

12 January 2011

Friends of the Earth/Clean Air in London press release

Government attempts to keep London air pollution information secret

A freedom of information tribunal is being urged by environmental campaigners to reject Government attempts to keep secret sections of ministerial briefing papers on air pollution in London. The Government's appeal against a previous ruling to make the information public will be heard today and tomorrow (12 and 13 January 2011).

The information could have major implications for Government efforts to prevent the European Union prosecuting the UK for persistently breaching air quality laws. It has been requested by Simon Birkett, who is Founder and Director of Clean Air in London and represented by lawyers from Friends of the Earth's Rights and Justice Centre and barristers Gerry Facenna and Laura Elizabeth John of Monckton Chambers. A separate decision from the EU on its legal action is expected imminently.

In January 2009 Clean Air in London filed a freedom of information request asking for "a copy of any minutes, papers, correspondence or other material relating directly to any meeting (including sent subsequent to it) that takes places between Lord Hunt [Environment Minister under the previous Labour Government] and Mayor Johnson". The sections of the documents which the Government has yet to release are believed to relate to the western extension of the congestion charging zone and air quality.

Despite two rulings in favour of Mr Birkett (by the Information Commissioner's Office in November 2009 and at an appeal heard by the First-tier Tribunal in May 2010), the Government has continued to refuse to make the information public.

The Government is appealing for a second time (this time to the Administrative Appeals Chamber of the Upper Tribunal) – arguing that it was entitled to say, for the first time to the First Tier Tribunal, that the information is covered by 'legal advice privilege and litigation privilege'.

Simon Birkett, Founder and Director of the Clean Air in London, said:

"For two years successive Governments have fought to keep information about London's air quality secret – if only they'd put as much effort into meeting pollution laws.

"The Mayor estimates that the early death of some 4,300 Londoners in 2008 was attributable to long-term exposure to dangerous airborne particles – mainly caused by diesel-powered vehicles. This is a national disgrace.

"The Government must not be allowed to hide this information – the public interest in favour of publication is overwhelming."

Friends of the Earth's Head of Legal Gita Parihar said:

"The Government's approach to this case makes a mockery of information laws.

“When the Information Commissioner’s Office ruled that the Government’s reason for refusing to make the information public wasn’t valid, it came up with two completely new reasons for keeping these documents secret.

“Ministers must deal with freedom of information fairly and openly rather than trying to move the goalposts to protect themselves.”

Notes to editors

1. Defra’s appeal follows a decision by the First-tier Tribunal (Information Rights) (FTT) in May 2010 to reject the Government’s attempt to raise new legal arguments late in the original appeal process. The Government admitted there were no special reasons why the FTT should consider the arguments and that the only reason it had not made them earlier was an error. The FTT ruled within minutes that the Government was not allowed to introduce new arguments. As a result, the Government’s barrister stated in open court that “it does not have much of an appeal left” if it could not claim belatedly ‘legal professional privilege’ (or ‘legal advice privilege and litigation privilege’). The FTT hearing related to an appeal by Defra against an Order by the Information Commissioner’s Office (ICO) on 2 November 2009 for it to release all information requested by the Clean Air in London on 22 January 2009.
2. According to Defra the most important air pollutant in terms of quantified health effects is PM₁₀ – small particles emitted from vehicle exhausts, chimneys or formed in the air from reactions between other pollutants. The World Health Organization (WHO) advises there is no safe exposure level. See: <http://ww2.defra.gov.uk/environment/quality/air/air-quality/>
3. On 28 March 2010, Mayor of London, Boris Johnson, estimated that 4,267 premature deaths in London in 2008 were attributable to long-term exposure to the smallest dangerous airborne particles (PM_{2.5}).
See: http://www.london.gov.uk/sites/default/files/Health_Study_%20Report.pdf
4. On 3 June 2010 the European Commission sent the UK a final written warning for breaching air quality laws for dangerous airborne particles (PM₁₀) in London every year since 2005.
5. The Mayor of London has taken a succession of backward steps on air quality measures in the capital including: the postponement of Phase 3 of the low emission zone from 4 October 2010 to 3 January 2012; the removal of the western extension of the congestion charging zone on 4 January 2011; and the weakening of other measures in his Air Quality Strategy published on 14 December 2010.
6. The European Commission is due to decide imminently (and by early February 2011 at the latest) whether or not to allow the UK a time extension until 2011 to comply with the PM₁₀ daily limit value in London.
7. The European Commission is likely to progress from its final written warning and refer the UK to the European Court of Justice over breaches of air quality laws for PM₁₀ if it rejects the UK’s reapplication for a time extension on PM₁₀.

8. More information on Clean Air in London: <http://www.cleanairinlondon.org/>.
9. Friends of the Earth believes the environment is for everyone. We want a healthy planet and a good quality of life for all those who live on it. We inspire people to act together for a thriving environment. More than 90 per cent of our income comes from individuals so we rely on donations to continue our vital work. For further information visit www.foe.co.uk.

Timeline

2009

22 January	Clean Air in London (CAL) lodges request for information
29 January	European Commission sends UK first written warning for breaching PM ₁₀ laws
1 April	Defra rejects CAL request for information
24 April	Defra lodges initial application for PM ₁₀ time extension
1 May	CAL requests internal review of Defra decision
15 September	Defra rejects CAL request after internal review
3 October	CAL appeals to Information Commissioner's Office (ICO)
2 November	ICO makes nearly unprecedented urgent decision and orders release of all papers
1 December	Defra appeals against ICO decision
11 December	European Commission rejects UK's application for time extension for PM ₁₀
24 December	Defra posts Ministerial briefing papers to CAL with sections redacted

2010

3 May	UK lodges reapplication for PM ₁₀ time extension
11 May	First-Tier Tribunal rejects Defra request to rely belatedly on 'litigation privilege'
3 June	European Commission sends UK final written warning for breaching PM ₁₀ laws

2011

12 and 13 January	Upper Tribunal to hear appeal from First-Tier Tribunal
By early February	European Commission to decide on UK's reapplication for PM ₁₀ time extension