

EIR Request (received 14 August 2022) - Reference: DFI/2022-0256

Under the EIR regulations, I hereby request all information held by DFI and their consultants, and any other information relied upon by the DFI to inform the Department's consideration of the environmental impact of, and proposed mitigation measures for, the proposed A5WTC dual carriageway project on Tully Bog ASSI.

This has been requested by other family members at several previous meetings (as recorded in minutes) and to date, no information has been forthcoming. A reason for the lack of response to these requests for information is also requested.

Response (issued 12 September 2022)

Thank you for your email request of 14 August 2022 in relation to the above.

Your request has been made under the Environment Information Regulations 2004 (EIR), which established rights of public access to environmental information held by public authorities similar to those provided for other information types by the Freedom of Information Act 2000.

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/>.

I can confirm that the Department for Infrastructure does hold information relating to your request and, having conducted a test of the public interest, I attach all information within the scope of your request that is suitable for disclosure.

Prior to publication of the Environmental Statement Addendum, Reports to Inform an Appropriate Assessment and draft Vesting Order on 16 March of this year, the Department had sought legal advice during the development process associated with the proposed mitigation works at Tully Bog and attached are the memos presented to our Counsel which provide a narrative of that developing process.

Please note that some information within these memos has been redacted as it is considered to be subject to Legal Professional Privilege. Legal Professional Privilege is a long-standing convention under the Common Law system, whereby communications between a lawyer and client will be protected. Under the Environmental Information Regulations, the exception that provides protection for such communications is Reg. 12(5)(b): the course of justice and inquiries.

Legal Professional Privilege applies not only to both litigation and advice provided by legal professionals, but also to client internal discussions of the advice provided. The privilege that attaches to legal advice and any associated discussions of that advice within the authority will remain for as long as the advice remains applicable. It is very likely that recently received advice will be covered by Legal Professional Privilege, because the subject matter of the advice remains live, and disclosing this advice would clearly harm the ability of the public authority to make the best use of that advice in furthering its business.

In this case, it is clear that, with the A5 Western Transport Corridor, the legal advice provided to the Department is current, relating, as it does, to an ongoing scheme to provide a dual carriageway, replacing the current A5, connecting Aughnacloy with Newbuildings. In this circumstance, having considered the public interest, I am satisfied that the need for the Department to protect the legal advice that it has received, and the internal discussions about that advice, as the scheme develops, outweighs the public interest in favour of disclosure. The information has therefore been redacted under Reg. 12(5)(b): the course of justice and enquiries.

In addition, some information has been withheld from disclosure because it constitutes third party personal data within the meaning of the Data Protection Act 2018 (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, 3 or 4 of the DPA. The Department may not disclose personal information to the public in contravention of any of the data protection principles (Article 5(1) UK General Data Protection Regulation or sections 34(1) and 85(1) DPA) and must consider all consequences of disclosure in each case.

The information provided has therefore been redacted under the exception provided under EIR by Regulation 12(3) & 13: personal information. I am satisfied that the public interest is best served by withholding this information.

A full list of where and why Tully Bog has been referenced in already public facing documentation is also attached for your convenience.

In addition, an explanatory paper titled '*Scientific rationale for vesting lands for environmental mitigation at Tully Bog*' is attached. This has just recently been prepared by our engineering consultants, WSP to aid understanding on this issue and has since been passed to both Conor Mallon and the Ulster Farmers Union for their information.

I do apologise for the delay in getting some of this information to family members. The explanatory memo in particular however has taken some time to pull together with a view to being as helpful as possible without being overly technical on this complex matter.

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