

Request for Internal Review (received 25 October 2022) - Reference: DFI/2022-0272

I write regarding my original FOI request dated 31st August 2022 in relation to questions regarding Public Liability Insurance connected to match night road closures at Kingspan Stadium.

I am dissatisfied with the department's response and as such I request an internal review specifically to answer those questions.

The application process is made to the department by a traffic management company on a match-by-match basis and previously it was your own department that advised those applications are required to be accompanied with £10M in Public Liability Insurance the policy of which is checked on a yearly basis by the department.

Here the department appear to be suggesting that it is for Ulster Rugby to answer these questions and I would challenge that. The application process in question is made to your department and as such it is your office that should then be responsible for answering these questions under the FOI.

If it chooses not to then say but don't pass the buck suggesting that I write to a private company who have no obligation to answer anything. Indeed this response is a marked changed from any previous requests not only by me but others when information has been provided.

Further with regard question 7. I fail to understand why I must first provide the name of the company making the application before the question will be answered. As stated it was your department that previously advised that the relevant insurance had to be checked each year now unless I know the name I wont get that answer.

For the record I believe the traffic management company then was McVeigh Contracts in Saintfield but again your department can confirm this as it has all the information. My question remains the same as to when was this policy last checked by the department given the legal requirement to check yearly and did it provide for the £10M insurance required.

Response (issued 19 January 2023)

You wrote to me on 25 October 2022 requesting an internal review of the handling of your Environmental Information Regulations 2004 (EIR) request for information regarding insurance held by any traffic management company involved in road closures to facilitate

Ulster Rugby matches, received in the Department on 31 August 2022. You had received a response to your request on 28 September 2022, from Mr. Des McFarlane, Divisional Roads Manager for DfI Roads' Eastern Division, reference DFI/2022-0272.

I had hoped to issue this response at an earlier stage, and I regret the length of time taken to provide this response to your request.

As Head of Information Management, 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 not fulfil its obligation under the Environmental Information Regulations 2004. I would like to take this opportunity to explain my decision.

You had asked a number of questions about the Public Liability Policy and/or Declaration of Liability submitted by the traffic management company or companies working on behalf of Ulster Rugby for their home matches at the Kingspan Stadium. In response, you were directed to ask these questions of Ulster Rugby.

I am satisfied that the Department should have confirmed whether or not any information was held and advice and assistance.

The Environmental Information Regulations established an obligation on public authorities, under Regulation 9, to provide members of the public with advice and assistance when dealing with information requests. While this includes acting in a way to assist the requester access meaningful information, it also means that a public authority should provide explanations in any response where it holds information that may prove confusing to the public or does not hold any information.

An explanation of the reasons why the Department did not feel it necessary to hold the information that you were seeking was appropriate. I have been in contact with relevant staff, to help understand what the processes are and the reasoning behind why information will not have been held.

I have been advised that, while the Department for Infrastructure does require traffic management companies to provide evidence of holding £10 million public liability insurance, it does not, itself, carry out the confirmation of their having that public liability insurance in place. The Department engages the services of a third party broker to carry out these assessments and, once the assessments have been completed, this broker informs the Department of the public liability insurance position for each traffic management company.

In many ways, this public liability insurance check is analogous to the position for a car owner bringing their vehicle for an MOT inspection. It is a snapshot in time, confirming whether the relevant requirements for continued operation on the public roads have been met. Also like an MOT, without the Department being involved in the most invasive of supervision, it does not confer any confirmation of suitability for operation on the roads beyond when the insurance policies were actually inspected.

The Department is only interested in whether the traffic management companies have the required level of cover or not, the specific details of any policy, beyond confirmation that it meets the Department's requirements, is of no interest to the Department.

With the third-party broker acting on the Department's behalf, there is no need for DfI to receive and retain copies of the public liability insurance documents, or any declarations of public liability. All that the Department requires from the broker it has engaged is confirmation that the traffic management companies have adequate public liability insurance in place when requested for inspection. As a result, the Department will not hold copies of a public liability insurance policy held by any of the companies.

I can advise, however, that McVeigh Contracts Ltd., the traffic management company you identified, was Ulster Rugby's contracted traffic management company for the 2021-2022 season. Their public liability insurance policy was most recently assessed by the Department's third-party broker on 08 September 2022, covering insurance for the period to 06 February 2023.

I attach a copy of the third-party broker's confirmation, following that assessment, to the Department that McVeigh Contracts Ltd. did have adequate public liability insurance in place. This document also provides the name of the broker for McVeigh Contracts Ltd., the identify of which had formed part of your request. You will note that the attached confirmation form has been redacted, as the redacted information constitutes third party

personal data within the meaning of the Data Protection Act 2018 (DPA) and UK General Data Protection Regulation (UKGDPR).

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) UKGDPR).

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.

The Department has not been advised of any restrictive endorsements associated with insurance policies or declarations that have been scrutinised by its third-party broker.

I hope you find this helpful.

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