

## **EIR Request (received 12 January 2022) - Reference: DFI/2022-0014**

Request for Information under the Freedom of Information Act 2000 ("FOIA") and/or the Environmental Information Regulations 2004 ("EIR")

Department for Infrastructure Roads ("DFI") Covid-19 Supplier Relief and Assessment for Additional Costs in respect of Northern Division, Eastern Division, Western Division ("Relevant Areas")

I refer to the above and seek the following information for the period from 15 March 2020 - 31 December 2021 in respect of the DFI Roads split into each of the above Relevant Areas:

1. Copies of all DFI Covid-19 guidelines, measures and procedures applicable to both DFI office based and operational staff;
2. Details of all costs incurred by the DFI Roads to ensure Covid-19 compliance, specifically confirming:

### (a) One-Off Costs

- i. Direct Costs for staff required to carry out complete review of site operating procedures;
- ii. Direct Costs associated with training staff on Covid-19 compliance (including internal resources);
- iii. IT/Homeworking establishment including the costs of all hardware (computers, laptops, screens, mobile devices, headsets, desks, chairs etc), software, additional IT support resources, stationery;
- iv. Additional Vehicles and Equipment purchased by the DFI to ensure compliance with Covid-19 guidance;
- v. Premises Costs (modification to premises to ensure compliance with Covid-19 guidance);
- vi. Graphics and Maintenance of any additional vehicles purchased or hired to ensure compliance with Covid-19 guidance (in addition to compliance with Chapter 8 requirements) including motor related software, parts, servicing and tyre costs.

### (b) Recurring Costs:

- i. Additional Vehicles and Equipment to ensure Covid-19 compliance (including details of any hiring costs incurred from the Education Authority and Translink (or otherwise));

- ii. Additional Insurance Costs;
- iii. Additional Fuel Costs;
- iv. Mileage allowance payable to staff to cater for them taking their own vehicles;
- v. Hand Sanitiser;
- vi. PPE;
- vii. Cleaning Materials;
- viii. Signage;
- ix. Van dividers;
- x. Costs associated in dealing with additional Covid-19 related investigations;
- xi. Costs associated with the provision of Covid-19 Inspector/Compliance Officer.

(c) Productivity Costs

- i. Productivity delays on site as a result of Covid-19 measures;
  - ii. Additional time/resource required to maintain normal productivity levels;
  - iii. Changes to normal phasing of the works to minimise interaction with the public/pedestrians and maintain social distancing;
  - iv. Additional TTM costs/management costs;
  - v. Restrictions on the sequencing of works that reduce outputs resulting in additional time to complete;
  - vi. Costs associated with permanent changes to work methodology and procedures relating to Covid-19 measures;
  - vii. Additional costs of material collections and deliveries.
3. Confirmation of all Covid-19 Supplier Relief payments made by the Relevant Areas in respect of Roads Service Contracts. The identity of any contractor may be appropriately redacted.
  4. Confirmation of the extent and nature of all evidence requested and supplied by each contractor who has received Covid-19 Supplier Relief payments from the Relevant Areas in respect of Roads Service Contracts.
  5. Copies of all internal correspondence between the Contract Engineer/Network Maintenance Managers and Section Offices/DFI Roads staff relating to the Greentown

Environmental Ltd. Covid-19 Supplier Relief assessment. This should include all relevant emails, letters, notes or minutes of meetings (handwritten or otherwise).

## **Response (issued 09 February 2022)**

Thank you for your email request dated 12 January 2022 for information relating to the impact of COVID-19, including applications and awards of COVID-19 Supplier Relief to contractors operating on the Northern Ireland road network under Measured Term Contracts, held by DfI Roads' Northern, Eastern and Western Divisions, the client bodies for these contracts within their Divisional areas.

In considering your request on behalf of the Department, I have determined that the information requested falls under the aegis of the Environmental Information Regulations 2004 (EIR), as opposed to Freedom of Information Act 2000. Your request is for information that relates to activities, policies or plans that affect the environment. Section 39 of the Freedom of Information Act specifically excludes from consideration under that Act requests for what is deemed to be environmental information.

A guide explaining the Environmental Information Regulations can be found at:

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

The Environmental Information Regulations established general public rights of access to environmental information held by public authorities, similar to the general rights established under FOI.

There is no provision for privileged access to information, it may either be released to the World at large, or it must be withheld. Any information provided in response to an information request (either FOI or EIR) is considered to have been placed in the public domain. In addition, there is no requirement placed on public authorities by the legislation to create new records where records do not exist at the time of the request.

You asked a number of questions, and I will seek to answer each in the order asked:

1. The DfI Covid-19 guidelines (copy of each attached) applicable to all staff are:

SSW23 - Working from Home;

SSW24 - COVID-19; and

PTW09 - COVID-19.

2. Details of costs incurred by to ensure Covid-19 compliance:

(a) One-Off Costs

- i. There were no direct costs incurred by any of DfI Roads' Eastern, Northern or Western Divisions for staff reviewing site operating procedures;
- ii. There were no costs incurred by any of DfI Roads' Eastern, Northern or Western Divisions due to training staff on COVID-19 compliance;
- iii. The Department does not hold information in an accessible format with regards to staff homeworking set up costs. Attempting to comply with this element of your request would require a manual search of all payment and staff records.

While EIR, like FOI, is designed to increase transparency and openness in relation to information held by public authorities, it is not always possible to comply with requests. Parliament, when framing UK Freedom of Information legislation, recognised that there would be occasions where it would be in the public interest to refuse requests.

The Environmental Information Regulations, unlike FOI, did not specify a fixed amount of staff costs that would represent an appropriate limit (£600 for Government Departments, set at £25 per hour of staff time), beyond which public authorities need not go to answer requests. Instead the legislation provides an exception from the general presumption in favour of disclosure, at Regulation 12(4)(b), when the burden placed on staff resources is considered to be manifestly unreasonable. The Information Commissioner's Office has made clear that, while EIR does not specify a reasonable cost of compliance, Parliament had clearly identified what would be a reasonable cost in setting the appropriate limit for FOI.

We have carried out a sample exercise, at 10 minutes per person and c.2,000 staff, to determine whether the Department can comply with your request, without placing an unnecessary burden on staff resources. I regret to inform you that this sample has shown that staff time required to comply, at over 300 hours, would be well in excess of the appropriate limit set out under FOI. I have carried out a test of the public interest in this case, and am satisfied that the diversion of staff resources required is so great that the Department must refuse your request. The Regulation 12(4)(b): manifestly unreasonable exception is clearly engaged;

- iv. There were no costs incurred by any of DfI Roads' Eastern, Northern or Western Divisions for the purchase of additional vehicles or equipment to

ensure with COVID-19 requirements, as no additional vehicles or equipment were purchased;

- v. The Department does not hold information regarding expenditure in a format that would allow premises costs to be identified without a manual search through its financial records.

As explained for the application of a Reg. 12(4)(b): manifestly unreasonable exception, above, the diversion of staff resources that would be required to identify individual purchases, in the absence of specific coding in our payments processing software for COVID-19 would place an unreasonable burden on staff. Such a manual check, added to that at iv, above, would clearly exceed what Parliament has considered reasonable.

I have carried out a test of the public interest in disclosure and I am not convinced that there is a sufficiently strong public interest favouring diverting staff from their main duties, to find the detail that you have requested. I am obliged, therefore, to consider that this element of your request is also manifestly unreasonable, and to apply the exception provided by Reg. 12(4)(b); and

- vi. There were no costs incurred by any of DfI Roads' Eastern, Northern or Western Divisions for graphics and maintenance of any additional vehicles or equipment purchased or hired to ensure with COVID-19 requirements, as no additional vehicles or equipment were purchased or hired;

(b) Recurring Costs

- i. There were no recurring additional vehicle hire costs incurred by any of DfI Roads' Eastern, Northern or Western Divisions to ensure compliance with COVID-19 restrictions;
- ii. There were no recurring additional insurance costs incurred by any of DfI Roads' Eastern, Northern or Western Divisions to ensure compliance with COVID-19 restrictions;
- iii. There were no recurring additional fuel costs incurred by any of DfI Roads' Eastern, Northern or Western Divisions to ensure compliance with COVID-19 restrictions;
- iv. There were no increased staff mileage allowances incurred by any of DfI Roads' Eastern, Northern or Western Divisions to ensure compliance with COVID-19

restrictions. There was no change to the existing procedures, as Divisional staff have always used their own vehicles;

- v. The Department does not hold information regarding recurring expenditure in a format that would allow costs of hand sanitiser, to help prevent the spread of COVID-19, to be identified without a manual search through its financial records.

As explained for the application of a Reg. 12(4)(b): manifestly unreasonable exception, above, the diversion of staff resources that would be required to identify individual purchases, in the absence of specific coding in our payments processing software for COVID-19 would place an unreasonable burden on staff. Such a manual check would clearly exceed what Parliament has considered reasonable.

I have carried out a test of the public interest in disclosure and I am not convinced that there is a sufficiently strong public interest favouring diverting staff from their main duties, to find the detail that you have requested. I am obliged, therefore, to consider that this element of your request is also manifestly unreasonable, and to apply the exception provided by Reg. 12(4)(b);

- vi. The Department does not hold information regarding recurring expenditure in a format that would allow costs of PPE, for staff during the pandemic, to be identified without a manual search through its financial records.

As explained for the application of a Reg. 12(4)(b): manifestly unreasonable exception, above, the diversion of staff resources that would be required to identify individual purchases, in the absence of specific coding in our payments processing software for COVID-19 would place an unreasonable burden on staff. Such a manual check would clearly exceed what Parliament has considered reasonable.

I have carried out a test of the public interest in disclosure and I am not convinced that there is a sufficiently strong public interest favouring diverting staff from their main duties, to find the detail that you have requested. I am obliged, therefore, to consider that this element of your request is also manifestly unreasonable, and to apply the exception provided by Reg. 12(4)(b);

- vii. The Department does not hold information regarding recurring expenditure in a format that would allow costs of cleaning materials, specifically required

because of COVID-19 protocols, to be identified without a manual search through its financial records.

As explained for the application of a Reg. 12(4)(b): manifestly unreasonable exception, above, the diversion of staff resources that would be required to identify individual purchases, in the absence of specific coding in our payments processing software for COVID-19 would place an unreasonable burden on staff. Such a manual check would clearly exceed what Parliament has considered reasonable.

I have carried out a test of the public interest in disclosure and I am not convinced that there is a sufficiently strong public interest favouring diverting staff from their main duties, to find the detail that you have requested. I am obliged, therefore, to consider that this element of your request is also manifestly unreasonable, and to apply the exception provided by Reg. 12(4)(b);

- viii. There were no recurring signage costs incurred by any of Dfl Roads' Eastern, Northern or Western Divisions to ensure compliance with COVID-19 restrictions;
- ix. There were no recurring van divider costs incurred by any of Dfl Roads' Eastern, Northern or Western Divisions to ensure compliance with COVID-19 restrictions;
- x. There were no recurring costs incurred by any of Dfl Roads' Eastern, Northern or Western Divisions in dealing with COVID-19 investigations.
- xi. There were no recurring costs incurred by any of Dfl Roads' Eastern, Northern or Western Divisions associated with the provision of a COVID-19 Inspector/ Compliance Officer.

(c) Productivity Costs

- i. Not applicable to Dfl Roads' Northern, Eastern, and Western Divisions;
- ii. Not applicable to Dfl Roads' Northern, Eastern, and Western Divisions;
- iii. Not applicable to Dfl Roads' Northern, Eastern, and Western Divisions;
- iv. Not applicable to Dfl Roads' Northern, Eastern, and Western Divisions;
- v. Not applicable to Dfl Roads' Northern, Eastern, and Western Divisions;
- vi. Not applicable to Dfl Roads' Northern, Eastern, and Western Divisions; and
- vii. Not applicable to Dfl Roads' Northern, Eastern, and Western Divisions;

3. The Department can advise the payment in respect of this relief to these contractors was in line with the suggested COVID-19 claim percentage range as provided in the Head of Procurement memo HoP 3/21.

The Department cannot, however, disclose details of the amounts of those payments made to contractors, in compliance with the Head of Procurement memo HoP 3/21, under the COVID-19 Supplier Relief scheme.

I have examined the information that contractors have provided when applying for support under the COVID-19 Supplier Relief scheme, and have determined that it is not suitable for release.

The details provided by other contractors in this case constitutes commercially sensitive information which, being neither trivial nor in the public domain, meets the Common Law's necessary quality of confidence. The information is being withheld from disclosure to protect the legitimate economic interests of both the Department and third parties.

Disclosure of this commercially confidential information would undermine the third party's reasonable and actionable expectation of confidentiality. The information is current and placing it in the public domain would cause harm to a large number of the Department's contractor partners and would cause potentially irreparable damage to their relationships with the Department.

Disclosure would clearly allow the public, in particular economic competitors, to identify commercial rates/costs for carrying out these activities. This would have the effect of creating a competitive advantage for competitors and would clearly have an adverse effect on the commercial [bargaining] position of these contractors in future similar contract tender competitions.

Making the information available to the public would also clearly damage the Department's own legitimate economic interests. It would compromise future competitive tendering for these services, and would prevent the Department achieving the best value for money for the public purse.

The information provided has therefore been redacted under the exception provided under EIR by Regulation 12(5)(e): confidentiality of commercial or industrial information. I am satisfied that the public interest is best served by withholding this information.

4. The Department can confirm that all supporting information requested from contractors seeking COVID-19 Supplier Relief payments and all evidence supplied by contractors successfully applying for COVID-19 Supplier Relief, was in line with the guidance provided in HoP 3/21.



5. Copies of all internal correspondence, as requested, relating to the Greentown Environmental Ltd. COVID-19 Supplier Relief assessment is attached.

You will note that the attached correspondence has been redacted. The redacted information constitutes third party personal data within the meaning of the Data Protection Act 2018 (DPA). A public authority may only release third party personal data if to do so would be fair, lawful and would meet the conditions in Schedule 2, 3 or 4 of the DPA. The Department may not disclose personal information to the public in contravention of any of the data protection principles (Article 5(1) UK General Data Protection Regulation or sections 34(1) and 85(1) DPA) and must consider all consequences of disclosure in each case.

The information provided has, therefore, been redacted under the exception provided under EIR by Regulations 12(3) & 13: personal information. I am satisfied that the public interest is best served by withholding this information.

I appreciate that you may be disappointed with this response. However, I am satisfied that the Department for Infrastructure is making available all the information that the legislation requires. I am also satisfied that the public interest supports the use of the three exceptions applied in this response.

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