

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

Decision notice

Date: 13 September 2018

Public Authority: Department for Environment, Food and Rural Affairs (DEFRA)

Address: Area 4A
Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested DEFRA to disclose copies of all of the briefing notes and information given to Therese Coffey which include references to fly-tipping. DEFRA responded to the request citing regulation 12(5)(b) of the EIR. In accordance with regulation 11 of the EIR, the complainant requested an internal review. But to the date of writing, DEFRA has not responded or complied with the requirements of regulation 11.
2. The Commissioner's decision is that DEFRA has breached regulation 11 of the EIR by failing to respond to the complainant's request for an internal review within 40 working days of receipt.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - DEFRA should issue its internal review response in accordance with regulation 11 of the EIR.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 6 February 2018, the complainant wrote to DEFRA and requested information in the following terms:

“Please provide me with a copy of all of the briefing notes /information given to Therese Coffey which include references to fly-tipping.

These should cover the period from her most recent appointment as Undersecretary of State for Environment, Food and Rural Affairs to the present.

Please include the whole of each document not just extracts.

Where an item is not dated please provide the date it was provided / written”

6. DEFRA acknowledged receipt of the request on 6 February 2018.
7. DEFRA responded on 2 March 2018. It refused to disclose the requested information citing regulation 12(4)(b) of the EIR.
8. The complainant requested an internal review on 12 April 2018.
9. DEFRA acknowledged receipt on 12 April 2018 but to date has failed to carry out an internal review.

Scope of the case

10. The complainant contacted the Commissioner on 13 June 2018 to complain about the way his request for information had been handled. He stated that DEFRA has failed to respond to his request for internal review in accordance with regulation 11 of the EIR and requires a decision notice to be issued.
11. The Commissioner considers the scope of this investigation is to determine whether DEFRA has complied with regulation 11 of the EIR.

Reasons for decision

12. Regulation 11 of the EIR provides the applicant with the right to make representations to a public authority in relation to their request for environmental information if it appears to them that the authority has failed to comply with the requirements of the regulations. The Commissioner often refers to this as a request for an internal review. Representations must be made in writing to the public authority within 40 working days.
13. On receipt of the representations the public authority should consider them and any supporting evidence and decide if it has complied with the regulations. Regulation 11(4) states that a public authority shall notify the applicant of its decision as soon as possible and in any event no later than 40 working days after the date of receipt of the representations.
14. In this case the complainant wrote to DEFRA on 12 April 2018 to make his representations/request an internal review. The Commissioner has checked the What Do They Know website (the website used by both parties to correspond) and to the date of writing, DEFRA has failed to comply with regulation 11 of the EIR and to provide the complainant with its internal review response.
15. The Commissioner has therefore recorded a breach of regulation 11 of the EIR against DEFRA and requires DEFRA to issue its internal review response to the complainant.

Right of appeal

16. 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@hmcts.gsi.gov.uk

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

17. 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.
18. 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

Samantha Coward
Senior Case Officer
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Wycliffe House
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Wilmslow
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SK9 5AF