

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 11 September 2013

Public Authority: Northern Ireland Water
Address: Northern Ireland Water
Westland House
Old Westland Road
Belfast
BT14 6TE

Decision (including any steps ordered)

The complainant has requested from Northern Ireland Water (NI Water) information in relation to works carried out by or on behalf of NI Water in a certain area in Northern Ireland on a specific date. NI Water has provided information in relation to two parts of the complainant's request, however it has applied regulation 12(4)(a) of the EIR (information not held). The Commissioner's decision is that NI Water has disclosed all the information to the complainant which it holds and is relevant to the request. Therefore, the Commissioner orders no steps to be taken.

Request and response

1. On 23 January 2013, the complainant wrote to NI Water and requested information in the following terms:
 - "4. Please provide me with all documents to clarify why Northern Ireland Water had required a company to most likely sub-contract to Environmental Technical Services, work to be carried out on Old Church Road?
 8. What is the name of the Business or individual who requested the work to be carried out?
 12. Exactly how much did the work carried out on Old Church Road, Wednesday 23rd January 2013 cost in total?"

The complainant had also requested other information, however this was dealt with separately by NI Water's Customer Relations Centre. As these queries were intertwined with the complainant's EIR requests above, the relevant requests have been referred to throughout this Notice as parts a) b) and c) of the complainant's request for ease of reference.

2. NI Water responded on 13 February 2013. It disclosed information in relation to part b) of the complainant's request, however it refused to disclose the information requested in parts a) and c), citing the exceptions as set out in regulations 12(4)(a) and 12(4)(d) of the EIR.
3. Following an internal review NI Water wrote to the complainant on 5 March 2013. It stated that the reviewer was upholding the original decision that regulations 12(4)(a) and 12(4)(d) applied to the information in parts a) and c) of the complainant's request.

Scope of the case

4. The complainant contacted the Commissioner on 6 March 2013 to complain about the way her request for information had been handled.
5. Since NI Water subsequently provided the complainant with a response to part c) of her request, the Commissioner has only considered whether NI Water has correctly applied the exception as set out in regulation 12(4)(a) above.

Reasons for decision

Regulation 12(4)(a) – information not held

6. Regulation 12(4)(a) of EIR states that a public authority may refuse to disclose information to the extent that it does not hold that information when a request is received.
7. In cases such as this where there is some dispute as to whether a public authority holds information falling within the scope of the request the Commissioner has been guided in his approach by a number of Tribunal decisions which have used the civil standard of the balance of probabilities, i.e. whether on the balance of probabilities the Commissioner is satisfied that no further information is held. In deciding where this balance lies the Commissioner will take into account the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where

appropriate, any other reasons offered by the public authority to explain why the information is not held.

8. Therefore, the Commissioner will consider both:
 - the scope, quality, thoroughness and results of the searches and
 - other explanations offered as to why the information is not held.
9. NI Water advised the Commissioner that it has never had any reason to hold any information relevant to part a) of the complainant's request, nor has it ever been held by anyone on behalf of NI Water. It does not hold any records to suggest that information relevant to the request has ever been destroyed and has no reason to conceal any such information.
10. NI Water confirmed that, upon receipt of the complainant's request, it sent out a specific background-gathering request to its 'Engineering Procurement' Directorate as it suspected that the work in respect of which the complainant had requested information may have been sub-contracted to Environment Technical Services. It received a reply stating that this was not the case. A background-gathering request was also sent to NI Water's 'Networks Water' team, from which it was ascertained that NI Water's 'Networks Sewerage' team, and a specific member of staff therein, could possibly hold information relevant to the complainant's request. That member of staff contacted NI Water clarifying that no documents were held by the Networks Sewerage team which were within the scope of the complainant's request. NI Water advised the Commissioner that, if such information were held, it would be held in electronic format.
11. NI Water further informed the Commissioner that there would be no specific business need for NI Water to hold such information, however it would sometimes hold such information for historical reference, or audit, purposes.
12. NI Water further clarified to the Commissioner that its Customer Relations Centre had provided a comprehensive response to that part of the complainant's original letter which was not deemed to consist of requests under the EIR, but rather under normal course of business. It considers that this response provided full clarification and reasoning as to the work being carried out, in respect of which the complainant had posed a number of questions, including parts a) and c), which were dealt with under the EIR. NI Water therefore considers that it has provided all advice and assistance to the complainant which it is within NI Water's ability to provide. The Commissioner, having viewed the complainant's original letter and the information provided by the Customer Relations Centre in response to this, is satisfied that all such

appropriate advice and assistance has been provided to the complainant by NI Water.

13. After considering all the information before him, and NI Water's submissions, the Commissioner is satisfied that, on the balance of probabilities, NI Water does not have any further information relevant to part a) of the request.
14. Regulation 12(1)(b) of the EIR requires that all exceptions, including regulation 12(4)(a), are subjected to a public interest test. However, it is not possible for the Commissioner to carry this out given his finding that the Council does not hold the information to which the public interest could apply.

Right of appeal

15. 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

16. 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.
17. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF