

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 19 June 2014

Public Authority: Highways Agency (an executive agency of the Department for Transport)

Address: Piccadilly Gate
Store Street
Manchester
M1 2WD

Decision (including any steps ordered)

1. The complainant has requested a Maintenance Requirements Plan (MRP) in relation to litter clearance on a section of motorway. The Highways Agency responded and provided a link to the MRP but redacted some information on the basis it was commercially sensitive. As this response was sent later than the 20 working day timescale and the refusal notice did not explain the grounds for relying on this exception or that the complainant could make representations, the Commissioner has decided that the Highways Agency breached the requirements of regulations 5(2) and 14(3)(a) and (b) and 14(5) as regards the above points.

Request and response

2. On 2 April 2014, the complainant wrote to the Highways Agency (an executive agency of the Department for Transport) and requested information in the following terms:

"The AMOR pages you sent me refer to implementing the 'Maintenance Requirements Plan with regard to Sweeping and Cleaning'. The MRP is therefore part of the contract. Could you please let me have a copy of the relevant pages from the MRP."
3. The Highways Agency responded on 9 May 2014. It provided a link to the Maintenance Requirements Plan (MRP) but stated that the section on

sweeping and clearing had been redacted as it contained commercially sensitive information.

Scope of the case

4. The complainant contacted the Commissioner on 13 May 2014 to ask for a decision in relation to the alleged failure of the Highways Agency to respond within 20 working days and to sufficiently explain its basis for withholding information.

Reasons for decision

5. Section 5(2) of the EIR states that:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

6. In this case, although the Highways Agency did respond and provide the majority of the requested information, it failed to do so within 20 working days and therefore the Commissioner has concluded that the Highways Agency breached regulation 5(2) of the EIR.
7. In addition to this, the complainant did not consider that the Highways Agency had specified the exception it was relying on to redact some information from the MRP, it had not explained any public interest arguments it had considered in reaching this decision and did not inform him of his right to representations or appeal the decision.
8. Regulation 14 of the EIR states that:

"14. – (1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation ...

(3) The refusal shall specify the reasons not to disclose the information requested, including –

(a) any exception relied on under regulations 12(4), 12(5) or 13; and

(b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

(5) The refusal shall inform the applicant –

(a) that he may make representations to the public authority under regulation 11; and

(b) of the enforcement and appeal provisions of the Act applied by regulation 18.”

9. The Commissioner has considered the refusal notice issued by the Highways Agency in response to this request and he is satisfied that the public authority did not meet with the requirements of the Regulations. Although the Highways Agency did state that information had been redacted as it was commercially sensitive it did not specify the exact exception it was relying on and did not stipulate the public interest factors it had taken into account when reaching its decision. This did not meet the requirements of regulation 14(3)(a) or (b).
10. The Commissioner has also found that the refusal notice did not explain the options the complainant had in terms of making representations to the Highways Agency. As such the Highways Agency did not meet the requirements of regulation 14(5).

Other matters

11. Whilst not specifically raised as an issue of complaint; the Commissioner notes that the refusal notice also failed to inform the complainant of the requirement to make representations to the public authority about its response within 40 working days. This is detailed in regulation 11 and also specifies that on receipt of representations the public authority will conduct an internal review and response no later than 40 working days from the date of receipt of the representations.
12. In the event that representations are received from the complainant, the Commissioner would expect the Highways Agency to ensure that its response specifies the exception it is relying on as well as explaining the public interest arguments it has considered when making its decision.

Right of appeal

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: GRC@hmcts.gsi.gov.uk

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

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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