

Public Interest Test – EIR

Reference Number – DAERA/24-230

Requested Information

Various information relating to the handling of the Abstraction applications AIL 2024/0003 and AIL 2024/0004.

Exemption / Exception under consideration

- Exemption 12(4)(e) has been engaged as some of your request relates to internal communications.
- Exemption Regulation 12(5)(b) has also been engaged as you have requested information which is legal professional privilege (LPP).

Reasons why the public interest would favour disclosure:

- Open and transparent decision making.
- Provide clarity on the reasoning for the approach taken by the Department.

Reasons why the public interest would favour withholding:

- Disclosure of information which is legal professional privilege would adversely affect legal and appeal proceedings. LPP protects the advice given by a lawyer to a client and confidential communications between them about that advice.
- There is a need to ensure that communications between the Department and their legal adviser will be treated in confidence and not revealed.
- The internal communications relate to the LPP in drafting the advice for the Minister.
- The Department must be allowed a safe space to consider the advice given.

Conclusion

Following consideration of the Public Interest Test the Department has decided to release the briefing document to the Minister providing advice on the direction to the Appeals Commission. However the Department has decided to withhold all other information on the basis that it is legal professional privilege and includes internal communications relating to the information which is LPP.

Water Regulation, NIEA

LAWFULNESS, FAIRNESS AND TRANSPARENCY TEST

DAERA/24-230 - Environmental Information Regulations 2004 (EIR)

Request Details: Various Documents in relation to the handling of Abstraction and Impoundment applications AIL 2024/0003 and AIL 2024/0004

Various documents to be released contains names of officials which is considered personal information.

LAWFULNESS

Please identify the lawful basis for processing

Personal data is processed when it is lawfully disclosed in response to an FOI / EIR request.

The lawful basis for processing are set out in Article 6 of the GDPR and the ICO expects at least one of two lawful bases (Consent / Legitimate Interest) to apply before the personal data held can be disclosed.

- Consent:** This will apply when the data subject(s) clear consent exists that allows you to disclose the personal data falling within the scope of this request.
- Legitimate interests:** the processing is necessary for the Department's legitimate interests or the legitimate interests of a third party that overrides the data subject(s) rights and freedoms, particularly their right to privacy.

Consideration of Legitimate Interests

1. PURPOSE

As the disclosure of personal data under FOIA or EIR is a disclosure to the world at large, doing so on the strength of a requester's private interests alone could constitute a disproportionate and unwarranted level of interference with the data subject(s) rights and freedoms, particularly their right to privacy and family life under the Human Rights Act 1998.

2. NECESSITY

The right of access under FOI or EIR does not in itself constitute a **pressing social need**.

The Department has considered and not identified any such need for the data subject's right to privacy to be interfered with.

CONCLUSION

Having considered all of the information contained within this test, the Department has established that, on balance, there is no lawful basis for the disclosure of third party personal data falling within the scope of the request of which the requester is not the data subject.

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