

EIR Request (received 16 June 2025) - Reference: DFI/2025-0268

This is a formal request for information under the Environmental Information Regulations 2004 (EIR) and the Freedom of Information Act 2000 (FOIA).

I request disclosure of any and all legal advice, whether internal or external, held by the Department for Infrastructure since 1 January 2011, which relates to:

The commencement (or failure to commence) Schedule 3 (Review of Old Mineral Permissions) of the Planning Act (Northern Ireland) 2011.

The Department's legal duties, risks, obligations, or statutory discretion concerning the non-implementation of ROMPs.

Any advice, memoranda, legal correspondence, or instructions from or to the Departmental Solicitor's Office (DSO), Counsel, or the Office of the Attorney General for Northern Ireland concerning Schedule 3 or mineral permission modernisation.

For avoidance of doubt, this request covers draft legal advice, final advice, legal briefing notes, and legal risk assessments.

If any information is withheld under legal professional privilege, I request that you provide:

The date of the advice.

The parties involved.

The subject matter/title.

A schedule of documents withheld.

I remind the Department of its obligations under Regulation 12(1)(b), 12(4)(d) and the public interest tests that apply under EIR, particularly concerning environmental governance and accountability

Response (issued 11 July 2025)

Thank you for your correspondence dated 16 June 2025 and I note your 3 requests for information, made under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, on matters relating to the Review of Mineral Permissions (ROMPS). The references for these requests are DFI/2025-0268, DFI/2025-0269 and DFI/2025-0270.

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: [Guide to the Environmental Information Regulations](#).

In response to your 3 requests for information, I can confirm that the Department for Infrastructure does hold information related to your requests. 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. There is no provision for privileged access to information, it may either be released to the World at large, or it must be withheld. Any information provided in response to an information request (either FOI or EIR) is considered to have been placed in the public domain.

As your correspondence included 3 closely related information requests, I thought it appropriate to respond to all 3 matters in a single response. My response to each of these requests, in order, are as follows.

You have requested the following information on legal advice for ROMPs, *“disclosure of any and all legal advice, whether internal or external, held by the Department for Infrastructure since 1 January 2011, which relates to:*

- *The commencement (or failure to commence) Schedule 3 (Review of Old Mineral Permissions) of the Planning Act (Northern Ireland) 2011.*
- *The Department’s legal duties, risks, obligations, or statutory discretion concerning the non-implementation of ROMPs.*
- *Any advice, memoranda, legal correspondence, or instructions from or to the Departmental Solicitor’s Office (DSO), Counsel, or the Office of the Attorney General for Northern Ireland concerning Schedule 3 or mineral permission modernisation.*
- *For avoidance of doubt, this request covers draft legal advice, final advice, legal briefing notes, and legal risk assessments.*
- *If any information is withheld under legal professional privilege, I request that you provide:*
- *The date of the advice.*

- *The parties involved.*
- *The subject matter/title.*
- *A schedule of documents withheld”.*

I can advise that the Department has sought legal advice on the commencement of ROMPs, that advice set out a number of legislative risks involved in commencing ROMPs in its current form. In order to bring legal certainty to implementing ROMPs it would be necessary to amend both primary and secondary legislation. The Department is not in a position to release documentation relating to this advice as it is a legal matter and proposals are still at a policy development stage. The exceptions on the release of information are based on Regulation 12(4)(d) material in the course of completion, unfinished documents & incomplete data, Regulation 12(4)(e) internal communications and Regulation 12(5)(b) the course of justice and inquiries.

I am satisfied that the public interest supports withholding this information by protecting internal deliberation during the normal drafting process. Whilst there is always a public interest in disclosure of environmental information, to ensure that the public is better informed and to increase transparency in decision-making, the legislation recognises that there will be times where it is necessary to allow public authorities a protection for formal proceedings. It is essential for public authorities to be able to engage in free and frank internal discussions for which there is a reasonable expectation of confidentiality. It would not be appropriate, at this stage, to make public drafts, and clearly incomplete, information in response to your EIR request.

Discussions within the Department about legal advice will also be protected because to disclose them would place in the public domain the contents of the confidential communications between lawyer and client.

Release of legal advice would clearly have a negative effect on the Department's ability to effectively access legal advice in the future, as the effect of disclosure would undermine the provision of frank legal advice by DSO to the Department.

As a result, I am obliged to conclude that the nature of the information, being at a policy development stage, with no decision yet taken on the most appropriate way forward in the matter of commencing ROMPs, which is contained within the correspondence with DSO means that the public interest in favour of non-disclosure clearly outweighs the general public interest in favour of greater openness and transparency at this time.

Application of exceptions

In addressing your information request, the Department relied upon exceptions from the general public right of access to environmental information provided under the Environmental

Information Regulations. The exceptions were Regulation 12(4)(d): material in the course of completion, unfinished documents & incomplete data; Regulation 12(4)(e): internal communications and Regulation 12(5)(d) the course of justice and inquiries.

The decision to withhold information under the exceptions listed above was clearly linked to provide a safe space within which DfI officials could create and collate records that would form the basis of policy development regards the procedures required to implement ROMPS in an appropriate and effective manner. While some of the material fell within the scope of your request, the process of internal discussion and information gathering was incomplete.

Timing of the request

It is important to stress that, where information requests are processed under the EIR, the timing of a request will often be a significant determining factor in any decisions on disclosure. The legislation assumes that the passage of time will have a major influence on the public interest considerations that must be weighed up when deciding what information may or may not be disclosed. As a result, information that is withheld in response to a request may well be disclosed if precisely the same request is made at a later date.

I and my colleagues would be happy to meet with you to discuss this matter at a date of your convenience. Should you wish to avail of a meeting, please contact my Personal Secretary at Julie.Maroadi@infrastructure-ni.gov.uk to make the necessary arrangements.

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