

Public Interest Test – EIR

Reference Number – DAERA/ 26-594

Requested Information

Part 5

Copies of any internal briefing notes, memos, or email correspondence prepared for the Minister or the DAERA Permanent Secretary between January 1, 2025, and the date of this request, specifically discussing the legal risks or environmental impacts of maintaining the current nitrates derogation regime (including discussions relating to the ongoing High Court judicial review, *Conlon v DAERA*).

For Part 5 (*above*), I am seeking the factual and statistical background data contained within these briefings regarding the environmental impact of derogations. If you intend to withhold policy advice or legal advice, I request that all factual and scientific environmental data upon which that advice is based be extracted and provided, as this generally falls outside the scope of these exemptions.

Exemption / Exception under consideration

Regulation 12(5)(b) – The course of justice and inquiries exception

Regulation 12(4)(e) – internal communications

Reasons why the public interest would favour disclosure:

- Releasing information would aid accountability and transparency regarding government policy development and decision making.
- DAERA is committed to conducting its business in a manner that is as open and transparent as possible.
- Regulations 12(5)(b) & 12(4) require DAERA to apply a presumption in favour of disclosure.

Reasons why the public interest would favour withholding:

- Documents withheld include legal advice on a matter which is currently the subject of legal proceedings.
It would not be appropriate for information contained in the documentation relating to an ongoing legal case to be put in the public domain.
- The documents solely relate to the existing policy intention, procedures and legal advice. The documents do not contain factual and statistical background data regarding the environmental impact of derogations. They are intended to give the Minister a wider context to inform decisions.

- The relevant policies are under review, and revision. It is in the public interest to prevent disclosures which would undermine the integrity of this process and result in less robust, well-considered or effective policies. There remains a need of a safe space to consider policy options internally within government.
- As the policy process is live, disclosure of information has the possibility to inhibit the future exchange of free and frank discussions. Releasing this would lead to poorer decision making in the future.
- Information relating to the implementation of the existing Nutrients Action Programme are already in the public domain as part of Consultation on the revised Nutrients Action Programme.
- Ministerial briefing and information provided in the documentation is intended for internal Department use only.

Conclusion

Following consideration of the Public Interest Test the Department has decided that on balance the public interest in maintaining the exception outweighs the public interest in disclosure.

Documents withheld include legal advice on a matter which is currently the subject of legal proceedings and it is therefore not appropriate to disclose them.

The documents do not contain factual and statistical background data regarding the environmental impact of derogations. Therefore, there is no such information within them, which may fall outside the scope of the relevant exceptions, to disclose.

Officials should be able to fully brief Ministers on relevant issues and should not feel inhibited because of the possibility of the disclosures of such advice between Officials and their Minister. It would also affect the “protected environment” under which legal advice is sought and provided.

