

EIR Request (received 28 October 2022) - Reference: DFI/2022-0369

I am requesting copies of all the information held by the Department for Infrastructure pertaining to the Ministers recent decision to hold a public inquiry in relation to planning application LA02/2017/0594/F for construction of a wind farm including, All internal emails, correspondence or records of conversations and minutes of any meetings within the Department for Infrastructure relating to the case/application including those between departmental officers, the Minister, other Departments and SpAd's (as referred to in the Ministers decision).

All new emails, correspondence or records of conversations or minutes of meetings with external stakeholders and politicians including MPs and local councillors relating to this application from 28/10/21 to the present (that were not included in my previous FOI request in March). In addition, a copy of the letter to the PAC is also requested.

Response (issued 28 November 2022)

Thank you for your email of 28 October 2022 requesting, under the Freedom of Information (FOI) Act/Environmental Information Regulations 2004 as appropriate the following:

requesting copies of all the information held by the Department for Infrastructure pertaining to the Ministers recent decision to hold a public inquiry in relation to planning application LA02/2017/0594/F for construction of a wind farm including, All internal emails, correspondence or records of conversations and minutes of any meetings within the Department for Infrastructure relating to the case/application including those between departmental officers, the Minister, other Departments and SpAd's (as referred to in the Ministers decision).

All new emails, correspondence or records of conversations or minutes of meetings with external stakeholders and politicians including MPs and local councillors relating to this application from 28/10/21 to the present (that were not included in my previous FOI request in March). In addition, a copy of the letter to the PAC is also requested.

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, as opposed to the FOI Act 2000. Section 39 of the Freedom of Information Act specifically excludes from consideration under that Act requests for what is deemed to be

environmental information. EIR gives rights of public access environmental information held by public authorities.

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/>.

You may be aware that the DfI Planning Group has for a considerable period of time made planning applications available to be viewed online. The system, the Planning Portal, may be accessed at: <http://epicpublic.planningni.gov.uk/publicaccess> and the applications can be viewed by entering planning reference LA02/2017/0549/F. The letter to the Planning Appeals Commission (PAC) which you requested can be found at this location.

As EIR relates to public rights of access to information, I must consider whether information is suitable for release to the world at large, and not solely to the applicant. I have examined the information you requested and carried out a public interest test to determine whether this information is suitable for release to the public.

Following consideration of the public interest in this case, I can confirm that the information held relevant to your request, that is suitable for disclosure to the public, is already in the public domain following earlier EIR requests, under references DFI/2022-0098, DFI/2022-0116 and DFI/2022-0319. This information can be accessed via the following webpage links:

[DFI/2022-0098 - EIR Request for copies of records held about the call-in the proposed Carnalbanagh Wind Farm application \(LA02/2017/0594/F\), including: 1\) decision document & any supporting report; 2\) any recommendation documents; etc. | Department for Infrastructure \(infrastructure-ni.gov.uk\)](#)

[DFI/2022-0116 - EIR Request for copies of meeting minutes, consultations with Natural Environment Division & reports informing DfI's decision to issue a s29 referral Direction to Mid & East Antrim Borough Council for the proposed Carnalbanagh Wind Farm. | Department for Infrastructure \(infrastructure-ni.gov.uk\)](#)

[DFI/2022-0319 - EIR Request for copies of all documents held by the Department related to Planning Application LA02/2017/0594/F, Carnalbanagh Wind Farm, for the period from 16 March 2022 to 27 September 2022. | Department for Infrastructure \(infrastructure-ni.gov.uk\)](#)

Some information was not suitable for release. It is not available via the links above or some of the information was considered as not suitable for release and the records have been redacted.

- (1) 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 Regulation 12(3) & 13: personal information. I am satisfied that the public interest is best served by withholding this information.

- (2) The requested information relates to discussions between officials and DSO or to ongoing legal proceedings.

Release of this material, at this stage, would undermine (in the terms of the legislation) the course of justice in that it would damage the legal professional privilege enjoyed in the relationship between the Department and its legal officers. Release is likely to have a negative effect, and would hamper the provision of legal advice to the Department. The Upper Tribunal has ruled (GIA/2545/2011) that it is relevant to consider the adverse effect upon legal professional privilege, etc., generally, not simply the context of the individual request.

The information has therefore been withheld under the exception provided under EIR by Regulation 12(5)(b). I am satisfied that the public interest is best served by withholding this information.

- (3) The information requested includes records relating to the Department's internal decision-making processes associated with a scheme that is still "live". Effective government requires a safe space for the formulation and implementation of policies; with officials allowed to provide advice and suggestions freely, without the "chilling effect" of potential disclosure of all records.

The information has therefore been withheld under the exception provided under EIR by Regulation 12(4)(e). I am satisfied that the public interest is best served by withholding this information.

- (4) Draft documents will engage the exception under 12(4)(b) because a draft of a document is by its nature an unfinished form of that document. Furthermore, the Information Tribunal has found that a draft version of a document is still an unfinished document, even if the final version of the document has been published. Releasing

incomplete or unfinished material into the public domain may distract public debate away from the substantive environmental issues that the information relates to. Debate could focus on secondary issues such a difference between a draft and a finished document. Additionally, the final version of the documents have since been published and indeed released already.

The information has therefore been withheld under the exception provided under EIR by Regulation 12(4)(b). I am satisfied that the public interest is best served by withholding this information.

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