

Request for Internal Review (received 25 October 2022) - Reference: DFI/2022-0326

To the DFI River Agency,

Please see my attachment to your reply dated October 11, 2022, regarding a request for an internal review.

While you have continued to not address issues that I have raised regarding your unprofessional treatment of the general public in carrying out your duties to provide evidence to simple requests, it will not deter me to drop the requests that you are legally required to respond to.

By continuing to draw out and not addressing a major issue of speaking to witnesses regarding the false assumptions by the DFI River Agency Director and the Ombudsman office, [a named individual] has passed away but his wife and sons will provide evidence to highlight the mistakes by both organizations.

If you are going to stand by the report on May 1, 2018 by[a named individual], you need to provide evidence to collaborate the statements in the official report.

Attachment to the above

Thank you for your reply on October 11, 2022. I have been away in the USA on holiday and decided I would not waste my time replying until I returned back to Northern Ireland to review your replies and attachments.

If you are going to carry out an internal review, I would like the following to occur:

- Address the request in the email on May 24, 2018 requesting evidence to prove that [a named individual] carried out a full inspection of the watercourse on my property and the property of [named address] Ballykeel Road.
- Due to the release of the report by the DFI River Agency that has several points without any evidence and all the associated documents related to the correction of the blocked watercourse on my property, I would like detail replies and supporting evidence on the points I have requested as stated below.
- I would like the internal review to include a visit to [named address] Ballykeel Road to review the issues I have asked for evidence to support the DFI River Agency's position that the report is 100% correct.
- Have an interview with [2 named individuals] regarding the building of the bridge that the River Agency stated was due to horses trampling in the watercourse, which was not true.

- Review the video that I provided and explain how the water can be running in TWO different directions without occurring due to the blockage of the watercourse in the field of [named address] Ballykeel Road due to the bridge that [a named individual] did not know about until August 2018, when I highlighted it to him as it was not mentioned in his May 1, 2018 report but he included comments without supporting documentation by [a named individual] in his report, including photos without dates to relate to the problem on March 14, 2018 regarding the watercourse blockage.
- Explain how the EIR Request can have a title that does not refer to the correction of the watercourse, but states that the DFI River Agency has information about flooding due to my septic tank.

It is unfortunate that the DFI River Agency could have addressed this issues that I raised back in May , 2018 to correct the report by your engineer that conjectures and not facts were not corrected as all of the directors in the department made excuses to support the report without ever providing evidence to support the claims in the report due to interviews with [a named individual & address] Ballykeel Road and 2 photos what have no date stamp to support when the photos were taken.

I have only asked for 2 things:

- Provide evidence to support the claims in the report
- Provide evidence to prove that [a named individual] carried out the full inspection of the watercourse that Mr Alistair Payne (Area Engineer) stated he had seen at the meeting at my house on August 18, 2022 that was conveniently left out of the notes of the meeting.

I do not understand why your department does not seem to communicate with each other regarding the issues I have with the DFI Rivers Agency and the unacceptable actions they have taken since 2018. I can see that you think that if you bombard the General Public with an overload of material that they will get frustrated and drop any inquiries related to unacceptable practices by your department. I did not need the 27 page copy of the Revision of "Drainage (Northern Ireland) Order 1973 - Guidelines to Area Staff - Schedule 5 & 6" but it highlights issues that were overlooked by [a named individual] and all of the directors, included the Director of the River Agency, Deidre Mackle in 2018.

There was never an issue to address the problem with the watercourse diversion as I reported the problem and provided videos and photos related to the problem that occurred on March 14, 2018 and there had been no problems with the watercourse on my property since I purchased it in 1999. That means the watercourse was working fine up until this major rainstorm and the blockage of the pipe associated with the watercourse on my

property. In his report, he kept stating that I had diverted the watercourse near my septic tank, which is not true and [a named individual] stated that to him on April 4, 2018. The insurance contractor, Auger also stated that he felt the blockage was due to tree roots and he ignored that also and did not even request a final copy of the Auger report on their visits to my property. Very unprofessional to not request information to support the official report, but to include comments from [a named individual and address on the] Ballykeel Road without supporting evidence.

A professional department and organization will admit mistakes and move to correct the actions.

I have been requesting answers to problems I had with a report by [a named individual] dated May 1, 2018 and the request for clarification was made in writing on May 24, 2018 and to date, I have not received a reply to support comments in the report without evidence. The Ombudsman's Office was called to address my complaints and they RUBBER STAMPED everything that was done without requesting your department to provide evidence and proof to support comments in the OFFICIAL REPORT. This is why I asked for the policies, guidelines, etc.

There are only 2 main issues that I have with the River Agency.

- Provide the evidence stated in the report by [a named individual] that I have been asking for since May 24, 2018 and on the meeting at my house with the DFI River Agency on August 18, 2022 at 2 pm, Mr Alistair Payne made a statement that he had seen proof that [a named individual] had carried out a full watercourse inspection and it was conveniently excluded in the notes as I asked him to provide the evidence. Note that there were witnesses at the meeting to confirm that I asked for proof:
 - Location: [a named individual's] residence
 - Attendee's:
 - Mr Alistair Payne (Area Engineer)
 - [a named individual] (Note taker)
 - [a named individual] (Land Owner)
 - [a named individual] (Land Owner)
 - Mr James Tinsley (Alderman)
 - [a named individual] - (Neighbour)

Unfortunately, [a named individual] passed away on October 15, 2022. But [named individuals] stated to me on October 19, 2022 that they saw [a named individual] build the bridge to allow the horses to move between the two fields so that they could graze on the field owned by Sam G Jones and Son Building Supplies.

[A named individual] and her son stated they are open to speak to the DFI River Agency to correct the excuse used by the Deidre Mackle, the Director of the River Agency and RUBBER-STAMPED by the Ombudsman's office back in 2018 and 2019. Note the reply below by Deidre Mackle on February 6, 2019 about horses trampling the river bank, which was not the case and was used as the excuse but it did not answer the question as to why nothing was in the report by [a named individual] regarding the construction that blocked and diverted the water traveling down the watercourse:

- You have asked for “proof of the dated document that shows approval has been given to your neighbour to modify the watercourse”. In my letter of 10 January 2019, I acknowledged that within your neighbour's property there is an area where the invert level of the watercourse has been raised. This appeared to be as a result of horses trampling the river bank, which is experienced on many farms throughout Northern Ireland. DfI Rivers does not consider that under the terms of the Drainage (NI) Order 1973 the raised invert level is a significant enough change to necessitate enforcement action as there are no impacts on property other than that of your neighbour. Therefore, DfI Rivers has no plan
- The following is included in [a named individual's] report and I have yet to see the SO-CALLED FOOTAGE that he said he saw as it is not in the EIR DUMPAGE of information.
 - This first site meeting showed that the field behind [an address on] Ballykeel Road was extremely waterlogged. I also saw footage of this property's horse paddock flooded in around 18 - 24 inches of water.
- He included 2 photos given to him by [a named individual at an address on] Ballykeel Road without out any date stamp to prove this occurred on March 14, 2018 and I have been requesting this information
- In his report, he made references to my septic tank as causing flooding issues with my neighbour's property based on a discussion with my neighbour
- There are other issues at this property regarding the septic tank and its operation, which are outside the remit of the Department.

Then, I found out that my neighbour requested a EIR Request and this is that your office did.

EIR Request (received 05 October 2020) - Reference: DFI/2020-0272 Could you please forward me all records on the flooding we had due to the septic tank at a named address on Ballykeel Road, Hillsborough, overflowing into ourselves? After some thought we have now made the decision that we will file a claim for damages and I would like to forward these to loss adjuster.

Response (issued 02 November 2020) Thank you for your email of 5 October 2020, requesting under the Environmental Information Regulations, information DfI Rivers holds in relation to a septic tank overflowing into your property. I CAN CONFIRM THAT DFI RIVERS HOLDS THE ATTACHED INFORMATION RELATED TO YOUR REQUEST.

The underline reply from your office is NOT TRUE as you only had information related to correcting a problems under the Schedule 6 Application to address a problem with the watercourse blockage on my property and it had nothing to do with MY SEPTIC TANK.

The title is put on the web for anyone to see. The concern I have is that any request from the general public or a specific person should have a title related to what data is released, and not the title of what an individual is insinuating as a problem.

Instead of Addressing the issue correctly and removing the description completely and stating that you only have information related to the correction of a blocked or diverted watercourse, you send me the following, which is an insult.

Dear [named individual]

Thank you for your email of 26 August 2022.

The wording describing the EIR requests on our website is designed, as much as possible, to reflect the actual question(s) posed by the requester.

However, on this occasion we have amended the descriptor to read "EIR request for copies of all records held regarding flooding, allegedly due to a septic tank overflow, on the Ballykeel Road, Newtownstewart, Hillsborough"...

Regarding your comments suggesting an internal review, it is obvious that your internal reviews are going to be a process to document that you have tried to be fair as ALL of your replies to my request for evidence to support [a named individual's] report is to give me additional ENGLISH REPORT reading with numerous adjectives about how the report is excellent and has no problems. You have yet to provide evidence to address any of the incorrect points in the report.

Now, you are telling me I have 2 months to submit a request for an internal review and I have been waiting for over 5 years for you to provide answers to the points in the report with evidence.

The reason a requested the August 18, 2022 meeting to be held at [an address on] Ballykeel Road instead of at the DFI River Agency's Office and to invite Emmy Little Pengelly and she sent Mr James Tinsley (Alderman) was to discuss the issues at the [address on] Ballykeel Road with witnesses.

So, lets see what excuses you have this time that is wasting my time as well as yours, when a simple acknowledgement that the report has mistakes and will be corrected.

DfI IMU seeking confirmation of Internal Review request - 01 November 2022

I am writing to confirm that you are seeking an internal review into the handling of your recent request for information, made to the Department for Infrastructure, regarding the policies/procedures involved in disclosing reports to the public (DFI/2022-0326).

I must stress that an internal review can only relate to the handling of the request for recorded information, and will not have any role regarding wider complaints or any other issues raised in the correspondence.

Can you let me know if you are seeking an internal review of the handling of DFI/2022-0326 or making a complaint?

Confirmation of Internal Review request - 01 November 2022

I am asking for an internal review as well as a complaint.

Thank you for your reply but as usual, your department continues to pretend that you cannot understand a simple request regarding the policies/procedures involved in disclosing reports to the public (DFI/2022-0326).

I have continued to ask for details and policies and guidelines for creating official reports and releasing the reports to the public, when requests have been made to provide evidence to support the statements in the report.

A simple request to DFI Rivers to provide evidence to support statements in an official report that was written on May 1, 2018 and I requested clarification or corrections or proof to the statements on May 24, 2018 and up to now and all I have gotten is excuses and finally a statement that [a named DfI Rivers individual] had an interview with my neighbour and included points from his interview without any supporting evidence.

Your department then releases all documents due to a EIR Request that had a title that your department stated they had, which was not correct...

See timeline below again:

TIMELINE OF ISSUES

- On May 1, 2018, a report was written by [a named individual] of the DFI River Agency with several errors that did not have evidence to support the claims
- On May 24, I sent an email questioning several points in the report and never received to date answers to the errors in the report
- Due to the DFI River Agency not addressing the issues, I raised the complaint to the Ombudsman's Office in 2018 and your office accepted every excuse from the DFI River Agency and did not contact anyone to collaborate on whether my complaints were correct.
- Your department never asked for detailed evidence to support the points in the report that I felt were questionable and stated to me that the next step was a Judicial Review against the Ombudsman's Office.
- In March 2022, I received a letter with accusations from [an address on the] Ballykeel Road that referred to points in the May 1, 2018 report and they were going to take me to court and they referenced the errors in the report as the reasons for their false claims they were going to make.
- In March 2022, I contacted the DFI River Agency and asked how the Official incorrect report was obtained by [a named address on the] Ballykeel Road.
- After several emails, the DFI River Agency stated that [a named address on the] Ballykeel Road submitted EIR Request EIR Request (received 05 October 2020) - Reference: DFI/2020-0272. Note that I did not know about this until around June, 2022.
- The following is the reply to the EIR Request:
 - Response (issued 02 November 2020) Thank you for your email of 5 October 2020, requesting under the Environmental Information Regulations, information DfI Rivers holds in relation to a septic tank overflowing into your property. I can confirm that DfI Rivers holds the attached information related to your request
- The EIR Request DFI/2020-0272 allowed every document related to the Schedule 6 Application to correct a diverted watercourse to be released on the web, including the May 1, 2018 error infested report, which still included several errors.

- Due to the fact that I did not become aware of the incorrect report being released to the general public and the DFI River Agency continued to defend the error-prone report, I contacted the Ombudsman's Office as I felt they would not accept a government agency generating a report with potential errors and not provide evidence to support the report.
- The Ombudsman's Office has used the excuse that they cannot get involved in civil matters when my request is for them to request correction of the report or provide evidence to support all points of the report.

I still want to know what are the guidelines to ensure that information in an official report has proof and evidence to support the statements.

Maybe you need to look at the BBC Editorial guidelines to ensure you can defend the points in the report.

Just for your information, I have informed the U S Consulate on your actions and they have stated the following:

Response (issued 30 November 2022)

You wrote to me on 25 October 2022, and again on 01 November 2022, requesting an internal review of the handling of your Environmental Information Regulations 2004 (EIR) request for copies of DfI Rivers Engineering Section's rules, guidelines, procedures and policies in relation to submitting and releasing an official report. Your requests were received in the Department on 12 September 2022 and 27 September 2022 and a response issued on 11 October, from Mr. Shaun Donnelly (reference DFI/2022-0326).

As Head of Information Management, my role in carrying out an 'Internal Review' following a complaint or 'appeal', is pursuant to the Secretary of State for Constitutional Affairs' Code of Practice [which now comes under the responsibility of the Secretary of State for the Department of Justice] on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000 and, by extension, the Environmental Information Regulations. Section 39 of the Code of Practice requires "a fair and thorough review of the handling issues and of decisions taken pursuant to the [Freedom of Information] Act, including decisions taken about where the public interest lies in respect of exempt information." Under the Environmental Information Regulations, this review of the handling of your request for information is a "reconsideration", a public authority obligation contained within Regulation 11 (Representations and Reconsideration). I have no role or locus with

regards to any issues arising out of the substance of any information sought or the resolution of complaints, which may be the subject matter of the information.

Disclosure Log on Dfl website

Before turning to the handling of your request, I will refer, briefly to your complaint about the Department's publication of a previous request for information, DFI/2020-0272, about flooding on the Ballykeel Road. Although outside the timescales for an Internal Review, I would like to address the issues you have raised.

You objected to the wording of the request, as published, and also the phrase used in the response: "*I can confirm that Dfl Rivers holds the attached information related to your request*".

The Department published this request and response, as it does for all FOI/EIR requests it receives and processes via its Disclosure Log, a part of the Dfl Publication Scheme, which is a requirement under s19 of the Freedom of Information Act. Staff in Dfl Information Management Unit are responsible for preparing material for inclusion in the Disclosure Log.

In keeping with other public authorities' Disclosure Logs, the title of each request is based closely upon the question asked, to make it easier for the public to determine what information is being sought and disclosed. You have objected to the wording of the question being included in the description for publication in the Disclosure Log, and the Department has amended this to make clear that the reference to the source of flooding was an allegation made by the requester.

In the response, Dfl Rivers had stated that it held information related to the request. This is because, under both FOI and EIR, public authorities are obliged, other than in exceptional circumstances, to state whether information is held or not. As the request related to flooding issues, notwithstanding the alleged cause, the Department clearly held information relating to the flooding at the location.

Even if the information held by the Department confirmed a completely different cause of any flooding, or even if there was no flooding at all, the Department held information relating to that circumstance. Nothing in the wording of the response letter is an acceptance that flooding was caused for the reason the requester alleged. I am satisfied that the publication of that request and response in the Department's Disclosure Log, having amended the wording in the description, is appropriate.

Internal Review

I have examined the information relating to your request and completed my review. I can now inform you that, having reviewed the handling of your request, the Department did fulfil

its obligation under the Environmental Information Regulations 2004. I would like to take this opportunity to explain my decision.

An Internal Review, as outlined in Annex A, relates only to the handling of the request for information, it has nothing to do with wider complaints that you may have.

In this case, you had asked for a copy of:

the rules, guidelines, procedures and policies related to submitting and releasing an official report from your engineering section of the River Agency.

In his response, Mr. Donnelly provided you with a copy of the following guidance document: Technical Guidance Note (TGN) 14 Revision of "Drainage (Northern Ireland) Order 1973 - Guidelines to Area Staff - Schedule 5 & 6". This is DfI Rivers' only guidance for staff involved in carrying out site visits to investigate alleged flooding and has been disclosed to you in full.

For many of DfI Rivers' engineering activities there will be limited, directive, guidance, with the Department generally relying upon the technical abilities and experience of its engineering staff, including in the mentoring of new staff members. It is unsurprising, therefore, that there was only the one guidance document to disclose.

With reference to releasing official reports to the public, I would like to stress that DfI Rivers, in common with the wider Department, is guided by the principles underpinning Freedom of Information legislation. This legislation requires that public authorities make as much information available as possible in response to requests made for that information. There is always a presumption in favour of disclosure. Information may only be withheld where that is in the public interest and an FOI exemption or EIR exception applies.

I hope you find this helpful.