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Email:

**Your ref:**  
**Our ref:** RFI 5954  
**Date:** 24 December 2013

Dear

**REQUEST FOR INFORMATION: SURREY COUNTY COUNCIL WASTE  
INFRASTRUCTURE PROJECT**

Thank you for your request for details, times, and contents of any communication between Surrey, Sita and WIDP/Defra, in the last month [30 September to 30 Oct]; communication which has occurred relating to the National Audit office investigation; and list of any emails, phone calls, meetings etc.

As you know, we have considered your request under the Environmental Information Regulations 2004 (EIRs).

Defra/ Sita communications and Communications relating to the National Audit Office (NAO) investigation

Defra has not communicated with Sita, nor communicated with the NAO on Surrey County Council's waste infrastructure project . As such, the information that you have requested is not held by Defra and is therefore exempt under regulation 12(4)(a) of the EIRs, which relates to information which is not held at the time when an applicant's request is received. Regulation 12(4)(a) is a qualified exception, which usually means that a public authority is required to conduct a public interest test to determine whether or not information should be disclosed or withheld. However, the Information Commissioner, who is the independent



regulator for requests made under the EIRs, takes the view that a public interest test in cases where the information is not held would serve no useful purpose. Therefore, in line with the Information Commissioner's view, Defra has not conducted a public interest test in this case.

#### Defra/ Surrey County Council communications

I attach the correspondence between Defra and Surrey County Council (SCC) in the attached document, *Correspondence.pdf*.

You will see that we have redacted some of the information, as follows:

#### Regulations 12 (3) and 13(2)(a)(i)

As regards the names of officials, this personal data is being withheld as the information falls under the exception in regulations 12(3) and 13(2)(a)(i) of the EIRs, which relate to personal data relating to third parties. Regulation 13(2)(a)(i) of the EIRs exempts from disclosure personal data relating to third parties where disclosure would breach the Data Protection Act 1998 (DPA). In this case, we believe that disclosure of the information would breach the first data protection principle in Schedule 1 of the DPA in two ways. First, disclosure would not constitute 'fair' processing of the personal data and, second, disclosure would not satisfy any of the conditions for data processing set out in Schedule 2 of the DPA. In particular we do not consider that there is a legitimate interest in disclosure in this case. Release of names of junior officials poses a risk to the neutrality of the civil service, the names would add nothing to the public's understanding of this matter and the public authority's accountability does not require release of names. Consequently, we believe that regulations 12(3) and 13(2)(a) (i) of the EIRs exempt the information from disclosure.

#### Regulation 12(5)(e)

The attachments referred to in the emails have been withheld (where shown) because of commercial confidentiality. These documents hold information of a sensitive commercial nature and disclosure could be harmful to the relationship between SCC and Sita and it would not be in Defra's, or indeed in the public, interest to release such information.

## Public Interest Test on using Regulation 12(5)(e)

The WIDP Programme Office is aware that there is always a public interest in ensuring transparency in the dealings between Defra and the various participants in this project, ensuring best value for money and that the award of contracts, and other dealings, is a fair and transparent process. But there is also a strong public interest in ensuring that, for their part, those who have dealings with ourselves and the Councils can do so in the assurance that confidences will be respected where there is no overriding public interest in breaching confidence.

I attach Annex A, which explains the copyright that applies to the information being released to you.

I also attach Annex B giving contact details should you be unhappy with the service you have received.

In addition to the EIR request above, your email of 30 October also asked other questions which I will answer as general correspondence.

1. Defra had no involvement with the SCC's emergency cabinet meeting of 30 October.
2. SCC's move on 30 October does not affect the waste infrastructure grant award
3. Defra does not provide advice on stopping waste infrastructure grants.

If you have any queries about this letter please contact me.

Yours sincerely

WIDP Programme Office

Email: [widp.programmeoffice@defra.gsi.gov.uk](mailto:widp.programmeoffice@defra.gsi.gov.uk)

## **Annex A Copyright**

The information supplied to you continues to be protected by copyright. You are free to use it for your own purposes, including for private study and non-commercial research, and for any other purpose authorised by an exception in current copyright law. Documents (except photographs) can be also used in the UK without requiring permission for the purposes of news reporting. Any other re-use, for example commercial publication, would require the permission of the copyright holder.

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## **Annex B Complaints**

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Mike Kaye, Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: [requestforinfo@defra.gsi.gov.uk](mailto:requestforinfo@defra.gsi.gov.uk)) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

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