

**Department for Environment, Food and Rural Affairs**  
Information Rights Team  
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Mr Simon Birkett  
Campaign for Clean Air in London  
c/o The Knightsbridge Association  
6 Montpelier Street  
London  
SW7 1EZ

Our ref: RFI 2490  
15 September 2009

Dear Mr Birkett

**ENVIRONMENTAL INFORMATION REGULATIONS 2004: INTERNAL REVIEW**  
**INFORMATION ABOUT DOCUMENTS RELATING TO ANY MEETING BETWEEN**  
**LORD HUNT AND MAYOR JOHNSON**

Thank you for your letter of 1 May appealing against the decision to withhold some of the information regarding meetings between Lord Hunt, then Parliamentary Under-Secretary of State at Defra, and the Mayor of London, Boris Johnson.

In accordance with Defra's internal review procedures, your case has been reviewed by the Information Rights Team within Defra in discussion with colleagues who handled your original request. We have considered your appeal, including your arguments in favour of disclosure, and reviewed the public interest arguments for and against disclosure and have concluded that the information you requested has been properly withheld under the Environmental Information Regulations 2004 (EIR). I set out below a fuller explanation of our decision.

Chronology

You contacted Defra on 19 January to request "any minutes, papers, correspondence or other material relating directly to any meeting that takes place between Lord Hunt and Mayor Johnson". Robert Vaughan from AQIP contacted you on 13 February informing you that Defra was extending the time limit to respond to your request by a further 20 days, due to the complex nature of your request and the substantial amount of information you had requested. He explained that the department needed to consider the public interest arguments about disclosure in regulation 12(4)(e). He responded to your request on 1 April 2009, to say that the information was being withheld under this exception, on the grounds that release would involve disclosure of internal communications.

You wrote to me on 1 May 2009 to request an internal review of that decision, and raised a number of points that are dealt with in the 'Public Interest' section below.

You also raise the point that as at the date of your request, Defra did not hold any information relating to the meeting on 22 January. For clarity I should explain that the timing of your request on 19 January coincided with the production of information for the meeting on 22 January. Nonetheless all the documents relating to that meeting were considered as falling within your request, even if they were created after 19 January.

### FOI or EIRs

As the substance of these meetings concerned matters such as air quality and the London congestion charge, we consider that it properly falls under the definition of environmental information in regulation 2 (1) (a) of the EIRs. At regulation 2 (1) (c) the EIRs defines Environmental Information as

*(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements.*

The factors referred to in (b) include

*[...] substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment.*

### Regulation 12 (4) (e)

A public authority may refuse to disclose information that would involve the disclosure of internal communications. In point (a) of your appeal letter, you raise the point that the Mayor of London is not a government department as referred to in regulation 12(8). We would consider that in this case correspondence between this department and the Mayor is internal communications, as it relates to the approach by both public authorities to matters affecting air quality in London.

### Public Interest

In applying this exception we have had to balance the public interest in withholding the information against the public interest in disclosure. In this case, we believe that the public interest continues to fall in favour of withholding the information for the reasons previously set out in Robert Vaughan's letter

We recognise there is a general public interest in understanding how government works and transparency in how decisions are reached. There is also a particular interest regarding environmental emissions. However, there is also a strong and countervailing public interest in preserving private space for discussion and consideration of issues within government. Good government depends on good decision making and this needs to be based on the best advice available and a full

consideration of all the options. Ministers and officials need to be able to conduct candid assessments of their policies without there being premature disclosure which might close off possible options. In this case, releasing these documents would reveal policy not yet concluded as the discussions with the Mayor are ongoing. They also include opinions and speculation about the position of the GLA or the Mayor on air quality matters, which were used as the basis for discussion of the approach the Minister might wish to take in the meeting.

You also raised the point that no regard appeared to have been given to our duty under Regulation 5(1) of the EIRs. This Regulation states that a public authority should make environmental information available on request, subject to paragraph 4(3), which says this shall not extend to disclosing information which it would be entitled to refuse to disclose under Regulation 12. It is the exception in Regulation 12 (4)(e) that has been invoked. With regard to your point about distinctions between categories of information, we do not consider that any of the information captured by the request falls outside the scope of this exception. This information consists of briefing material provided to Ministers on handling the meeting with the Mayor; internal correspondence relating to the development of that briefing; notes of a pre-meeting to discuss handling the meeting with the Mayor; and internal e-mail summarising the outcome and next steps; and a letter from Lord Hunt to the Mayor. Defra has also considered whether any of the information could be provided in a redacted or summary form. However, as the bulk of all the relevant documents fell under the exception in 12(4)(e) we do not consider the remainder to be of use in providing the information requested.

#### Representations and reconsideration

Regulation 11(1) of the EIRs provides a right to an internal review of the original decision where the applicant considers that the public authority has failed to comply with requirement of these Regulations in relation to the request. Regulation 11(4) requires us to undertake such a review and inform the requestor of the outcome as soon as possible and no later than 40 working days after receipt of the complaint.

Your letter requesting a review was received on 1 May 2009. The internal review should therefore have been completed by 30 June 2009.

Consequently, Defra was in breach of Regulation 11(4) of the EIRs. I should like to apologise for the length of time that it has taken to review your case. We are grateful for the patience that you have shown. It is not our practice to take longer than absolutely necessary to take or review decisions on information requests. I very much regret that we have fallen short of the standards to which we aim to adhere.

I recognise that this reply may be disappointing. However, if you remain dissatisfied, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

<http://www.ico.gov.uk/complaints.aspx>

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Clive Porro', written in a cursive style.

**Clive Porro**