

Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 24 April 2024

Public Authority: Department for Environment, Food and Rural Affairs

Address: Nobel House
17 Smith Square
London SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested information from the Department for Environment, Food and Rural Affairs (DEFRA) regarding cetacean strandings. DEFRA refused to provide the requested information, citing regulation 12(4)(d) of the EIR – material still in the course of completion.
2. The Commissioner's decision is that DEFRA was correct to cite this exception and that the public interest lies in maintaining it.
3. The Commissioner does not require further steps.

Request and response

4. On 4 September 2023 the complainant made the following request for information:

“Please kindly provide the following information:-

Numbers of cetaceans (whales, dolphins, porpoises) that were stranded / beached around the coast of the UK during the years 2020, 2021 and 2022, collated from data such as the (Cetaceans Stranding Investigation Programme) CSIP reports to Defra. Please include where possible: species (and numbers associated with each species), together with locations of strandings, for each year.”

5. DEFRA responded on 25 September 2023 and stated that it did not hold the information in respect of Scotland (applied regulation 12(4)(a)) and further stated that it was applying regulation 12(4)(d) in respect of the remaining requested information.
6. The complainant did not have any issue with the application of regulation 12(4)(a), however on 10 October 2024 they sought an internal review of DEFRA’s decision to apply regulation 12(4)(d). DEFRA responded on 8 December 2023 and upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 8 December 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to consider whether DEFRA has correctly applied regulation 12(4)(d).

Reasons for decision

Regulation 12(4)(d) – material in the course of completion, unfinished documents, and incomplete data

9. The Commissioner’s guidance¹ states that the exception can be split into three possible limbs:

“Information which is, or which relates to:

- material which is still in the course of completion;

¹ [Regulation 12\(4\)\(d\) - Material in the course of completion, unfinished documents, and incomplete data \(Environmental Information Regulations\) | ICO](#)

- unfinished documents; or
 - incomplete data.”
10. If the requested information falls within the above bullet points, the exception is engaged. There is no need to consider any adverse effect, however adverse effects regarding disclosure can be considered under the public interest considerations.
 11. DEFRA has provided the withheld information to the Commissioner and confirmed that it is not complete. It stated that work on the CSIP annual reports was actively ongoing at the time of the request and internal review, including detailed work to interpret the data for publication. As such DEFRA considers that this information request was for data that ‘relates’ to material which is still in the course of completion.
 12. DEFRA has informed the Commissioner that the raw data is fundamental to the publication of the annual reports and is not considered an independent or separate piece of work. The two are interlinked, in that the raw data is collected solely for the purpose of preparing and publishing the annual stranding reports. DEFRA aims to publish the annual report for 2020 in April 2024 and the annual reports for 2021 and 2022 in May/June 2024. Each annual report will compare the data output from the previous four-year period to establish whether there have been any significant changes in stranding numbers or likely causes of death.
 13. The Commissioner accepts that the data is still in the process of being interpreted for publication as the reports are not yet complete and ready to be published. At the time of the request the material, i.e. the reports, was still in the course of completion and remains so, therefore the exception at regulation 12(4)(d) is engaged.

Public interest test

14. The Commissioner nevertheless needs to consider whether on balance the public interest lies in disclosure or in maintaining the exception.

Public interest factors in favour of disclosing the requested information

15. DEFRA took into account considerations about openness and transparency concerning cetaceans around the coast of the UK. Disclosing information on cetaceans stranded around the UK would inform public debate of the issues surrounding cetacean strandings.

16. DEFRA also took into account that disclosing this information would demonstrate accountability and transparency within the government

Public interest factors in favour of maintaining the exception

17. DEFRA considers that disclosing datasets in their raw state would give a misleading or inaccurate impression that would likely result in incorrect conclusions, drawn out of context. The stranding of cetaceans is a highly emotive issue and often attracts a lot of media and public attention. If cetacean strandings data is interpreted incorrectly and misleading conclusions are drawn, then it is likely to generate a large volume of queries from the public. It would be necessary for DEFRA to have responses ready, and that will depend on it having completed the data analysis, with the involvement of the specialists who provided the data for that purpose.
18. DEFRA is also concerned that the disproportionate effort required to address these queries would hinder efforts and divert resources away from completing the reports of which the requested information forms part, as well as from delivering urgent, time-critical responses to stranding events. The additional resources needed would affect DEFRA and its relevant agencies, as well as CSIP the contractor and partner organisations, and also colleagues in the Welsh and Scottish Governments.
19. DEFRA also informed the Commissioner that disclosing datasets comprising raw data which has yet to be analysed would prejudice the quality of the information. This would have a negative effect on ongoing and future discussions between DEFRA and CSIP regarding the quality assurance of data and publication of annual reports. Disclosure would place disproportionate pressure on CSIP colleagues, and the potential for misleading impressions to misinform public debate would risk damaging the reputation of the primary CSIP contractor (Institute of Zoology, Zoological Society of London), partner organisations, and colleagues in Welsh and Scottish Governments. This would inhibit the free and honest discussions that take place between DEFRA, the Devolved Administrations and CSIP when analysing the data and producing the reports and would affect the quality of the annual reports.
20. DEFRA also states that the annual reports for 2021 and 2022 are currently being worked on and will be published in May/June, with an offer of additional support provided to assist with this. Disclosing the raw data now would impact the safe space required to hold discussions between Defra and CSIP on the development of the reports and make it more difficult to finalise this material.

21. DEFRA does not consider that disclosure at this stage would serve the wider public interest as the data is raw and undergoing analysis. Released out of context, it would not add to public understanding. It is of the view that sharing the data as presented in the finalised annual reports would serve the wider public interest. DEFRA is confident that the annual reports will provide the information that the complainant is seeking; the numbers of cetaceans that were stranded/beached around the coast of the UK during the years 2020, 2021 and 2022, collated from data such as the UK CSIP reports to DEFRA.

Balance of the public interest

22. The Commissioner acknowledges that there is a strong public interest in favour of disclosure as openness and transparency are important and could inform public debate regarding the stranding of cetaceans. The fact that this is environmental information also carries its own weight with the presumption in EIR being in favour of disclosure.
23. The Commissioner's guidance states that, just because incomplete or unfinished information might give a misleading or inaccurate impression, this does not carry much weight because a disclosure can be placed in context. However in this instance, the information is raw data which is currently being analysed, interpreted and collated to inform what will eventually be the final published annual reports. Disclosure at this stage could present misleading impressions which could lead to inaccurate and damaging conclusions as it would be out of context, not having been finalised.
24. The Commissioner has considered all the factors both in favour of maintaining the exception and disclosing the requested information. As DEFRA is planning imminent publication of the final reports, and DEFRA is confident that they will answer the complainant's request, the Commissioner sees no value in prematurely disclosing information at this stage which could cause the public to come to incorrect conclusions. DEFRA has also stated that if the complainant requires more detailed information e.g. about a specific area/region it would be happy to provide this following publication of the reports.
25. Having considered all of the above factors, the Commissioner has concluded that, on balance, the public interest lies in maintaining the exception.

Right of appeal

26. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Deirdre Collins
Senior Case Officer
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Wycliffe House
Water Lane
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