

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

**Decision notice**

**Date:** 12 November 2012

**Public Authority:** Department of the Environment  
**Address:** Clarence Court  
10-18 Adelaide Street  
Belfast  
BT28GB

**Decision (including any steps ordered)**

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1. The complainant requested information including minutes of meetings, emails and memoranda relating to various recycling lands and sites. The Department of the Environment (DOE) disclosed some information but refused to provide the remaining information under regulations 12(4)(e) (internal communications), 12(5)(b) (the course of justice), and 12(4)(d) (unfinished documents) of EIR. The complainant was dissatisfied with the response and requested in writing a review of the decision to refuse the request. DOE failed to conduct an internal review.
2. The Commissioner's decision is that DOE breached regulations 11(3) and 11(4) of EIR in failing to conduct an internal review.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Conduct an internal review which meets the requirements of EIR.
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**

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5. On 3 November 2013, the complainant wrote to the Department of the Environment for Northern Ireland (DOE) and requested information as detailed at Annex A of this notice
6. DOE responded on 3 January 2012. It stated that it was disclosing some information but that the remainder was exempt under regulations 12(4)(e) (internal communications), 12(5)(b) (the course of justice), and 12(4)(d) (unfinished documents) of EIR.
7. On 16 January 2012 the complainant requested in writing a review of the refusal to provide the information.
8. On 17 January 2012 DOE wrote to the complainant to inform him that it was conducting an internal review and that the aim was to respond by 12 March 2012.
9. On 14 February 2012 DOE wrote to the complainant to inform him that it had received the request for an internal review and that this had been passed to the person responsible for conducting reviews within the Department. It also informed the complainant how he could access some additional information and additionally provided some copies of that information.
10. During the period from April to the date of this notice the complainant continued to write to DOE to ask for an update on the review.
11. The Information Commissioner wrote to DOE on 18 April 2012 to remind it of its obligations and requesting that a review be carried out in accordance with the guidance.
12. Despite intervention by the Information Commissioner, to date the internal review has not been completed.

## **Scope of the case**

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13. The Information Commissioner accepted a complaint from the complainant and, having carefully considered the information made available to him, focussed his investigation on whether there had been a breach of regulation 11 of EIR.

## **Reasons for decision**

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### **Internal review – regulation 11**

14. Regulation 11(1) of the EIR provides that an applicant may make representations to a public authority, if he considers that the authority has failed to comply with the requirements of the EIR in relation to his request.
15. Regulation 11(3) requires that the authority consider the complainant's representations, along with any supporting evidence provided by the complainant, and to decide whether it has complied with the requirements of the EIR. Finally, regulation 11(4) requires that the authority notify the applicant of its decision in relation to the applicant's representations no later than forty working days after receipt of those representations.
16. The Information Commissioner notes that the complainant in this case clearly requested an internal review in his letter of 16 January 2012.
17. The Information Commissioner contacted both DOE and the complainant to establish whether the internal review had been completed in the time since making the complaint to him. DOE confirmed that it had not completed an internal review and that this had been overlooked.
18. The Information Commissioner considers that regulation 11 of the EIR provides a clear statutory right for an applicant to have his or her request reconsidered by the public authority in question. This in turn provides the authority with an opportunity to rectify any procedural or handling issues, as well as an opportunity to explain to the complainant how their request was handled.
19. In any event DOE has failed to conduct an internal review, adequate or otherwise, and therefore the Commissioner must find that it failed to comply with regulation 11(3) of the EIR. Consequently, in failing to provide the complainant with notice of its decision in response to the complainant's representations within the appropriate time period the DOE failed to comply with regulation 11(4) of the EIR.

## Right of appeal

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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: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

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 .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

Annex A

Copies of all notes, memorandum, email, minutes of meetings and any other correspondence or document between the Environment Minister and/or his special advisor and or the Environment Minister's office and;

- a) The northern Ireland Environment agency (NIEA) and;
- b) DOE's Planning Division.:

Relating to the tyre recycling site owned and operated by [named company and address].

Copies of all correspondence, notes, memorandum, email and records relating to the granting of planning permission to [named company] for the use of [named company] at its landfill site [named site].

Copies of all records in addition to notes, memorandum and email held by DOE relating to the final destinations of the tyre residue resulting from the large tyre depot fires at[named location] in 2009.

Details of any and all sites, lands or locations within Northern Ireland where the End of Waste Criteria pertaining to Used Tyres (as adopted by the NIEA in April 2011) has been permitted to operate by the department, including copies of all correspondence, notes, memorandum, email detailing when, where (including location) and to whom (the specific identity of the individual, partnership or corporate entity) the appropriate permission as granted.

Copies of any and all correspondence, between the Northern Ireland Environment Agency and DOE Planning Service relating to the site operated by [named site and company];

Copies of all internal notes, memorandum, email and correspondence arising from the End of Waste query submitted by named company] in March 2011;

Copies of all internal notes, memorandum, email and correspondence arising from the End of Waste query submitted by named company] in September 2011;

Copies of all notes, memorandum, internal email, external email and correspondence relating to the application of End of Waste criteria implementation in respect of used/disposed tyres in northern Ireland