

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 26 January 2023

**Public Authority:** The Department for Business, Energy and Industrial Strategy

**Address:** 1 Victoria Street  
London  
SW1H 0ET

### **Decision (including any steps ordered)**

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1. The complainant has requested information from the Department for Business, Energy and Industrial Strategy ("BEIS") regarding a specific spreadsheet which details the emissions reductions that will be delivered under a specific strategy. BEIS withheld the information, citing regulation 12(4)(e) of the EIR.
2. The Commissioner's decision is that BEIS has correctly applied regulation 12(4)(e) – internal communications of the EIR, when determining this request. However, as BEIS failed to respond to the request within 20 working days, it has breached regulation 5(2) of the EIR.
3. The Commissioner does not require BEIS to take any steps as a result of this decision notice.

### **Request and response**

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4. On 19 October 2021, the complainant wrote to BEIS and requested information in the following terms:

"At a press briefing on the net zero strategy today (October 19) officials at Beis made reference to a spreadsheet which details the emissions reductions that will be delivered by specific policies under the strategy, but said the information was not being published. Please can you furnish

me with this information under FOI or EIR rules, whichever is the most appropriate, as it is in the public interest that the details of this wholesale transformation of the economy to meet emissions reduction targets – mandated by law under the Climate Change Act and carbon budgets under the Act – are in the public domain.”

5. BEIS responded on 29 November 2021. It stated that it refused to provide the requested information, citing regulation 12(4)(e) – internal communications.
6. Following an internal review BEIS wrote to the complainant on 29 December 2021. It stated that it upheld its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 4 January 2022 to complain about the way their request for information had been handled.
8. During the Commissioner’s investigation, he had to issue an Information Notice as BEIS failed to respond to his request for the withheld information, along with failing to respond to the further questions he asked to assist with the investigation.
9. In response to the Information Notice, BEIS provided an updated response, including adding that it was now also relying on regulation 12(4)(d) – material in the course of completion.
10. The Commissioner considers that the scope of the case is to determine if BEIS is able to rely on regulations 12(4)(e) and 12(4)(d) of the EIR to withhold the requested information.

### **Reasons for decision**

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#### **Regulation 12(4)(e) – Internal Communications**

11. Regulation 12(4)(e) of the EIR provides an exception from disclosure to the extent that the requested information comprises internal communications. The exception is class-based, which means that it is engaged if the information in question falls within its scope. There is no requirement to consider prejudice or adverse effect at this stage.
12. The withheld information comprises of a spreadsheet which details information relating to the Net Zero Strategy.

13. Upon review of the withheld information, the Commissioner is satisfied that the exception at Regulation 12(4)(e) is engaged.
14. 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) further states that the public authority must apply a presumption in favour of disclosure when considering the public interest.

### **Public interest in favour of disclosure**

15. BEIS explained that if the information were to be disclosed, it would increase public accountability and would allow the public to assess and influence the quality of decision making on policies, such as the Net Zero Strategy.

### **Public interest in the exception being maintained**

16. BEIS has explained that it has applied a presumption in favour of disclosure as required by regulation 12(2) of the EIR.
17. BEIS has explained that the underlying principle in the information being withheld, is that it should have a safe space to discuss and develop policy in private, away from external interference and distraction.
18. BEIS has advised that whilst the Net Zero Strategy has been published, much of the development of the underlying policies and proposals listed within the spreadsheet is still occurring. It also advised that a number of policies are yet to be consulted on, fully designed, agreed and/or implemented.
19. BEIS argued that disclosure of the spreadsheet would affect the 'safe space', which would damage the internal policy-making process and could also be misleading in making policies public prematurely that have not yet been fully formed or consulted on.
20. BEIS has also explained that it could lead to a 'chilling effect'. It argued that if everything is done in the public eye, then public officials will have fewer free and frank discussions which will damage the quality of advice and lead to poorer decision-making. It advised that this is pertinent and risky when tackling such a long-term target and challenge such as climate change, which requires a lot of early-stage thinking.
21. BEIS has informed the Commissioner that it is subject to a Court order, which requires it to update the list of policies and proposals within the spreadsheet and publish a new Net Zero Strategy by the end of March

2023. It explained that this exercise makes it more imperative that the details within the spreadsheet are protected, as the information within the spreadsheet is currently being updated to transparently communicate the policies and proposals that underpin the Net Zero Strategy in a way that still maintains the policy development space and commercial sensitivity.

22. BEIS explained that disclosing this information before it is contextualised and published in an appropriate way will inhibit free and frank discussion across government departments and the loss of frankness and candour will significantly damage the collection of data required to update the spreadsheet, which is an extremely sensitive and political process.
23. BEIS has argued that in regards to commercial sensitivity, releasing policy information ahead of such policies being publicly consulted on or designed, could provide unhelpful or misleading signals to market about the direction of policy, which could lead to sub-optimal decision-making by those making capital investments and could undermine commercial negotiations between government and industry. This could again lead to the chilling effect, leading to less candid and less informed discussions internally around policies that rely on private investment.

### **The Commissioner's analysis**

24. The Commissioner considers that the underlying rationale for the exception at Regulation 12(4)(e) is to protect a public authority's need for a private thinking space. He considers that the extent to which disclosure would have a detrimental impact on internal processes will be influenced by the particular information in question and the specific circumstances of the request.
25. The Commissioner notes that the situation was ongoing when it was responding to the request for information. Some of the discussions/policies were still live and no final decision had been made. The Commissioner considers that disclosing information in relation to the live policies could damage the quality of advice given, or ideas discussed. The Commissioner also notes that the discussions/policies are still live at the time of this decision notice.
26. The Commissioner accepts that in this situation, BEIS' officers and others involved require free space in order to discuss, deliberate and formulate its response to the various policies and ideas in a full and frank way, away from the public's view. A disclosure during the midst of this would undermine its ability to obtain the best outcome and have the effect of preventing officers from being able to freely discuss different ways to approach the issues involved in a complicated situation.

27. The Commissioner also considers that a safe space is required around a sensitive and emotive topic. The issue is particularly sensitive given the subject and how it can/will effect the environment in the future.
28. The Commissioner has also taken into consideration that further information on the subject will be being released by BEIS before the end of March 2023. This should be able to assist the complainant further with their information request.
29. Therefore, the Commissioner considers that there is a strong public interest in protecting BEIS' ability to exchange correspondence and deliberate in a private space whilst the policies are still live.
30. The Commissioner is mindful that a public authority is required to apply a presumption in favour of disclosure, and in any event the public interest in maintaining an exception must outweigh the public interest in disclosure. If the public interest is balanced, then the information in question must be disclosed.
31. The Commissioner is satisfied that there is a significant public interest in protecting BEIS' ability to exchange internal communications in a "safe space".
32. The Commissioner does not consider that the presumption in favour of disclosure changes this conclusion.
33. Consequently, the Commissioner finds that the public interest in maintaining the exception at Regulation 12(4)(e) does outweigh the public interest in disclosing the withheld information.
34. As covered above, in this case the Commissioner's view is that the balance of the public interests favours the maintenance of the exception, rather than being equally balanced. This means that the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(e) was applied correctly.
35. BEIS also cited regulation 12(4)(d), however, as the information in its entirety has been withheld correctly under regulation 12(4)(e) the Commissioner has not gone on to investigate the additional exception.

### **Regulation 5(2) – time limits**

36. The Commissioner finds that BEIS breached regulation 5(2) by failing to respond to the request within 20 working days.

**Right of appeal**

37. 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)

38. 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.

39. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**SK9 5AF**