

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 August 2019

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information concerning asbestos reports on buildings used and managed by the Cabinet Office along Whitehall, as well as information about asbestos related health claims made against the Cabinet Office. The Cabinet Office did not respond to this request.
2. The Commissioner's decision is that the Cabinet Office has failed to respond to the request within 20 working days and has therefore breached Regulation 5(2) of the Environmental Information Regulations ("the EIR").
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the EIR, to the request.
4. The Cabinet Office 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 Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. On 21 February 2019, the complainant wrote to the Cabinet Office and requested information in the following terms:

"To whom it may concern,

I write to request information on asbestos under the Environmental Information Regulation 2004.

For buildings used and managed by your department along Whitehall, including subterranean areas and tunnels between yours and another government department please provide the following:

1. A list of asbestos findings since 2000 in the buildings and areas specified above.

For each, please include:

- a) Date of finding*
- b) Location*
- c) Type found, i.e. white, brown, blue*
- d) Abatement action taken (when and what)*

2. A copy of each asbestos survey undertaken in the last five years.

3. The number of health claims against the department due to asbestos since 2000.

For each, please provide:

- a) anonymised summary of the claim*
- b) remedial action taken*
- c) If an compensation payment was made*
- d) If an NDA was signed as part of any remedial agreements."*

6. The Cabinet Office acknowledged the request on 22 February 2019, but had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 15 July 2019 to complain about the way their request for information had been handled.

8. In line with her usual practice, the Commissioner contacted the Cabinet Office on 31 July 2019 to highlight the outstanding response. She requested that the Cabinet Office respond to the request within 10 working days. Her correspondence was neither acknowledged nor responded to.
9. The Complainant contacted the Commissioner on 19 August 2019 stating that the Cabinet Office had still not issued a substantive response to their request.
10. The Commissioner considers that the scope of her investigation is to determine whether the Cabinet Office has complied with Regulation 5(2) of the EIR.

Reasons for decision

11. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) *the state of the elements of the environment, such as air and atmosphere, water, soil, land, 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)...as well as measures or activities designed to protect those elements;*
 - (d) *reports on the implementation of environmental legislation;*
 - (e) *cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and*
 - (f) *the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life,*

cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

12. The Commissioner has not seen the requested information but, has considered the wording of the request and notes that it is for information relating to asbestos reports. Therefore, she believes that it is likely to be information about factors affecting or likely to affect the state of elements of the environment, which may in turn affect the state of human health and safety. For procedural reasons, she has therefore assessed this case under the EIR.
13. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"
14. Regulation 5(2) states that such information shall be made available "*as soon as possible and no later than 20 working days after the date of receipt of the request.*"
15. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
16. Regulation 7 provides that an authority may extend the time for compliance to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request or to make a decision to refuse to do so. However regulation 7(3) states that the authority is obliged to notify the applicant as soon as possible and no later than 20 working days after the request is received. The Commissioner has seen no evidence that the Cabinet Office advised the complainant that it was relying on regulation 7.
17. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Cabinet Office has breached Regulation 5(2) of the EIR.

Right of appeal

18. 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: 0870 739 5836

Email: grc@justice.gov.uk

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

19. 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.
20. 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

**Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**