

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 December 2023

Public Authority: Department for Environment Food & Rural Affairs (Defra)

Address: Seacole Building
4th Floor
2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested two draft versions of a Life Cycle Analysis document on absorbent hygiene products, as well as any comments or feedback from various parties. Defra explained any comments or feedback had been provided in response to an earlier request but withheld the drafts under regulation 12(4)(d) of EIR.
2. The Commissioner's decision is that regulation 12(4)(d) was engaged in relation to the draft documents but that the public interest in disclosure outweighs the public interest in maintaining the exception and withholding the information.
3. The Commissioner requires Defra to take the following steps to ensure compliance with the legislation.
 - Disclose the draft versions of the Life Cycle Analysis from 9 February 2022 and 6 June 2022.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 28 April 2023, the complainant wrote to Defra and requested information in the following terms:

"I'd like a copy of the draft version of the life cycle analysis of absorbent hygiene products as it was on 9 February 2022.

I'd like a copy of the draft version of the life cycle analysis of absorbent hygiene products as it was on 6 June 2022.

I'd like any comments or feedback from the Absorbent Hygiene Product Manufacturers Association, Essity, Proctor and Gamble, Ontex, Kimberley Clarke, or Edana to Defra staff on the life cycle analysis of absorbent hygiene products between 9 February 2022 and 1 April 2023. I include in this emails, notes from meetings in person, online or on the phone, whatsapp messages, etc."

6. Defra responded on 17 May 2023. It stated that it was withholding the two draft documents under regulation 12(4)(d). For the comments, feedback and notes Defra advised it had provided emails between the Absorbent Hygiene Products Manufacturers Association and Defra between 1 December 2021 and 1 December 2022 in response to an earlier information request. Defra stated it had not received comments or feedback from the other companies listed and did not hold any information for the companies listed for the period 1 December 2022 to 1 April 2023.
7. The complainant requested an internal review of the decision to withhold the draft documents on 19 June 2023.
8. Following an internal review Defra wrote to the complainant on 8 August 2023 upholding its position.

Scope of the case

9. The complainant contacted the Commissioner on 18 August 2023 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to determine if Defra has correctly withheld the two draft documents under regulation 12(4)(d) of EIR.

Reasons for decision

Regulation 12(4)(d) – material in the course of completion, unfinished documents and incomplete data

11. 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.¹
12. Regulation 12(4)(d) is a class-based exception, which means that if the information falls within its scope, then the exception is engaged. It is not necessary to demonstrate that disclosure would have any particular adverse effect in order to engage the exception. However, regulation 12(4)(d) is subject to the public interest test.
13. Defra considers the information relates to both incomplete data and to unfinished documents. The draft versions of the report both underwent several rounds of revision. Both reports were revised substantially following feedback from the nappy industry via the Absorbent Hygiene Products Manufacturers Association, and from peer reviewers. Defra explained the differences between the drafts and final published report were substantial.
14. The Commissioner accepts the information in scope of the request engages the exception. It is clear the documents are draft documents as they were unfinished. As the Commissioner's guidance makes clear, draft versions of documents are still unfinished even if the final version of the documents has been published.

Public interest test

15. Regulation 12(1)(b) requires that where the exception under regulation 12(4)(d) is engaged, a public interest test should be carried out to ascertain whether the public interest in maintaining the exception outweighs the public interest in disclosing the information. The Commissioner is mindful of the provisions of regulation 12(2) which state that a public authority shall apply a presumption in favour of disclosure.

Arguments in favour of disclosing the requested information

16. Defra recognises there is a public interest in disclosure of information around any Life Cycle Analysis of absorbent hygiene products, and that

¹ [Regulation 12\(4\)\(d\) - Material in the course of completion, unfinished documents, and incomplete data \(Environmental Information Regulations\) | ICO](#)

disclosure of the information in this case would aid transparency and accountability.

17. The complainant argued that the information was necessary as the drafts were produced by researchers before nappy industry lobbyists were given a chance to review the documents so would show the position prior to the input of the nappy industry bodies. They argue that the nappy industry is a multi-billion pound global industry that causes pollution and is a significant contributor to waste disposal problems in the UK. It is pointed out that Defra's last Life Cycle Analysis document on single use versus reusable nappies was widely cited in the UK and globally, often in support of the single use nappy industry's claims.
18. The complainant states that one of the groups involved in the process of producing the new Life Cycle Analysis raised concerns that the single use nappy industry had undue influence on the process, leading to Defra downplaying the environmental damage of disposable nappies.
19. Further arguments given by the complainant point to a Dutch government Life Cycle Analysis of disposable vs reusable nappies done at the same time as the Defra analysis, but without input from nappy industry lobbyists, which had significantly different findings. It's therefore argued that seeing the complete draft versions of the paper before it was presented to industry lobbyists for their comments would help the public better understand the level to which the single-use industry shaped the outcomes of this piece of government research.

Arguments in favour of withholding the requested information

20. Defra considers that as the final version of the Life Cycle Analysis has been published and is available online², releasing working drafts would put into the public domain incomplete information and data which had not been quality assured and was still subject to review and correction. Defra considered this could confuse consumers and others, making it harder to make informed decisions based on the results of the published Life Cycle Analysis.
21. Defra argues that it needs a safe space in which officials can operate and finalise information in private, free from distraction in releasing incomplete data, likely to confuse consumers.

Balance of the public interest arguments

22. The Commissioner has considered the arguments provided by both parties. He recognises the legitimate public interest in disclosing

² [Science Search \(defra.gov.uk\)](https://science.search.defra.gov.uk)

information that would inform the public about how a report was formulated.

23. The Commissioner is also mindful that access rights under the EIR are designed to support public access to environmental information and public participation in decision making.
24. A key factor in assessing the weight of public interest arguments is the extent to which the information itself would inform public debate on the issue concerned. There is always an argument for presenting a full picture of how a decision was made or arrived at. If disclosing incomplete material or draft documents would support this, then it increases the weight of the argument for disclosure.
25. The Commissioner also recognises that authorities will need a safe space to develop ideas, debate issues and reach decisions away from external interference and distraction. This may carry significant weight in some cases, particularly when the issues in question are still live or only recently decided.
26. He considers that the extent to which disclosure would have a detrimental impact on internal processes will be influenced by the particular information in question and the stage the process had reached at the point the request was responded to. There will always be a stronger public interest in protecting a process that is ongoing than one that has concluded.
27. The Commissioner understands the Life Cycle Analysis provides the evidence underpinning the Government's stance on reusable vs disposable nappies. The final report assessed reusable and disposable nappies against 18 criteria or types of environmental harm and there was no clear consensus on whether one type of nappy was better for the environment and whether the Government should take policy or legislative action.
28. The research work was carried out by a third party, Giraffe Innovation Ltd, who assessed the nappies against the 18 criteria and the work was subject to peer review to ensure it met quality standards. Defra explained that the nappy industry was involved throughout the lifetime of the research, represented by the Nappy Alliance (reusable nappies) and the Absorbent Hygiene Products Manufacturers Association (disposable nappies).
29. The Commissioner considers there is a strong public interest in understanding the full detail of the research that has been carried out and how it has been considered. The draft documents are the first version of the report and a version following comments from peer reviewers and the nappy industry. The final published version followed final comments following the earlier drafts being shared.

30. There is a strong public interest in understanding how a document such as this evolved and how the final position was reached. This is an area that has attracted attention and there is public interest in understanding the environmental impact of nappies and making the best decision for environmental reasons. The Commissioner takes the view that disclosure, even of material that is no longer being worked on, would provide the public with an understanding of, and inform the debate on, how the government's position on nappies evolved. This would show how the Life Cycle Analysis evolved from the initial research to the final version and how peer reviews and industry comment contributed to this evolution.
31. Whilst the drafts do not show comments from contributors so it would not be possible to attribute specific changes from one draft to another to particular parties feedback, it would give an overall picture of the way the document evolved and led to the final position. The Commissioner considers there is public interest in this and, given the presumption in favour of disclosure under the EIR, he considers this is sufficient to outweigh the factors in favour of withholding the information.
32. The arguments presented by Defra aren't compelling. Defra has referred to confusion caused to consumers by releasing the drafts but the Commissioner isn't convinced this is a likely outcome as most consumers will be satisfied with using the final published version of the document to make a decision. In any event, Defra can provide explanatory text to accompany any disclosure, making clear that the drafts do not represent the final position. The 'safe space' argument put forward by Defra has not been expanded upon further than stating that it is needed to finalise information in private, free from distraction. Safe space arguments carry much more weight when an issue is still live. In this case the final report had already been published when the request was made so the Commissioner doesn't afford this argument much weight.
33. Taking into account all of the above, the Commissioner has concluded that the public interest in disclosing the drafts outweighs the public interest in maintaining the exception at regulation 12(4)(d). The Commissioner's decision is therefore that the draft Life Cycle Analysis documents should be disclosed.

Right of appeal

34. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

35. 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.

36. 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

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