

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

**Decision notice**

**Date:** 21 July 2023

**Public Authority:** Department for Education  
**Address:** Sanctuary Buildings  
Great Smith Street  
London  
SW1P 3BT

**Decision (including any steps ordered)**

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1. The complainant has requested information produced by a unit called Policy Lab. The above public authority ("the public authority") relied on regulation 12(4)(a) of the EIR to refuse the request as it did not hold the information for the purposes of the EIR.
2. The Commissioner's decision is that the public authority does not hold the information for the purposes of the EIR and is thus entitled to rely on regulation 12(4)(a) of the EIR.
3. The Commissioner does not require further steps to be taken.

**Request and response**

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4. On 1 March 2023, the complainant wrote to the public authority and, referring to earlier correspondence he had exchanged with the public authority, requested information in the following terms:

"I should be very grateful if you would confirm what bass-related information Policy Lab has been provided to Defra and other fishery managers (IFCAs, MMO, EA) please.

"From [redacted]'s email below, it appears to be mainly two things: 1) the full data set; and 2) a report with detailed findings. Is that everything? Was any other information shared?"

"Regarding the data set, in what form was this provided to Defra please – was it raw data, or did you provide some method for Defra to easily review the data, for example by using the Policy Lab Collective Intelligence platform?"

"Is it possible for you to provide access to the data set in a way that I could easily review it please?"

"Regarding the priorities that were covered in the Co-refine stage, how were these arrived at please? For example, how was it decided to prioritise 'in the short term, prioritise maximising the amount of bass that can be caught in a sustainable manner....MSY'. Did this emerge from consensus among stakeholders? If not, how was it arrived at please?"

5. The public authority responded on 17 March 2023. It relied on regulation 12(4)(a) of the EIR as it did not hold the information for the purposes of the EIR. It suggested that the complainant contact DEFRA to obtain the information. The public authority upheld its stance following an internal review.

## **Reasons for decision**

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### **Would the requested information be environmental?**

6. The requested information concerns policies to manage fisheries – specifically bass. The Commissioner therefore considers that the information (if it were held by the public authority) would be information on a measure affecting (or likely to affect) the elements of the environment. For procedural reasons, the Commissioner has therefore assessed this complaint under the EIR.

### **Is the information held for the purposes of the EIR?**

7. The Commissioner asked the public authority to explain its relationship with Policy Lab and Policy Lab's relationship with the information. The public authority responded to say that:

"Policy Lab is the team within the department that has responsibility for the area covered by the request. Policy Lab is a cross-Whitehall unit based within the Department for Education (DfE), and using DfE

systems, whose aim is to improve policy making through design, innovation and people-centred approaches.

"Policy Lab is made up of officials with multidisciplinary expertise, helping cross-government officials and teams to understand the present, imagine the future and design ways to achieve the policy impact they intend.

"There methods are grounded in evidence, participation and experimentation, and they draw on diverse perspectives, tackle complexity and build consensus.

"Policy Lab can be commissioned by any department or agency to help research, structure and develop leading, evidence-based policy. Due to this, not all information held by Policy Lab and, therefore, by the DfE as the 'parent' department, relates to the work and the policies of the DfE. In this case the information in scope relates directly to the commission made by, and the policies of, the Department for Environment, Food and Rural Affairs (DEFRA) and not the DfE.

"Although the information in scope of the request is held on DfE systems due to the commissioned work being undertaken by the Policy Lab, we believe exception Regulation 12(4)(a) is relevant and appropriate, as the information in scope has no relation to, or is of use to, the policies and delivery of policies that are the responsibility of the Policy Lab's 'parent' department, that being the DfE. Indeed, this information is held for DEFRA, as it relates directly to the DEFRA commission made to the Policy Lab regarding fish (Bass) and relates directly to DEFRA policies, and is not used by, or for the DfE's policies and policy commitments."

8. Under the EIR, for a public authority to be considered to "hold" information, that information must not just be physically present on the public authority's premises or stored digitally on its IT systems: there must be a connection between the information and the functions and work of the public authority.<sup>1</sup>
9. In this situation, the Commissioner recognises that the information being requested may be stored on the public authority's IT systems –

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<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/information-you-hold-for-the-purposes-of-the-eir-regulation-3-2/>

but, in the circumstances, he is not persuaded that this means that the public authority holds the information for the purposes of the EIR.

10. The information has not come into the possession of the public authority for any reasons connected with its functions or the work that it carries out. The public authority has no interest in the management of fisheries as this is not a function that it is required to discharge.
11. Policy Lab appears to operate as an autonomous unit that is both within the public authority and sitting outside it. It takes on commissions from other departments and, in the course of carrying out the work that it has been commissioned to do, it acquires information on behalf of the commissioning department. That does not mean that the public authority now holds the information that Policy Lab has acquired – unless that information also has a connection to the functions or the work of the public authority.
12. In this scenario, the Commissioner considers that the information collated by Policy Lab for this particular project would be held on behalf of the commissioning department – in this case DEFRA. In the circumstances, were the same request to be made to DEFRA, DEFRA would be obliged to consider for disclosure both the information it held itself and any information Policy Lab might hold on its behalf.
13. The public authority has no interest itself in the content of the information and the information is not relevant to anything the public authority does.
14. In the circumstances, the Commissioner accepts that the public authority did not hold the information for the purposes of the EIR and it was therefore correct to rely on regulation 12(4)(a).

### **Public interest test**

15. Technically regulation 12(4)(a) contains a public interest test – however the Commissioner cannot conceive of a public interest argument that would require a public authority to disclose information that it did not hold.

## **Procedural matters**

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16. Where a public authority does not hold a piece of environmental information, but is aware of another public authority that does, regulation 10 of the EIR requires the public authority that received the original request to either transfer it or inform the requester of the name and contact details of the public authority that would hold the information. In this case, the public authority informed the requester that he should make his request to DEFRA and informed him of the email address to use for that purpose. Whilst the public authority could perhaps have explained more clearly that a request made to DEFRA would still capture information held by Policy Lab on DEFRA's behalf, it still met its obligations under regulation 10 of the EIR.
17. The Commissioner appreciates that the overall decision is one that the complainant is likely to find frustrating: applying the strict letter of the law appears to result in contradicting its spirit. However the Commissioner is bound by the language of the law he regulates and can only assess whether a public authority has or has not complied with that language. He also notes that the complainant had the opportunity to submit his request to DEFRA instead, but appears to have chosen not to do so at the point the complaint was made – though that option remains open to him.

## Right of appeal

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18. 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)

19. 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.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**