

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

### **Decision notice**

**Date:** 23 February 2015

**Public Authority:** The Coal Authority  
**Address:** Berry Hill  
200 Lichfield Lane  
Mansfield  
Nottinghamshire  
NG18 4RG

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

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1. The complainant has requested diverse mining data from the Coal Authority. The Coal Authority relied on regulations 8, 12(5)(c) and 13 to withhold requested information from the complainant.
2. The Commissioner's decision is that the Coal Authority incorrectly relied on the said regulations to withhold requested information, save for some information which was appropriately withheld by virtue of regulation 13.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Release to the complainant the requested information which it holds, save for the property address and postcode as per Request 3 which is to be withheld, and to do so in accordance with regulation 8.
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.

## Background

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5. The Coal Authority (TCA) is a non-departmental public body sponsored by Department for Energy and Climate Change. It was established by the Coal Industry Act 1994 to undertake specific statutory responsibilities associated with the mining of coal.
6. The Coal Mining Subsidence Act 1991 (as amended) places a duty on TCA to remediate damage to property arising from coal mining subsidence as detailed in the Act, for which it receives grant-in-aid from the Department of Energy and Climate Change.
7. TCA holds and maintains the national coal mining database and provides a coal mining search service. The CON29M Coal and Brine Report, amongst other things, provides property specific information about past, present and proposed underground and surface level coal mining activities.
8. TCA, during 2007, commenced an inspection programme of mine shafts ("Mine Entry Inspections") across the United Kingdom to allow it to keep its records up to date and to identify whether it needed to carry out any work.

## Request and response

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9. On 9 October 2013, the complainant wrote to TCA and requested that it provide him with specified information. TCA substantively responded to him on 20 November 2013. The requests and TCA's replies thereto are laid out below

### Request 1

Results of the Mine Entry Inspection Programme. xls or csv format which should include attributes: Object ID, Shape, Reference, Type, Adit<sup>1</sup> Bearing, Treatment, Indicator, Treatment , Details, Feature Type, Hyperlink.

### Reply

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<sup>1</sup> Horizontal entry to a mine.

The Interactive Viewer on TCA website includes a Mine Entries layer which shows all mine entries including those in the Mine Entry Inspection Programme. The next update to the Interactive Viewer is intended for April 2014. In most instances the inspection was visual and no issue were found.

Notwithstanding the above, results of the Mine Inspection Programme would not be available because disclosure of such information would risk blight on properties in question and breach TCA's duty of confidentiality to the property owner.

#### Request 2

Has TCA brought the public up to date as regards the changes in location of main entries, and if so how?

#### Reply

TCA's Inferis database is updated upon receipt of any relevant information regarding shaft locations and/or treatments. Such updates flow through, if relevant, into the CON29M mining reports.

#### Request 3

TCA Claims between 1.1.84 and 1.11.94. xls or csv format, which should include attributes: Reference, Claim Received Date, Property Address, Property County, Property Post Code, Claim Accepted = Yes/No/Not Determined, Resolution date, monetary compensation Yes/No, Amount.

#### Reply

See the response to request four below.

#### Request 4

Has TCA ever reported on the above period of claims as part of its coal report i.e. Con29M and if so when did it stop and why?

#### Reply

Prior to 1 July 2011, reference was made in TCA's mining reports including the CON29M to claims made or pursued prior to 1 November 1994.

#### Request 5

Copy Licences pdf, and/or shp and/or xls format as appropriate, which should include details of all overground and underground mining

operations that are either active or that have been active since 1994. Attributes to include Object ID, Shape, Reference, Licence Type Type (opencast or underground), or Licence types where sites include both, current status, name of Licensee, Licence number and date of licence.

### Reply

The Licence Register contains information on all current granted licenses together with any applications for the same received by TCA. In the case of a granted license the entry consists of the relevant extracts of the license together with plan/s depicting the area of the same. This can be viewed at the Records Office (or posted) both on payment of £40 plus VAT per license. Shapefiles can be obtained as part of data sales.

10. Following an internal review TCA wrote to the complainant on 22 November 2013. It stated that it upheld its previous decision. However it now also relied on regulation 12(4)(b) (the request being manifestly unreasonable) not to provide, where held, the requested information.

### **Scope of the case**

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11. The complainant contacted the Commissioner (on 11 February 2014) to complain about the way his request for information had been handled.
12. On 14 April 2014, the Commissioner wrote to TCA, explaining that it was its opportunity to finalise its position regarding the request. The Commissioner asked TCA to make it clear which exceptions, to the general duty of disclosure, it was relying on. He also stressed that it was its responsibility to satisfy him that it has complied with the law. TCA was then referred to the Commissioner's website guidance in order to check whether its original response to the information request was appropriate.
13. In reply (23 May 2014), TCA laid out and clarified its position as to the complainant's information request. The same is laid out below.

### Request 1 - amended reply

When undertaking this programme TCA uploaded the details of any results into its Inferis database. TCA has checked with its team how these details were uploaded, and the details were not tagged or differentiated in any way from other database entries in the Inferis system which were also continually being made, and as such TCA does not therefore hold the specific information requested as a discrete data set. TCA notes that it does not need to create information that it does

not hold. The request is therefore refused on the grounds of regulation 12(4)(a).

Request 2 - amended reply

TCA treated this request as a simple customer service question, in line with the Commissioner's EIR guidance. As the information is not held, despite an adequate and properly directed search, TCA answered the question based on its general records and staff knowledge. The request is therefore outside the scope of the EIR but TCA answered it to assist the requester.

Request 3 - amended reply

Only a very limited set of information relating to these claims remained. This was where the claims related to fissures, break lines or large, significant or on-going claims. This limited set of information may be obtained from TCA. There is a charge for this service in line with TCA's licence arrangements and scale of fees and charges. The request was therefore refused on the grounds of regulation 12(4)(a) in respect of the data TCA does not hold. As to the limited remainder of the request this could be provided on payment of the appropriate fees.

Request 4 - amended reply

TCA treated this request as a simple customer service question, in line with the Commissioner's EIR guidance. As the information is not held, despite an adequate and properly directed search, TCA answered the question based on its records and staff knowledge. TCA noted in its response to the complainant that certain hard copy information relating to that period of claims which had not been requested could be made available on request. The request is therefore outside the scope of the EIR but TCA answered it to assist the requester.

Request 5 - amended reply

In the letter of 20 November 2013 to the complainant TCA stated that the licences and applications could be viewed at its premises or provided by post. TCA set out the fee structure for undertaking those requests which it considers reasonable and covers the costs of making that information available including either meeting costs or copying costs as applicable. In relation to Shapefiles, TCA also stated that these could be made available on its standard terms. The request could be granted on payment of the appropriate fees.

14. On 23 September 2014, the Commissioner wrote to TCA seeking further submissions from it regarding matters it relied on not to meet the complainant's information request. The Commissioner explained to TCA

that having regard to its statutory function and the Mine Entry Inspection Programme it was not clear to him why it did not hold all or some of the requested information it said it did not hold.

15. In reply (letter dated 8 October 2014) TCA conceded that Mine Entry Inspection Programme data was indeed held. However it maintained, amongst other things, that to release some of this information would be a release of people's personal data. It also relied on regulation 12(5)(c) not to convey information to the complainant. The reply of TCA is considered more fully below.

## Reasons for decision

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16. Regulation 5(1) of the EIR provides that "a public authority that holds environmental information shall make it available on request". A public authority may only refuse to disclose information where an exception applies.
17. If an exception applies, the information is still to be disclosed unless "in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information" (regulation 12(1)(b)). This is assessed by having regard to the overriding presumption in favour of disclosure.
18. **Request 1**  
*Results of the Mine Entry Inspection Programme. xls or csv format which should include attributes: Object ID, Shape, Reference, Type, Adit Bearing, Treatment, Indicator, Treatment ,Details, Feature Type, Hyperlink.*
19. As stated above (paragraph 13), TCA at one stage informed the Commissioner that it did not hold this requested information and therefore relied on regulation 12(4)(a) not to meet the request.
20. However on 23 September 2014, the Commissioner wrote to TCA to seek further submissions from it regarding matters it relied on not to meet the complainant's information request. The Commissioner explained to TCA that having regard to its statutory function and the Mine Entry Inspection Programme it was not clear to him why it did not hold all or some of the requested information it said it did not hold.
21. In reply (letter dated 8 October 2014) TCA conceded that Mine Entry Inspection Programme data was held; however it relied on regulation 12(5)(c) to withhold the information from the complainant. It also averred that disclosing this information would risk blight on the

properties in question, breach its duty of confidentiality to property owners and breach its obligations concerning personal data. However, no exceptions were relied upon in support of those assertions.

22. Regulation 12(5) states:

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—

(c) intellectual property rights

23. The Commissioner's position is that to establish that there would be an adverse effect on intellectual property (IP) rights (if the information were to be released), a public authority must demonstrate that:

- the material is protected by IP rights;
- the IP right holder would suffer harm - it is not sufficient to show that IP rights have merely been infringed;
- the identified harm is a consequence of the infringement or loss of control over the use of the information; and
- the potential harm or loss could not be prevented by enforcing the IP rights.

24. As stated above TCA, in explaining its reliance on regulation 12(5)(c), said that releasing the requested information would have an adverse effect on its IP rights. It avers that the complainant and others are going to use the information to produce their own coal reports. If, and when, these people took possession of the withheld information it would be extremely difficult for TCA to enforce its IP rights.

25. Where the Commissioner has to determine whether a public authority has misapplied regulation 12(5)(c), the onus will be on the public authority to identify the specific IP right that would be adversely affected, and its owner. The Commissioner is not satisfied (on the basis of TCA's submission) that the withheld information is material that is protected by the exception in that it has not explained, to his satisfaction, how the withheld information attracts Intellectual Property Rights. Accordingly the Commissioner cannot find that the exception afforded by regulation 12(5)(c) is engaged.

26. **Request 3**

*TCA Claims between 1.1.84 and 1.11.94. xls or csv format, which should include attributes: Reference, Claim Received Date, Property*

*Address, Property County, Property Post Code, Claim Accepted = Yes/No/Not Determined, Resolution date, monetary compensation Yes/No, Amount.*

27. TCA's position (as per its letter to the Commissioner dated 8 October 2014) is that it either does not hold the requested information or, where it does, it is obtainable via payment of a reasonable fee.
28. It states that regarding coal mining subsidence damage claims for the period 1 January 1984 to 1 November 1994 these were paper files which were ultimately destroyed after appropriate discussions with varying stakeholders and The National Archives. The reason for the destruction was that these were considered low risk. The destruction of some 318,000 paper files occurred between December 2011 and March 2012. The request was therefore refused on the grounds of regulation 12(4)(a) in respect of the data TCA does not hold it.
29. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
30. On the facts of this matter the Commissioner does not doubt the explanations of TCA. He accepts that the particular information was destroyed by TCA as it explained and was therefore not held at the time of the information request.
31. TCA's position is that only a very limited set of information relating to these claims remained. That is where the claims relate to fissures, break lines or large, significant or on-going claims. Accordingly TCA concedes it does hold this information. This limited set of held information may be obtained from TCA. There is a charge for this service in line with TCA's licence arrangements and scale of fees and charges. As TCA also relies on regulation 8 as regards Request 5, the Commissioner considers both matters jointly below.

Regulation 13(1)

32. As regards Request 3 TCA also relies on regulation 13 to withhold the requested information.
33. Regulation 13(1) states that if information requested includes personal data of which the applicant is not the data subject and the disclosure of



the information to a member of the public would contravene any of the data protection principles set out in the Data Protection Act 1998 (DPA), a public authority shall not disclose the personal data.

34. The first data protection principle states:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

35. Personal data is defined in section 1(1) of the DPA as -

"...data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual".

36. In determining whether information is the personal data of individuals other than the requester, that is, third party personal data, the Commissioner has referred to his own guidance and considered the information in question. He has looked at whether the information relates to living individuals who can be identified from the requested information and whether that information is biographically significant about them.

37. Having regard to the previous paragraph the Commissioner is satisfied that the requested information that comprises the property address and property postcode constitutes the personal data of people other than the requester. For example, searching a public register would enable or greatly assist the identification of an individual if done so with reference to an address or postcode.

38. In considering whether disclosure of personal data would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner considers the following factors:

- The data subject's reasonable expectations of what would happen to their personal data.
- The consequences of disclosure.

- The balance between the rights and freedoms of the data subject and the legitimate interests of the public.
39. There is nothing to suggest that the data subjects have consented to TCA for it to release their personal data to the public. However, non-expression of consent is not solely determinative as to whether a data subject's personal data may be disclosed. It is one, albeit very weighty, factor that has to be weighed against factors which focus on any legitimate interests in releasing the information.
40. Acknowledging the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where regulation 13(1) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so. The Commissioner cannot find a compelling public interest reason to override the data subjects' right of privacy, the breach of which would be a likely consequence of the disclosure of this information. Accordingly the Commissioner finds that this information (i.e. the property address and property postcode) was appropriately withheld by virtue of regulation 13(1).
41. Conversely the Commissioner's view is that the requested information that comprises the "claim received date", "property county", "claim accepted yes/no/not determined", "monetary compensation paid yes/no", "amount", "resolution date" does not – when isolated from the property address and postcode - represent the personal data of a third party. The reason for this being that this information is not readily linked or linkable to a known person or persons once the personal data is withheld as considered above. Accordingly this information cannot be withheld from the claimant by virtue of regulation 13.
42. **Request 5**
- Copy Licences pdf, and/or shp and/or xls format as appropriate, which should include details of all overground and underground mining operations that are either active or that have been active since 1994. Attributes to include Object ID, Shape, Reference, Licence Type Type (opencast or underground), or Licence types where sites include both, current status, name of Licensee, Licence number and date of licence.*
43. TCA explained that the Licence Register contains information on all current granted licenses together with any applications for the same received by TCA. In the case of a granted license the entry consists of the relevant extracts of the license together with plan/s depicting the area of the same. This can be viewed at the Records Office (or posted)

both on payment of £40 plus VAT per license. Shapefiles can be obtained as part of data sales.

44. The considerations below are equally applicable to Request 3 inasmuch as TCA similarly relied on regulation 8, in the alternative, to withhold that information.
45. TCA explained that the fees chargeable are as laid out on its website. The fees payable simply cover the staff and system costs in locating, retrieving and extracting the information, and either printing or copying that information and sending it on to an applicant.
46. Regulation 8(1) of the EIR states that a public authority may charge for making environmental information available, albeit that there are two important qualifications to this.
47. Regulation 8(2) specifies that no charge can be made for accessing public registers or lists of environmental information or for examining the information requested at the place which the authority makes available for that purpose.
48. Regulation 8(3) states that a charge may not exceed an amount that a public authority is satisfied is a reasonable amount. Although regulation 8(3) does not offer any assistance as to what is meant by the word 'reasonable', the Directive, upon which the EIR are based, provides some guidance namely that "as a general rule, charges may not exceed the actual costs of producing the material in question".
49. The intention behind the EIR is to increase public access to environmental information. This can be seen in recitals 1 and 9 of Directive 2003/4/EC of the European Parliament of the Council (the Directive) from which the EIR are derived. The Commissioner therefore considers that any charge should be compatible with encouraging transparency and should not be an obstacle to such access.
50. There are two broad types of costs for which a public authority can charge:
  - The cost of staff time spent locating, retrieving and extracting the information.
  - The costs incurred when printing or copying the requested information and sending it to the applicant.
51. The Commissioner considers it unreasonable for a public authority to include any further costs associated with a request, for example:

- The costs associated with maintaining a register of environmental information.
  - The cost of maintaining a database used by the public authority to answer requests for environmental information.
  - Overhead costs attributed to staff time properly taken into account in fixing the charge.
  - Staff time spent redacting excepted information after it has been retrieved.
52. The Commissioner considers that the drafters of the Directive made a clear decision not to exclude the cost of staff time in searching for the environmental information when considering a reasonable amount for a charge. Therefore the Commissioner takes the view that the EIR do allow public authorities to charge a reasonable amount to recover the cost of staff time taken to locate environmental information.
53. However, any charges for staff time must still be reasonable and applicants should not be unfairly penalised for a public authority's poor records management. Therefore the reasonableness of any charge for staff time will often depend on how wide ranging the request is and how well the authority maintains its records.
54. The fees payable for TCA's services are clearly set out on its website and simply cover the staff and system costs in locating, retrieving and extracting the information and either printing or copying that information and/or sending it to the applicant. It explains that the fees payable are done so on a reasonable basis of reimbursement, being a staff hourly rate to cover staff costs plus a small percentage to cover administration and copying costs for such data sales.
55. TCA has supplied the Commissioner with samples of the withheld information which comes from a non-manual source which makes its reproduction and dissemination a relatively non-expensive exercise. Additionally the Commissioner has viewed the varying charges that range from £15.60 to £132 per claim (as per Request 3) or license (as per Request 5). Having regard to these two factors and the submissions made by the TCA, the Commissioner is not satisfied that the charges are reasonable for the purposes of the EIR. He therefore finds TCA to have breached regulation 8 and requires it to only make charges for access to this information in accordance with its provisions.
56. **Requests 2 and 4**

*Request 2 - Has TCA brought the public up to date as regards the changes in location of main entries, and if so how?*

*Request 4 - Has TCA ever reported on the above period of claims as part of its coal report i.e. Con29M. and if so when did it stop and why?.*

57. TCA maintains that it treated these requests as a simple customer service question, in line with the Commissioner's EIR guidance. As the information is not held, despite an adequate and properly directed search, TCA answered the question based on its general records and staff knowledge. It explained that the request is therefore outside the scope of the EIR but TCA answered it to assist the requester. Regulation 12(4)(a) EIR states that, "a public authority may refuse to disclose information to the extent that (a) it does not hold that information when an applicant's request is received".
58. The EIR provide public access to environmental information held by public authorities. The Regulations do this in two ways; public authorities must make environmental information available proactively and secondly members of the public are entitled to request environmental information from public authorities. The Commissioner is satisfied that these "requests" were primarily a request for information to be created by the answering of the question posed. As such they are not requests for recorded information and thus outside the ambit of the EIR.

### **Regulation 12(4)(b)**

59. In its internal review letter TCA explained to the complainant that it also relied on regulation 12(4)(b) (manifestly unreasonable) not to meet his requests. As stated above (paragraph 12) the Commissioner requested TCA to confirm the exceptions (to the duty of disclosure) it was relying on and to satisfy him that the reliance was correct. In TCA'S reply it did not specify that it continued to rely on regulation 12(4)(b). More importantly, however, it did not advance arguments or submissions to justify its previous reliance on the regulation. In the absence of such the Commissioner cannot find that the exception is engaged.

### **Other matters**

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60. The Commissioner also wishes draw attention to another decision notice, FER0531132 (dated 2 February 2015), he served in relation to similar requests made to TCA:

[https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1043221/fer\\_0531132.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1043221/fer_0531132.pdf)

## Right of appeal

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61. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

62. 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.
63. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**