

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

**Date:** 3 September 2024

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

**Address:** 2 Marsham Street  
London  
SW1P 4DF

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to meetings with specific companies. The above public authority (“the public authority”) relied on regulations 12(4)(d) (material in the course of completion) and 12(4)(e) of the EIR (internal communications) to withhold the information.
2. The Commissioner’s decision is that regulation 12(4)(d) is engaged, but that the public interest favours disclosure. Regulation 12(4)(e) is engaged in respect of all the information to which the public authority has applied it, but the public interest only favours maintaining the exception for some of the information. For the remaining information, the public interest favours disclosure.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose a copy of the letter identified in paragraph 10 and the readouts identified in paragraph 21.
4. The public authority must take these steps within 30 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

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5. On 8 December 2023 the complainant requested information of the following description:

“This is an EIRs request about the following meetings.

- i. 31/01/22 - Jo Churchill met Jon Wood and Stephen Moorhouse of Coca Cola to discuss the details of implementation of a DRS scheme in England and Wales, and the interoperability between those schemes and the Scottish scheme.
- ii. 10/1/23 - Mark Spencer met DRAX to discuss agri-innovation policy
- iii. 23/3/23 - Therese Coffey met with multiple parties to discuss extended producer responsibility

1. I am writing to request documents related to each of these meetings, including but not limited to:

- a. Agendas
- b. Minutes
- c. Briefing notes
- d. Readouts
- e. Other meeting memoranda

2. I am also writing to request copies of correspondence generated between these respective parties, specifically correspondence between:

- i. Jo Churchill and Coca Cola generated in January and February 2022.
- ii. Mark Spencer and Drax generated in January and February 2023.
- iii. Therese Coffey and the Food and Drink Federation generated in March and April 2023.

I ask that correspondence include, but not be limited to:

- a. Letters
- b. Emails and attachments
- c. Text messages
- d. WhatsApp messages”

6. On 30 January 2024, the public authority responded. It refused to provide the requested information. It relied on regulations 12(4)(d) and 12(4)(e) to withhold the information. It upheld this stance following an internal review.

## Reasons for decision

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7. As it is information relating to policies on waste management and agri-business, the Commissioner believes that the requested information is information on measures affecting the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

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

8. Regulation 12(4)(d) allows a public authority to withhold information that relates to material in the course of completion.
9. The public authority argued that one of the documents falling within the scope of the request related to a statutory instrument which was, at the time (and remains), in the drafting process. That statutory instrument was thus “material” that was in the course of completion and, as the letter related to it, it was caught by the exception.
10. The letter in question was a joint letter from the heads of the Food and Drink Federation, the British Retail Consortium and the Industry Council for Packaging and the Environment. It was written to follow up a meeting representatives of these bodies had had with the Secretary of State the previous month.
11. The Commissioner is conscious that any EIR exception should be interpreted narrowly – although the phrase “relates to” potentially encompasses a large amount of information.
12. The letter does refer to the statutory instrument and changes that the three organisations wished to see made. However, some parts of the letter refer to the broader policy, of which the statutory instrument forms part, rather than the instrument itself. “Material” needs to be something tangible, whereas a policy is intangible.
13. Given the conclusions he has reached about the balance of the public interest, the Commissioner has not found it necessary to go through the letter section by section to determine what does and does not relate to material in the course of completion. He has simply proceeded on the basis that the letter as a whole engages the exception.

### **Public interest test**

14. In the Commissioner’s view the public interest strongly favours disclosure.
15. There is a public interest in protecting a public authority’s ability to deliberate sensitive matters candidly but privately.

16. However, in this case the information being withheld is not an early version of the statutory instrument, but a discussion of what the three organisations concerned would like to see added to or removed from it. The Commissioner is satisfied that the public authority's staff are sufficiently robust as not to be overly distracted by any debate provoked by disclosure.
17. There is nothing improper in businesses seeking to influence policy. The three organisations are likely to represent the interest of a large number of firms who, between them, employ an even larger number of people. Their interests do need to be considered when developing policy.
18. However, where organisations, regardless of the interests they represent, do seek to influence policy there must be high standards of transparency to ensure that influence is not exercised in an improper manner.
19. The Commissioner is therefore satisfied that the public interest favours disclosing this information and it must now be disclosed.

#### **Regulation 12(4)(e) – internal communications**

20. Regulation 12(4)(e) of the EIR allows a public authority to withhold internal communications.
21. The public authority has relied on this exception to withhold briefing notes prepared for the minister prior to the meetings with Drax and Coca Cola. The exception has also been used to withhold "readouts" of the meetings with Coca Cola and the Food and Drink Federation.
22. The public authority has explained that these documents have only been circulated within government. Having seen the information being withheld, the Commissioner has no reason to believe that this is not the case. That is sufficient to engage the exception.

#### **Public interest test**

23. Internal communications must still be disclosed unless the balance of the public interest favours maintaining the exception.
24. The Commissioner recognises that there is always some value in allowing a public authority to have some internal thinking space, so that it can debate sensitive matters candidly but privately. This is particularly important during the early stages of policy formulation.
25. However the Commissioner also notes that the information relates to meetings between ministers and various large firms or industry bodies.

Those organisations will have their own policy interests to pursue and would have been seeking to influence the eventual design of policy.

26. There is nothing improper about government ministers meeting with representatives of business nor in businesses seeking to influence policy. However, where this does happen there must be high standards of transparency to ensure that influence is not exercised in an improper manner.
27. In respect of the briefing papers, the Commissioner accepts that the balance of the public interest favours maintaining the exception. This was prepared based on an assessment of what Drax and Coca Cola were likely to bring up at the meeting and the strategic priorities they wished to pursue. That necessarily involves some candid assessments of each company.
28. The Commissioner accepts that it is in the public interest that ministers receive candid briefings from civil servants and that that candour is likely to be affected by disclosure. Given that the briefings don't necessarily reflect the actual discussions that took place or any lobbying that might have taken place, the Commissioner accepts that the public interest favours withholding these documents.
29. In contrast, the readouts reflect the actual discussions that took place and they are likely to be a "sanitised" versions of those discussions. The organisations involved should know that such records may be disclosable and the Commissioner is not persuaded that potential disclosure would prevent them from promoting their interests in future.
30. The Commissioner is therefore satisfied that, for the readouts, the public interest favours disclosure.

## Right of appeal

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31. 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](mailto:grc@justice.gov.uk)

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

32. 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.
33. 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

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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