

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 22 August 2013

**Public Authority:** Department for Environment, Food and Rural Affairs

**Address:** Nobel House  
17 Smith Square  
London  
SW1P 3JR

### **Decision (including any steps ordered)**

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1. The complainant made a request to the Department for Environment, Food and Rural Affairs (Defra) for information on the hair test conducted as part of the 2013 survey on badger numbers. Defra refused the request under regulation 12(4)(a) of the EIR (information not held) because it said that the information was held by another organisation. The Commissioner has investigated the complaint and found that this organisation is in fact an executive agency of Defra and therefore the information was held by Defra and it was obliged to response to the request. The Commissioner's decision is that regulation 12(4)(a) does not apply in this case.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Defra shall issue the complainant with a fresh response in under the EIR.
3. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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4. On 19 May 2013 the complainant made the following request to Defra:

*"I would like to ask for information and data regarding the methodology and reliability, validity and robustness of the hair test conducted during the survey on badger numbers in 2013, and how reported tampering of said tests will affect your badger cull protocol."*

5. Defra acknowledged receipt of the request on 19 May 2013.
6. On 18 June 2013 Defra provided a substantive response to the request which it said it was dealing with under the Environment Information Regulations 2004 as the requested information was deemed to be environmental information. However it also said that the request was being refused under the exception in regulation 12(4)(a) because the information was not held. It explained that the information was instead held by another organisation, the Food and Environment Research Agency (FERA). It asked for the complainant's permission for it to transfer the request to this organisation, which the complainant subsequently gave.
7. The complainant received nothing further from Defra and on 10 July 2013 asked it to confirm that the request had been transferred. Again, nothing more was heard from Defra and on 25 June 2013 the complainant asked Defra to carry out an internal review of its handling of the request.
8. Defra presented the findings of its internal review on 25 July 2013. It now acknowledged that FERA was legally a part of Defra and therefore the regulation 12(4)(a) exception did not apply. It also apologised that the request should have been transferred to FERA in a more timely manner.

## Scope of the case

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9. On 5 July 2013 the complainant contacted the Commissioner to complain that Defra had failed to respond to her after it had said that it would transfer the request to FERA.
10. The Commissioner considers the scope of the scope of the complaint to be to decide whether Defra was correct to refuse the request under regulation 12(4)(a).

## Reasons for decision

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11. Regulation 12(4)(a) provides that a public authority may refuse to disclose information if it does not hold that information when a request is received. In this case Defra claimed that it did not hold the requested information because it was held instead by another organisation, FERA. However, the Commissioner understands that FERA is in fact an Executive Agency of Defra and therefore it is legally part of the same organisation. Executive agencies have no independent legal status and therefore, Defra should have responded to the request in its own right or else transferred the request to FERA and ensured that a response was sent within 20 working days.
12. The Commissioner has decided that regulation 12(4)(a) is not engaged. Whilst Defra acknowledged this in its internal review the Commissioner understands that at the time of drafting this notice the complainant has yet to receive a further response from Defra or FERA.

## Right of appeal

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13. 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)

14. 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.
15. 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 .....**

**Pamela Clements  
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