

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004**

**Decision notice**

**Date:** 21 October 2019

**Public Authority:** Public Health Agency  
**Address:** Tower Hill  
Armagh BT61 9DR

**Decision (including any steps ordered)**

---

1. The complainant has requested information from the Public Health Agency ('PHA') in relation to a planning application for a pig farm. The PHA disclosed some of the requested information and stated that it did not hold the remainder.
2. The Commissioner's decision is that the PHA has correctly relied upon regulation 12(4)(a) of the EIR in that it holds no further information within the scope of the complainant's request apart from that which it has already disclosed to the complainant. Therefore, the Commissioner requires no steps to be taken.

**Request and response**

3. On 20 February 2019 the complainant requested information in the following terms, in relation to a specified planning application:-

"To enable me to assess the case officer report and responses from bodies consulted, under FOI/EIR legislation I request that you supply the following information - a copy of the assessments upon which their (the planning officer and consultees) expert opinion is based, including the criteria used in the risk assessments and the evidence that each issue raised by objectors has been actively considered by those consulted and by planners."

4. The PHA responded to the complainant's request on 5 April 2019. That response referred the complainant to the PHA's response on the Planning Portal and also provided the complainant with two pieces of correspondence dated 15 June and 8 September 2018.
5. The complainant sought an internal review of the PHA's response on 7 April 2019. Within that letter, he also requested the 'working file PHA used in this planning application.'
6. The PHA provided a response to the complainant's internal review request on 26 April 2019. It stated that the reviewer believed the PHA's initial response to be appropriate, however it apologised for the delays incurred in it issuing its response. In relation to the complainant's request for a 'working file' it stated that it did not hold such a file, and indeed held no further information within the scope of the complainant's requests. It was therefore applying the exception as set out in regulation 12(4)(a) of the EIR to the complainant's requests for information that had not been disclosed to him in the PHA's initial response.

### **Scope of the case**

7. The complainant contacted the Commissioner on 26 April 2019 to complain about the way his request for information had been handled.
8. The Commissioner wrote to the PHA seeking its detailed submissions on 18 July 2019. The PHA responded to the Commissioner on 15 August 2019, providing its submissions as to its application of the above exception and its overall handling of the complainant's requests.
9. The Commissioner has considered the PHA's handling of the complainant's requests.

### **Reasons for decision**

#### **Regulation 12(4)(a) – information not held**

---

10. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.

11. The PHA stated that it had forwarded the complainant's request of 21 February 2019 to the only officer responsible for responding to the specified planning application with a request to provide all relevant information in relation to the request. A search was conducted in that officer's e-mails, files and corresponding paper files which produced two documents; a letter from the PHA to the Antrim and Newtownabbey Borough Council dated 15 June 2018 and an update on the application dated 8 September 2018. Although both documents were already in the public domain, through the NI planning website, these were forwarded to the complainant for ease of reference. The PHA stated that it holds no further information relating to the issue.
12. The PHA also drew the Commissioner's attention to the process in place for reviewing planning applications within the PHA. This process was described to the complainant in correspondence, and highlighted that its responses to planning applications are based upon the experience and expertise within the PHA, gained from responding to similar applications over a number of years.
13. The PHA informed the Commissioner that information in relation to planning applications may be held by it in e-mail, electronic and paper format. It stated that all relevant files in relation to the complainant's request had been searched as per paragraph 12 above.
14. The PHA stated that it is not a statutory consultee in respect of planning consultations however, in line with good practice, it does hold copies of its responses in relation to planning applications in accordance with its Retention and Disposal schedule. Its responses are also available on the NI planning website.
15. The PHA stated that responses to consultations relating to similar facilities (i.e. large pig farms), are all in the public domain, and these responses have given consistent advice regarding the potential adverse health effects. The PHA considers that the complainant has been given all appropriate advice and assistance in respect of the specific complaint made.
16. The Commissioner is satisfied that the PHA has carried out all necessary searches and enquiries to establish that it does not hold any further recorded information falling within the scope of the relevant parts of the complainant's requests. It has explained exactly why it holds no recorded information within the scope of the complainant's request other than what has already been provided to him.

17. For these reasons the Commissioner is satisfied that on the balance of probabilities the PHA does not hold any further recorded information within the scope of the complainant's request. It was therefore entitled to rely on regulation 12(4)(a) of the EIR at the time of the request.

## Right of appeal

---

18. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504  
Fax: 0870 739 5836  
Email: [GRC@justice.gov.uk](mailto:GRC@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

### **Information Commissioner's Office**

**Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **ANNEX**

1. What steps have ANB Council taken to ensure that the numerous incidents of water pollution from the site will cease? Please specify dates.
2. What has the council done to have the unapproved lean-to and the generator removed from the site? What conclusions did the council come to when they checked that the shed is built as in the plans approved?
3. What steps has the council taken to remove the lighting at the large shed which is disruptive to bat activity? Please specify dates and the success of these steps.
4. What steps has the council taken to prevent the developer working outside the site limits as denoted by the red line? This work is so extensive that it requires planning permission.
5. The conclusions of the bat survey at the time of application were based on the developer only working inside the red line. What has the council done to prevent the illegal activity on the east side of the site which has disrupted bat activity? Has the council informed PSNI of this activity?
6. What action have been taken by the council as a result of the failure of the developer to follow the CEMP? Please specify dates and the results of the action. Condition 4 requires the developer to adhere to the CEMP throughout the construction period.
7. What action has been taken by the council as a result of work going on outside normal hours? Please specify dates.
8. What has the council done to ensure that hedges cut were not buried before being checked for nests?
9. Please provide copies of the changes to the CEMP agreed to by NIEA and council planners.
10. Please provide copies of environmental audits carried out since January 2017 as required by the CEMP.
11. What action has been taken by council to ensure soil bunds are as per the CEMP? Please specify dates and the outcome of the action.

12. Please provide drawings and photographs of the silt fencing and the cut-off trenches as per the CEMP.
13. Please provide copies of noise and vibration monitoring carried out since work commenced on site.
14. What action has been taken by council to have the wheel wash operational and being used?
15. What action has been taken by council to have the concrete wash operational and in use?
16. Please provide details of a contact number for local residents to ring for undue disturbance as per the CEMP.
17. What action has been taken by council to have the road widening scheme completed before work began on site?
18. What action has been taken by council to the unapproved culverting along the side of the Reahill Road?
19. Please provide copies of the pre-commencement inspection report carried out on the area to be occupied by the attenuation pond before any work took place as set out in the Reservoir Act 2015.
20. What action has been taken by council to have schedule 6 completed. At the planning meeting councillors were told "this is at an advanced stage and requires minor details to be submitted in order to be approved". That was November 2016!
21. What action has been taken by council to ensure that all those living downstream of the attenuation pond will be safe from inundation? Levels on drawings submitted at the time of application show that all of this body of water will be above the natural level of the surrounding land.