

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 7 December 2022

Public Authority: Foreign, Commonwealth & Development Office
King Charles Street
London
SW1A 2AH

Decision

1. The complainant has requested information relating to a mine in Armenia. The Foreign, Commonwealth & Development Office ('FCDO') released some information in scope of the request but cited regulations 12(4)(d), 12(5)(a), 12(5)(e), 12(3) and 13 of the EIR to withhold the remaining information within scope.
2. The Commissioner's decision is that the withheld information engages regulations 12(4)(d), 12(5)(a) of the EIR and the public interest favours maintaining the exceptions. The Commissioner also considers regulation 13 of the EIR is engaged.
3. However, the FCDO failed to provide a response to the request for information within the designated time frame and therefore breached regulation 5 as well as regulation 11(4) of the EIR by failing to provide its internal review response within the required 40 working days.
4. No steps are required as a result of this decision notice.

Request and response

5. The complainant made the following information request to the FCDO on 23 March 2021:

"I'm writing to make a request under the Environmental Information Regulations for the following information:

Briefings, reports, emails and/or memos relating to Lydian International's Amulsar mine in Armenia, held by the UK Foreign Office and/or UK Diplomatic Posts in Armenia, and which were created and/or received during 2020.

I note that under EIR Regulation 12 (2) "a public authority shall apply a presumption in favour of disclosure".

Furthermore, disclosure, subject to a public interest test, may only be refused if "the public interest in maintaining the exception outweighs the public interest in disclosing the information" (Reg. 12 (1) (b))."

6. The FCDO responded on 27 May 2021. It provided a partial response and cited that it was withholding part of the requested information under regulations 12(4)(d), 12(5)(a), 12(5)(e), 12(3) and 13 of the EIR.
7. The complainant set out their grounds for an internal review on 4 June 2021. The FCDO responded some four months later on 26 October 2021 and disclosed some further information in scope of the request but upheld its initial stance for the remaining withheld information.

Reasons for decision

8. This reasoning covers whether the FCDO was correct to refuse to disclose the withheld information in scope of the request.

Regulation 12(5)(a) – international relations

9. Regulation 12(5)(a) of the EIR states that information is exempt if its disclosure would adversely affect international relations, defence, national security, or public safety. In this case, the FCDO believes that disclosure would have an adverse effect on international relations.
10. The FCDO argued that although releasing information would increase public knowledge about their relations with the Armenian Government, maintaining trust and confidence between governments is central to conducting effective international relations. The erosion of this trust

would prejudice the UK's interests abroad and their promotion or protection, which is clearly not in the public interest.

11. The FCDO says that although it recognises the need for openness and transparency in general terms and that the EIR favours on the side of disclosure, it needs to have open and frank discussions about the motivations and intentions of another government's actions – this conjecture, if released publicly, can damage relations. And that a reduction in trust in the relationship between UK and foreign governments would likely constitute an adverse effect on the UK's international relations and make it considerably more difficult for the UK to pursue relations in such circumstances, which is inherently, not in the public interest.
12. The complainant has said that they believe that the FCDO's withholding of the information requested is not in the public interest and that the public interest is much more strongly in favour of disclosure.
13. With regard to whether disclosure of such information would adversely affect the UK's international relations, the Commissioner has taken into account the comments of the Information Tribunal when it considered the application of section 27 of FOIA, the equivalent exemption in that legislation. The Tribunal accepted that prejudice to international relations can be said to be real and of substance if such harm 'makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise been necessary.'¹
14. Having reviewed the information withheld on the basis of this exception, the Commissioner is satisfied that its disclosure would prejudice the UK's international relations. The Commissioner accepts the relevance of the FCDO's reasoning set out above at paragraphs 10 and 11, and he is satisfied that harm would occur either directly to the UK's relations with Armenia and/or harm would be caused to the UK's standing and influence with other states if the withheld information were disclosed.
15. The information withheld by the FCDO on the basis of regulation 12(5)(a) is therefore exempt to disclosure on the basis of this exception.

¹ Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence (EA/2006/0040), paragraph 81

16. The Commissioner has not considered regulation 12(5)(e) of the EIR in this case, as the regulation upheld, cover the information under this exception.

Regulation 12(4)(d) – material in the course of completion

17. Regulation 12(4)(d) of the EIR provides that a public authority may refuse to disclose information to the extent that the request relates to material, which is still in the course of completion, to unfinished documents or to incomplete data.
18. The FCDO informed the complainant that the unfinished documents were created as part of draft processing and the final version had been linked to the disclosed digest and, that it should have the necessary space to think in private as well as be able to have free and frank discussions which form part of the process. Disclosure would be likely to have an adverse effect on their ability to engage in honest exchanges of views in future - for fear of disclosure and negative publicity.
19. The complainant reiterated their belief that withholding this information is not within the public interest and the EIR should favour disclosure.

Regulation 13(1) – personal data

20. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulations 13(2A), 13(2B) or 13(3A) is satisfied.
21. The FCDO said that the fairness aspect of the data protection principles is most relevant to the personal information it is withholding, as it relates to third parties who would not have a reasonable expectation of their personal information being disclosed in the public domain in this way. They see no compelling legitimate interest in disclosure to the public. And in addition, staff are informed that the FCDO policy clearly says that names of junior officials will not be released, so they would have a reasonable expectation for their details not to be released into the public domain.
22. The complainant argued that names of higher-ranking officials are not afforded the same protection as ordinary employees.
23. The FCDO has argued that as this information is the personal data of third parties whose reasonable expectation is that their information would not be published in the public domain and therefore breach the principle of fairness and would not be lawful with regard to the first principle of data protection.

The Commissioners view

24. The Commissioner has had sight of the correspondence of both the complainant and the FCDO as well as further submissions from the FCDO which outline their case and underpin the reliance on the exceptions cited. Given the information provided to him, the Commissioner's decision is that the exceptions cited at regulations 12(5)(a) and 12(4)(d) are engaged.
25. The Commissioner's view is that the public interest in maintaining the exception at 12(5)(a) and 12(4)(d) outweighs that in the information being disclosed.
26. Regulation 13 is engaged, as disclosure would breach the data protection principles and would not be within the expectations of the individuals concerned.

Procedural matters

27. The public authority breached regulation 5 of the EIR because it failed to inform the complainant, within 20 working days, whether or not it held any information within the scope of their request.
28. The public authority also breached regulation 11(4) of the EIR as they failed to carry out their internal review within 40 working days.

Right of appeal

29. 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

30. 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.
31. 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

Phillip Angell
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