



EAST CAMBRIDGESHIRE DISTRICT COUNCIL

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Further to your information request FOI/EIR 22/23-272 please find your question and our response below.

Request:

1. Business name and business registration number of the contractor who used herbicide within Contaminated Land Report filed with ECDC Environmental Department;
2. Licence number(s) possessed by such contractor for use of herbicides;
3. Copy of any written correspondence from Environmental Department of ECDC to the Property Owner who hired Contractor within the case (with any personal details redacted);
4. Copy of any written response to Environmental Department of ECDC from the Property Owner who hired Contractor with the case (with any personal details redacted);
5. Copy of Referral sent to HSE by Environmental Department of ECDC in relation to the case (with any personal details redacted)

Response:

The Council considers that the requested information falls within the Environmental Information Regulations ("EIR"), which relate to information on activities affecting or likely to affect the elements and factors of the environment.

Determining whether or not it is appropriate to release information involves considering whether the public interest is better served by withholding or releasing the information. By way of explanation, the 'public interest' is not the same as what might be of interest to the public. In carrying out a Public Interest Test we consider the greater good or benefit to the community as a whole if the information is released or not. The 'right to know' must be balanced against the need to enable effective government, deliver efficient policies and to serve the best interests of the public.

EIR requests are 'applicant blind'; this means that we cannot, and do not, ask about the motives of anyone who asks for information. In providing a response to one person, we are providing the same response to anyone, via publishing all FOI responses on our website.

The Council believes that the following exceptions are engaged in respect of your request and these are detailed below:

In respect of those requests that are answered in full, partially or the total refused, please take this as notice under EIR, which we:

a) Consider the following exceptions of EIR apply:

b) Claim exception under sections of the Act:

Exception 12 (5) (b) Course of Justice Exception

c) State why the exception applies:

Regulation 12(5) (b) provides an exception from the disclosure of environmental information which would adversely affect the course of justice. Regulation 12(5)(b) allows you to refuse to disclose information "to the extent that its disclosure would adversely affect" the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.

We note paragraph 39 of the ICO guidance which outlines the factors an authority should consider including:

- The stage or stages reached in any particular investigation or proceedings:

The case has now passed to the HSE. To release correspondence and details of the contractor, could potentially hinder the HSE's investigation.

- Whether and to what extent the information has already been released into the public domain
None of the requested information is in the public domain. The HSE deal with complaints confidentially. If the HSE issues an enforcement notice, then the details will be published on their website.
- The significance or sensitivity of the information:
Release of this information could potentially hinder an ongoing investigation and damage a company's reputation.
- The age of the information:
This information is relatively new, and as such the investigation case with the HSE is still live and ongoing.

As the Council has passed over the details of this case to the Health and Safety Executive, we cannot release the requested details as doing so may hinder the HSE's investigation. The HSE deal with complaints confidentially until the point that an Enforcement Notice is issued. If an Enforcement Notice is not issued, then the details remain confidential.

As this exception is qualified, we are obliged to outline the harm in disclosure and explain why we consider that the public interest in maintaining the exception outweighs the public interest in disclosure: Whilst we appreciate the benefits of transparency, the requested details are now with the HSE for investigation and release of this would be detrimental to their investigation. We consider that communications between ourselves and the contractor and home owner, were provided in confidence, and that therefore the common law of confidence is applicable.

As the case is now with the HSE, we recommend that you contact them for further information at:
<https://www.hse.gov.uk/foi/your-right-to-know.htm>

This concludes your request FOI/EIR 22/23-272

If information has been refused please treat this as a Refusal Notice for the purposes of the Act.

If you disagree with our decision or are otherwise unhappy with how we have dealt with your request in the first instance you may approach foi@eastcambs.gov.uk and request a review. A request for review must be made in no more than 40 working days from the date of this email.

Should you remain dissatisfied with the outcome you have a right under s50 of the Freedom of Information Act to appeal against the decision by contacting the Information Commissioner, Wycliffe House, Water Lane, Wilmslow SK9 5AF.