Public Interest Test

Introduction

The public interest test (PIT) enables decisions to be made on a case-by-case basis on where the balance between disclosing or withholding information lies.

It must be used when considering whether or not information should be withheld under an FOI qualified exemption or any exceptions of the EIRs. The provision of the PIT recognises that, although a particular interest may sometimes be harmed by disclosure (and is therefore protected by an exemption or exception), when other, broader, factors are taken into consideration, the greater public interest is served by release.

The underlying assumption is that information can be released unless the public interest in withholding it can be shown to be greater than the public interest in release.

Useful information

When can we refuse a request for information? FOI exemptions

When can we refuse a request for environmental information? EIR exceptions

DAERA Intranet guidance

Prejudice test – ICO guidance

Public Interest test - ICO guidance

Public Interest Test – FOI

Reference Number – DAERA/26-387

Requested Information

‘Please provide copies of any NIEA policies, guidance, procedures, operational instructions, or decision-making frameworks governing enforcement action under the Waste and Contaminated Land (Northern Ireland) Order 1997.

In particular, I am seeking information relating to:
1.) The escalation of enforcement action following non-compliance with an abatement notice or remediation notice.
2.) he enforcement options available to NIEA following a successful prosecution for offences under the Waste and Contaminated Land (Northern Ireland) Order 1997.
3.) Any guidance relating to further enforcement action, monitoring, site inspections, remediation requirements, or case closure where waste remains present following prosecution.
4.) Any enforcement hierarchy, workflow, or decision-making process used by NIEA officers when determining what action should be taken after non-compliance with a notice or following prosecution’

Exemption under consideration

31.—(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice -

(a) the prevention or detection of crime,

(b) the apprehension or prosecution of offenders,

Reasons why the public interest would favour disclosure:

- The Department’s default position is to disclose information held unless an absolute exemption applies.
- Openness and transparency in the delivery of the Department’s operations regarding Its investigations and any subsequent follow up actions.
- The Public need to have confidence in the Department to carry out its duty and investigate any reported allegations of wrongdoing in keeping with the Departments internal and external policies.
- The information may demonstrate publicly that investigations have, or have not, been carried out properly.

Reasons why the public interest would favour withholding

- Any information the Department releases should be seen to be released to the world at large. This should then be seen to be released to possible offenders and those who would be determined to conduct actions that would be considered offences against legislation specifically written to penalise those offences. The policies and guidance to officers, in other words, the ‘Methodology’ in place for authorised officers to detect or prevent the crimes being committed by offenders, if released, would guide/help the offenders to change their actions to other actions that may then not be able to be detected (or if detected not attributed to the offender).
- The disclosure of investigators Methodology has the potential to increase the rate of waste crime in Northern Ireland and this can have an impact on both the individuals ‘hurt’ and impacted and by the crime itself and society as a whole in terms of reduced tax receipts, harmful visual impacts and pollution of the Environment.

Conclusion

Following consideration of the Public Interest Test the Department has decided that on balance, the public interest in maintaining the exemption outweighs the public interest in disclosing the information due to the effects any disclosure would have on the application of a fair trial if the investigation proceeded to such an outcome.

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