

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

Decision Notice

Date: 29 September 2015

Public Authority: Department for Culture, Arts and Leisure
Address: Causeway Exchange
1-7 Bedford St
Belfast
BT2 7EG

Decision (including any steps ordered)

1. The complainant requested information relating to a bid made by the Department for Culture, Arts and Leisure in respect of its sports stadia programme. The Department provided some information but refused the remainder under regulations 12(4)(d), 12(4)(e) and 12(5)(e) of the EIR.
2. The Commissioner's decision is that the Department was entitled to rely on the exceptions cited, but that the public interest lay in favour of disclosing some of the withheld information. The Commissioner also finds that the Department failed to respond to the request within the statutory time for compliance. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information specified at the attached schedule.
3. The public authority must take this step 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 FOIA and may be dealt with as a contempt of court.

Request and response

4. The request in this case follows on from a previous request made by an associate of the complainant, which was the subject of a decision

notice.¹ That decision notice, issued on 31 March 2014, found that the Department (also referred to as DCAL) was entitled to refuse a request for some of the information which falls under the scope of the request in this case.

5. On 11 June 2014 the complainant requested the following information from the Department:
 1. *The final draft and final versions of the outline business case/economic appraisal which formed the basis for DCAL's bid for the PfG allocation to the sports stadia programme ie the draft and final versions as at March 2011, when the PfG allocation to the stadia programme was announced by the then Minister for Finance and Personnel.*
 2. *All papers submitted to your Department by the Gaelic Athletic Association (GAA) in support of the DCAL bid for allocation of funds to the sports stadia programme, which refer to the types of events, and their annual frequencies and projected attendances, which the GAA anticipated would be hosted at the new Casement Park stadium, including conferences, concerts and other non-sporting activities in relation to sporting events.*
 3. *The comments of DCAL economists on the first and all subsequent drafts of the sports stadia outline business case/economic appraisal leading up to DCAL's bid for allocation of PfG funds to the sports stadia programme ie through March 2011.*
 4. *The minutes of meetings in which the sports stadia programme was considered for an allocation of funding.*
 5. *Papers submitted by your Departmental economists and policymakers in relation to discussion of the sport stadia programme any such meetings.*
 6. *All final draft and final versions of further iterations of the outline business case/economic appraisal prepared and/or commissioned by DCAL in the period between March 2011 and December 2012.*
 7. *DCAL economists' comments on final draft and final versions of the outline business case/economic appraisal submitted between March 2011 and end-2012.*

¹ Decision notice FER0507182

8. *All final draft and final versions of the economic appraisal outline business case/full business case prepared and/or commissioned by DCAL in the period between January 2013 and December 2013.*
 9. *DCAL economists' comments on those draft final and final documents submitted in the period between January 2013 and the final business case as of December 2013.*
 10. *The final version of the Full Business Case as at December 2013, along with the Benefits Realisation Plan.*
6. The Department acknowledged the request on 16 June 2014, and on 11 July 2014 it advised the complainant that it needed to extend the time for compliance from 20 to 40 working days as permitted under regulation 7 of the EIR.
 7. On 1 August 2014 the Department wrote to the complainant requesting clarification of parts 4, 6 and 7, 9 and 10 of the request. The complainant responded to the Department on 11 August 2014.
 8. The Department provided a substantive response to the complainant's request on 9 September 2014. The Department withheld the information requested at parts 3, 4, 5, 7 and 9 of the request in reliance on the exceptions at regulations 12(4)(e) and 12(4)(d) of the EIR. The Department advised that it did not hold any information relevant to part 2 of the request. The Department provided some of the information requested at parts 1, 6, 8 and 10 of the request. It withheld the remainder in reliance on the exception at regulation 12(5)(e) of the EIR.
 9. The complainant requested an internal review on 20 October 2014, and the Department provided him with the outcome on 15 December 2014. The outcome of the internal review was that the Department upheld its decision to withhold information under regulations 12(4)(d), 12(4)(e) and 12(5)(e).

Scope of the case

10. On 28 January 2015 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant confirmed to the Commissioner that he was content to restrict the scope of his request to information relating only to Gaelic football (ie the proposed redevelopment of Casement Park).
11. The complainant advised the Commissioner that the Casement Park redevelopment proposal has been the subject of extensive legal challenge. In December 2014 the High Court in Northern Ireland

partially upheld an application for judicial review of the planning permission granted in respect of the redevelopment.² However the Commissioner is mindful that his decision must be based on the circumstances at the time the request was refused, rather than the time the complaint was made to him. This follows the Supreme Court's reasoning in *R (Evans) v Attorney General*³ that the time for the application of the public interest test was at the point of the authority's refusal.

12. During the course of the Commissioner's investigation the Department agreed to disclose some of the withheld information to the complainant. Therefore the Commissioner's decision relates only to the remaining withheld information that relates to Casement Park. The complainant did not raise any issue about the Department's claim that it did not hold information specifically relating to part 2 of the request so the Commissioner has not considered this as part of his decision.

Reasons for decision

13. The Commissioner wrote to the Department on 17 April 2015 to request full details of its position, and given the passage of time the Commissioner considered it appropriate to explore informal resolution. The Commissioner therefore asked the Department to consider whether any of the withheld information could now be disclosed to the complainant. The Commissioner also asked the Department to explain more clearly how the exceptions cited were engaged with specific reference to the information that the Department wished to continue withholding. Finally, the Commissioner invited the Department to provide more detailed arguments in respect of the public interest considerations in respect of each exception claimed.
14. The Commissioner initially requested a response within 20 working days of his letter. However the Department requested a number of extensions to this deadline, explaining that it needed to consult with external parties before it could respond. The Commissioner allowed the Department extra time in order to ensure that the Department was satisfied that it had provided all the information and arguments it wished the Commissioner to consider. The Commissioner stressed to the Department that he expected a full and detailed response to his enquiries in order to enable him to draft a decision notice.

² [2014] NIQB 130, delivered on 15 December 2014.

³ [2015] UKSC 21 at [72]-[73]

15. The Department provided its final response to the Commissioner on 16 July 2015. In this response the Department advised that it was now content to disclose some of the withheld information to the complainant. The Department repeated its previous arguments in respect of the exceptions claimed, and provided some further arguments.
16. The Commissioner wishes to emphasise that he can only make a decision based on the information provided by the parties. It is for the public authority to satisfy the Commissioner that it has correctly applied exceptions, and that it has properly considered the public interest in any particular case. The Commissioner cannot speculate or make assumptions as to the consequences of disclosure, particularly where the public authority provides generic arguments. If a public authority fails to demonstrate that the information in question has been properly withheld then the Commissioner may well order disclosure. The authority may then find itself bearing the additional cost of an appeal to the First-tier Tribunal in order to present arguments that ought to have been put to the Commissioner during the course of his investigation. The Commissioner would urge public authorities to ensure that they provide him, at an early stage, with full details of any arguments they wish to be taken into account, so that he can make a properly informed decision.

Regulation 12(4)(d): material in the course of completion
Regulation 12(4)(e): internal communications

17. Regulation 12(4)(d) provides an exception to the duty to make environmental information available when the request relates to material which is still in the course of completion, unfinished documents or incomplete data.
18. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information if the request involves the disclosure of internal communications. Regulation 12(8) confirms that internal communications will include communications between government departments.
19. The Department claimed reliance on the exceptions at regulation 12(4)(d) and 12(4)(e) in respect of parts 3, 7 and 9 of the request. This information comprised the comments of DCAL economists on various documents and drafts. The Department also claimed reliance on these exceptions in respect of parts 4 and 5 of the request. This information comprised the minutes of a meeting in which the sports stadia programme was considered for funding, and papers submitted by departmental officials in relation to these discussions.
20. Both regulation 12(4)(d) and regulation 12(4)(e) are class-based. This means that the exceptions will be engaged if the information in question

falls within the description set out in the regulation. There is no requirement to demonstrate adverse effect, although the exceptions are subject to the public interest test.

21. With regard to regulation 12(4)(d), the Department argued that, since the redevelopment of Casement Park had been "delayed pending a revised planning application", the relevant information was material in the course of completion.
22. By nature of being an unfinished document, draft documents will engage the exception at regulation 12(4)(d). A draft version of a document will still be considered an unfinished document even if the final version of the document has been published. The Commissioner considers that regulation 12(4)(d) does not provide a blanket exception from disclosure for information relating to an unfinished project. However in this case the information withheld under regulation 12(4)(d) records the decision making process relating to the progress of the business case, at that time a draft document. The Commissioner's published guidance says that the exception at regulation 12(4)(d) may also apply to information created as part of the process of formulating and developing policy, where the process is not complete. Accordingly the Commissioner is satisfied that the exception is engaged in respect of the information at parts 3, 4, 5, 7 and 9 of the request.
23. Having inspected the information in question the Commissioner is satisfied that it also falls under the description of "internal communications". This is because it comprises communications including emails and memos between officials within the Department, and between the Department and other Northern Ireland government departments. Accordingly the Commissioner is satisfied that the information falls within the scope of regulation 12(4)(e).

Public interest test

24. Regulation 12(1) of the EIR states that disclosure of environmental information may be refused if (a) an exception to disclosure applies and (b) if in all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosing the information. Regulation 2(2) states that the public authority must apply a presumption in favour of disclosure when considering the public interest.

Public interest in favour of disclosure

25. The Department identified the following arguments in favour of disclosure:

- Disclosure would promote transparency and accountability where the spending of public money is concerned.
- Disclosure would allow more effective public understanding and participation in decision making.
- The public would be able to scrutinise the financial viability of the options.
- The right of the public to have access to the information.
- There is considerable public interest in the redevelopment of Casement Park.

26. The complainant also put forward arguments in favour of disclosure:

- The amount of public money allocated to the stadia programme in a time of austerity increased the importance of informing the public about the decision making behind the funding.
- The stadia programme had generated considerable public interest, comment and controversy.
- A residents' association had been granted leave to seek judicial review of the decision to grant planning approval for the redevelopment of Casement Park.
- The redevelopment project was progressing and the main contractor for Casement Park was appointed in December 2013, six months before the request was submitted. Therefore commercial sensitivity ought to have decreased.

Public interest in favour of maintaining the exceptions

27. The Department identified a need to protect its internal deliberations and decision making processes. The Department said that government must be able to undertake a full consideration of all of the options, which required "safe space".
28. The Department argued that "disclosure of advice and assessments may close off discussion and the development of better options". The Department also argued that disclosure might "undermine frank reporting on progress and the identification of risks".
29. The Commissioner agrees that the arguments set out above represent important principles which may be relevant in this case, but the Department has failed to explain how these principles apply to the specific information in this particular case. For example the Department has not explained how disclosure of the requested information would close off discussion or undermine frank reporting. Therefore, although the Commissioner will not dismiss these arguments entirely, he is unable to attach significant weight to them.

30. The Department did provide some arguments which related more specifically to the requested information. The Department argued that, since the development of Casement Park was not complete, disclosure of the information in question "could distract public debate away from the substantive issues". However the Department did not explain what it considered the substantive issues to be, nor did it explain how disclosure of the requested information would cause such distraction. The Commissioner also notes that the Department has sought to rely on arguments relating to public debate both in favour of disclosure and in favour of maintaining the exceptions. Therefore, again, the Commissioner may only attach limited weight to argument in respect of maintaining the exceptions.

Balance of the public interest

31. Both the Department and the complainant acknowledged the general public interest in transparency and accountability. The Commissioner considers that these arguments carry greater weight in the context of the amount of public money involved. The Commissioner also notes that in April 2014 the European Commission found that the £110 million funding was consistent with EU State aid rules.⁴ Given that the Casement Park proposal was allocated £62.5 million of this funding there is a legitimate and substantial public interest in the public being sufficiently informed to participate in and comment on the decision making process. The importance of public participation in decision making is set out in Aarhus Convention from which the EIR were drawn.

32. The Commissioner has discussed in previous decision notices the importance of a public authority providing detailed submissions in support of its position, especially with regard to the public interest in qualified exemptions and exceptions. For example, in 2014 the Commissioner ordered the disclosure of information relating to a proposed Peace Building and Conflict Resolution Centre at the Maze Prison/Long Kesh site, on the basis that the public authority had failed to provide robust arguments specific to the case.⁵ In that case the Commissioner noted that the public authority had failed to explain how disclosure of the withheld information would have had an adverse impact on the safe space needed for policy development.

⁴ http://europa.eu/rapid/press-release_IP-14-406_en.htm

⁵ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/963366/fs_50494921.pdf

33. The Commissioner considers that his concerns are equally relevant in this case. The Department has been given a number of opportunities to reconsider its position, and it did indeed disclose further information during the course of the investigation. However the Department has not explained to the Commissioner how it determined what information could and should be disclosed, and what information should remain withheld. Therefore the Commissioner concludes that the information disclosed by the Department falls short of that required to address the considerable public interest in informing the public about the decision making process.
34. Consequently the Commissioner has considered the requested information and has applied his own judgement. The Commissioner considers that there is a stronger public interest in maintaining the exceptions in respect of information that reflects individual opinions, such as those put forward by departmental economists. In the Commissioner's opinion there is a stronger public interest in disclosing information recorded in minutes of meetings, which are less likely to be attributable to individuals.
35. In light of the above the Commissioner finds that the Department was entitled to rely on regulation 12(4)(d) or regulation 12(4)(e) in respect of some of the requested information. However the Commissioner also finds that the Department was not entitled to rely on regulation 12(4)(d) or regulation 12(4)(e) in respect of some other parts of the requested information. The Commissioner has produced a schedule as an appendix to this notice which specifies the information to be disclosed to the complainant.

Regulation 12(5)(e): confidentiality of commercial or industrial information

36. The Department sought to rely on regulation 12(5)(e) in respect of information relating to parts 1, 6, 8 and 10 of the request. The Department also sought to rely on regulation 12(5)(e) in addition to regulations 12(4)(d) and 12(4)(e) in respect of information relating to parts 4 and 5 of the request. However the Department did not clarify whether it sought to rely on all three exceptions in respect of all the information falling under these parts of the request. Since the Commissioner has concluded above that the Department was entitled to withhold some information under regulation 12(4)(d) and regulation 12(4)(e) he has only considered regulation 12(5)(e) in respect of the information relating to parts 4 and 5 of the request that he has found cannot be withheld under regulations 12(4)(d) and regulation 12(4)(e).
37. Information is exempt under regulation 12(5)(e) if its disclosure would adversely affect

"the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest".

38. The wording of the exception sets out a number of tests or conditions that must be met before the exception can be engaged, and the Commissioner has considered each in turn below.

Is the withheld information commercial or industrial in nature?

39. The Commissioner considers that for information to be commercial or industrial in nature, it will need to relate to a commercial activity either of the public authority concerned or a third party. The essence of commerce is trade and a commercial activity will generally involve the sale or purchase of goods or services for profit.

40. In its refusal notice the Department stated that:

"The OBC, Business Plan and FBC contain details of a commercially confidential nature in relation to the Casement Park project and provide the basis upon which the current commercial negotiations, procurement and funding agreements are controlled and managed between the Department, the UCGAA, the Integrated Consultancy Team and the Integrated Supply Team."

41. The Department advised that, as *"significant elements"* of the redevelopment project had not at the time of the request been tendered, disclosure of the requested information would have an adverse impact on negotiations for tenders. Similarly the Department was of the view that disclosure would *"significantly prejudice the outcome of the ongoing procurement competitions and jeopardise the confidentiality and integrity of the procurement process"*.

42. The Department argued to the Commissioner that the information withheld under regulation 12(5)(e) included:

"...commercially sensitive information relating to the GAA such as confidential and commercially sensitive data about income received from various sources and also expenditure. The business plan also contains information relating to income and expenditure forecast regarding sponsorship."

43. The Commissioner accepts that financial information relating to tendering and procurement, and information relating to income and expenditure provided by the GAA, can be described as commercial. However some of the information withheld under regulation 12(5)(e) cannot reasonably be described as commercial or industrial. Since the

Department has not sought to rely on any other exceptions in respect of this information the Commissioner has no reason to find that it should be withheld. The information to be disclosed is specified in the schedule provided in the annex.

Is the withheld information subject to confidentiality provided by law?

44. The Commissioner considers that "provided by law" will include confidentiality imposed on any person under the common law of confidence, contractual obligation, or statute. The Commissioner is not aware of any statutory duty of confidence so he has gone on to consider the common law of confidence, which has two key tests:
- Does the information have the necessary quality of confidence?
 - Was the information imparted in circumstances creating an obligation of confidence?
45. For the common law duty of confidence to apply the information must have the necessary quality of confidence, meaning the information should not be trivial in nature and should not already be in the public domain. The Commissioner acknowledges that much of the requested information has now been disclosed to the complainant. However this does not necessarily affect the confidentiality of the remaining withheld information.
46. The Commissioner notes that one document falling under part 5 of the request, the Project Funding Agreement, refers to an obligation to comply with under the Freedom of Information Act 2000 and the Data Protection Act 1998. Although the EIR is not specified the Commissioner considers it reasonable to assume that compliance with the EIR would also be expected. In addition section 13.3 states:
- "[The Department] shall be entitled to publish details of the amounts and type of financial assistance referred to in this Agreement at such times and in such manner as it may decide".*
47. This does not in itself create an obligation to disclose all of the withheld information, but it usefully confirms that the question of transparency was considered and determined at least in respect of the Project Funding Agreement referred to. The Department did not refer to this clause in any correspondence, but the Commissioner is satisfied that in drafting the Agreement the Department and the GAA considered the principle that it would be appropriate to disclose certain information into the public domain. In the absence of a compelling reason as to why the Project Funding Agreement should not in fact be disclosed the Commissioner finds that it should be provided to the complainant.

48. The complainant argued to the Commissioner that financial information relating to the GAA was publicly available at the time of the request, therefore it could not be considered confidential. The Commissioner has inspected information published by the GAA on its website⁶ but notes that the information published by the GAA is less detailed than that contained in the withheld information. The Commissioner is not satisfied that comparable information was available, and he accepts that the withheld information was not in the public domain at the time of the complainant's request. The Commissioner considers that some of the information appears relatively innocuous, but none of it is trivial, therefore it is capable of having the necessary quality of confidence.
49. The Department advised the complainant that it intended to publish the outline business case once tendering and procurement activities were concluded. This does not however prevent the Department from claiming that the information contained in the outline business case was provided by the GAA in circumstances importing an obligation of confidence at the time the information was provided. On this basis the Commissioner accepts that the information which has not already been disclosed into the public domain will be subject to the common law duty of confidence.

Is this confidentiality provided to protect a legitimate economic interest?

50. The First-tier Tribunal confirmed in *Elmbridge Borough Council v Information Commissioner and Gladedale Group Ltd*⁷ that, to satisfy this element of the test, disclosure of the confidential information would have to adversely affect a legitimate economic interest of the person the confidentiality is designed to protect. It is not enough that disclosure might cause some harm to an economic interest. A public authority needs to establish (on the balance of probabilities – ie more probable than not) that disclosure would cause some harm.
51. The Department's position is that disclosure of the information withheld under regulation 12(5)(e) would harm the GAA's economic interests. The GAA was consulted by the Department and stated that it did not consent to disclose any of the remaining withheld information on the basis that disclosure would cause "*real, actual and substantial prejudice to its interests*".

⁶ http://www.gaa.ie/content/documents/Annual_Congress_Final_Report2.pdf

⁷ Appeal no EA/2010/0106, 4 January 2011

52. Having considered the information provided by the Department, and having examined the withheld information in detail, the Commissioner accepts that financial information relating to the GAA's income and expenditure, including sponsorship, will be commercially sensitive. The Commissioner is satisfied that the common law of confidence will apply to this information, and that disclosure would adversely affect the GAA's legitimate economic interest, ie its commercial activities. Consequently the Commissioner finds that the exception is engaged in respect of the information withheld under regulation 12(5)(e), that has not been excluded in the analysis above.

Public interest in favour of disclosure

53. The Department identified the following arguments in favour of disclosure, some of which understandably overlapped with the arguments it had identified in respect of regulations 12(4)(d) and 12(4)(e):
- Disclosure would promote transparency and accountability where the spending of public money is concerned.
 - Disclosure would allow more effective public understanding and participation in decision making.
 - The public would be able to scrutinise the financial viability of the options.
 - Demonstrate value for money and making best use of resources.
 - The right of the public to have access to the information.
 - There is considerable public interest in the redevelopment of Casement Park.
54. Similarly the complainant's arguments as set out at paragraph 26 are relevant to the exception at regulation 12(5)(e).

Public interest in favour of maintaining the exception

55. The arguments put forward by the Department in favour of maintaining the exception at regulation 12(5)(e) largely repeated the statements it had made in order to argue that the exception was engaged. The Department stressed that the GAA had been consulted and had expressed concern that disclosure would prejudice its interests.
56. The Department stated that disclosure would compromise the GAA's ability to negotiate future contracts (including potential suppliers, partners and sponsors) in respect of Casement Park, which would place it at a competitive disadvantage.

57. The Department also pointed out that the full business case had been prepared by the GAA and submitted to the Department in confidence.

Balance of the public interest

58. As set out at paragraph 33 above the Commissioner considers that there is a strong public interest in the public being adequately informed about the Department's decision making in this case. The amount of public money involved is an important factor in determining the public interest, although it is by no means overwhelming.
59. The Commissioner also considers that his decision has been made more difficult by the Department's failure to provide detailed arguments relevant to the specific information in this case. However this in itself does not mean that the information withheld under regulation 12(5)(e) should be disclosed in full. The Commissioner acknowledges the fact that the Department has consulted the third party whose commercial interests would be affected by disclosure, ie the GAA. The Commissioner is of the view that it would be unfair to order the disclosure of financial information in this context simply because the Department has failed to provide sufficient detail as to how it considered the balance of the public interest. As with the information withheld under regulations 12(4)(d) and 12(4)(d) the Commissioner has spent considerable time examining the withheld information in detail in order to form his own judgement as to what information should be disclosed.
60. As set out above the Commissioner has found that much of the information withheld by the Department under regulations 12(4)(d) and 12(4)(e) ought to be disclosed. The Commissioner has also found that the exception at regulation 12(5)(e) is not engaged in relation to certain information, so it must also be disclosed. The Commissioner considers that this disclosure will better inform the public as to the Department's decision making in this case. It will demonstrate the processes followed and the options considered that led to the business case being approved.
61. Having inspected the withheld information in detail the Commissioner acknowledges that disclosure of the financial information would give a more complete picture, however he considers that it is not necessary in order to inform the public as to the decision making. The Commissioner is also mindful that disclosure of the financial information would prejudice the GAA's commercial interests and make it more difficult for the GAA to redevelop and operate Casement Park as a viable stadium. This would risk defeating the purpose of providing public funding for the project, which would not be in the public interest. The Commissioner recognises that the public interest arguments in this case are relatively balanced, but considers that there is a significant public interest in

protecting the GAA's commercial interest in this particular case, and that this outweighs the public interest in disclosure.

62. In light of the above the Commissioner concludes that the Department was entitled to withhold some, but not all, information under regulation 12(5)(e). The information to be disclosed is listed at Annex 1.

Procedural requirements

Time taken to respond to the request

63. The complainant raised an issue about the time taken by the Department to respond to his request. In particular the complainant was unhappy that the Department took six weeks to ask for clarification of the request. The chronology of the request is set out at paragraphs 5-9 above.
64. Regulation 5(2) requires public authorities to respond to requests no later than 20 working days after the date the request is received. Regulation 7 provides that this can be extended to 40 working days if required because the request is voluminous or complex, although the authority must advise the applicant of this no later than 20 working days after the date of receipt.
65. Regulation 9(2) provides that a public authority may seek clarification if a request is made in "*too general a manner*", although again the authority must ask the applicant for further information no later than 20 working days after the date of receipt.
66. In this case the Department advised the complainant that it was extending the time for response (ie relying on regulation 7) on 11 July 2014, 22 working days after the request was received. The Department did not seek clarification until 1 August 2014, 37 working days after the request was received.
67. The EIR does not explicitly address a situation where the request is voluminous or complex and formulated in too general a manner. However the Commissioner is of the view that a public authority would need to determine the scope of the request before it could consider whether extra time was required to comply with the request. Therefore the Commissioner considers that the Department failed to comply with regulation 9(2)(a) in that it failed to request clarification from the complainant within the 20 working days permitted. The Department was not entitled to extend the time for compliance and then request clarification.

Refusal notice and internal review

68. The Commissioner also considered the quality of the refusal notice and internal review correspondence. Regulation 14 of the EIR provides that a public authority refusing any part of a request for information must issue a refusal notice. Regulation 14(3) states that:

"14(3) The refusal shall specify the reasons not to disclose the information requested, including –

(a) Any exception relied on under regulations 12(4), 12(5) or 13; and

(b) The matters the public authority considered in reaching its decision with respect to the public interest..."

69. Furthermore, regulation 11(3) obliges the authority to consider an applicant's representations when conducting an internal review.

70. In its refusal notice dated 9 September 2014 the Department stated that the exceptions cited applied to the requested information. However the Department did not explain how the exceptions claimed applied to the information in question. Accordingly the Commissioner finds that the Department failed to comply with regulation 14(3) of the EIR. In addition the Department's internal review letter dated 15 December 2014 did not provide any further explanation or argument. It merely stated that the reviewer was satisfied with the Department's original decision, although it did address (in one brief paragraph) some of the complainant's arguments. Although the Commissioner does not find that the Department failed to comply with the technical requirement of regulation 11(3), he is of the view that the Department ought to have addressed the complainant's representations more thoroughly in its internal review response.

71. The Commissioner considers that the refusal notice and internal review provide two crucial opportunities for the public authority to explain to the applicant why it is refusing part or all of a request. An inadequate explanation is more likely to lead to a request for internal review, and possibly a complaint to the Commissioner. However the Commissioner would also point out that it is a matter of basic customer service. Public authorities should always seek to ensure that they communicate effectively with the public, particularly when explaining a decision that may be unwelcome. The complainant may continue to disagree with the decision, but they should at least have a better understanding as to the reasoning behind it.

Right of appeal

72. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

73. 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.
74. 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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix

SCHEDULE: Information to be disclosed

Information relating to soccer and rugby can be redacted from the information to be disclosed as the complainant has restricted his request to information relating to Gaelic football (ie the redevelopment of Casement Park).

Part 1 of request:

- i) Outline business case, page 243: disclose the criteria and weighting.
- ii) Appendix, disclose page 131-170 (financial information can be redacted).

Part 4 of request:

- i) Disclose the minutes of the meeting held on 12 December 2013.

Part 5 of request:

- i) Disclose the agenda for the meeting held on 12 December 2013.
- ii) Disclose the DCAL approvals framework.
- iii) Disclose the funding agreement for UCGAA (SPB/04/06).
- iv) Disclose the benefits realisation plan (SPB/04/05) (financial information can be redacted as per the outline business case).
- v) Disclose the document titled "consideration of the procurement process of the appointment of the IST" (SPB/04/07).
- vi) Disclose the document titled "finance update – for information" (SPB/04/09).

Part 6 of request:

- i) Disclose the draft Programme Level Business Plan (financial information can be redacted).
- ii) Disclose the letter dated 20 March 2011 (financial information can be redacted from point 3).
- iii) Disclose the document titled "Facilities Management and Life-Cycle Cost Report" (financial information can be redacted).
- iv) Disclose the stadium development project risk register (financial information can be redacted from section F5).
- v) Disclose the Casement Park high level timeline.
- vi) Disclose the terms of reference for stadium capital programme board.

- vii) Disclose the advice on terms of reference.
- viii) Disclose the memorandum of understanding (financial information can be redacted).

Part 9 of the request

- i) Disclose the email dated 14 February 2013 titled "FW: Casement Park FBC".

Part 10 of request:

- i) Disclose the community engagement activity report.
- ii) Disclose the document titled "delivery of community benefits and socio-economic returns" (August 2012).
- iii) Disclose the map indicating integrated sports provision and wider community benefit.