

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

Date: 2 March 2020

Public Authority: Cornwall Inshore Fisheries and Conservation Authority

Address: Chi Gallos
Hayle Marine Renewables Business Park
North Quay
Hayle
Cornwall TR27 4DD

Decision (including any steps ordered)

1. The complainant has requested papers prepared for a byelaw working group meeting on 23 April 2019. Cornwall Inshore Fisheries and Conservation Authority ('CIFCA' / 'Cornwall IFCA') withheld the information it holds under regulation 12(4)(e) of the EIR (internal communications) and considered that the public interest favoured maintaining this exception. The complainant disputes that this information could be withheld.
2. The Commissioner's decision is as follows:
 - The information engages the exception under regulation 12(4)(e) and, at the time of the request, the public interest favoured maintaining this exception.
3. The Commissioner does not require CIFCA to take any remedial steps.

Request and response

4. On 26 April 2016 the complainant wrote to CIFCA and requested information in the following terms:

"Yes, I would like to receive a copy of papers prepared for the Byelaw Working Group meeting on Tuesday 23 April 2019 please."
5. CIFCA responded on 14 May 2019. It withheld the information the complainant has requested under regulation 12(4)(e) of the EIR. It did not refer to the associated public interest test.
6. Following an internal review CIFCA wrote to the complainant on 24 May 2019. It maintained its reliance on regulation 12(4)(e) and confirmed that the public interest favoured maintaining this exception.

Scope of the case

7. The complainant contacted the Commissioner on 9 September 2019 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focussed on CIFCA's reliance on regulation 12(4)(e) to withhold the information that is the focus of complainant's request, and the balance of the public interest.

Reasons for decision

9. Regulation 12(4)(e) of the EIR says that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. This regulation is subject to the public interest test under regulation 12(1)(b).
10. As the Commissioner notes in her published guidance on the application of regulation 12(4)(e), the term '*internal communications*' is not defined in the EIR and is normally interpreted in a broad sense. She has considered the meaning of '*internal*' and '*communications*' separately.
11. With regard to the term '*internal*', the Commissioner notes in her guidance that '*...an 'internal' communication is a communication within one public authority*'.
12. With regard to '*communications*', the guidance notes that '*...the concept of a communication is broad and will encompass any information someone intends to communicate to others, or even places on file... It*

will therefore include not only letters, memos, and emails, but also notes of meetings or any other documents if these are circulated or filed so that they are available to others'.

13. In its submission to the Commissioner, CIFCA has referred to the Commissioner's decision in FS50665904¹. In that case, which also concerned the application of regulation 12(4)(e) to meeting papers, the Commissioner had determined that the byelaw working group papers that had been requested constituted an internal communication, because the byelaw working group Members are also Members of CIFCA.
14. CIFCA's submission then provides the following explanation of the byelaw making process, and a background to the request that is the subject of this notice.
15. The making of a byelaw is a protracted process, with guidelines set out by the Department of Environment, Fisheries and Rural Affairs (Defra). As a result, proposed legislation can take many years to develop before it finally becomes law. In terms of agenda item 7 [of the Tuesday 23 April 2019 meeting, which Cornwall IFCA considers is of particular concern to the complainant], this issue was referred to the byelaw working group by the main Statutory Authority [ie CIFCA] for consideration following a Member of that Authority proposing the use of an emergency byelaw to increase the mesh size of bass gillnets at its December 2018 meeting. This followed an incident in early December 2018, which saw an amount of bass being landed in St Ives, some of which was undersize – this being a Marine Management Organisation (MMO) investigation and not a CIFCA investigation.
16. There are strict criteria for making an emergency byelaw. As set out in the Marine and Coastal Access Act 2009 (MaCAA), Section 157 states that an emergency byelaw can be made if:
 - (a) the IFC authority considers that there is an urgent need for the byelaw, and
 - (b) the need to make the byelaw could not reasonably have been foreseen.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2172557/fs50665904.pdf>

17. Defra offered the following points as context to its opinion that the creation of an emergency byelaw for increasing the mesh size of bass gillnets in this instance would be challenged:
 - What amounts to reasonably foreseeable in this context has not, to Defra's knowledge, been tested.
 - The Secretary of State has no confirmatory role in the making of an emergency byelaw under section 157 of MaCAA. If there was a challenge to the emergency byelaw, Defra would expect Cornwall IFCA to assume full responsibility for any risk associated with the byelaw.
 - Cornwall IFCA will have a better feel for the actual risk of challenge likely to be made but Defra would assess the risk of a challenge being successful as medium to high.
 - The Secretary of State has the power under section 159 of MaCAA to revoke or restrict the application of any byelaw made by an IFCA where it appears that the byelaw is unnecessary, inadequate or disproportionate.
 - Cornwall IFCA could alternatively make a byelaw under section 155 of MaCAA, which would be subject to confirmation by the Secretary of State.
 - The current overhaul of the EU technical conservation measures features an adjustment of minimum mesh size for directed fishing for bass from 100mm – that overhaul is close to completion.
18. Of importance with the byelaw making process is the fact that, even though the Authority (ie CIFCA) is able to 'make' a byelaw, the byelaw must still go to the MMO for quality assurance before being sent to Defra for critiquing and testing to ensure that it is necessary, adequate and not disproportionate before it is signed off by the Fisheries Minister. It is only at that point that the byelaw becomes law.
19. At a February 2019 extraordinary meeting of the Cornwall IFCA Committee, its Members voted against using the emergency byelaw making route to deal with the issue of the size of bass gillnets and the matter was referred to Cornwall IFCA's byelaw working group to consider the use of a permanent byelaw, developed through the normal processes, as a way of addressing this issue.
20. The dates that this issue was discussed at statutory Authority meetings were: 14 December 2018 (statutory meeting), 22 February 2019 (extraordinary meeting) and 15 March 2019 (statutory meeting). (The March meeting was held prior to the byelaw working group meeting being held in April 2019 so there is no substantive content in these minutes about the issue at hand.)

21. There was further interest in this topic after the extraordinary meeting in February 2019 which saw the start of an email campaign by the 'Save Our Sea Bass' organisation. The content of the campaign was reported to the byelaw working group at its meeting on 23 April 2019 and subsequently also reported to the main Authority meeting on 21 June 2019.
22. Information associated with the above December, February, March and June meetings is published on Cornwall Council's website.
23. CIFCA notes that in minute note IFCA/85 (from the June 2019 meeting), there is a discussion surrounding the availability of the legal advice from Defra upon which the Authority relied at its February 2019 meeting. This advice indicated that, should the emergency byelaw be made by the Authority, it could be revoked by the Fisheries Minister. This legal advice became the subject of a separate EIR request and, following a third party request to Defra to release the email which contained the advice, this request was granted resulting in that legal advice now being in the public domain. CIFCA has provided the Commissioner with a copy of that legal advice.
24. Minute note IFCA/89 (from the June 2019 meeting) discusses the 'Save Our Sea Bass' email campaign. This was included in the agenda pack for two reasons. First, the campaign emails were directed to Authority Members and not to officers. Second, the Authority had not, to that point, formally decided how to manage campaigns directed to Members. The inclusion in the agenda brought the campaign to the attention of the Members in a fair and transparent manner and allowed a resolution as to how such material would be handled in the future. This resolution was that officers would report on campaigns to Members and make it clear that if stakeholders wished to contact Members, they should do so using their publicly available contact details, in line with the guidance supplied by Cornwall Council.
25. Minute note IFCA/90 (also from the June 2019 meeting) is the report to the Statutory Authority of the byelaw working group. This is discussed at each quarterly meeting of the Authority if there has been a byelaw working group meeting since the last quarterly meeting. The Appendix 1 Chart in this note relates to the Coastal Fishing Nets (Salmonid Protection) Byelaw which was discussed at the same byelaw working group meeting. Within this minute note, several Members of the byelaw working group gave the Statutory Authority some indication of the length and depth of discussions that took place at their April 2019 meeting whilst discussing a potential way forward for bass gillnets.
26. CIFCA goes on to advise the Commissioner that following on from the February 2019 meeting, a formal notice of judicial review was submitted

by Fish Legal regarding the Authority's decision not to create an emergency byelaw. Minute note IFCA/91 of the June 2019 meeting advises that this judicial review was subsequently withdrawn.

27. CIFCA notes that its Members' contact details are publicly available through a link on its website (www.cornwall-ifca.gov.uk) to the Cornwall Council site which hosts these details, along with minutes of all its statutory meetings. Regarding the extraordinary meeting held in February 2019, some Members were contacted directly about how they voted at the February meeting. Meeting note IFCA/92 from the June 2019 Authority meeting shows a report from one Member who was contacted by some members of the public who did not agree with that Member's decision on how they voted at the February meeting.
28. To support its position, CIFCA has next provided the Commissioner with information about the byelaw working group. This is an internal discussion group set up to discuss fisheries management options, including the development of potential byelaws, following Cornwall IFCA's inception in 2011. The group happens to consist of six Members who were all appointed to the Authority by the MMO. Their selection was based on their varied range of expertise and experience concerning the marine environment and its subsequent ongoing protection. Some of these Members work for external environmental organisations whilst some are directly involved in the fishing industry or have interests in the recreational angling sector.
29. MMO appointees are appointed by the Marine Management Organisation under strict requirements and CIFCA has provided the Commissioner with a copy of MMO's application pack to become a MMO appointee to the Committee.
30. Working papers for the group are distributed on pink paper in hard copy only which indicates to recipients that it is not a public document, the contents are confidential, and the information cannot be repeated outside of the group. This is the same approach that Cornwall Council uses. This high level of confidentiality helps to support the safe space which is afforded to this group, and this safeguard actually assists group Members to bring additional information to the meetings which they may have heard about within their particular sector of the industry that could assist discussions. Therefore, byelaw working group Members know that they can openly discuss information which they would not normally divulge as all confidential matters discussed within the group remain within the group.
31. This confidential element enables group Members to openly, honestly and fully explore all, even sometimes extreme, options for a particular issue, using all the evidence available to them, thereby enabling

appropriate fisheries management recommendations to be put to the Statutory Authority for a decision. The working papers often include information from other organisations and legal advice, which is not in the public domain. On occasions, some Members may bring further evidence with them to be tabled at the meeting.

32. CIFCA has told the Commissioner that it has to be appreciated that sea fisheries management options available to Cornwall IFCA may have a serious impact upon some individual fishing businesses, potentially restricting or even, in some instances, stopping their current activities. However, these management options form a key and detailed part of the discussions in this group. Again, the safe space ensures that disclosure of some of the options considered by the group, even where they are not followed up, do not get publicised in the wider public domain. To do so would likely be detrimental to Cornwall IFCA's essential working relationships with the fishing industry and other stakeholders and, potentially, also to the ongoing participation and contribution of byelaw working group Members.
33. CIFCA stresses that the group can only make recommendations to the full Statutory Authority; it cannot make any decisions of its own. It is a forum for gathering of all evidence surrounding an issue and arranging that evidence into a useful and logical format which can be fully understood. Whilst these meeting discussions are confidential, a concise round up of topics discussed, along with any significant progress that can be reported on, are provided to each quarterly meeting of the Authority so that all Members are broadly aware of the matters that have been discussed. These quarterly reports are always publicly available.
34. CIFCA goes on to summarise the key agenda items for the 23 April 2019 meeting – the Commissioner does not intend to reproduce those summaries in this notice. CIFCA says that five items on the Agenda are pertinent to the complainant's request for information, the other four items being standard items. CIFCA says that the meeting notes are sent to the group within two weeks of the meeting being held and are not included in the agenda pack. They are, however, listed on the agenda in case group members wish to clarify anything.
35. CIFCA says it is relying on regulation 12(4)(e) regarding Agenda Item 4 because it has categorised this paper as an internal communication. The discussions the group had over the subject of the paper were also only preliminary, utilising the safe space to consider particular impacts. The group agreed to discuss the possible content of a draft byelaw over the coming 12 months and, as such, the issue remains live at this time.

36. Agenda Item 5 concerned a verbal report about the aforementioned judicial review. This matter was mentioned at the 23 April 2019 meeting as it was pertinent to another of the meetings Agenda Items. As this was a verbal report, no papers were presented.
37. Agenda Item 6 concerned the email campaign through the 'Save Our Sea Bass' website. A full report was provided to the Statutory Authority at its 21 June 2019 meeting and is available on its website. However, Agenda Item 6 is being withheld under regulation 12(4)(e). Again, it is viewed as an internal communication, as the papers contained information that was used to promote discussion within the group at the 23 April 2019 meeting. CIFCA considered that of importance here is the safe space to allow the contents to be discussed in a confidential arena.
38. The report that is relevant to Agenda Item 7 was used to begin the discussions surrounding the use of a standalone byelaw for the management of bass gillnet fisheries, as requested by the Statutory Authority at the extraordinary meeting held in February 2019. The draft technical measures paper within the agenda report was provided to CIFCA by the MMO so CIFCA deems this to be an internal communication under the guidelines for authorities within regulation 12(4)(e).
39. CIFCA says it withheld this item under regulation 12(4)(e) as the byelaw working group papers are viewed by CIFCA (and the Commissioner in FS50665904) as being an internal communication. Further, the papers contained draft information on technical measures provided by the MMO which CIFCA also considers to be an internal communication. Extensive discussions were required for this agenda item following the direction of the Authority to explore a way forward with bass gillnet mesh sizes. Hence, the safe space was required to fully explore all alternatives to ensure that the sustainable development of the bass fishery was balanced against the needs of all those persons engaged in the exploitation of fisheries and marine resources. CIFCA says this issue remains ongoing.
40. Finally, Agenda Item 8 concerned the ongoing development of another byelaw, a first draft of which was included for the group to discuss. This first draft had not been shown to the MMO or Defra for comment and was very much a start for discussions. Again, CIFCA views such information as an internal communication, excepted from release under regulation 12(4)(e). It says the safe space is required for Members to discuss potential issues coming from the draft document and for them to debate and explore alternative scenarios and weigh up how those possible scenarios may affect a particular group. At this time, work to develop the byelaw remains ongoing. It has gone through one informal consultation and is now subject to a further informal consultation

following proposals from the group Members to obtain more information and evidence surrounding this topic.

41. In his initial complaint to her of 9 September 2019, the complainant had provided arguments to support his position that regulation 12(4)(e) is not engaged. These are public interest arguments rather than arguments that the information in question cannot be categorised as internal communications. The Commissioner will consider the complainant's arguments as part of her consideration of the public interest test.

Conclusion

42. Having considered the relevant information that CIFCA holds and is withholding under regulation 12(4)(e) the Commissioner is satisfied that this information can be categorised as internal communications and that, as such, it engages the regulation 12(4)(e) exception.
43. The recorded material associated with the Agenda Items in question can be categorised as 'communications' for the purpose of the exception – the information was circulated to byelaw working group Members to aid discussion at the 23 April 2019 meeting. And as in FS50665904, the information constitutes 'internal' communications because the byelaw working group Members are also Members of CIFCA – the information was therefore staying within one public authority.
44. It is the case that attachments to an email that may have been generated externally to an organisation, but which are circulated within an organisation constitute internal communications. In this case, material included in the Agenda reports, such as the draft technical measures which were provided by the MMO, may have been generated externally but this information was circulated within CIFCA so that it could be discussed at a meeting. As such, that information can also be categorised as internal communications.
45. The Commissioner has gone on to consider the public interest test; despite regulation 12(4)(e) being engaged, the information may still be disclosed if there is sufficient public interest in doing so.

Public interest test

Public interest in releasing the requested information

46. In his initial complaint to the Commissioner, the complainant argued that his request was made after CIFCA had received advice from the byelaw working group and decided not to pursue an emergency byelaw to protect juvenile bass. He therefore does not consider that the safe

space argument has much, if any, force in these specific circumstances as, in his view, the issue was no longer live.

47. The complainant does not agree either that disclosing the papers CIFCA provided to the byelaw working group would compromise the safe space for that group, since the byelaw working group has no influence over the papers CIFCA provided and could not be criticised for their content. He says he specifically said that he only wanted the papers provided by CIFCA, so as not to risk compromising any safe space for the byelaw working group
48. (The Commissioner notes that in later correspondence to her dated 17 January 2020, the complainant had confirmed his request as being as reproduced above. That request does not explicitly say that he was only requesting the papers CIFCA provided to the byelaw working group for that 23 April 2019 meeting.)
49. In his 9 September 2019 correspondence the complainant also disputed that if the papers CIFCA provided included draft legislation this would impact on the safe space for the byelaw working group. He considered that if he was wrong, then that draft legislation could be withheld whilst the rest of the papers could be provided.
50. The complainant considered that CIFCA appeared to be suggesting that the papers included a piece of forthcoming EU legislation that was not yet finalised or in force and that this was not in the public domain. In his view that suggestion was surprising and unlikely. The complainant queried whether this EU draft legislation is now in the public domain, if so, when was it made public and was it before or after his request to CIFCA. Again, the complainant considered that if he was wrong, CIFCA could simply withhold this draft EU legislation and release the other papers.
51. In the complainant's view, CIFCA appeared to be arguing that the papers contained two draft byelaws which might not be considered beneficial to its stakeholders and he conjectured what these byelaws might concern. He said he could see no reason to withhold these drafts because, presumably, the decision to make them public was taken some time ago, probably before request. However, if this information was not in the public domain at the time of his request, the complainant said he would argue that the byelaw working group safe space would not be damaged by disclosing the draft byelaws. He considered that what is important is that the discussion on these proposals is confidential, not the fact that CIFCA has put these drafts to the group. In the complainant's view it is possible for a safe space discussion to take place where the papers to the working group are public, but the discussions in the working group are private. He considers that it may be the case

that CIFCA does not wish to put draft byelaws into the public domain, but he considers that that is a separate issue.

52. Finally, the complainant noted that CIFCA has not explained why, in this specific case, the draft byelaws would be detrimental to essential working relationships. He says that all CIFCA has done is say that the draft byelaws may not be beneficial to its stakeholders. The complainant considered that CIFCA needs to demonstrate that the impact of the draft byelaws would be detrimental to essential working relationships. He has also noted that CIFCA has now published "the draft byelaw" so any detrimental effect would now have been triggered and releasing the papers to him would have no detrimental effect.
53. The complainant provided further public interest arguments for releasing the information in correspondence to the Commissioner of 17 January 2020. He first argues that the byelaw working group is, in practice, playing a major part in making decisions on the development of byelaws. The complainant considers it is not the case that the group is simply processing information and then passing this onto the CIFCA for its consideration and decision. He says that the byelaw working group is making decisions about how to amend byelaw proposals, making those amendments in draft and then presenting them to CIFCA. To make things worse, the complainant says, the group does not provide CIFCA with meaningful summaries of the information that it has considered, and it does not provide a detailed explanation of its rationale for changes it has made to byelaw proposals. In the complainant's view CIFCA typically has very superficial discussions about what has been proposed, and rubber stamps the byelaw working group's proposals.
54. The complainant argues that because the information the byelaw working group considered and its reasons for reaching decisions are kept out of the public domain, the public has no way of carrying out any scrutiny of the most fundamental part of CIFCA's law-making activity. The complainant considers that this is completely undemocratic and unacceptable and contrasts with how other IFCA's operate.
55. The complainant goes on to argue that whilst the byelaw working group is nominally a working group, in substance it is no different from the technical sub-committees other IFCA's operate and that consider byelaws. He considers that simply naming the group the byelaw development group rather than a sub-committee should not enable CIFCA to side-step transparency requirements for sub-committees. The complainant notes that the byelaw working group has been in existence since 2011. He considers that one would expect a true working group to be relatively short-lived and to be formed for a specific time-limited purpose.

56. In its submission to the Commissioner, CIFCA has noted the EIR's default presumption that requested information should be disclosed. Disclosing the information in this case would, CIFCA acknowledges, satisfy its aim of being as open and transparent as possible with its information. Disclosure would also provide reassurance to stakeholders that the creation of any local regulations has been considered fully and help the public to understand the work behind creating any regulations.

Public interest in withholding the requested information

57. CIFCA argues that the public interest test should also be focused on protecting the Authority's thinking space, or safe space. It says that the EIR allow an exception to the duty to provide data from internal communications. This is in cases in which disclosure would prejudice the conduct of public affairs because releasing the information would prevent the free and frank provision of advice, the exchange of ideas and would otherwise prejudice, or would be likely to prejudice the effective conduct of public affairs.
58. CIFCA notes that regulation 12(4)(e) provides that information may be excepted if disclosing it would, or would be likely to, inhibit the ability of public authority staff and others to express themselves openly, honestly and completely, or to explore extreme options, when providing advice or giving their views as part of the process of deliberation. It says this 'chilling effect' is the case with the byelaw working group. If these meetings were held publicly, then a wide range of information would not be discussed as some information required to aid comprehensive discussions would not be forthcoming.
59. Byelaw working group Members come from a variety of backgrounds and are specifically chosen to bring their knowledge and expertise into the discussions. Two Members of the group are from outside organisations (the Environment Agency and Cornwall Wildlife Trust) who can bring additional information which is far wider than the commercial and recreational fishing industry. The safe space is critical if all aspects of any issue can be openly and fully discussed without the interception by various interested parties. These parties may not be able to explore all avenues from an external perspective, something which Members are required to do under their appointment as an Authority Member.
60. CIFCA goes on to argue that [byelaw working group] working papers almost always include information from other organisations and legal advice, which is not in the public domain. This information is provided on the assumption that the safe space is in place and, as has been noted, the documents are printed on pink paper to indicate that they are confidential and not for publicising to the wider world. CIFCA says that, with this request, this is certainly the case, as the requested information

includes a first draft of a byelaw for discussion by the group and information regarding forthcoming EU technical measures.

61. CIFCA says that, as has been mentioned, some sea fisheries management options available to it may have a serious impact on individual fishing businesses, some of which may be discussed in detail. Information for these discussions could result from responses to informal consultations or via direct evidence supplied by individuals who have provided that information to either officers or Members, knowing that it will be discussed in confidence. CIFCA argues that if this confidential information was put out into the wider public domain, the level of evidence available to the group in future would likely be severely diminished, resulting in a lack of evidence on which to make an informed decision on a draft byelaw for consideration by the Statutory Authority at its quarterly meetings. Therefore, the safe space is imperative for these types of discussions to be ongoing.
62. CIFCA says that, additionally, disclosing some options the group considered, even where they are not followed up, would likely be detrimental to essential working relationships with the fishing industry and other stakeholders. It considers that this is certainly the case with this request and has provided more detail which the Commissioner has not reproduced in this notice. CIFCA considers that if particular information was to be made publicly available, stakeholders and the general public could easily be misinformed. This could potentially lead to issues with compliance and enforcement, directly impacting on CIFCA's ability to carry out its statutory duties. CIFCA argues that Members' discussions on how to resolve particular issues required the safe space in order to consider all the matters and options available to the group so it could move towards potential solutions.
63. CIFCA argues finally that, as part of byelaw working group discussions, it is not unusual that confidential material is provided at the meetings, either verbally or through a report from one of the Members. This could be financial information or recent catch statistics which indicate a growing issue within the CIFCA district that needs to be looked at. CIFCA says that some fishing areas could be fished by only one or two vessels and, therefore, if this information got out into the public domain before being aggregated into larger areas to amalgamate the level of fishing activity in any particular area, this could result in the commercial activity of some fishing businesses becoming easily identifiable and quantifiable. Whilst this exception is class-based and, therefore, does not require the level of sensitivity of the information to be explored, it is clear that when discussing the financial aspects of any number of businesses, that this will have a bearing on the outcome of the public interest test.

Balance of the public interest

64. The Commissioner accepts that a public authority needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction.
65. However, she does not consider that safe space arguments automatically carry much weight in principle. The weight accorded to such arguments depends on the circumstances of the specific case, including the timing of the request, whether the issue is still live, and the content and sensitivity of the information in question.
66. Considering the timing of the request first, the complainant submitted his request for meeting papers on 26 April 2019, three days after the meeting in question. It is therefore true that the meeting, and its associated discussions, had taken place at the time of the request. The Commissioner has noted the complaint's view that the byelaw working group has a central role in the decision making process. That may be the case, but the group is not the final decision-maker; its role is to formulate recommendations. Final decisions had therefore not been taken at the time of the request.
67. The complainant also argued that the byelaw working group is not a 'true' working group because it has been in existence since 2011. (Therefore, information associated with its meetings should not be treated any differently from any other sub-committee.) The Commissioner makes the point that the group was not established just to look at one particular byelaw; it was established to consider byelaws generally and so long as there are byelaws to consider, the byelaw working group will exist.
68. As to whether the issues were still live at the time of the request, the complainant may consider that certain issues were no longer live, but the Commissioner disagrees. In its submission CIFCA has explained that the issues discussed under each of the Agenda items in question, and for which it holds recorded information, were still live at the time of the request and either remain live to date and/or were discussed at meetings following the 23 April 2019 meeting.
69. The complainant disputes that releasing the requested information would impact on the safe space for the byelaw working group. However, CIFCA has also noted that some Members had been contacted directly by members of the public following an extraordinary meeting in February 2019. In light of this, the Commissioner considers that external interference, distraction or pressure could have arisen if the internal communications associated with the April 2019 meeting had been released into the public domain under the EIR. The Commissioner

considers that the byelaw working group should be able to carry out its future activities without such external interference, distraction or pressure and that disclosure could very well have impacted on the group's safe space.

70. Finally, the sensitivity of the disputed information. It is not clear to the Commissioner that CIFCA's final public interest argument is directly relevant to the information in this case. It appears to be a general argument about certain financial information that the byelaw working group might discuss and why this should remain confidential as general principle. However, the Commissioner considers that the specific information that is currently under consideration – copies of which it has provided to the Commissioner, can be categorised as sensitive as it is associated with people's livelihoods and the exploitation of sea fisheries.
71. In the specific circumstances of this case, and having considered the particular information in question, the Commissioner considers that disclosing the withheld information could compromise CIFCA's thinking space and the ability to have full and frank discussions without fear that the information will be disclosed. This could detrimentally affect the overall decision making process. She has therefore given the safe space argument significant weight.
72. CIFCA has also referred to the 'chilling effect' in its submission ie it raised concern about the impact that disclosure would have on future recommendations. The chilling effect is the argument is that disclosing internal discussions would inhibit free and frank discussions in the future, and that the loss of frankness and candour would damage the quality of advice and lead to poorer decision making.
73. As with safe space arguments, the Commissioner does not consider that chilling effect arguments will automatically carry much weight in principle. The weight will again depend on the circumstances of each case, including the timing of the request, whether the issue is still live, and the content and sensitivity of the information in question. If the issue. As discussed above, the Commissioner is satisfied that disclosing the withheld information could compromise CIFCA's thinking space and its ability to have full and frank discussions without fear that the information will be disclosed. In her view not having the confidence that sensitive information discussed in a meeting would not be disclosed while issues were still live could detrimentally affect the decision making process. This would potentially lead to less full and frank advice being provided to CIFCA in the future, and the exchange of views being inhibited.
74. The Commissioner accepts that the matters discussed on 23 April 2019 do have a wider public interest. There is also a general public interest in

CIFCA demonstrating it is open and transparent. However, she considers that that this wider public interest is satisfied through information associated with CIFCA's statutory meetings and certain extraordinary meetings being published. In addition, CIFCA has told the Commissioner that summaries of the byelaw working group's meetings are provided for CIFCA's quarterly meetings and that the associated quarterly reports are published.

75. The Commissioner has noted the complainant's concerns but, on balance and having considered all the circumstances, she is satisfied that, at the time of the request, the public interest favoured maintaining the regulation 12(4)(e) exception.

Right of appeal

76. 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

77. 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.
78. 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

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