

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 19 December 2011

**Public Authority:** HM Treasury  
**Address:** 1 Horse Guards Road  
London  
SW1A 2HQ

**Decision**

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1. The complainant requested the following:

*"The ever increasing commercial wind turbine expanse throughout the UK countryside throws up many issue's and in particular the financial benefit to the economy as a whole. It is my understanding that the UK goes not have a turbine manufacturer and ALL turbines are imported for assembly in the UK. Taking this into account, what are the tax benefits to the UK economy with the importation of turbines? The largest capital outlay for a commercial wind farm is some 75% for the purchasing and erecting of turbines with the remaining 25% for the preparation of the site.*

*a) What is the current tax benefit to the UK economy on the importation of wind turbines?;*

*b) What is the annual tax benefit to the UK economy for wind turbines? The 'benefit' does of course mean the direct income from turbines to the treasury in income tax, corporation tax etc;*

*c) What tax benefits are awarded to wind farm operators on an annual basis?;*

*d) What is the tax liability on an annual basis for individual commercial wind turbines?*

*e) Is VAT applicable to wind turbines at any time?"*

2. The Information Commissioner's decision is that HM Treasury dealt with the request under the wrong access regime. He considers that the request is for environmental information and should have been dealt with under the EIR, rather than the FOIA. He also considers that HM Treasury breached regulation 14(2) and 14(3)(a) of the EIR as it did not issue a valid refusal notice within 20 working days citing the exception it was relying on.
3. The Information Commissioner (the Commissioner) contacted HM Treasury and asked it to provide a response to the complainant under the EIR. HM Treasury did so on 1 December 2011. The Commissioner does not require any further steps to be taken.

### **Request and response**

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4. On 23 July 2011, the complainant wrote to HM Treasury and requested information as described in paragraph 1.
5. The request was acknowledged by a member of the Correspondence and Information Rights Team on 25 July 2011.
6. The complainant wrote to HM Treasury on 7 September 2011 asking why he had not been provided with a response to his request. He made a complaint to the Commissioner on the same day.
7. A member of HM Treasury's Correspondence and Information Rights Team responded to the complainant on 8 September 2011 providing an apology and stating that the request was not initially recognised as a request for information under the FOIA.
8. The Commissioner wrote to HM Treasury on 20 October 2011 asking it to provide a response to the complainant's request within 10 working days.
9. HM Treasury provided a response to the complainant under the FOIA on 28 October 2011.
10. The Commissioner contacted HM Treasury on 15 November 2011 and asked it to provide a response to the complainant under the EIR. HM Treasury did so on 1 December 2011.

## Scope of the case

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11. The complainant initially complained to the Commissioner as he had not received a response to his request. At the time of the Commissioner's investigation HM Treasury had provided a response under the FOIA. Therefore, in addition to the delay that occurred in this case the Commissioner has also considered whether the request was dealt with under the correct access regime.

## Reasons for decision

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12. The Commissioner first considered whether the withheld information is 'environmental information' within the definition of the EIR.

13. Section 2(1) of the EIR states that:

*"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on—*

*(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;*

*(b) factors, such as 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 referred to in (a);*

*(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".*

14. The Commissioner considers that information on taxes applied to alternative energy sources, or to wind turbines in particular, and the implications of those taxes would be information on a measure that is likely to affect the production of energy, which in turn is likely to affect the state of the elements of the environment such as the air and atmosphere. Therefore, he considers that HM Treasury should have dealt with the request under the EIR.

15. HM Treasury responded to the complainant's request under the FOIA stating that it did not hold any information within the scope of the request. Under the FOIA if a public authority does not hold any of the requested information it has to respond to the applicant stating that fact but it is not required to issue a refusal notice in compliance with section 17 of the FOIA. Under the EIR if a public authority does not hold any information within the scope of the request the exception under Regulation 12(4)(a) is engaged and a refusal notice should be issued in compliance with Regulation 14 of the EIR.
16. The Commissioner considers that HM Treasury responded to the complainant's request under the wrong access regime and failed to issue a valid refusal notice within 20 working days. In doing so HM Treasury breached Regulation 14(2) and 14(3)(a) of the EIR. As HM Treasury has now provided a response to the complainant under the EIR the Commissioner does not require any further steps to be taken.

## Right of appeal

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17. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

18. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed .....**

**Faye Spencer**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**