

EIR Request (received 05 February 2021) - Reference: DFI/2021-0048

I am writing to request a copy of all communication between DFI Roads, the land owner and/or bond holder(s) (or any consultant or legal representative acting on their behalf) regarding the road widening works associated with development of lands approved under P/2006/1117/F.

We would specifically like a copy of any communication that has taken place between these parties since the 1st January 2019 and present day.

We would also request a copy of all documents, briefs and communications that were prepared or exchanged in relation to the legal proceedings that were taken against DFI in 2020 by the developer and/or bondholder of the lands stated in relation to the issuing of article 3(4)C adoption certificate at the aforementioned development site above.

Response (issued 05 March 2021)

Thank you for your email dated 5 February 2021 requesting information held by this office, under the Freedom of Information Act 2000 (Fol), relating to Road Widening Works at Dorans Hill, Newry. You requested the following:

1. a copy of all communication between DFI Roads, the land owner and/or bond holder(s) (or any consultant or legal representative acting on their behalf) regarding the road widening works associated with development of lands approved under P/2006/1117/F.
2. a copy of all documents, briefs and communications that were prepared or exchanged in relation to the legal proceedings that were taken against DFI in 2020 by the developer and/or bondholder of the lands stated in relation to the issuing of article 3(4)C adoption certificate at the aforementioned development site above.

In considering your request on behalf of the Department I have determined that the information requested falls under the Environment Information Regulations 2004 (EIR), as opposed to Fol. 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:

<https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/what-are-the-eir/>.

In response to your first request, I can confirm that we hold the enclosed communications between DFI Roads, the land owner and/or bond holder(s) (or any consultant or legal representative acting on their behalf) regarding the road widening works associated with development of lands approved under P/2006/1117/F.

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. I have examined the information you requested and carried out a public interest test to determine whether this information is suitable for release to the public. Following consideration of the public interest in this case, I have determined that certain information requested is not suitable for release.

The requested information constitutes third party personal data within the meaning of the Data Protection Act 1998 (DPA). A public authority may only release third party personal data if to do so would be fair, lawful and would meet the conditions in Schedule 2 of the DPA. The Department may not disclose personal information to the public in contravention of any of the data protection principles, and must consider all consequences of disclosure in each case.

Sections of the requested information is therefore withheld under the exception provided under EIR by Regulations 12(3) & 13: personal information. I am satisfied that the public interest is best served by withholding this information therefore personal data such as names and phone numbers have been redacted from the information provided.

Your second request retains to information relating to an ongoing legal action.

Release of this material, at this stage, would undermine (in the terms of the legislation) the course of justice in that it would damage the legal professional privilege enjoyed in the relationship between the Department and its legal officers.

Release is likely to have a negative effect, and would hamper the provision of legal advice to the Department. Legal Professional Privilege is a long standing convention under the Common Law. The privilege may relate to either specific litigation or broader advice. Advice privilege will extend to both the advice provided and to discussions about that advice. Legal Professional Privilege often remains engaged after the litigation has concluded or the reason for the advice being sought has passed, because the privileged information continues to be valid for similar circumstances in the future.

Release of this information would harm the Department's interests, damage relationships with its legal representatives and advisors and hamper the provision of legal advice and services

The requested information is therefore withheld under the exception provided under EIR by Regulations 12(5)(b): The course of justice. I am satisfied that the public interest is best served by withholding this information.

I appreciate that you will be disappointed with this response, but I hope that you will understand the reasons behind the Department's decision.

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