

By email to:  
Mr Andy Wightman  
mail@andywightman.com

Our ref: FOI/13/00041  
22 March 2013

Dear Mr Wightman,

Thank you for your request of 19 February 2013 for a review of our response to your request under the Environmental Information (Scotland) Regulations 2004 (EIRs) for evidence submitted to the Land Reform Review Group in response to their call for evidence. I have been asked by Jonathan Pryce, Director for Agricultural, Food and Rural Communities to carry out the review because I was not involved in handling your original request. I have now completed my review having looked at the case afresh to establish whether the original response should be confirmed, with or without modifications as appropriate, or a fresh decision should be substituted. I understand that you did not receive an acknowledgement to your review request; please accept my apologies. An acknowledgement was issued by email on 5 March but it is clear that you did not receive that email.

You raise some specific points in your review request and I will respond to each in turn:

1. There is no specific exception that allows a public authority to withhold information on the grounds of “the review group not having had that time to study the response themselves” or that such a group had not had “the benefit of having undertaken any formal analysis”, however these are relevant to your request because public authorities do have the right to consider information within a private space prior to any public debate taking place. Additionally, this is an appropriate consideration to make in relation to the terms of your request, particularly as, at the date of making your request, the call for evidence’s deadline had been extended.

2. Your request was for “Evidence submitted to the Land Reform Review Group in response to their Call for Evidence in which evidence was invited by 11 January 2014”; it did not specify that we were to discount confidential responses. To that end, we were obliged to consider your request in the widest terms – in other words, we had to consider all information we held, including confidential responses. This is a legal duty placed on us by the EIRs. This reason for refusal is not irrelevant as we were obliged to inform you why the information was being withheld. However, an exception should have been used to explain why this particular

information was being withheld this and to that end I apply the terms of regulation 11(2) (Personal data relating to third party) to that information.

3. Under the terms of FOISA/the EIRs, release to one is release to all. In other words, if the information is released to one person, it then becomes public and anyone is entitled to it. Therefore, it essentially is being published prior to the date the Scottish Government has already committed to.

4. As I describe below, the time and cost it would take to redact any information prior to scanning it onto our system so that it would be ready to burn onto a CD would be excessive.

In relation to your review request, I have concluded that the original decision should be confirmed; however I have concluded that regulation 10(4)(b) applies because the time and costs involved in complying with the request mean that any reasonable person would regard them as excessive. This is because the time taken to collate and print out the 479 consultation responses we received, (some of which consist of as many as 200 pages) as well as go through every page to identify and redact any information that we would be unable to release, such as personal information, would, in my view, be excessive. It would also divert a very small team away from its core task of supporting the Working Group, impacting on its timetable of which the publication of the consultation responses is included.

As the exception is conditional I have applied the 'public interest test'. This means I have, in all the circumstances of this case, considered whether the public interest in disclosing information outweighs the public interest in applying the exception. I have found that, on balance, the public interest lies in favour of upholding the exception. Whilst I recognise that there may be some public interest in the consultation responses, this is outweighed by the public interest in ensuring the efficient and effective use of public resources by not incurring excessive costs when complying with information requests, nor in delaying the Working Group's planned timetable of work as a result of the small team that supports the Working Group being diverted to dealing with your request.

If you are unhappy with the outcome of this review you have the right to appeal to the Scottish Information Commissioner about our decision within 6 months of receiving this letter. You can contact the Commissioner at:

The Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS  
E-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)  
Telephone: 01334 464610

Yours sincerely,  
Emma Henderson