

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

Decision notice

Date: 1 March 2021

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 relating to minutes of meetings within the Department for Infrastructure ('the Department') held in certain years relating to contracts regarding weed control and grass-cutting.
2. The Commissioner's decision is that the Department has disclosed all the information it holds within the scope of the complainant's request and that, on the balance of probabilities, it does not hold any further information falling within the scope of the request.
3. Therefore the Commissioner requires no steps to be taken.

Request and response

4. On 20 September 2019, the complainant wrote to each of four divisions of the Department and requested the following information:-

"The recorded minutes of each meeting agenda, content and discussion either held annually or six monthly between DRD/DFI and the Principal Contractor and/or Sub-Contractors regarding the above works/operations on the above contract for [specified years].

Each annual monetary amount paid to the principal contractor for 'weed control,' 'urban and rural grass cutting,' 'gully emptying,' 'tree/hedge cutting services within financial years 2010-2011, 2011-2012 and 2012-2013."

5. The Department responded on 21 October 2019 and at various points up until the end of November 2019, providing some information to the complainant in respect of each division. The complainant sought an internal review of the respective decisions within each division not to disclose some of the requested information.
6. Following an internal review the Department wrote to the complainant on 29 January 2020. In respect of each division, it stated as follows:-
- Northern division – the Department stated that this division had disclosed all records held by it which were within the scope of the complainant's request. It also acknowledged that its response to the complainant's request regarding that division was issued one day beyond the statutory time limit of 20 working days.
 - Southern division – the Department stated that some meeting minutes had been withheld under the exception as set out in regulation 12(5)(e) of the EIR. The Department confirmed that this exception has been incorrectly applied as the information to which it applied did not fall within the scope of the complainant's request.
 - Eastern division – the Department stated that this division had carried out a further search and had identified some more information held by it which fell within the scope of the complainant's request. The Department provided that information to the complainant and apologised for the oversight. The Department also apologised as its response to that request was issued 28 days after the 20 working day statutory time limit.

- Western division – the Department stated that some of the payment information provided by that division was inaccurate and apologised, providing the complainant with the accurate information.

Scope of the case

7. The complainant contacted the Commissioner on 10 February 2020 to complain about the way his request for information had been handled.
8. The Commissioner has considered the way in which the Department handled the complainant's request for information.
9. The Commissioner wrote to the Department explaining that the complainant considers that the Department holds further information within the scope of his request and requesting further submissions from the Department.
10. The analysis below considers whether, on the civil standard of the balance of probabilities, the Department holds further information within the scope of the request.

Reasons for decision

Regulation 5 duty to make environmental information available on request

11. Regulation 5(1) of the EIR states that:

"Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request".
12. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request the Commissioner will consider the complainant's evidence and arguments. She will also consider the searches carried out by the public authority, in terms of the extent of the searches, the quality of the searches, their thoroughness and the results the searches yielded. In addition, she will consider any other information or explanation offered by the public authority which is relevant to her determination.

13. For clarity, the Commissioner is not expected to prove categorically whether further information is held, she is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
14. In this case, the Commissioner has sought to determine whether, on the balance of probabilities, the Department held further information within the scope of the request.

The complainant's view

15. The Commissioner acknowledges that the complainant considers that the Department holds further information within the scope of his request, as he believes minutes of all meetings should be held by the Department.

The Department's view

16. During the course of her investigation, the Commissioner asked the Department questions, as is her usual practice, relating to how it established whether or not it held further information within the scope of the request.
17. In its submission, the Department confirmed that it holds no further recorded information within the scope of the complainant's request. The Department has now conducted four searches of its electronic records management system, and has disclosed all the records that had been found. The Department states that the complainant made it clear that he was seeking Performance Review Meeting Minutes. DfI Roads have advised the Department that, following the release of information included with the internal review, they "have released all the 6 monthly minutes that... they hold and these are contained within the Divisional packs provided to [the complainant]".
18. The Department has informed the Commissioner that staff in DfI Roads Section Offices have searched online, via the Department's electronic records management system, and also the physical records of routine contract management meetings with the Environmental Maintenance Term Contractors. Including additional searching by IMU, a total of four searches have now been conducted for electronic records. The Department further confirmed that staff in Section Offices were required to search for physical records in their offices when the original request and the internal review were being processed. All records that have been identified through these searches, falling within the scope of the request, have been disclosed.

19. DfI Roads staff have confirmed that the Divisions should hold minuted Performance Review Meetings as part of contract management for the Environmental Maintenance Term Contracts. Information Management Unit have highlighted the need to retain required contract management records appropriately.
20. The Department states that the requirement to hold and record meetings are contained within the DfI Conditions of Contract. DfI Roads Environmental Maintenance Term Contract Managers have been reminded that the meetings should be held and minuted, with all records being retained in line with the Department's Retention and Disposal Schedule.

The Commissioner's view

21. The Commissioner recognises that the requested information is clearly of interest to the complainant. She acknowledges that he explained the basis on which he believes that the Department held further information within the scope of his request, namely the wording in some of the emails he has received.
22. The Commissioner's role is to make a decision based on whether recorded information is held and has been provided.
23. The EIR cover recorded information. In that respect, the Commissioner's guidance to public authorities states:

"The Regulations will cover any recorded information you hold that falls within the definition of 'environmental information'. It is not limited to official documents or information you create – it can cover, for example, drafts, emails, notes, recordings of telephone conversations and CCTV recordings".

24. Her guidance also states:

"The Regulations do not cover information that is in someone's head. If a member of the public asks for information, you only have to provide information you already have in recorded form. You do not have to create new information or find out the answer to a question".

25. Having considered the evidence provided by the Council, including details of the actions taken to search for relevant information, the Commissioner is satisfied, on the balance of probabilities, that no further information within the scope of the request is held.

26. The Commissioner therefore considers that the Department complied with its obligations under Regulation 5 of the EIR.

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: 0870 739 5836

Email: grc@justice.gov.uk

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

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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF