

**Request for Internal Review (received 27 November 2019) - Reference:
DFI/2019-0343, 0364, 0365 & 0366**

SUBJECT INFORMATION - EM CONTRACT 2010 - 2019-Northern, Eastern, Southern and Western Division Environmental Term Contract:

This is an Internal Review (review) request under Environmental Information Regulations (EIRs) part 5 for information regarding the above contract works using the EIRs 2004 Part 1 *Application 3. - (1) Subject to paragraphs (3) and (4), these Regulations apply to public authorities. (2) For the purposes of these Regulations, environmental information is held by a public authority if the information - (a) is in the authority's possession and has been produced or received by the authority; or (b) is held by another person on behalf of the authority.*

This review is sought in order that the information requested and not provided and or withheld within the responses from each of the DfI Divisions is released.

Southern Division within its response dated 17th October 2019, has stated that "some of the information held is related to rates" as the reason for non-release. The normal process for protecting confidential commercial rates is simply to redact the rate/s within the documentation sought; it is however unlikely that 'Performance Review Meeting Minutes' contain much if any confidential commercial rates that would subject the Department powers of non-disclosure through the common law quality of confidence as stated by Southern Division correspondence under and within regulation 12(5)(e) of the Environmental Information Regulations.

As per paragraph 7 of the First Tier Tribunal Appeal EA/2016/0292

"Information is exempt information if its disclosure under the Act would, or would be likely to, prejudice the commercial interests of any person (including and public authority) holding it - It is well established in the jurisprudence that in order for the section to apply it must be shown that there is a real and significant risk of some commercial disadvantage occurring"

This principle is will grounded within the "Nolan Principles" and in particular in relation to the principle of Openness - which explains that

"Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there is a clear and lawful reason for doing so"

Attached is an analysis and breakdown of the minority amount of information that has been released and the display as to the majority amount of information that has not be provided and or withheld.

Response (issued 29 January 2020)

You wrote to me on 27 November 2019 requesting an internal review of the handling of your four linked Environmental Information Regulations (EIR) requests for information regarding annual or bi-annual meetings held under the Environmental Maintenance Term Contracts, 2010-2019, for each of the four DfI Roads Divisions, received in the Department on 23 September 2019. You had received a response to your requests on:

- 22 October 2019, from DfI Roads Northern Division, reference DFI/2019-0343;
- 21 October 2019, from DfI Roads Eastern Division, reference DFI/2019-0364;
- 17 October 2019, from DfI Roads Southern Division, reference DFI/2019-0365; and
- 28 November 2019, from DfI Roads Western Division, reference DFI/2019-0366.

As Departmental Information Manager, 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 fulfill its obligations under the Environmental Information Regulations 2004. However, I do believe that the Department was attempting to fulfill these obligations. I would like to take this opportunity to explain my decision.

Records Held

You were unhappy that the four Divisions provided a more limited number than expected minutes of meetings.

I contacted each of the Divisions, to confirm that all such minutes that we held had been disclosed, and asked that a further search of our electronic records management system was made. All but Eastern Division (DFI/2019-0364) confirmed that all relevant records held had been disclosed. Eastern Division identified a number of additional records when carrying out this further search, and these are attached. I am content that failure to identify these records before was the result of oversight.

I am satisfied that the Department has now provided all the information that it holds. I do acknowledge, however, that the expectation of further minutes was reasonable in line with contract management principles. Staff have been reminded of the importance of recording meetings, to ensure that all processes are carried out in line with the Department's requirements.

Application of Reg.12(5)(e): confidentiality of commercial or industrial information exception

DfI Roads Southern Division's response (DFI/2019-0365) highlighted that some meeting minutes had been withheld under the exception provided by Regulation 12(5)(e). You indicated that either records of routine performance review meetings should not include information that is commercially sensitive, or that the records could not have been disclosed with redactions.

The information that had been withheld related to the Division's involvement in a formal adjudication process between the Department and the Principal Contractor.

This was, in fact, outside the scope of your request and, unless references were included within the minutes of any performance review meetings, should not have even been considered when your request was being processed. Reg. 12(5)(e), therefore, should not have been applied.

Accuracy of payments information

In the response provided by DfI Roads Western Division (DFI/2019-0366) the amounts listed for payments for each of the four Environmental Maintenance activities within the Mid-Ulster North Section Office area were inaccurate. It appears that the figures provided were for the total payments made since 2011-2012, rather than payments made in 2011-2012 only.

Revised figures, providing the detail for 2011-2012 are contained in the table below:

2011-2012		Contractor	Weed Control	Grass Cutting	Gully Emptying	Tree / Hedge Cutting
EMW1/2029	Mid-Ulster North	Maurice Flynn & Sons	£16,754.92	£0.00	£109,532.73	£0.00

Time taken to respond

The Department clearly, in the cases of DFI/2019-0343 and DFI/2019-0366, failed to meet the statutory deadlines for response. The first of the two responses was one day late, while the response DFI/2019-0366 was only issued 28 working days after the deadline. I apologise for our failure to comply with the legislation.

General handling of requests

Whilst the Department responded to your four linked requests separately, the Department is one single public authority for the purposes of the legislation. As such, the Department could have provided one single response covering all four requests.

This Internal Review has been conducted in that manner.

I hope you find this helpful.