

Internal Review Request (received 19 August 2025) - Reference: DFI/2025-0241

I request an Internal Review under EIR 2004, Regulation 11 (and the FOIA s.45 Code) of DfI's decision dated 1 August 2025 on my request of 5 June 2025 (Ref. DFI/2025-0241) concerning tellurium and related critical-minerals issues at Dalradian's Curraghinalt project.

I enclose:

1. Internal Review letter;
2. Original EIR/FOI request (5 June 2025);
3. DfI's response (1 August 2025); and
4. The documents disclosed (as received and appended to DfI response).

Please acknowledge receipt within 2 working days, confirm the review will be completed within 20 working days (EIR Reg. 11), and identify a single point of contact and the senior officer not previously involved who will conduct the review.

Attached letter

I seek an Internal Review of DfI's decision dated 1 August 2025 on my request of 4 June 2025 regarding tellurium and related critical-minerals issues at Dalradian's Curraghinalt project.

Please find enclosed my original EIR/FOI request and DfI's response, including the few redacted documents released.

For completeness, I am separately writing to the Planning case team requiring a Regulation 21 FEI notice (with publication and consultation), and I will copy you for the record.

In line with EIR Reg. 11 (good practice for impartial reviews) and the FOIA s45 Code of Practice, I ask that the review be undertaken by a senior officer independent of the original case team and decision-maker. Please confirm the reviewer's name and grade, and that they had no prior involvement in processing or deciding my request.

1) Decision under review and why this review is necessary

My request was unambiguously tellurium-specific, not a generic "critical minerals" enquiry. It asked for all correspondence, internal deliberations, and inter-agency communications about tellurium, the regulatory handling of that material change, and resultant environmental/radiological risk management, across seven headings.

Your reply (i) reframed the request as generic "critical minerals", (ii) asserted large parts were "not held", (iii) signposted to the applicant's Statement of Case/Rebuttals rather

than disclosing Dfl's own records, and (iv) relied broadly on EIR Reg. 12(5)(b) (course of justice/legal professional privilege) without record-specific harm or public-interest balancing. That decision is flawed in law and fact.

Procedural delay and extension: Dfl extended the response period to 58 days. Given the limited disclosure, that extension appears unwarranted and inconsistent with the duty to respond "as soon as possible" (EIR Reg. 5(2)) and-if treated as environmental information-the 40-working-day ceiling for complex/voluminous requests (EIR Reg. 7). Please (i) identify the legal basis relied upon (EIR Reg. 7 or FOIA s10(3)), (ii) confirm whether the request was handled under EIR Reg. 5(2) (and, if mixed, explain any split handling), and (iii) provide the contemporaneous Reg. 7(3)/s10(3) extension notice, the complexity/volume assessment, and the search plan (custodians, repositories, date ranges, keywords). If FOIA s10(3) was used, also supply the public-interest test timeline and decision trail. In light of the outcome, explain how these factors justified exceeding 20 working days, and confirm whether "58 days" denotes working or calendar days—and, if working, how the Reg. 7 40-day ceiling was respected. Please acknowledge receipt and identify a single point of contact for this review.

Summary of grounds (succinct):

- My request was tellurium-specific. The first explicit public disclosure of tellurium was the applicant's Statement of Case/Rebuttals, quantifying ~37 t (2016 reserves) and up to 157 t (2018 resources). On CPLI Day 1 (13 Jan 2025), Dfl accepted tellurium within scope-with no recorded screening, FEI/ES addendum, flotation/process detail, radiological appraisal, PPC or HRA work, and no public consultation
- Dfl's decision recast my request as generic "critical minerals," asserted extensive "not held" positions, signposted to SoC/Rebuttals under Reg. 6(1)(b) instead of disclosing Dfl-held records, and made blanket claims under Reg. 12(5)(b) (legal privilege) without record-specific harm analysis or a proper public-interest balance—despite GSNI flagging flotation-process uncertainty and the need to clarify with the applicant.
- At the Pre-Inquiry hearing (March 2024) Dfl said no FEI was required, yet later, accepted 37 t tellurium at CPLI with no evidence of screening or further information. Dfl confirmed on the 13th January at the CPLI that the mining of tellurium met the planning application scope. Dfl confirmed in a letter of Oct 2023 that Dfl's note records the applicant flagging that "critical minerals" would likely be raised at inquiry. This letter was not provided in full. Please disclose the full October 2023 document or provide a Reg. 14-compliant refusal with reasons and public-interest balance.

- Awareness of tellurium was effectively restricted to those who read the SoC/Rebuttals or attended the CPLI; the 50,000+ objectors to the gold–silver–copper scheme were never consulted on this material change.
- Prior transboundary consultation did not notify the Rol public of tellurium or “any mineral the customer wants.” Please disclose all transboundary screening/notification materials and
- how any Rol member of the public (or any of the 50,000+ objectors) was informed of Dfl’s CPLI-day acceptance of this material change

What should this Review do (within 20 working days: Reg. 11(4)):

1. Treat the request primarily as tellurium-specific (the quantified 37 t disclosed in the SoC/Rebuttals and accepted by Dfl at CPLI Day 1) and separately address any reliance on “any mineral the customer wants.” Provide two screening rationales (tellurium; and-if maintained-any wider mineral suite) and disclose all FEI-related correspondence for each strand.
2. Treat the request as tellurium-specific and conduct adequate searches, providing a search report (custodians, systems, date ranges, and proposed keywords as set out in my enclosed letter).
3. Provide a document-by-document schedule/privilege log and disclose all factual environmental content (with narrow redactions for genuine legal advice only).
4. Disclose (or expressly confirm the absence of) records evidencing: screening, FEI directions, ES addendum, radiological/toxic assessments, PPC/HRA steps, and inter-agency correspondence (NIEA/DAERA/GSNI/PAC, etc.).
5. If such records do not exist, explain why no FEI/screening/public consultation was undertaken before Dfl accepted 37 t tellurium at CPLI, and confirm immediate steps to obtain the missing environmental information with public and transboundary participation.
6. Please also find a Word version of my EIR/FOI setting out each heading and point for ease of response.

2) Key chronology that Dfl’s decision fails to confront

- 4 Oct 2023: Dfl’s note records the applicant flagging that “critical minerals” would likely be raised at inquiry. No screening was undertaken and no FEI was sought. The fact that the only subsequent explicit reference to tellurium appears much later in the Statement of Case/Rebuttals-stating an intention to mine 37 tonnes - and that Dfl

now discloses no intervening paper or electronic communications (minutes, emails, internal notes, Teams/Zoom records, or equivalent) is, on its face, implausible and inconsistent with the duty to make reasonable searches and to obtain adequate environmental information before proceeding.

It points to one (or more) of the following: inadequate searches under EIR Regs 5 and 9, a failure to obtain the environmental information required for lawful EIA decision-making (EIA Regs (NI) 2017, incl. Reg. 8(11) screening and Reg. 21 FEI), deficient record-keeping on a material change, and/or an unlawful narrowing of the request to avoid disclosure. Any of these amounts to a serious procedural and regulatory failure by DfI (and, insofar as consultation was required, by NIEA/DAERA and other statutory bodies), particularly given the later acceptance at CPLI of tellurium within scope without public consultation, FEI, HRA or PPC review. Please disclose the complete October 2023 note or issue a Reg. 14-compliant refusal identifying the exception(s) relied upon and the public-interest balance.

- Pre-Inquiry Hearing (March 2024): DfI stated that no FEI was required.
- Statement of Case/Rebuttals (late 2024): Statement of Case / Rebuttals (Oct/Nov 2024): This was the first explicit public disclosure of mining of tellurium. Furthermore the Turley SoC created Oct 2024 detailed the mining of tellurium, quantifying ~37 t (2016 reserves) and up to 157 t (2018 resource) also claimed tellurium mentioned in Feasibility Study.
- CPLI Day 1 (Strule Arts Centre, Omagh, 13 Jan 2025): Dalradian stated it would mine “any mineral the customer wants”; DfI accepted tellurium within scope. There is no evidence of prior screening, FEI/ES addendum, HRA/PPC steps, or public consultation.
- Public consultation (transboundary) Feb 2025: No information provided on tellurium. Awareness was confined to those who happened to read the SoC/Rebuttals or attend the CPLI; the 50,000+ objectors to the advertised gold–silver–copper scheme were never consulted on this materially different proposal.

Despite the intention stated in the letter of Oct 2023, It is clear that the Public Inquiry is not the correct forum to introduce or “accept” a material change of this magnitude for the first time. Under the EIA Regulations (NI) 2017, any further environmental information (FEI) must be requested by the authority, published, and consulted upon *before* it is tested at inquiry. The inquiry’s function is to examine a proposal already defined and properly publicised-it is not a substitute for EIA screening, FEI, public participation, HRA screening/AA, or PPC review. Announcing at the CPLI that

tellurium/“any mineral the customer wants” was within scope, without prior FEI and consultation, amounts to gross procedural impropriety and regulatory maladministration, and a breach of statutory duty to ensure lawful EIA/HRA/PPC processes and meaningful public participation (including transboundary where applicable). This matter was not “discussed” at the inquiry in any compliant sense; the public was told it would happen, and DfI confirmed satisfaction—that is not consultation and does not cure the underlying EIA/HRA/PPC failures.

That sequence exposes a total absence-before DfI’s acceptance at CPLI-of any screening decision, Further Environmental Information (FEI) request or ES addendum, flotation chemistry/process detail, emissions/waste characterisation, radiological appraisal, PPC or HRA update, or transboundary consideration. Your EIR decision does not identify a single DfI record evidencing any of those steps.

2a) Material change accepted at CPLI - “any mineral the customer wants” (including uranium) without FEI is unlawful and unsafe

By publicly stating at the CPLI that it will mine “any mineral the customer wants,” and with DfI (and, on the day, NIEA/DAERA) accepting that position without any Further Environmental Information (FEI), the applicant has been allowed to expand the identity and risk profile of the development far beyond the gold-silver-copper scheme described in the planning application.

On any rational view this is a material change: the type of mineral(s) to be extracted is an essential characteristic of the project and dictates process chemistry, emissions/wastes, radiological and toxicological pathways, permitting, and mitigation.

In the Curraghinalt setting, the move to tellurium recovery is itself a regulatory trigger: tellurides are commonly co-located with uranium/thorium, so recovery will tend to co-concentrate NORM in concentrates, tailings and paste/backfill. Once “any mineral the customer wants” is accepted, the logical implication is that uranium-bearing material could be mined and processed under the same consent—a scenario never assessed, advertised or consulted upon.

I reiterate: there has been no FEI and no updated Environmental Statement, yet DfI (and, on the day, NIEA/DAERA) confirmed acceptance of tellurium within scope at CPLI. That stance creates a de facto pathway whereby the applicant could contend that uranium extraction/processing (or other high-risk minerals) is similarly covered—without prior screening, FEI, ES addendum, HRA screening/AA or PPC variation.

Allowing this shift without screening, FEI, an ES addendum, HRA screening/AA, or PPC review/variation breaches the EIA Regulations (NI) 2017 (including the duty to obtain and consult upon Reg. 21 FEI where new or greater effects may arise), offends the Wheatcroft principle - *Bernard Wheatcroft Ltd v Secretary of State for the Environment [1982] JPL 37*, (a materially different scheme requires fresh publicity/consultation or a new application), and undermines the Aarhus/EIA public-participation guarantees (including transboundary duties).

It also compromises enforceability: a consent untethered from defined minerals is not a stable description of development, leaving regulators and the public unable to know what processes, reagents, emissions, wastes, or radiological controls are actually authorised.

Acceptance of 'any mineral the customer wants' (including the possibility of uranium-bearing ore streams) also alters the project's GHG profile (energy intensity, reagent manufacture, ventilation/radon control, waste treatment). Climate impacts cannot be assumed equivalent to the original gold–silver–copper scheme; FEI is therefore required to meet section 52 Climate Change Act (NI) 2022 duties before any further step.

2b) Prior departmental knowledge of tellurium (DfE Hollis study; 2016 feasibility)

Turley's SoC (Oct 2024) records a DfE-commissioned study by Dr Steve Hollis (2016/2018 basis) estimating Curraghinalt tellurium (Te) at ~37 t (2016 reserves) and ~157 t (2018 resources), and states that the 2016 feasibility referenced Te. Yet the 2017 application and 2019 ES addendum contained no Te proposal, and DfI's EIR response discloses no screening, FEI, or inter-agency correspondence about Te. On that evidence DfI knew, or ought reasonably to have known, that Te was a live environmental issue well before the SoC/Rebuttals. Please disclose all DfI↔DfE communications, any receipt/use of the Hollis material, and any resulting screening/FEI steps—or state unequivocally that none exist, with a Reg. 14-compliant notice.

2c) Inconsistent tellurium tonnage (37 t vs 157 t) and duty to obtain FEI

Turley's SoC (Oct 2024) cites a DfE-commissioned Hollis study estimating Curraghinalt tellurium at ~37 t (2016 reserves) and ~157 t (2018 resources), and elsewhere refers to 3-4 t/year potential. These inconsistent tonnages materially affect process scale, reagent suites, emissions/waste, radiological/NORM pathways, traffic, climate, and transboundary effects. Under the EIA Regs (NI) 2017, the Department must base any decision on adequate, up-to-date environmental information and-where uncertainty exists-obtain FEI (Reg. 8(11)/Reg. 21) and consult upon it (Barker, Wells, Berkeley)).

- the Hollis study (and any updates) and all DfI↔DfE↔applicant communications about tellurium tonnages and recovery assumptions;
- the calculation basis for each figure (37 t, 157 t, 3–4 t/year), including mine life, grade, throughput, recovery factors, and cut-off/resource vs reserve distinctions; and
- any screening/FEI steps taken in light of these discrepancies. If none exist, please state this unequivocally and issue a compliant Reg. 14 notice; in that event, the inconsistency alone triggers FEI before any further step.

2d) Pre-application knowledge, omission from 2017/2019 submissions, and legal consequences

Turley's SoC (Oct 2024) records that tellurium at Curraghinalt was quantified on the 2016 reserve base (~37 t) and the 2018 resource (~157 t), and that the 2016 feasibility referenced Te. On that footing, tellurium and associated critical-mineral implications were identifiable before the 2017 planning application and the 2019 ES addendum, yet neither the application nor the 2019 ES explicitly assessed Te recovery or its process/radiological/environmental effects. In law, a competent authority must take reasonable steps to acquaint itself with relevant information before deciding (Tameside), ensure adequate and up-to-date environmental information for EIA (Reg. 8(11)/Reg. 21, EIA Regs (NI) 2017), and remedy any EIA omissions before proceeding (Wells). Where material environmental information emerges later, the authority must obtain further environmental information and subject it to public participation (Barker), with EIA interpreted broadly to avoid under-assessment (Kraaijeveld).

Accordingly, FEI should have been sought and consulted upon at the 2017/2019 stages once tellurium was reasonably foreseeable; at the very least, FEI became mandatory once the SoC crystallised Te tonnages. The failure to obtain and publish FEI then cannot be cured by signposting the SoC or by discussion at inquiry; the remedy now is to require FEI, publish it, and re-consult (including transboundary) before any further step.

Knowledge inside policy/applicant files is not public consultation: the EIA regime requires the Department to obtain FEI, publish it as environmental information, and invite participation before proceeding.

3) Misinterpretation of the request (tellurium, not "critical minerals")

My opening paragraphs of my EIR/FOI letter explicitly targeted tellurium-its disclosure, regulation, planning status, and environmental oversight. Recasting that as generic "critical minerals" was an unlawful narrowing. The review must be conducted on the

correct basis: tellurium-specific (and associated minerals where relevant to tellurium extraction/processing).

4) Inadequate searches and untenable “not held” claims

You assert “not held” for entire headings (notably Radioactivity/Toxicology; PPC; HRA) and most bullets elsewhere, yet Dfl’s own exchanges acknowledge process uncertainty and the need to clarify with the applicant regarding extraction of additional minerals and flotation process implications. On any reasonable view, there should be—at minimum—emails, Teams notes, meeting agendas, internal briefings, Counsel instructions, and inter-agency referrals (NIEA/DAERA/GSNI/PAC) once 37 t tellurium and “any mineral” were on the table.

Review request - search report & re-search: Please provide a search report and conduct fresh, targeted searches across: Outlook (incl. archives), Teams/SharePoint, eDOCS/records, shared/network drives, Counsel conference notes, and private office mailboxes; custodians including the case team, Grade 7/5, DSO liaison, PAC liaison, and attendees at the 4 Oct 2023 meeting and subsequent meetings;

Keywords: “tellurium”, “Te”, “Hollis”, “University of Edinburgh”, “DfE”, “critical minerals”, “tellurium tonnage”, “157 t”, “37 t”, “SoC”, “rebuttal”, “Turley”, “resource vs reserve”, “recovery factor”, “mass balance”, “flowsheet”, “flotation”, “reagent”, “material change”, “Wheatcroft”, “screening”, “FEI”, “ES”, “HRA”, “Habitats”, “PPC”, “NIEA”, “DAERA”, “GSNI”, “radiation”, “radiological”, “thorium”, “uranium”, “emissions”, “discharge”, “waste”, “Article 7”, “Espoo”, “Aarhus”, “transboundary”, “RoI notification”. Date range: 2016-present.

If genuinely no records exist for screening/FEI/ES/HRA/PPC, please state this expressly and explain why no screening/FEI was undertaken before Dfl accepted 37 t tellurium within scope at CPLI.

5) Improper reliance on Reg. 6(1)(b) (signposting) - and failure to disclose transboundary materials

Dfl’s signposting to the applicant’s Statement of Case/Rebuttals under EIR Reg. 6(1)(b) is not a lawful substitute for disclosing Dfl-held information responsive to my request. Reg. 6(1)(b) permits referral only where “the requested information is already publicly available and easily accessible” in another form/format. My request, however, is for Dfl’s records—i.e., correspondence, internal deliberations, screening notes, risk appraisals, directions and inter-agency communications—including those relating to transboundary

screening/notification/consultation. Those are Dfl-held records and are not satisfied by pointing me to the developer's filings.

Specifically:

- Transboundary expectation from my EIR/FOI: I reasonably expected transboundary documentation (screening outcomes, notifications to the Republic of Ireland (RoI), public notices placed in RoI, consultation packs, responses received, and Dfl's reasons if re-notification was not undertaken) to refer expressly to tellurium (37 t) and the "any mineral the customer wants" position. Dfl has disclosed no such transboundary records. Pointing to SoC/Rebuttals (which are applicant documents and do not constitute Dfl's transboundary dossier) does not answer my request.
- Signposting cannot replace disclosure of Dfl's own records: Even if some information overlaps with publicly available material, Reg. 6(1)(b) does not allow an authority to avoid confirming and disclosing the Dfl-held versions, nor to avoid disclosing distinct material (e.g., internal emails, meeting notes, instructions to Counsel, liaison with NIEA/DAERA/GSNI/PAC/Irish counterparts). As framed, my request seeks those Dfl-held materials; signposting to third-party or applicant content is insufficient.
- Form/format and accessibility duties: Where Dfl relies on Reg. 6(1)(b), it must show that the particular information requested is already publicly available and easily accessible. Generic referral to a document trove (e.g., "see SoC/Rebuttals on the website") is not compliant; Dfl must still identify the precise items relied on and disclose any additional Dfl-held material not in the public domain (including transboundary records).

Remedy sought (for this review):

1. Withdraw reliance on Reg. 6(1)(b) for Dfl-held materials and disclose the requested records, including transboundary screening/notification/consultation documents, or issue a lawful refusal with record-specific reasons.
2. Where Dfl maintains any Reg. 6(1)(b) reliance, identify the exact public document(s) (title, date, page/section) and also confirm whether Dfl holds additional or different versions; disclose those Dfl-held copies and any associated internal communications.
3. Produce a search report showing the repositories/custodians/keywords used specifically for transboundary materials (RoI notifications, public notices, consultation packs, responses, and decision rationales). If no such records exist, state this

expressly and explain why no transboundary re-notification/re-consultation occurred once tellurium (37 t) and the “any mineral” position emerged.

Signposting to SoC text is not responsive to the basis for selecting 37 t (rather than 157 t) -those are Dfl-held deliberations and inter-agency records which must be disclosed or lawfully refused document by document.

6) Misuse of Reg. 12(5)(b) (course of justice/LPP)

Your refusal relies on a generic legal-privilege essay but fails to:

- identify record-specific harm;
- conduct a public-interest test with the Reg. 12(2) presumption;
- segregate environmental facts from advice.

Principles that bind the review:

- Facts ≠ privilege. Dates of meetings, attendees, instructions given, factual risk appraisals, reagent lists, flowsheets, mass balances, emissions/waste characteristics, and third-party technical reports are not privileged merely because lawyers were copied.
- Partial disclosure. Mixed documents must be disclosed with narrow redactions for genuine advice only.
- Public interest is weighty here. There was no public consultation; awareness was limited to SoC readers and CPLI attendees; >50,000 objectors were excluded from commenting on a materially altered scheme. That transparency deficit heavily outweighs generic “chilling effect” assertions.
- Emissions/process information. Environmental content about flotation reagents, process changes, predicted discharges/wastes attracts especially strong openness; shielding such content behind LPP is not permissible in blanket form.

Review outcome sought on 12(5)(b): Provide a document-by-document schedule (date, author, recipients, description, specific exemption relied upon, specific harm, public-interest reasoning, and explain why partial disclosure is not possible). Then disclose all factual environmental content and third-party technical material, with only minimal redaction of true legal advice.

7) Why FEI, screening, ES addendum and consultation were mandatory here

By the time 37 t of tellurium (2016 reserves; up to 157 t on 2018 resources) and “any mineral the customer wants” were in play, Dfl was required to:

- Screen whether the change could cause new or greater significant effects;
- Request Further Environmental Information (FEI) from the applicant (process chemistry, reagent suite, toxicity/radiotoxicity, emissions/waste, materials handling, occupational/public exposure pathways, water/air impacts, biodiversity receptors);
- Publish FEI and run a public consultation;
- Where relevant, update PPC considerations and conduct HRA screening/AA (the “likely significant effect” threshold is low).

Instead, DfI accepted tellurium within scope at CPLI, with no evidence of the requisite screening/FEI/ES/HRA/PPC steps. That is precisely why the missing records must be disclosed-or, if they do not exist, then the regulatory failure must be transparently acknowledged.

7a Radiological & NORM Risk - Trigger for EIA/HRA/PPC:

The very introduction of tellurium recovery in this geological setting is a regulatory trigger. In orogenic Au-Ag systems like Curraghinalt, tellurium-bearing phases (tellurides/selenides) are commonly co-located with uranium/thorium-bearing minerals and NORM pathways. Tellurium recovery will co-concentrate associated elements in flotation concentrates, tailings and paste/backfill, with plausible radon generation and radiological exposure routes (workers and public). On a source-pathway-receptor basis, those risks cannot be excluded without evidence, which in law requires: (i) EIA screening and a Reg. 21 FEI request for radiological/process data; (ii) HRA screening given the low “likely significant effect” threshold; and (iii) PPC review/variation for emissions and waste controls. No screening outcome, FEI, radiological appraisal, HRA or PPC records have been disclosed, underscoring the need to obtain and consult on this information before any further step.

This failure breaches:

- the EIR 2004 duties to make environmental information available as soon as possible (Reg. 5(1)–(2)), to apply the presumption in favour of disclosure (Reg. 12(2)), and to issue a legally adequate refusal if withholding (Reg. 14);
- the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017, including the duty to seek further information at screening where needed (e.g., Reg. 8(11)) and to require, publish and consult on Further Environmental Information (Reg. 21);

- Article 6(3) of the Habitats Directive 92/43/EEC as transposed by the Northern Ireland Habitats Regulations (failure to screen/AA before agreeing to a change that may have likely significant effects); and
- the Northern Ireland PPC/Industrial Emissions regime (failure to review/require variation of permitting/controls for new emissions and waste streams associated with tellurium recovery).

(Where transboundary effects arise, these omissions also engage the EIA Directive Article 7 transboundary consultation duties and the Espoo/Aarhus participation principles.

7b GSNI's Recommendation for FEI

In the few documents provided by DfI, it is critical to emphasise that Geological Survey of Northern Ireland (GSNI) identified flotation-process uncertainty and advised DfI to clarify with the applicant whether additional minerals would be extracted and what process changes that would require. This recommendation underscores the need for comprehensive environmental assessments to evaluate the environmental and public health risk associated with the chemical processes involved in tellurium extraction.

Despite this clear recommendation from GSNI, DfI did not appear to have sought the necessary Further Environmental Information (FEI) from Dalradian or consulted with the relevant environmental agencies to fully assess the potential risks posed by this new mineral. This omission further supports the argument that DfI's actions in this matter are incomplete, and they have failed to comply with their statutory obligations under EIR 2004 and EU regulations. Please provide all documentation from DfI (including DAERA/NIEA) requesting this FEI from Dalradian and provide all information and communications relating to the same. If DfI decided to ignore GSNI advice and not seek additional FEI, please provide all communications and information justifying this decision.

DfI's Failure to Provide Essential Information and the Need for FEI In its response to the EIR/FOI request, DfI repeatedly stated that it did not hold information on crucial matters, including the following:

- **Timing of Disclosure:** DfI claimed to hold no information on when Dalradian first informed the Department about its intention to mine tellurium, despite the fact that such a disclosure would have been a significant development impacting the scope of the planning application.

- **Internal Discussions:** DfI also failed to provide any documentation regarding its internal discussions on whether the inclusion of tellurium would constitute a material change to the project.
- **Regulatory Considerations:** DfI did not provide any records of discussions or correspondence with other statutory bodies (e.g., NIEA, DAERA) concerning the introduction of tellurium and the environmental risks associated with its extraction.

This lack of documentation raises significant concerns, as environmental information concerning the extraction of tellurium—a critical mineral—is of utmost importance in assessing the project’s full environmental impact. The absence of such information strongly suggests that DfI has failed to collect or request necessary data on the toxicological, radiological, and environmental risks posed by tellurium and its chemical processing. These omissions cannot be overlooked, as they point to a failure in the regulatory process and underscore the urgent need for Further Environmental Information (FEI).

7c DfI’s failure to request or disclose Further Environmental Information (FEI) on the new risks posed by tellurium extraction violates the following legal obligations:

- **Environmental Information Regulations 2004 (EIR 2004):** DfI’s failure to request and disclose FEI under Regulation 5 constitutes a breach of the public’s right to access environmental information, particularly when such information is necessary to assess the environmental impact of a project.
- **EIA Directive (2011/92/EU):** The inclusion of tellurium extraction requires a revised EIA to evaluate new environmental risks associated with its extraction. DfI’s failure to initiate this review undermines the legal requirement to assess the full impact of this project.
- **Planning (EIA) Regulations (Northern Ireland) 2017:** These regulations explicitly require updated EIAs when a material change occurs in the scope of a project. The introduction of tellurium into the mining process constitutes such a change, yet no revised EIA was requested or conducted.
- **Aarhus Convention (Article 6):** The failure to properly assess the environmental risks and engage the public in decision-making violates the public’s right to participate in environmental decisions.
- **EU Case Law:** Case C-234/09 (Abels) and Case C-401/12 (Flintshire CC) both emphasize that new information that alters the environmental risk profile of a

project must trigger an updated EIA. The introduction of tellurium to the mining project is clearly new information that should have triggered such a process.

8) Public consultation was absent and awareness was unusually restricted

There was no public consultation on tellurium. The only people aware before the CPLI session were those who happened to read the SoC/Rebuttals; and those physically present at Strule Arts Centre on 13 Jan 2025 heard the “any mineral the customer wants” position and DfI’s acceptance. That is not compliance with the EIA participation duties. The public-interest test under EIR therefore weighs decisively in favour of disclosure.

9) Specific disclosures sought (by heading)

1. Timing of disclosure - All DfI <-> Dalradian correspondence documenting first formal notification of tellurium (and follow-ups), internal logs/briefings post 4 Oct 2023, CPLI preparation notes on “any mineral”/tellurium.
2. Radioactivity & toxicology - Any risk notes, referrals to NIEA/DAERA/HSE, instructions to applicant for data, internal analyses of flotation reagents, toxicity, radionuclide co-occurrence, emissions/waste characterisation, and water/air pathways.
3. EIA & consultation - Any screening decisions, FEI directions, ES addenda, publication/consultation plans, rationale for DfI’s “no FEI” stance at the Pre-Inquiry (March 2024) despite the later 37 t disclosure.
4. PPC & risk regulation - Engagement with NIEA on PPC implications of tellurium/flotation chemistry; internal assessments of need to vary PPC permits.
5. HRA & radioactivity - HRA screening, receptor lists, AA triggers/notes, reasons for no HRA update if none exists.
6. Inter-departmental/strategic - DfI communications with DAERA/NIEA/GSNI/DfE/Crown Estate/PAC re tellurium, flotation, “any mineral,” and process/risk implications.
7. Material change response - Internal/legal briefings recording DfI’s basis for declaring 37 t tellurium “within scope” at CPLI; any reliance on Wheatcroft-type reasoning; any consideration of requiring a fresh application or fresh publicity.
8. Transboundary: export destinations for concentrates; downstream processing risks and any transboundary consultation triggers. Article 7/Espoo/Aarhus: All documents evidencing transboundary screening/consultation on tellurium/“any

mineral,” including: notifications to RoI authorities; public notices and web postings in RoI; consultation packs supplied; responses received; and the decision rationale for not re-notifying after the SoC/Rebuttals disclosed 37 t tellurium. Please also disclose any records explaining how RoI members of the public-or the 50,000+ objectors-were informed of DfI’s CPLI-day acceptance of a shift from gold–silver–copper to “any mineral.”

9. Mineral scope control - All DfI documents confirming what minerals (if any) are lawfully within scope; any internal/legal advice on the Wheatcroft threshold; any screening/FEI directions addressing uranium/thorium co-occurrence and control measures.

Where you still maintain LPP, please provide the schedule and disclose the factual parts.

- 10) If the review does not cure these defects

If this review does not: (i) re-make the decision on a tellurium-specific basis; (ii) evidence adequate searches (with a search report); (iii) produce a proper privilege log and disclose all factual environmental content; and (iv) disclose the screening/FEI/ES/HRA/PPC position (or state unequivocally that none exists), I will refer the matter to the ICO and consider public-law remedies, including a pre-action protocol letter and an application for standstill pending lawful screening, FEI and consultation.

Please also treat this as a document preservation notice: retain all potentially relevant records (including emails, Teams/Zoom chats, meeting notes, counsel instructions, drafts and backups) in accordance with FOIA s.77 (which applies to EIR requests)..

Response (issued 15 October 2025)

You wrote to me on 19 August 2025 requesting an internal review of the handling of your Environmental Information Regulations 2004 (EIR) request for information regarding the department’s oversight of potential mining of Tellurium and other critical minerals at Dalradian Ltd.’s proposed goldmine at Curraghinalt, received in the Department on 05 June 2025. You had received a response to your request on 31 July 2025, from Judith Andrews, DfI (Interim) Deputy Secretary for the Climate, Planning and Public Transport Group, under reference DFI/2025-0241.

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.

You raised a number of issues in your request for this internal review, and I am obliged to address those issues raised which relate to the handling of your request as part of my internal review. However, as outlined above, my role does not extend to any of the wider issues associated with the planning process that you have raised in your emailed request. I cannot, therefore, provide you with any of the assurances that you sought in relation to the Department carrying out the additional Environmental Statements, environmental screenings or other investigations that you desire.

1. Tellurium-specific request

In your request for this internal review, you stated that your original request "*was unambiguously tellurium-specific*" in which you "*asked for all correspondence, internal deliberations, and int-agency communications about tellurium, the regulatory handling of that material change, and resultant environmental/radiological risk management, across seven headings*". You were clear in requesting this internal review, that you believed that the Department had incorrectly considered as a request for information more broadly about "*critical minerals*".

Having looked at the wording of your original request, I am obliged to point out that the wording included does not suggest that the information being sought was, in fact, "unambiguously tellurium specific".

“1. Timing of Disclosure

I am writing to request full disclosure of all information held by the Department for Infrastructure (DfI) and any associated bodies regarding the disclosure, regulation, planning status, and environmental oversight of tellurium and other critical minerals in relation to Dalradian Gold Ltd’s Curraghinalt mining project in County Tyrone...

- The first date on which Dalradian informed DfI of its intention to mine tellurium or other critical minerals...*
- All documentation or correspondence between DfI and Dalradian (or its agents, including Turley) referencing tellurium or other newly proposed target minerals from 2016 to present...*

2. Radioactivity and Toxicological Risk of Tellurium and Associated Minerals”...

- All DfI/NIEA records of radiological hazard screening, dust toxicity studies, and bioaccumulation risk assessments*
- Communications with HSE, the UK Radiological Protection Agency, DAERA or other bodies regarding possible radioactive or health risks associated with tellurium or related minerals...*

4. Pollution Prevention and Control (PPC) and Risk Regulation

- Any documents or legal advice concerning the potential toxicity or radioactivity of tellurium or related flotation reagents.*
- Records of any meetings or discussions where PPC requirements were considered.*

6. Interdepartmental and Strategic Communications

The declaration by Dalradian on the first day of the CPLI that it would extract “any mineral the customer wants” - including 35 tonnes of tellurium - fundamentally alters the basis upon which the original Mineral Prospecting Licence (MPL) was issued and the original planning application submitted. This shift carries implications for the broader mineral and planning governance.

Please provide:

- All correspondence between DfI and Crown Estate, DAERA, DfE, SES, NIEA or other public bodies relating to tellurium or the project’s expanded mineral scope.*

- *Any references to strategic mineral classification, export value, critical mineral policy, or UK/EU critical raw materials frameworks...*

7. Regulatory Response to Material Change - Critical Minerals Including Tellurium

Please provide all documentation, correspondence, legal advice, or decision records relating to DfI's consideration of whether Dalradian's shift to include tellurium and other critical minerals should have triggered.

- *A resubmission of the planning application to reflect the changed scope.*
- *A revised or supplementary Environmental Impact Assessment under the EIA Regulations 2017.*
- *A new or amended Pollution Prevention and Control (PPC) permit application to address the use of additional chemical reagents, associated waste by-products, and potential radioactivity risks, particularly those arising from tellurium and its co-association with uranium and arsenic.*
- *A new round of public and statutory consultation in line with applicable EIA/public participation requirements.*

Please confirm if this shift in application and process was treated as a material change, and if not, provide the legal and regulatory justification for that conclusion. Please also confirm:

- *Whether any decision was made to defer regulatory action or delegate such decisions to the Planning Appeals Commission.*
- *All documents, minutes, or logs relating to any such determinations."*

While many of the questions that you asked did relate to tellurium alone, the wording of your request, even if the Department was to interpret the references to uranium as entirely tellurium related, does not indicate that the information that is of interest to you was solely about tellurium. The wording contained within your queries clearly indicated a broader interest, beyond tellurium alone.

I believe that it was entirely reasonable to read your request to be for tellurium and other critical minerals, because you had mentioned both tellurium and other critical minerals on a number of occasions. While it is clear that you were particularly concerned about the impact of tellurium being extracted from the ore mined at Curraghinalt, your request was not clearly so narrowly focussed to the extent that a reasonable person would read it as meaning that you were only interested in tellurium.

I must also advise that in your request for this internal review you stated that your original request was “*regarding tellurium and related critical-minerals issues*”. It is not unreasonable for DfI officials to consider that you are also interested in other critical minerals that Dalradian Gold Ltd. have indicated that they are seeking to extract from the ore that they have applied to mine at the Curraghinalt site.

You also stated, in your request for this internal review, that you expected the Department to “*treat the request primarily as tellurium specific... and separately address any reliance on ‘any material the customer wants’. Provide two screening rationales... and disclose all FEI-related correspondence for each strand*”. This again indicates, again, that what you are seeking is for information about tellurium and other materials being mined.

The Department, therefore, interpreted your request to encompass both any information it held that references tellurium as well as information that referred to other materials contained within the ore that Dalradian would seek to harvest when the ore was processed. I am satisfied that this interpretation was reasonable and that the Department sought, in good faith, to identify as much information as possible, falling within the scope of your request as officials understood it, to consider for disclosure to the public.

5. *Time taken to provide the response*

You claimed, in your request that the Department “*extended the response period to 58 days*”. While it may be true that the time from the receipt of your request on 05 June 2025 and the response issuing on 01 August 2025 was 58 calendar days, it amounted to exactly 40 working days.

You had been informed, on 01 July 2025, by the Department that your request was deemed to be both complex and voluminous, under Reg. 7(1) of the Environmental Information Regulations 2004. As this correspondence made clear, in such a circumstance, EIR allows a public authority to take up to 40 working days in order to provide a response to the requester. The letter issued also stated to you that the new date by which a response must issue was 01 August 2025.

Your argument, in requesting this internal review seems to be that you do not believe that the request was both complex and voluminous and that a final response should have been issued within the initial 20 working day period. This seems to be based upon a belief that, as you were not provided with large quantities of records, there cannot have been either a large volume of information to be considered when processing this response. You also seem to suggest that the Department did not communicate to you

the specific EIR Regulation relied upon for this purpose. This was outlined in the letter that was issued to you.

The Department for Infrastructure will only occasionally make use of Reg. 7(1) when processing requests for environmental information. It only seeks to do so in a circumstance where it believes that the public interest in the requested information is extremely strong. It is applied in cases where requests that would otherwise be refused under the exception provided by Reg. 12(4)(b), because of the burden that processing a response would place on staff, relate to material on a question that is clearly in the public interest to consider for disclosure.

6. *“Inadequate searches” & information ‘not held’” response*

You were clear in your request for this internal review that you did not believe that the Department had carried out adequate searches of its electronic records management system to identify what information might be held. You were also clear that you believed that it was inconceivable that DfI would not hold information under entire headings contained within your original request.

The Department will retain only those records that it needs for its official purposes, so that, even for this planning application, the quantity of records held may be less than many members of the public might expect would be the case.

In this case, DfI’s official purpose relates solely to the planning process. The Department will only need to hold records that fall within its functional responsibilities. Other public authorities, in Northern Ireland and elsewhere, will hold the records that relate to their functions and responsibilities with regard to the proposed goldmine and all plans for processing of any ore that Dalradian Gold Ltd. intends to mine. Among the other Northern Ireland Executive Departments that will have some involvement and will be likely to hold some information, depending on the outcome of the planning process, are DAERA, DfE and DOJ.

You asked that, as part of this review, the Department would provide you with a “*search report*” of “*fresh, targeted searches across: Outlook (incl. archives), Teams/SharePoint, eDOCS/records, shared/network drives, Counsel conference notes, and private office mailboxes; custodians including the case team, Grade 7/5, DSO liaison, PAC liaison, and attendees at the 4 Oct 2023 meeting and subsequent meetings*”. You provided a list of some 41 keywords that you believed DfI staff should use to identify relevant information.

As part of this internal review, I asked Information Management Unit officials to conduct a search of our electronic records management system in the first instance, using the keywords you had provided for the period from 01 January 2016 to 05 June 2025.

Keyword Search			
Tellurium 0	DfE 2,734	Rebuttal 228	Thorium 0
University of Edinburgh 6	Te 139	Turley 685	Uranium 0
Resource vs reserve 0	Hollis 9	Flowsheet 0	Emissions 843
Critical materials 6	157t 0	Flotation 0	Discharge 7,967
Tellurium tonnage 0	37t 0	Reagent 0	Waste 3,863
Recovery factor 0	SoC 1,120	Wheatcroft 0	Article 7 290
Mass balance 0	FEI 266	Screening 2,335	Espoo 48
Material change 46	ES 2,940	Habitats 2,620	Aarhus 94
Radiological 0	HRA 2,408	GSNI 78	DAERA 6,436
Transboundary 260	PPC 50	NIEA 2,004	Radiation 5
RoI Notification 0			

Please note that the volume of records held that mention DAERA somewhere within the Department's archived electronic records is so large that the electronic records management system timed out before the full number could be determined. I am obliged to highlight that, with your choice of search terms, you again demonstrate an interest in information that is wider than what would be considered to be unambiguously tellurium specific. In addition, for some of your terms, I had staff also investigate a number of keywords that related to the keywords you had chosen and the broader scope of your request.

Additional Keyword Search	
Environmental Statement 386	Dalradian 3,564
Habitats Regulations Assessment 60	Curraghinalt 522
Further Environmental Information 35	Critical minerals 1

I do not claim that all of the records identified by the keyword search process relate to the proposed Dalradian goldmine, much less the specific topics of your request, and I am positive that a significant proportion of the records identified in this keyword search have been identified under multiple keywords. However, even relying only on the exact keywords that you had mentioned, the search has identified some 37,162 records. It is important to, once again, point out that this excludes the detail of records referencing DAERA that are held in the archived electronic records management system.

If the additional 4,568 records, identified using the keywords IMU officials also felt applicable, were to be added to that figure, it would mean that the Department would need to consider over 41,000 records if it was to seek to comply with your request.

Even if it took no more than a minute process each of the records identified, which would be mostly determining that they would not fall within the scope of your request,

processing the request as defined in your internal review request would take over 619 hours of staff time (the figure rises to over 695 hours if the additional keywords are used). Even processing only those records identified as part of the additional keyword search would require in the region of 76 hours of staff time at the same rate.

While the Environmental Information Regulations do not, unlike the Freedom of Information Act, specify a set appropriate limit for processing responses to information requests, the Information Commissioner's Office does accept that, with FOI, Parliament has given a clear indication of what it deems to be a reasonable diversion of staff resources for that purpose. Under FOI, the appropriate limit is set at £600, or 24 hours of staff time (1 person, regardless of grade, at £25 per hour). While the Department will routinely exceed this limit when processing requests for information, it is unlikely to do so when the time to process a response is likely to be significantly higher than the limit.

As you have worded it, requiring the keyword searches that you have indicated, your internal review request, and presumably your original query as well, is clearly both complex and voluminous. It is useful, when seeking to make an information request, to consider the guidance that the Information Commissioner's Office has made available on its website about making an effective request for information, which is available at this [link](#).

I am obliged, given the volume of records that fall within your keyword search parameters, to consider that your request is manifestly unreasonable, because of the diversion of staff resources that would be required to provide you with a response that meets your expressed needs. The exception from the general public right of access to environmental information held by public authorities provided by Reg. 12(4)(b) of EIR is applicable in this case and the public interest clearly supports a refusal of your request on that basis.

7. A "document-by-document schedule/privilege log"

You have asked on a number of occasions, as part of your request for this internal review, for a search report, schedule or privilege log for every record identified and considered for disclosure. It is the Department's position that the legislation does not require a public authority to produce such a schedule. There will be occasions when the Department is able to provide a schedule as a part of a response to an information request, but such a schedule will only be provided where the conditions meet the requirements and expectations placed on public authorities under the legislation.

The Environmental Information Regulations 2004 established general public rights of access to recorded environmental information that is held by public authorities at the

time of a request being made. There is no requirement to create new information, although where it is easy to generate a new record, when the “building blocks” of that information are already available, for example in a database or spreadsheet, there is an expectation that a public authority will make it available.

In addition, a significant proportion of the information that the Department holds in relation to the planning application will, because it is information generated as part of the planning process, already be in the public domain, via the Planning Portal. Where a member of the public would be interested in a schedule of these records that individual can do so, without recourse to a formal request for information.

That is not the case in this instance, I am satisfied that there is no obligation placed upon the Department to provide you with the detailed schedule of information held that you have requested. I must stress that, even if there was a formal requirement to provide you with a schedule, the Department would have to withhold some of the detailed information that you expected the Department to provide.

8. *“Improper reliance” upon Reg. 6(1)(b)*

You also made clear that you believed that the Department had not complied with its obligations under the legislation when it advised that some of the requested information was already in the public domain and easily accessible to you via the Planning Portal, and that, under Reg. 6(1)(b) of EIR, the Department was not obliged to process your request for such information.

You stated your belief that the Department’s use of Reg. 6(1)(b) was incorrect because it:

is not a lawful substitute for disclosing DfI-held information responsive to my request. Reg. 6(1)(b) permits referral only where “the requested information is already publicly available and easily accessible” in another form/format. My request, however, is for DfI’s records - i.e., correspondence, internal deliberations, screening notes, risk appraisals, directions and inter-agency communications - including those relating to transboundary screening/notification/consultation. Those are DfI-held records and are not satisfied by pointing me to the developer’s filings.

The Department did not direct you to publicly available information, in line with Reg. 6(1)(b), as a substitute for disclosing information that it holds, which is not publicly available. The DfI Planning officials who processed your request, made available to you all the information that the Department holds that was deemed suitable for disclosure.

Reg. 6(1) states the following:

- 6 (1) *Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless -*
- (a) it is reasonable for it to make the information available in another form or format; or*
 - (b) the information is already publicly available and easily accessible to the applicant in another form or format.*

Reg. 6(1)(b) does not provide a public authority with a means by which to withhold from public disclosure information that it holds. The only lawful means of withholding environmental information under EIR is when an exception under Reg. 12(4) or Reg. 12(5) is applicable and engaged.

The simple fact of the matter is that the Department directed you to information that it holds, which is already in the public domain. This is an entirely proper approach under the Environmental Information Regulations.

The reason why the Department did not provide you with a much larger quantity of environmental information in response to your request, other than where exceptions were engaged, is because the Department does not, in fact, hold much of the information that you believe should be held in its official records, as that information is not required for the Department's purposes.

In some cases, that will be because the information type is something that relates to another public authority's functions and may, therefore, be held by another public authority, such as DAERA or DfE. The Department would only need to hold the information that you had requested when those record types would be required for the Department's purposes.

I do not believe that it is necessary for the Department to comply with the remedies that you had demanded in relation to the reference to Reg. 6(1)(b). It was correctly applied in relation to information that was already in the public domain and easily accessible to the public.

9. "Misuse" of the Reg. 12(5)(b) exception

You argued that the Department had refused to disclose information on the basis of what you claimed was misuse of the Reg. 12(5)(b) exception from the general public right of access to environmental information held by public authorities. Your argument seems to be that the explanation provided to you was too general and not specifically

related to the proposed mineral extraction at Curraghinalt and the processing of the ore derived from the mine.

Reg. 12(5)(b) expressly provides protections for information that is deemed to be subject to Legal Professional Privilege, in addition to various forms of court or inquiry, including investigations, records.

Legal Professional Privilege is a long-standing convention underpinning the Common Law system, which provides for privileged interaction between a lawyer and their client, their communications must be treated as confidential and may not be disclosed without the consent of the client. It applies to all circumstances where a legal officer or other lawyer is providing the benefit of their professional expertise to a client. This may be associated directly with litigation or may fall more broadly within the scope of legal advice.

Under EIR, like FOI, there is a protection provided for records that are subject to Legal Professional Privilege, because of the harm that disclosure would do to both the individual lawyer-client relationship and, as identified by the Upper Tribunal in [DCLG v Information Commissioner & WR \[2012\] UKUT 103\(AAC\) \[Case No. GIA/2545/2011\]](#), to the broader principle of Legal Professional Privilege. In that case, the Upper Tribunal judgement is clear about disclosure of information covered by Legal Professional Privilege, in the absence of very compelling arguments in favour of disclosure, stating that:

if disclosure were to be directed... the loss of confidence in the efficacy of LPP in respect of environmental information would necessarily be considerable

The Upper Tribunal decision was clearly concerned both with the general impact on the principle of Legal Professional Privilege and the specific details of the information involved. The need to protect Legal Professional Privilege as a whole, because of its fundamental importance in the Common Law system, is a very strong general public interest argument.

It is important to make clear that, while the public interest factors involved when considering the application of Reg. 12(5)(b), clearly place a very strong emphasis on protecting Legal Professional Privilege, it is not an absolute exception from the general public right of access to recorded environmental information.

However, it is equally important to make clear that, when the public interest supports application of this exception, the protection provided by Reg. 12(5)(b) covers not only the direct advice provided to the client (in this case the Department) but also any further

discussions of that advice by Departmental officials. In any process of policy development this is likely to include a significant volume of the records that are retained as part of the official record.

Legal Professional Privilege will attach to legal advice for as long as it remains “live” (i.e. for however long that advice is relied upon by the public authority). It is worth highlighting that legal advice may remain “live” for some considerable time, including for significant periods of time after the completion of the public authority’s work for which the advice was originally sought. Provided that the legal advice remains valid and is of use to a public authority it will continue to be relied upon and that advice and any associated discussions of that advice will therefore be subject to consideration of Reg. 12(5)(b), should it be the subject of an EIR request.

The Department had relied upon the Reg. 12(5)(b) exception for two bullet points of your 7-question request where you had specifically asked for the legal advice held by the Department, advice which, as it relates to an ongoing activity, was likely to be subject to Legal Professional Privilege. The Department is currently engaged in processing a planning application for mineral extraction at Curraghinalt. In such a case, there will clearly be a large element of official discussions in relation to legal implications of potential choices within the process, which have an impact on the wider planning process for all mineral extraction planning applications, in the records held by the Department.

In such a circumstance, the Department is obliged to consider whether the requested information may be disclosed or whether it must be withheld under the Reg. 12(5)(b) exception. I have reconsidered the original decision to engage this exception, in the light of the information held by the Department and have determined that the use of Reg. 12(5)(b) is appropriate.

Whilst there is always as public interest in favour of disclosure, I regret to say that, in this case, because of the nature and status of the ongoing planning application process, and the impact on future similar planning application processing, I am satisfied that the public interest clearly favours withholding the legal advice, and any associated records held that discuss that advice, that the Department holds.

10. *“Failure to request or disclose Further Environmental Information (FEI)”*

You stated your belief that the Department, by not requesting Further Environmental Information regarding the processing of critical minerals, including tellurium, from any ore to be mined at Curraghinalt, was failing in its duty to make information available to the public under EIR and the Aarhus Convention. As explained above, my role does not

extend to any of the wider issues associated with the planning process. This is a matter more appropriately to be considered by the Regional Planning Policy and Casework Directorate.

I hope you find this helpful.