withheld some information under regulation 12(4)(e), 12(5)(f) and 13 EIR.
6. The complainant requested an internal review on 13 January 2014. Defra sent the outcome of its internal review on 11 April 2014. It upheld its original position however it did provide one further piece of information.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 15 April 2014 to complain about the way her request for information had been handled.
8. During the course of the Commissioner's investigation, Defra provided the complainant with a further piece of information.
9. Defra has redacted information which does relate to GM issues in accordance with the complainant's clarification. Information which does not fall within the scope of the request has not been considered within this Notice.
10. The Commissioner has considered whether Defra was correct to apply regulations 12(4)(e), 12(5)(e) and 13 EIR to the withheld information. He has also considered whether Defra was correct to confirm that it did not hold any further information under regulation 12(4)(a) EIR.

### **Reasons for decision**

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#### **Regulation 12(4)(a) EIR**

11. Section 12(4)(a) of EIR states that, "For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that – (a) it does not hold that information when an applicant's request is received".

12. In this case Defra has explained that it does not hold any further information, relevant to the scope of the request, other than that which has been provided or is being withheld under regulations 12(4)(e), 12(5)(e) or 13 EIR.
13. When the complainant wrote to Defra to request an internal review, she highlighted that, "The released material states that on 10th June 2013 there was a teleconference between Defra and ABC to discuss progress on the Agri-tech Strategy, but no note was kept. This seems rather surprising and we would like confirmation of the absence of a note (e.g. of action points at least, if not formal minutes) to be part of your investigation. In addition, we would expect at least some emails were sent organising and following up this meeting, including a list of participants and an agenda, and we would like copies of these documents as they fall within the remit of our original requests."
14. In its internal review Defra explained that further searches had been carried out and it confirmed that no notes, minutes, or action points exist. It confirmed that there was a phone call between Defra's Agri-tech Strategy team and ABC about a general update on progress on the Agri-tech Strategy however it reiterated that no note was kept.
15. In response to the Commissioner's further queries Defra explained that the Defra GM team holds information in electronic form on a number of subject folders on a shared, network computer drive. Searches were made of all the folders which might conceivably hold information within the scope of this request (e.g. the 'liaison with industry' folder). It said that officials in the GM Team also checked the email folders on their personal laptop computers for any relevant documents that might not be filed on the shared drive. In addition, it explained that officials who deal with the 'Agri-Tech' policy area were asked to check for any relevant material, as it was known that they had communicated with the ABC on the development of the Government's agri-tech strategy, during which GM issues could have been touched upon.
16. Defra said that search terms used included: 'ABC'; 'agricultural biotechnology council'; the names of the individual ABC member companies (e.g. 'Syngenta'); and the names of key contacts at the companies.
17. It explained that it is likely that some information was held that would have been relevant to the request, but which was deleted before the request arose because it did not need to be kept as part of Defra's corporate record. It said that it does not maintain details of when documents are deleted.

18. It explained that Defra has a general aim of holding all the important information that it derives, to maintain an appropriate corporate record of its activities. It said this provides evidence of what and why things have been done, which is necessary to help officials take work forward and ensures there is proper accountability for Defra's actions. It said that information relating to contacts with the ABC and its member companies will be retained if it is significant in terms of the development and implementation of GM policy.
19. It confirmed that there is no specific statutory requirement to retain any of the documents it holds relevant to the enquiry, just its general duty to maintain the corporate record.
20. Defra has confirmed that it has conducted thorough electronic searches for the requested information and it has provided the search terms it used to conduct these searches. It has explained the type of information it would retain but acknowledged that some information may have been destroyed prior to the request being made. On the balance of probabilities the Commissioner considers that Defra does not hold any further information relevant to the scope of the request, other than that which has been provided to the complainant or has been withheld under regulations 12(4)(e), 12(5)(f) or 13 EIR.

#### **Regulation 12(4)(e) EIR**

21. Section 12(4)(e) EIR states that, "For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that – (e) the request involves the disclosure of internal communications."
22. Defra has explained that the information withheld under this exception comprises two emails that were written by Defra officials and circulated to other officials. It said that neither was sent to a third party, and therefore the information properly falls within the scope of 12(4)(e).
23. Upon viewing the withheld information the Commissioner accepts that the withheld emails are internal communications and therefore fall within the scope of the exception.

#### **Subsection 12(5)(f)**

24. Subsection 12(5)(f) EIR states that, "For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect – (f) the interests of the person who provided the information where that person – (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority; (ii) did not supply it in

circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and (iii) has not consented to its disclosure”.

25. Defra explained that the information which it applied this exception to was a letter from the EU Food and Feed Chain Coalition (FFC) to [named individual]. It said that this was sent to Defra by the ABC for information. It said that neither the FFC nor the ABC were legally obliged to supply the letter to Defra or to any other public authority. Defra confirmed that it asked the FFC whether it would consent to the letter being disclosed but said that they refused.
26. It provided some further submissions contained in the confidential annex to this Notice.
27. Based upon Defra’s submissions set out at paragraph 26 above, the Commissioner is satisfied that the person who provided the withheld information was not under a legal obligation to supply it to any public authority, it was not supplied in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it and that person has not consented to disclosure. The term person would also cover disclosure by an organisation.
28. Upon viewing the withheld information and taking into account Defra’s submissions contained in the Confidential Annex to this Notice, he considers that disclosure would adversely affect the interests of the person who provided the withheld information to Defra.
29. As the Commissioner considers that both regulations 12(4)(e) and 12(5)(f) were correctly engaged he has gone on to consider the balance of the public interest.

### **Public interest arguments in favour of disclosure**

30. Defra recognised that members of the public have a strong interest in GM policy and holding the Government to account on this issue. Disclosing the requested information would further the public interest by enabling people to better understand the relationship that Defra has with its stakeholders, so that Defra can be seen to be functioning in an open, accountable and reliable way. It would also enable members of the public to be aware of developments and be more informed on this issue, and thus better able to contribute to the wider ‘debate’ - which is an underlying principle of the EIRs. Finally, it acknowledged that there is also the general presumption under 12(2) of the EIRs in favour of disclosure.

## **Public interest arguments in favour of maintaining the exceptions**

### **Internal communications**

31. Defra argued that to operate effectively, it needs to have a space in which it can have free and frank discussions with key stakeholders on live policy issues. It said without this, stakeholders would be less forthcoming as to their own thinking on important topics. It said the information withheld in this case relates to a live and sensitive issue, ongoing discussions at EU level to try and find a new way forward on GM crop decisions, and how the UK's interest in this area might best be advanced. If the ABC felt that it could not discuss GM issues like this with a Defra Minister without the details becoming public, then it would be less likely to engage with Defra. It said that this in turn would prejudice Defra's ability to determine and implement policy as effectively as possible, undermining the public interest.

### **Interests of information provider**

32. Defra explained that disclosure of the EU Food and Feed Chain Coalition (FFC) letter to [named individual] against the express wishes of the FFC would harm the relationship that Defra has with FFC. FFC is likely to decline to share sensitive information with Defra in the future relating to the operation of the EU GM regime. This could potentially lead to poorer decision making and implementation of policy, as it would not be based on accurate and current industry based information. In particular, it said it could prejudice its ability to influence the European Commission to best effect, if it had to operate without knowing the detail of how a key industry group like the FFC is seeking to do likewise.
33. Defra also said that disclosure of the withheld information would harm FFC for the reasons set out in the Confidential Annex to this Notice which would likewise not be in the public interest.

### **Balance of the public interest**

34. The Commissioner acknowledges that whilst the emails withheld under regulation 12(4)(e) EIR are internal communications, they detail information relating to a meeting with an external stakeholder. The public interest arguments presented by Defra relate to the effect disclosure would have on the level of external stakeholder engagement which it said would prejudice Defra's ability to develop and implement policy in this area. The Commissioner does not consider that this is a relevant public interest argument to the exception concerned which is designed to protect internal communications. The Commissioner has therefore given little weight to this argument.

35. Similarly in relation to the application of regulation 12(5)(f) EIR, the Commissioner considers that the public interest arguments set out at paragraph 33 above do not relate to the interests of the person who provided the information (which is what the exception is designed to protect), rather the public interest in not causing a prejudice to Defra itself.
36. Defra did however provide comprehensive submissions, contained in the Confidential Annex to this Notice, to explain why disclosure would adversely affect the interests of the provider of the information and why that would not be in the public interest. The Commissioner has apportioned significant weight to these arguments.
37. The Commissioner does however consider that the subject matter of this request is of significant public interest and agrees that disclosure would further public understanding of the issue, would assist the wider debate and ensures Defra is functioning in an open and accountable manner.
38. The Commissioner has aggregated the public interest arguments in favour of maintaining the exceptions and considers that on balance these outweigh the public interest in favour of disclosure. The Commissioner therefore considers that regulation 12(4)(e) and 12(5)(f) were correctly applied to the withheld information.

### **Regulation 13**

39. Where information has been provided to the complainant, Defra has made redactions under regulation 13 EIR to the names and contact details of individuals sending or receiving the emails that fall within the scope of the request.
40. Regulation 13(1) states that, "To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data. Regulation 13(2) states that, "The first condition is – (a) in a case where the information falls within any paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene – (i) any of the data protection principles".
41. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as:  
  
"data which relate to a living individual who can be identified –  
  
(i) from those data, or



- (ii) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.”
42. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
43. In this case Defra has confirmed that the withheld information is the names and contact details of individuals who sent and/or received requested emails. It said that the data therefore relates to junior officials in Defra and people who work for the ABC or its member companies.
44. The Commissioner does consider that this information is the personal data of the data subjects concerned.
45. Personal data is exempt where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection principle, which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in Schedule 2 should be met.

### **Likely expectation of the data subject**

46. Defra argued that there is no reason why the individuals who wrote or received the emails would expect their details to be made public, especially bearing in mind their junior positions/grades.
47. Defra explained that ABC has previously indicated that it would not want this type of data to be made public (it is the general policy of the ABC and its member companies not to disclose staff names/contact details, except for the most senior executives which is not relevant here). Furthermore, it said that based on the experience of dealing with previous EIR cases, it was also known that the Defra officials would not want their details to be disclosed.

### **Damage and distress**

45. Defra explained that in relation to the Defra officials involved, the information relates to their public life. It said in relation to the industry (ABC/company) employees, the information relates to both their public



and private life. It said this arises because GM is a controversial area and some people hold extreme views about the activities of the agri-biotechnology industry. There have been instances in the past of company staff being harassed. It therefore said that it decided not to disclose staff names/contact details to avoid the potential for harassment of individuals which could spill over into their private lives, particularly as the people involved are not senior executives/officials.

### **The legitimate public interest**

46. Defra argued that there is a legitimate public interest in official information being made available, and a legitimate interest in information on GM issues being disclosed. However, it said the public interest in transparency and accountability had already been met by the disclosure of remainder of the documents, and the names and contact details of the junior officials and stakeholders are not key to the context of these documents. It argued that a further disclosure of this information is not necessary for the legitimate interests of the public as this would add virtually nothing to the public's understanding of the policy area.
47. The Commissioner considers that Defra has disclosed the substantive information requested in this case which goes a significant way to meeting the legitimate public interest described above. However given the likely expectations of the data subjects concerned and the damage and distress disclosure could cause, Defra was correct to redact the names and contact details of the data subjects from the information it disclosed. Regulation 13 was therefore correctly applied in this case.

## Right of appeal

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48. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

49. 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.
50. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
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