

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 December 2022

Public Authority: Department of Finance
Address: Clare House
303 Airport Road
Belfast
BT4 3SB

Decision (including any steps ordered)

1. The complainant has requested information from the Department of Finance (DoF) about the proposed Casement Park development. The DoF directed the complainant to some relevant publicly available information, but refused the rest of the request under regulation 12(4)(d) (material in the course of completion) of the EIR.
2. The Commissioner's decision is that the DoF correctly relied on regulation 12(4)(d) to refuse the request, and the balance of the public interest favours maintaining the exception.
3. The Commissioner does not require the DoF to take any steps as a result of this decision notice.

Request and response

4. On 7 February 2022, the complainant wrote to the DoF and requested information in the following terms:

"I request the following information incorporated in the 2022/2023 to 2024/2025 draft budget :-

1. Details of envisaged funding allocations provided for in the draft budget figures for each of the three years towards construction costs of the proposed Casement Park new stadium development.
2. A copy of all records/notes and calculations held by the department that were used in the calculation of projected annual financial allocations of funds to the proposed Casement Park development.

[3] Last years draft budget for 2021/2022 included an allocation of £20 million for the proposed Casement Park development. Please advise me as to how much of that amount has been distributed to date and/or is likely to be distributed by the end of the current financial year."

5. The DoF responded on 23 February 2022. It stated that the information at parts one and two of the request was exempt from disclosure in accordance with regulation 12(4)(d) of the EIR. It also stated that the information at part three of the request was already publicly available and easily accessible. It provided a link for the complainant to locate the information.
6. Following an internal review the DoF wrote to the complainant on 18 May 2022. It maintained its reliance on regulation 12(4)(d) of the EIR to refuse to disclose the information at parts one and two of the request.

Scope of the case

7. The complainant contacted the Commissioner on 17 August 2022 to complain about the way their request for information had been handled. In particular they disagreed with the DoF's conclusion that the balance of the public interest fell in favour of maintaining the exemption, as large sums of public money are potentially being allocated to the development. They also disagreed with the DoF handling the request under the EIR instead of FOIA.
8. The Commissioner considers the scope of his investigation is to determine whether the DoF is entitled to rely on regulation 12(4)(d) of the EIR to refuse to disclose the information within the scope of parts one and two of the request.

Reasons for decision

Is the requested information environmental as defined by the EIR?

9. Regulation 2(1) of the EIR defines environmental information as being information on:

- a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measure and activities designed to protect those elements;
 - d) reports on the implementation of environmental legislation;
 - e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).
10. The Commissioner's published guidance¹ states that sometimes information might not seem to be obviously environmental but could still fall under the definition. For example, financial information would be classed as environmental information if it related to the costs of redeveloping land. The Commissioner understands that the Casement Park redevelopment includes demolition and disposal of the existing Casement Park facilities and construction of a new stadium. He is therefore satisfied that the financial information relating to the costs of the development would be considered to be 'environmental information'.

¹ <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/>

Regulation 12(4)(d) – material in the course of completion

11. Regulation 12(4)(d) of the EIR provides that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
12. The Commissioner is satisfied with the DoF's explanation that the information sought at parts one and two of the request is considered material still in the course of completion. Whilst it holds relevant data for the purpose of informing policy discussions or negotiations, there is no Northern Ireland Executive in place so there are currently no decisions or agreements on the draft budget. Whilst there is no Northern Ireland Executive in place, senior civil servants are responsible for the day-to-day running of government. However, civil servants can only operate within the context of existing policy directions set by Northern Ireland ministers when they were still in post, and cannot develop new policies or take decisions that may be considered political in nature.
13. In view of the provisional nature of the information held by the DoF, along with the wider climate of uncertainty outlined above surrounding the Executive, the Commissioner finds that regulation 12(4)(d) of the EIR is engaged. He has therefore gone on to consider the associated public interest test.

Public interest test

14. The DoF considers that there is a general public interest in accountability, openness and transparency of government, and that the disclosure of information held by the government could promote public understanding.
15. The DoF recognises that the Casement Park development is a high profile project, along with the funding allocated to such projects, which therefore generates greater public interest during an uncertain time with the local economy being faced with significant pressures.
16. However, the DoF states that discussions, deliberations, evaluations and considerations which feed into decisions regarding the allocation of funding must be conducted with the confidence that there is no risk of them being disclosed prematurely. The DoF considers the fact that it will not be possible to agree a 2022-2025 Budget in the absence of an Executive and the consultation on the Draft Budget has therefore been paused, adds considerable weight to the argument that disclosure would prejudice those discussions, considerations, etc, and subsequently impact the integrity of the decision making process.

17. The DoF also considers that the incomplete nature of the information which it holds at present means that disclosure would not greatly inform public debate. Any proposed allocations of funding will be subject to change as and when discussions surrounding the budget are able to resume, as such the disclosure of funding information at this stage is likely to be unhelpful and misleading.
18. Finally, the DoF argues that the premature release of provisional figures (or the calculations on which they are based) may compromise future policy by creating an expectation in advance of decisions to be taken by ministers.
19. The complainant argued that "at a time when many families cannot afford to buy food and essentials and heat their homes, while hospitals are unable to function properly with serious consequences to the wellbeing of our citizens, that the public interest weighs heavily in favour of full disclosure of information surrounding sizeable allocation from the public purse to any privately owned new development project. They further argued that it is in the public interest to know the proposed amount of annual allocations to the redevelopment of Casement Park, with full substantiation, when funding to essential services is under such serious threat."

The Commissioner's conclusion

20. Regulation 12(2) of the EIR states that a public authority shall apply a presumption in favour of disclosure.
21. The Commissioner has considered both the DoF's and the complainant's arguments, and on the evidence presented to him in this case he is not persuaded that the public interest arguments in favour of disclosure are sufficiently compelling so as to outweigh those in favour of maintaining the exemption. Whilst the Casement Park development is clearly of public interest, the Commissioner is satisfied that disclosure of such provisional information, on which many decisions remain to be taken, would not be helpful in aiding public understanding and would result in unfounded speculative debate.
22. The Commissioner has concluded that the balance of the public interest in this case favours maintaining the exception. Therefore the Commissioner's decision, whilst informed by the presumption provided for in regulation 12(2), is that the exception provided by regulation 12(4)(d) of the EIR was applied correctly by the DoF.

Right of appeal

23. 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

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

24. 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.
25. 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

Catherine Fletcher
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