

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 2020

Public Authority: Department for Infrastructure

Address: Clarence Court
10-18 Adelaide Street
Belfast BT2 8GB

Decision (including any steps ordered)

1. The complainant has requested information from the Department for Infrastructure ("the Department") regarding the proposed experimental trial in Belfast of taxis in bus lanes.
2. The Commissioner's decision is that the Department has provided all the information it holds within the scope of the complainant's request, however it has breached regulation 5(2) of the EIR.
3. The Commissioner requires no steps to be taken.

Request and response

4. The complainant made a request for information on 22 January 2019 in the following terms:-

"The Experimental Traffic Control Scheme (Taxis in Bus Lanes) 2018 proposed a longer term trial of Taxis in Bus Lanes in Belfast. This trial was cancelled due to "lack of minister and understanding that civil servants could not make decisions of this magnitude."

Please provide correspondence relating to the cancellation of this trial, specifically:

- 1 - Copies of correspondence (emails, minutes and attendees at meetings) in which this trial was proposed to be cancelled.
 - 2 - Who made the final decision to cancel this trial?
 - 3 - Copies of correspondence (emails, meeting minutes and attendees) regarding reinstatement of this trial given the recent Northern Ireland (Executive Formation and Exercise of Functions) Act 2018."
5. The Department responded to the complainant on 25 February 2019, disclosing information in response to the complainant's request. The complainant was not satisfied with the Department's response and sought an internal review on the same date.
 6. On 22 March 2019 the complainant requested an update from the Department as to the progress of the internal review. The Department responded on 25 March 2019 stating that the request was for environmental information and that therefore it was allowed 40 working days in which to conduct the internal review.
 7. On 8 April 2019 the Department asked the complainant to clarify whether his request related to 'cancellation' or 'postponement' of the trial of taxis in bus lanes. The complainant replied to the Department on the same date, stating that his request related to 'postponement' of the trial.
 8. As the request was treated as a request for environmental information, 40 working days were allowed for completion of the internal review. The complainant disputed that the information was environmental, however the Department confirmed that the complainant's request was being handled under the Environmental Information Regulations 2004 (EIR).
 9. The Department again wrote to the complainant on 16 May 2019. It provided information in response to parts 1 and 2 of his request, and stated that, whilst it did hold information in response to part 3 of his request, it was withholding these under regulation 12(4)(e) of the EIR.
 10. On 6 August 2019, following correspondence from the Commissioner, the Department wrote to the complainant disclosing some further information it held in relation to deferring the trial. On the same date the complainant wrote to the Department stating that he had not yet received a full response to part 3 of his request, as the Department's correspondence contained records of correspondence prior to the implementation of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018.

11. The Commissioner has since clarified this with the Department. The Department states that it has checked back through its records and it does not actually hold any further information within the scope of part 3 of the complainant's request, as there were no further records within the timeframe requested following the decision to defer the trial until it could be reassessed when a Minister for Infrastructure was in place.

Scope of the case

12. The complainant contacted the Commissioner on 21 November 2019 to complain about the way in which the Department had handled his request for information.
13. The complainant stated that the title of his original request on the website www.whatdotheyknow.com referred to 'postponement' of the trial of taxis in bus lanes in Belfast, however the Department had treated his request as being for information regarding the 'cancellation' rather than the 'postponement' of the trial.
14. The complainant also did not consider the information he requested to be environmental, therefore he thought that the Department should have provided him with the result of that review within 20 working days.
15. The Commissioner has considered the Department's handling of the complainant's request in general, as well as the above two issues specifically.

Appropriate access regime

16. The Commissioner considers that the request was correctly handled under the provisions of the EIR as the requested information falls under regulation 2(1)(c) of the EIR, being a measure likely to affect the environmental factors referred to in regulation 2(1)(b) of the EIR, which refers to:-

"factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a).

Reasons for decision

Regulation 12(4)(a) – information not held

17. Regulation 5(1) of the EIR says that a public authority that holds environmental information must make it available on request.
18. The Department stated in its internal review letter that it was withholding information in response to part 3 of the complainant's request under regulation 12(4)(e) of the EIR. It later confirmed to the Commissioner that it did not hold information specifically within the scope of that part of the request and accepted that it should have explicitly stated this to the complainant.
19. The Commissioner is satisfied that the Department holds no further information within the scope of the complainant's request other than that which it has already provided to the complainant. The Commissioner also considers that the Department should have applied regulation 12(4)(a) to part 3 of the complainant's request instead of regulation 12(4)(e) – internal communications.

Regulation 5 of the EIR

20. Regulation 5(1) requires a public authority that holds environmental information to make it available on request.
21. Regulation 5(2) of the EIR requires this information to be provided to the requester within 20 working days following receipt of the request.
22. The complainant requested the information on 22 January 2019 and the Department provided the information it held within the scope of the request on 16 May and 16 August 2019, periods of three and six months respectively beyond the time for compliance. Therefore the Commissioner finds that the Department has breached regulation 5(2) of the EIR. Although there was some confusion as to whether the complainant was seeking information relating to the 'cancellation' or the 'postponement' of the trial, and the Department later sought clarification of this, the Commissioner considers that the Department should have disclosed all the information it held regarding the proposed 'postponement' of the trial in response to the original request.

Right of appeal

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 1234504

Fax: 0116 249 4253

Email: GRC@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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