

Internal Review Request (received 25 June 2025) - Reference: DFI/2025-0225

I acknowledge receipt of the attached response from Public Transport Operations, Department for Infrastructure. I should like to request an internal review by the Head of the Information Management Unit.

The cause of my dissatisfaction is quite simple. The refusal to disclose the information I requested is based on the assumption that details about Irish signage at Grand Central Station come under the Environmental Information Regulations 2004. They do not.

Therefore all the defence you have mounted in denying disclosure is invalid. I would direct you to the definition, on the Information Commission website, of what does come under the EIR Regulations at <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/#eir2>.

Irish signage does not come under any of these headings. As I see that since my original request you have mounted the EIR defence in response to similar questions, I can assume that your position is entrenched. It should therefore be possible to carry out a review very quickly so that I can refer the matter to the Information Commissioner.

Response (issued 18 July 2025)

You wrote to me on 25 June 2025 requesting an internal review of the handling of your Environmental Information Regulations 2004 (EIR) request for information regarding correspondence about the installation of Irish language signage at Belfast Grand Central Station, received in the Department on 26 May 2025. You received a response to your request on 25 June 2025, from Peter Rice, Director of Public Transport Operations, under reference DFI/2025-0225.

As Head of DfI Information Management Unit, my role in carrying out an 'Internal Review' following a complaint or 'appeal', is pursuant to the Secretary of State for Constitutional Affairs' Code of Practice [which now comes under the responsibility of the Secretary of State for the Department of Justice] on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000 and, by extension, the Environmental Information Regulations. Section 39 of the Code of Practice requires "a fair and thorough review of the handling issues and of decisions taken pursuant to the [Freedom of Information] Act, including decisions taken about where the public interest lies in respect of exempt information." Under the Environmental Information Regulations, this review of the handling

of your request for information is a “reconsideration”, a public authority obligation contained within Regulation 11 (Representations and Reconsideration). I have no role or locus with regards to any issues arising out of the substance of any information sought or the resolution of complaints, which may be the subject matter of the information.

I have examined the information relating to your request and completed my review. I can now inform you that, having reviewed the handling of your request, the Department did fulfil its obligation under the Environmental Information Regulations 2004. I would like to take this opportunity to explain my decision.

In your request for this internal review you have made clear that your objection is to the Department’s decision to process your request under the Environmental Information Regulations, rather than the Freedom of Information Act 2000. While I will address this issue, I will also provide some additional context regarding the Department’s application of the Reg. 12(5)(b) exception to withhold information.

Use of the Environmental Information Regulations

You confidently assert in your internal review request that, if, as you suggest, the correct legislation to be employed in handling your request was FOI, that that alone would invalidate the Department’s decision to withhold the information that you had requested. I do not share your understanding of either the correct legislation to be used in this case or of your assertion that, even if the request should have been processed under FOI rather than EIR, the Department’s decision would have been invalidated.

You directed me to the Information Commissioner’s Office guidance on Reg. 2(1) of EIR for a definition of what can be considered to be environmental information and forcefully stated your opinion that the replacement of English-only signage with dual language Irish-English signage was not, in fact, environmental information.

The Department for Infrastructure does not share your interpretation of the scope of EIR in relation to the replacement of physical signage in the newly constructed Belfast Grand Central Station.

It is the DfI position that the definition provided in the legislation and the leading Information Tribunal cases cited by the ICO in their guidance clearly include within their scope the type of information that you have requested in this instance.

The definition of what constitutes environmental information for the purposes of EIR and, by extension, FOI, as its s39 exemption specifically excludes environmental information, is much broader than what many people might expect. Reg. 2(1) of EIR defines environmental

information and, therefore, the scope of the Environmental Information Regulations as follows:

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on -

- (a) the **state of the elements** of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the **interaction among these elements**;*
- (b) factors, such as **substances, energy, noise, radiation or waste**, including radioactive waste, emissions, discharges and other **releases into the environment**, affecting or likely to affect the elements of the environment referred to in (a);*
- (c) **measures (including administrative measures)**, such as **policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect** the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;*
- (d) reports on the implementation of environmental legislation;*
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and **built structures** inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);*

I have highlighted some of the elements of this definition that coloured the Department's determination that the Environmental Information Regulations 2004 was the appropriate information access regime under which to process your request.

Any decision, or instruction to provide multilingual signage at Belfast Grand Central Station, involving the Department and Translink is a policy measure that impacts that building and its environs.

The new Belfast Grand Central Station, and the signage within it, clearly fall within the definition of built structures, that may be affected by the state of the elements of the

environment, the building and maintenance of which (including replacement of any signage), virtually by definition, involves releases into the environment of both energy and substances in a way that affects the state of the environment.

A significant proportion of the Department's activities, and the associated recorded information that it holds, fall within the scope of the EIR definition of what is environmental. It is logical, therefore, that the Department will routinely process information requests under EIR rather than FOI.

However, I must stress that the use of EIR rather than FOI does not, in any way reduce the likelihood of disclosure. If anything, there is a greater presumption in favour of making information available under EIR than there is under FOI, both in terms of a requirement for a consideration of the public interest in disclosure (unlike FOI there are no absolute exemptions, where information can be withheld without a test of the public interest being concluded) and in that, where there is a potential harm, there is a greater presumption in favour of making information available.

I am satisfied that the information that you had requested is environmental and that, as a result the correct legislation under which your request should be processed is the Environmental Information Regulations 2004.

Use of Reg. 12(5)(b): the course of justice & inquiries

As you may be aware, the Department is currently subject to legal proceedings in relation to the proposed introduction of dual language signage at Belfast's Grand Central Station. The correspondence held by the Department about Translink updating the signage within the building form part of the evidence for these legal proceedings.

The Department withheld the information that you had requested because of these legal proceedings, and Reg. 12(5)(b) is the relevant EIR exception allowing public authorities protection for material that is subject to legal professional privilege, together with information relating to legal proceedings, law enforcement and investigations carried out under legal authority.

Reg. 12(5)(b) states the following:

For the purposes of paragraph 1(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect - ...

(b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;

Legal professional privilege is a long-standing convention under the Common Law, which provides protection for privileged communications involving legal representatives and their clients with regard to both litigation and legal advice.

The advice privilege extends not only to the advice provided by the law officers but also to discussions of that advice. It will remain current for as long as the legal advice remains applicable, as the advice, for as long as it is relied upon, is considered to be "live". Legal advice may remain subject to this privileged status for some time, as the same advice will often be applicable on multiple occasions after having been first received.

In this case, however, while the advice privilege may also apply to some of the records held, the Department is concerned with the litigation privilege, because of the ongoing legal action, to which I have already referred. While the legal action is civil, the Department and Translink are considered to be "persons" and are entitled to "receive a fair trial".

I have again considered the public interest in disclosure in this case, and I am obliged to confirm that, at this time, the public interest favours withholding the requested information under the exception provided by Reg. 12(5)(b) of EIR.

The Reg. 12(5)(b) exception provides an equivalent protection from inappropriate public disclosure for sensitive legal or related information under EIR to that which is provided by multiple FOI exemptions (s30: investigations & proceedings, s31: law enforcement, s32: court records and s42: legal professional privilege).

The Department's position is that similar considerations regarding the public interest in disclosure would have been applied if the request had been processed under FOI, rather than EIR, meaning that it is largely unimportant under which of the two information access regimes a request is processed, as the outcome would be the same.

As with all Environmental Information Regulation exceptions, the timing of the request has an impact on the public interest factors influencing the decision on disclosure. When there is ongoing litigation and a request is received for material that is the subject of that litigation, it would be entirely inappropriate to place such information into the public domain, and a public authority is obliged to refuse that request. It is essential that public authorities do not undermine judicial processes by placing into the public domain information at a time that would, in any way, undermine those processes.

Disclosure at such a stage would clearly cause significant harm to those engaged in litigation, for whom other access rights to any sensitive material are available, outside of FOI/EIR. Once, however, any litigation process has been completed, it is much more likely

that information could be disclosed in any subsequent request for that same information, subject to any other exceptions that may be applied.

I am satisfied that, at this time, in the context of the legal challenge in the Courts, that it is appropriate to apply the Reg. 12(5)(b) exception to the information that you have requested. There is a clear and overriding public interest in favour of allowing judicial processes to be completed without any form of hindrance.

Once the current legal action has been completed the Department would be happy to process a request for this information and will, following a test of the public interest, make all information available that it is in the public interest to disclose. I cannot commit to all the information that the Department holds being disclosed, because some information may well be sensitive, for a variety of reasons, not least any third personal data contained within the records held.