

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 12 March 2012

Public Authority: The Health and Safety Executive
Address: 1 Magdalen House
Trinity Road
Bootle
Merseyside
L20 3QZ

Decision (including any steps ordered)

1. The complainant has requested information about the proposed expansion of Lydd Airport. The Health and Safety Executive (HSE) disclosed some of the requested information to the complainant. However it made one redaction and withheld 3 full pages of one of the requested documents under regulation 12(5)(a) of the Environmental Information Regulations 2004 (EIR). It made two further redactions to the same document under regulation 13 EIR.
2. The Commissioner's decision is that the HSE has correctly applied regulation 12(5)(a) and regulation 13 EIR.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 18 January 2010 the complainant requested the following information:

"In the email from HSE to OND of 7 May 2009 – see attached copy – a summary Briefing Note of December 2008 is attached. Accordingly, referring to the attached Briefing Note, please provide

1. *a summary, or if prepared, the detail of the S106 Agreement caveats on the proposed expansion flight paths likely to be applicable as referred to in paragraph 6 of page 1;*

2. *quantify the 'low levels' of risk associated with the fuel remaining at the Dungeness A (Magnox) site referred to in paragraph 2 of page 2;*
3. *a full and unabridged copy of the final report of the independent studies commissioned by the HSE in or about 2006 referred to in the 2nd bullet point of page 2; and*
4. *if different to the risk assessment in the report of 3) foregoing (ie if the item) 3) report only deals with aircraft crash risk), provide a copy of the studies that relate aircraft type and crash incidence to the projected 'calculated risk of a significant radiological release (per annum)' of the tabulated data of page 2;"*
5. The HSE provided a response to the complainant on 10 January 2011. It disclosed information to the complainant in relation to all four points of the request. However in relation to point 3 of the request it made redactions to the information it disclosed under regulations 12(5)(a) and regulation (13). It also withheld 3 full pages of this document under regulation 12(5)(a).
6. The complainant requested an internal review of HSE's decision on 27 January 2011. In the request for internal review the complainant explained that he was satisfied with the response in relation to point 1 of the request. In relation to the responses to points 2 and 4 of the request, he made some further requests for information. These further requests will not however be dealt with as part of this case. Finally in relation to point 3 of the request the complainant disputed the application of the exceptions applied to the redactions and the 3 withheld pages.
7. After completing the internal review the HSE removed some of the redactions it had originally made to the information requested at point 3 of the request, however it upheld its application of regulation 12(5)(a) to the remaining redactions.
8. During the course of the Commissioner's investigation the HSE did confirm that it also wished to uphold the 2 redactions made under regulation 13 EIR. The HSE also removed all but one of the redactions made under regulation 12(5)(a) and it does continue to withhold the 3 full pages.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information had been handled.

10. The Commissioner will consider whether the HSE was correct to make the two redactions under regulation 13 and the one remaining redaction along with the three withheld pages under regulation 12(5)(a).

Reasons for decision

Regulation 12(5)(a)

11. Regulation 12(5)(a) EIR states that, for the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety.
12. In this case the HSE has disclosed most of the information contained in the report, however, it argued that disclosure of one redaction along with the three withheld pages would adversely affect national security. The HSE has said that disclosure of this information would aid the commission of a malicious act. It has said that the redacted figure and withheld tables would identify potential for 'at risk' areas. It acknowledged that the location of UK nuclear facilities are well known however it explained that what is less well known are the vulnerable areas on such facilities.
13. The threshold to justify non-disclosure of information because of adverse affect under regulation 12(5) is a high one and the Commissioner must be satisfied not only that there is an effect but that the effect is adverse.
14. Upon viewing the redaction and the withheld pages the Commissioner considers that disclosure of this information would identify 'at risk' areas of the site in question which could inform the commission of a malicious act. Disclosure of this information would therefore adversely affect national security.
15. The Commissioner considers that regulation 12(5)(a) EIR was correctly engaged in this case. He has therefore gone on to consider the public interest in this case.

Public interest arguments in favour of disclosing the requested information

16. The Commissioner considers that there is a public interest in openness, transparency and accountability. Disclosure of the withheld information would further inform the public about the decision making process behind the proposed expansion of Lydd Airport.

17. The Commissioner does however consider that the information already disclosed by the HSE goes a considerable way to meeting the public interest arguments in favour of disclosure.

Public interest arguments in favour of maintaining the exemption

18. The HSE asserted that there is a strong public interest in not disclosing information which could inform the commission of a malicious act at Lydd airport and thereby adversely affect national security.
19. The HSE stated that this is against a background of terrorist threats and the impact such threats can have. The HSE also referred to the events of 9/11 and the London Tube bombings. Clearly, the commission of a malicious act at Lydd airport would pose a significant threat and risk to staff working at the airport and the general public.

Balance of the public interest arguments

20. The Commissioner considers that there is a public interest in openness, transparency, accountability and informing the public about significant decisions which are made by public authorities. However, he considers that information already disclosed in this case goes a considerable way to meeting these public interest arguments. The Commissioner has noted that the HSE has explained that it has held back information which would enable 'at risk' areas of the site to be identified. The Commissioner considers that there is a very strong public interest in withholding information which would identify 'at risk' areas of Lydd Airport as this could inform the commission of a malicious act. The Commissioner therefore considers that, in all the circumstances of this particular case, the public interest arguments in favour of maintaining the exemption outweigh the public interest arguments in disclosure.

Regulation 13

21. Under Regulation 13, to the extent that the information requested includes personal data of which the applicant is not the data subject a public authority shall not disclose the personal data if it would breach any of the data protection principles to do so.
22. In this case the redacted information is the name of the author and of the individual who reviewed the requested document, who were independent third parties.
23. The Commissioner considers that the redacted names would be classed as personal data from which the data subjects would be identifiable. The Commissioner has therefore considered whether disclosure would breach any of the data protection principles, in particular whether or not disclosure would be fair.

24. The Commissioner considers that given the nature of the contents of the withheld report, it is unlikely that the data subjects would have expected their names to be disclosed as part of that report. The Commissioner also considers that given that much of the report has been disclosed, disclosure of the names would be unlikely to add anything further to public understanding, and therefore there is little legitimate public interest in this information being disclosed.
25. The Commissioner therefore considers that regulation 13 was correctly applied to the two redactions on page 2 of the report.

Regulation 5(2)

26. In this case the Commissioner notes that the HSE did not respond to the complainant's request for information until nearly 12 months after the initial request was made on 18 July 2010. Regulation 5(2) EIR states that requests should be responded to within 20 working days. The HSE clearly breached regulation 5(2) in its handling of this case.

Other matters

27. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his '*Good Practice Guidance No 5*', published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 40 working days for an internal review to be completed, despite the publication of his guidance on the matter.

Right of appeal

28. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

29. 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.
30. 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

Gerrard Tracey
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