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Rachel Salvidge
By email: [REDACTED]@watershedinvestigations.com

Our ref: IR2024/05897
16 April 2024

Dear Rachel,

INTERNAL REVIEW: Consultation on the Persistent Organic Pollutants (POPs) Regulations

Thank you for your email which we received on 13 March 2024 appealing against the decision to withhold information. Your original request was dealt with under the Environmental Information Regulations 2004 (EIRs) and I have handled your request for an internal review under the same legislation.

Summary

In accordance with Defra's internal review procedures, I have reviewed your complaint in discussion with policy colleagues who handled your original request.

I have considered your appeal and reviewed the application of regulation 12(4)(d) of the EIRs. I have concluded that this exception was wrongly engaged initially to this information because instead regulation 12(4)(b) of the EIRs should have been engaged.

I set out in the annex below a fuller explanation of our decision.

For your further information, the government response to the consultation has now been published and is available on GOV.UK:

<https://www.gov.uk/government/consultations/amendments-to-the-persistent-organic-pollutants-pops-regulation>

Yours sincerely,

Andrew Mobsby

Head of Information Rights

Email: [REDACTED]@defra.gov.uk

Annex

Chronology

21 February 2024	You submitted the following request: <i>Please could you provide me with the consultation responses from the following consultations?</i> <i>Defra Consultation on potential amendments to the Persistent Organic Pollutants (POPs) Regulation: https://consult.defra.gov.uk/pops-and-chemicals-in-waste-team/amendments-to-pops-regulation/</i>
13 March 2024	We responded to your request confirming that the information requested is being withheld under regulation 12(4)(d) of the EIRs.
13 March 2024	You then requested an internal review as follows: <i>Thank you for your email. Before referring this request to the ICO, I would like to challenge your refusal on the grounds that I am asking for the consultation responses from consultees, which are complete and which you hold. I am not asking for the government's response, which as you say is incomplete.</i> <i>Separately, given the consultation closed in April 2023, when do you expect to publish your response?</i>

Regulation 12(4)(d)

As explained above, I have now re-examined the case and looked at the application of the exception set out at regulation 12(4)(d) of the EIRs, which relates to material, which is still in the course of completion, to unfinished documents or to incomplete data.

Although, at the time the Government response to the consultation had not been published the exception at regulation 12(4)(d) is something that can be lawfully considered. However, on review the burden and cost element of the request should have been considered first.

Regulation 12(4)(b)

Under the EIRs, unlike under the Freedom of Information Act 2000 (FOIA), there is no appropriate costs limit above which public authorities are not required to deal with requests for information. However, the exception at regulation 12(4)(b) of the EIRs can apply if the cost or burden of dealing with a request is “too great”.

In assessing whether the cost or burden of dealing with a request is “too great”, Defra will need to consider the proportionality of the burden or costs involved and decide whether they are clearly or obviously unreasonable. This means taking into account all the circumstances of the case.

Although there is no cost limit set out in the EIRs, the Information Commissioners Office (ICO) guidance on this issue is that when assessing whether the cost, or the amount of staff time involved in responding to a request, is sufficient to render a request manifestly unreasonable the FOIA fees regulations may be a useful starting point, which is set at £600, or 24 hours of staff time.

It also means that the actions included when administering a request are not limited to those set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulation 2004, which applies to the FOIA. Therefore, in processing this request I agree that the time taken to assess each response in full, carry out third party consultation for each respondent, consider any harm over release in light of the exceptions within the EIRs and redact and prepare for release, can be included in this assessment.

Public interest considerations

As previously mentioned in our original response I recognise that there is a public interest in disclosure of information concerning submissions to ministers. I understand that release of such information aids accountability and transparency when it comes to decisions being made within Defra in relation to the issues around this matter.

However, on the other hand, there is a strong public interest in withholding the information because of the significant cost for the department to identify, review and consider the information relating to your request. Each page of all of the responses would then need to be considered on a line-by-line basis against any harm over release, and third-party consultations to be carried out. Once the harm is identified, which has not been done at this stage, the particular exception can be engaged. Public interest arguments would then need to be written up to apply the exception. If the balancing test falls on the side of withholding any material each page would then need to be redacted accordingly. We estimate that it would take well in excess of 24 hours of staff time in order to comply with your request.

I therefore find that that regulation 12(4)(b) of the EIRs now applies to your request.

However, regulation 9 of the EIRs requires public authorities to provide advice and assistance to applicants where reasonable. I have therefore provided details below to assist you to formulate a request that can be handled at less cost, although we cannot guarantee that this will be the case.

The best way I can help you is to ask you to consider narrowing down your request to focus more clearly on the precise information you are seeking. You would need to:

- Select 5-10 full responses you are particularly interested in.

Please note that we will handle your modified request as a new request. The 20-working-day timescale for responding to requests will therefore commence from the date that we receive the modified request.

Rights of appeal

We hope that the above answers your complaint satisfactorily. However, if you remain dissatisfied, you have the right to apply directly to the Information Commissioner for a decision. <http://www.ico.org.uk/complaints.aspx>