

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 13 January 2014

Public Authority: Department for Communities and Local Government

Address: Eland House
Bressenden Place
London
SE1E 5DU

Decision (including any steps ordered)

1. The complainant has requested information, in an Excel spreadsheet or csv file, from the Non Domestic Energy Performance Certificate Register. The Department for Communities and Local Government (DCLG) refused to provide the information citing regulation 6(1)(b) – information is publicly available and easily accessible.
2. The Commissioner's decision is that regulation 6(1)(b) does not apply to this request.
3. The Commissioner requires DCLG to issue a fresh response to the complainant's request under the terms of the EIR.
4. 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

5. On 25 March 2013, the complainant wrote to DCLG and requested information in the following terms:

"For each building on the Non Domestic Energy Performance Certificate Register, please supply the following information (in the form of an Excel spreadsheet or as a csv file)

- 1. Organisation name*
- 2. Address*
- 3. Certificate reference number*
- 4. Energy performance operational rating*
- 5. Energy performance band (A-G)*
- 6. Useful floor area*
- 7. Total CO2 emissions*
- 8. Date certificate was issued*
- 9. Most recent previous operational rating (where available)".*

6. DCLG responded on 24 April 2013 advising that the request would be dealt with under the Environmental Information Regulations 2004 (the EIR). It confirmed that it held the information requested but refused to provide it stating:-

"Under regulation 5 of the EIR a public authority that holds environmental information shall make that information available on request. However, by virtue of the provisions in regulation 6(1)(b), the Department in this case is not obliged to provide you with the information you requested, and in the format that you have requested, as it is already publicly available and easily accessible in another form or format".

7. The complainant requested an internal review on 29 April 2013. DCLG sent the outcome of its internal review on 28 May 2013. It upheld its position and outlined the reasons behind its decision to do so.

Scope of the case

8. The complainant contacted the Commissioner on 10 June 2013 to complain about the way the request for information had been handled. Specifically the complainant stated that she disagreed that the information was easily accessible and that the time involved in retrieving the information was prohibitive.
9. The Commissioner considers the scope of the investigation is to determine if the information is publicly available and easily accessible, therefore removing the need for the information to be provided in the form/format requested.

Reasons for decision

Regulation 2

10. Regulation 2 defines what environmental information is. The first step for the Commissioner is to consider whether the information falling within the scope of the request is environmental in accordance with this definition and so whether the council correctly dealt with this request under the EIR.
11. Environmental information is defined within regulation 2(1) of the EIR as follows:

“any information in written, visual, aural, electronic or any other material form on –

 - (a) *The state of the environment, such as air and atmosphere, water, soil, land and 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”.*
12. The complainant requested information about energy performance certificates held on the Non Domestic Energy Performance Certificate Register, which provides access to information about energy performance in non-domestic buildings. The Commissioner believes that any information relating to this matter would be environmental information by virtue of regulation 2(1)(c) because it is information on measures and policies relating to factors which affect the environment listed in 2(1)(b). DCLG was therefore correct to respond to the request under the EIR.
13. The duty to make available environmental information is set out in regulation 5 of the EIR.
14. Form and format of information is covered by Regulation 6 of the EIR.

Regulation 6(1)(b) – form and format of information

15. Regulation 6(1) states:

“Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless-

- (a) It is reasonable for it to make the information available in another form or format; or*
- (b) The information is already publicly available and easily accessible to the applicant in another form or format*

The Non-Domestic Energy Performance Register

16. The register records energy performance information of all non-domestic buildings on construction, sale and rent.
17. This information allows owners and occupiers to potentially make their building more energy efficient and would allow energy performance comparisons to be made by potential buyers and/or tenants.
18. Following the refusal of her initial request, the complainant sought an internal review. In requesting the review the complainant accepted that the information was publicly available but did not accept it was easily accessible.
19. The complainant’s review request highlighted that, assuming one knew all of the valid postcode combinations in the UK, it would take 5 seconds to check each postcode to determine if an entry exists. Allowing for a rough estimate of 1.5 million postcodes in England and Wales, the time required to check for an entry would be 2,080 hours, amounting to the equivalent of 52 weeks on the basis of 40 hours per week.
20. Where the postcode search identifies an entry it is estimated that a further 90 seconds would be required to find and record the information relevant to the request. The lodgement statistics suggested there may be in the region of 100,000 entries on the register which would need to be considered thus providing an estimate of around 2,500 hours, or 62.5 weeks on the basis of 40 hours per week.
21. All told, the complainant estimated that the time required to locate the publicly available information would amount to a minimum of 26 months by which time much of the information may be out of date.

22. The complainant accepts that her estimate is rough but provides it as a benchmark to demonstrate the amount of time required to undertake the search and uses it to demonstrate that the information, although publicly available, is not easily accessible.
23. The Commissioner wrote to DCLG on 16 August 2013 requesting that the public authority answer a series of questions relating to the complaint.
24. DCLG requested two extensions to the period for providing a response to the Commissioner, in order to try to resolve the case informally. The Commissioner, always open to this approach, agreed to these extensions. DCLG has advised that it has made attempts to resolve the complaint informally but without success thus far.
25. The Commissioner notes that DCLG acknowledged that the requested data should be available to scrutiny and that there was provision for 'authorised recipients' to request data from the register for a fee based on the size of the data pack. The Commissioner asked DCLG to clarify to the complainant how she might become an 'authorised recipient' so that she could consider and pursue this avenue if she wished.
26. The complainant has advised that she is not prepared to pay to receive the information and therefore in all of the circumstances it is appropriate for the Commissioner to issue a decision notice addressing DCLG's reasons for refusing the request.
27. In its submissions DCLG argued that the search means by which the information could be obtained for an individual property or location was clearly explained. Having undertaken a search of the ICO postcode, the Commissioner finds that this is the case and indeed the complainant's own analysis of the search process bears this out.
28. DCLG further argued that the fact that considerable effort is required to extract the amount of information requested did not in itself mean that the information was not easily accessible as the process remains straightforward.
29. The Commissioner notes however that the complainant has not requested information relating to specific postcodes but rather requests information relating to each building on the register. The complainant does not have access to a list of buildings, and their postcodes or report reference numbers, covered by the register and therefore argues that each UK postcode would need to be entered to ultimately identify every entry on the register in order to retrieve the requested information. The onerous process involved in undertaking this activity is set out at paragraphs 18-21 of this notice.

30. In considering DCLG's submission, the Commissioner notes, and agrees, that the search means by which information could be obtained for an individual property or location was clearly explained. He also notes that had the complainant submitted a list of postcodes or details for individual properties/locations, irrespective of their number, then the argument that the information is easily accessible would apply in as much as she could reasonably expect to enter the details of the postcodes within the terms of the request and retrieve the information.
31. However, the Commissioner draws a distinction between the terms of the situation described above and the terms of the request in this case. The complainant has requested information about each building recorded on the register and is unable to know which buildings have entries on the register and which do not. Information to identify the relevant postcodes of reference numbers is not publicly available. The Commissioner believes therefore that the information requested by the complainant is not easily accessible because the onerous method for retrieving the information by searching for each valid UK postcode would be the only means of obtaining the information.
32. The Commissioner finds therefore that whilst the requested information is publicly available, it is not easily accessible and that Regulation 6(1)(b) does not apply to this request for information.

Other matters

33. Based on submissions provided by DCLG during the course of his investigation, the Commissioner notes DCLG's explanation that the requested information is not held in a format which allows for easy downloading of substantial data sets. This is due to the fact that the information is uploaded on a case by case basis. Retrieval of the information requested and the work required to present it in a meaningful format would, DCLG submits, require significant manual work. With that in mind, the Commissioner is of the view that the arguments put forward by DCLG may have been more constructively applied to Regulation 12(4)(b) of the EIR.
34. The Commissioner notes also that charging for the requested information has become an important feature of this case and he would wish to reiterate here the position that Regulation 8 only permits charging for making the information available, for example the photocopying of documents. The Commissioner therefore notes that whilst DCLG may seek to charge for producing the requested information (e.g. copying and providing it) it should not seek, under the EIRs, to levy any other charge (such as for retrieving it).

Right of appeal

35. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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

Alexander Ganotis
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