

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 July 2020

Public Authority: National Grid PLC
Address: 1-3 Strand
London
WC2N 5EH

Decision (including any steps ordered)

1. The complainant has requested information from the National Grid PLC ("NG") regarding four wind farms, the key stages of establishing connection and other related information. NG refused to provide this information, initially refusing it under Regulation 12(5)(f) but later changed its reliance on this regulation and cited Regulations 12(4)(d) and 12(5)(e) instead.
2. The Commissioner's decision is that Regulation 12(4)(d) is not engaged regarding Kype Muir, but it is engaged in relation to Broken Cross where the public interest favours maintaining the exception. She does not agree that Regulation 12(5)(e) is engaged with regard to the information requested relating to Beinneun, Kilgallioch and Kype Muir. However, she accepts that the exception is engaged regarding Broken Cross and that the public interest favours maintaining the exception. The Commissioner has also decided that NG has breached Regulations 5(1) and 5(2) of the EIR by not providing information it held within the time for compliance. The level of advice and assistance provided by NG did comply with the requirements of regulation 9(1) of the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information held that falls within the scope of the request as it relates to Beinneun, Kilgallioch and Kype Muir.

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

5. The National Grid Electricity System Operator ("NGESO") is the electricity system operator for Great Britain and has been since 1 April 2019. NGESO is a wholly owned subsidiary of NG. NG has referred to NGESO in its correspondence in relation to the requested information but because NG is the public authority and to avoid confusion, the Commissioner has referred to NG throughout.

Request and response

6. On 22 August 2019 the complainant made the following request for information under the EIR:

"...Obviously, as the TEC register and How-To-Connect doc shows, there are key stages in establishing connections. I've picked 4 onshore wind farms. Could you please let me have the dates of the key stages of establishing connection for these. These 4 WFs are: Beinneun Wind Farm (connecting to Beinneun 132/33kV substation), Broken Cross WF (connecting to Broken Cross), Kilgallioch WF (connecting to Kilgallioch 132/33kV Substation), and Kype Muir WF (connecting to Coalburn 132/33kV).

I see from Howto Connect doc for transmission directly connected there are Bilateral Agreements and the Construction Agreements. I would guess there may also be modifications to these. The Howto Connect doc shows there appears to be key milestones in the progress through to completion. If possible, I would like to be able to get the dates for those.

Could you please also provide the basic technical details like the length of connection, voltage, overground or underground, the OS reference point for the start and end of the connection, for the 4 WFs. I assume I can rely on the TEC register for the MW capacity."

7. NG responded on 29 August 2019 and refused to provide the requested information, citing the following - Regulation 12(5)(f). NG provided some general information and explained that mirror agreements were

held between it and either Scottish Power Transmission or Scottish Hydro-Electric Transmission.

8. The complainant requested an internal review on the same day. He pointed out that he was not seeking contractual agreements for the provision of high voltage power cables but the dates when decisions and key steps in the decision process were made. He also argued that the information was environmental.
9. NG provided an internal review on 22 October 2019 in which it revised its position regarding Regulation 12(5)(f) stating that it was not engaged. The remainder of the information not already in the public domain was refused under Regulations 12(5)(e) and 12(4)(d). It also stated that some of the information it believed the complainant to be asking for was not held.
10. On 28 February 2020 NG responded to the Commissioner's investigation confirming that it was relying on Regulations 12(5)(e) and 12(4)(d). At this point NG provided the Commissioner with the withheld information but it sent whole documents, rather than the much more limited information sought.
11. The Commissioner wrote to NG on 11 March 2020 asking for confirmation that these were the sole exceptions the public authority was relying on. NG did not cite any other exception in its subsequent correspondence with the Commissioner.
12. She then wrote to the complainant with a summary of the 28 February 2020 response. The complainant queried aspects of NG's response which led to further correspondence by the Commissioner with NG on 23 March 2020 concerning what information it held.
13. NG responded to the Commissioner's questions on 21 April 2020 with a brief response. The Commissioner asked for a more detailed response to certain questions and NG responded further on 29 April 2020.
14. The Commissioner asked for further clarification from NG on 7 May 2020 regarding what exactly had been withheld under the exceptions cited, bearing in mind that the complainant had not requested entire agreements. She also pointed out that the Transmission Operator construction agreement for Broken Cross postdated the request and that she needed to see the information that pertained to the request at the time it was made.
15. On 13 May 2020 there was a telephone meeting with NG in which various points were clarified. The question of how far a monopoly would have an adverse effect commercially from the disclosure of this information was raised. NG is itself a monopoly. Scottish Power

Transmission which is owned by Scottish Power Energy Networks Ltd is a monopoly in central and southern Scotland. Scottish Hydro Electric Transmission is owned by Scottish and Southern Electricity Networks and describes itself as a "*natural monopoly*" in the north of Scotland. The question of whose information the public authority were protecting was asked and NG clarified that it was the developers connecting to the network.

16. On 27 May 2020, NG provided the specific information requested as opposed to the entire agreements, in response to the Commissioner asking it to do so.

Scope of the case

17. The complainant contacted the Commissioner on 25 October 2019 to complain about the way his request for information had been handled. He was not content with the withholding of the information and the lack of addressing the geographic and technical part of the request which he describes as "part B". The complainant was interested in the physical provision of the power cables which he referred to in his review request. He did not accept that the dates of key stages and milestones were commercially confidential and should be withheld. The complainant was not content with the fact that NG sent his review response right at the end of the time for compliance but, as it was compliant, the Commissioner does not propose to look at this further.
18. The Commissioner considers that the scope of this case is NG's citing of Regulations 12(5)(e) and 12(4)(d), what NG holds in relation to this request, and any procedural matters.

Reasons for decision

Is the information environmental?

19. Regulation 2(1) of the EIR provides the following definition of environmental information:

"...any information in written, visual, aural, electronic or any other material form 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) and (b) 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 elements of the environment referred to in (b) and (c);"

20. Requests for information need to be handled under the correct scheme. The reasons why information can be withheld under the FOIA are different from the reasons why information can be withheld under the EIR.

Why is this information environmental?

21. NG originally stated that it did not accept that dates are environmental information but clearly the key dates and decisions that have been agreed or modified are directly linked to changes that are projected to take place on those dates that are going to directly affect the environment. Additionally the complainant requested other information likely to affect the physical landscape.
22. The Commissioner is satisfied that the information requested is environmental within the definition at regulation 2(1)(c), since it is information on measures which would affect or be likely to affect the elements and measures to protect them referred to in regulation 2(1)(c) and 2(1)(f) which relates to the state of human health and safety regarding built structures as they may be affected by the state of the elements.

Regulation 12(5)(e) – confidentiality of commercial or industrial Information

23. Regulation 12(5)(e) of the EIR provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect *"the confidentiality of commercial or industrial*

information where such confidentiality is provided by law to protect a legitimate economic interest”.

24. There are several conditions that need to be met for this exception to be applicable. They are as follows -
- Is the information commercial or industrial in nature?
 - Is the information subject to confidentiality provided by law?
 - Is the confidentiality provided to protect a legitimate economic interest?
 - Would the confidentiality be adversely affected by disclosure?

Is the information commercial or industrial in nature?

25. NG confirmed that the information is commercial in nature because it has a material impact on the underlying economics of the project from the developer’s perspective, and also in overall system terms from the perspective of NG and each relevant transmission owner.

Is the information subject to confidentiality provided by law?

26. NG explains that the information provided to it for the purposes of each connection is confidential by virtue of the regulatory framework within which NG operates, most notably the system operator licence granted to it under the Electricity Act 1989 and the confidentiality regime established by the Connection and Use of System Code (“CUSC”) and its associated bilateral agreements to which NG and developers are party. NG confirms that the information has not previously been disclosed and hence retains the necessary quality of confidence. Although a statutory bar can provide confidentiality by law, it is not in itself a justification to withhold information under the EIRs.
27. By contrast, the complainant has provided the Commissioner with the view that much of the information contained in these agreements is in the public domain, though difficult to find for the layperson. He states that the agreements that NG enter into with electricity generators (power stations and wind farms) can be found on NG’s and Ofgem’s (the electricity regulator) site.
28. He argues that these agreements are not private contracts and that there is a series of regulated agreements or codes and that the codes are formed under the Electricity Act 1989. NG operates under a licence under that Act. This requires the regulator to set out codes for NG and

others to abide by. All codes are overseen and approved by Ofgem. Most codes relevant to NG, for this EIR request, are within either the CUSC or System Operator - Transmission Owner Code ("STC")¹.

29. The complainant explains that most documents that are visible in each Ofgem sub-webpage relate to Ofgem's day to day role of modifying the codes (which is an ongoing activity). The current versions of the codes can be found on the public authority's website.² The agreements that it refers to are all part of the codes provided here. He states that the most relevant code to his request is the CUSC. This and all other codes are applicable throughout the country to every generator. It is a common document applicable to NG and all electricity generators and suppliers have to agree to it. The CUSC is a 1,289 page document. It is mandatory for a new generator to sign before connecting to the Grid. It is the common central contract applicable to the whole electricity industry. The codes cover every aspect of connecting a new generator (such as wind farms) and maintaining the connections. The complainant's view is that these agreements are not private contracts.
30. The complainant has provided links to dedicated webpages for 'new connections'³ and 'Applying for a new connection' gives details on what is required to connect to NG. He explains that all of the wind farms for which he has made an EIR request are 'Transmission Connected Generation' and have gone through the application process.
31. To determine whether the information has the necessary quality of confidence the Commissioner needs to determine that the information is not trivial and is not in the public domain. She has considered whether the information requested has the necessary quality of confidence and whether the information was shared in circumstances that created an obligation of confidence.

¹ <https://www.ofgem.gov.uk/licences-industry-codes-and-standards/industry-codes/electricity-codes>.

² <https://www.nationalgrideso.com/industry-information>.

³ <https://www.nationalgrideso.com/industry-information/connections/new-connections>.

32. In this context this will include confidentiality imposed on any person by the common law of confidence, contractual obligation, or statute. NG has explained that the information is confidential and subject to a duty of confidence provided by the regulatory framework and the system operator licence under which it operates.
33. NG confirmed that the requested information was not in the public domain whilst the complainant has provided links to suggest that much of the information contained in these agreements is in the public domain, though it would be extremely difficult for an ordinary member of the public to access it or understand the technical details necessary to work out the specific contents. However, the Commissioner's guidance states that it is also possible for information to keep its quality of confidence even if it is all in the public domain, if it would take time and effort to find and collate it from multiple sources.
34. This argument though is only relevant to a request for the agreements themselves but the complainant confined his request, at least as it relates to what was withheld under this exception, to the dates when key stages and key milestones were made regarding the four named wind farms. The Commissioner understands that this specific information is not publicly available.

Is the confidentiality provided to protect a legitimate economic interest?

35. The general scheme of the EIR 12(5) exceptions require that "disclosure would adversely affect" the relevant interests identified in each exception.
36. The confidentiality must be "*provided...to protect a legitimate economic interest*". The Information Rights Tribunal confirmed in *Elmbridge Borough Council v Information Commissioner and Gladedale Group Ltd (EA/2010/0106, 4 January 2011* that, to satisfy this element of the test, disclosure of the confidential information would have to adversely affect a legitimate economic interest of the person the confidentiality is designed to protect.
37. NG stated that developers who apply to it for a connection offer for windfarms have a clear economic interest in the ultimate choice and timing of a connection resulting from any subsequent offer, as it directly impacts on cost and timescales, which will often have direct and material consequences for the economics of the project and each developer's business case. That business case and the underlying project economics is a legitimate economic interest of the developer,

and the duty of confidentiality imposed by the regulatory framework, is intended to protect that economic interest.

38. A public authority needs to establish (on the balance of probabilities – ie more probable than not) that disclosure would cause some harm. In this case the arguments presented explain the harm that could be caused by disclosure at least in relation to the dates requested but the benchmark is set high and NG's arguments need to be considered in relation to that bar.
39. The Commissioner's guidance states that,
*"Legitimate economic interests could relate to retaining or improving market position, ensuring that competitors do not gain access to commercially valuable information, protecting a commercial bargaining position in the context of existing or future negotiations, avoiding commercially significant reputational damage, or avoiding disclosures which would otherwise result in a loss of revenue or income."*⁴
40. As previously stated, NG operates the National Electricity Transmission System (NETS). NETS is made up of a series of individual transmission systems owned by licensed transmission owners. The transmission owners in Scotland are Scottish Power Transmission and Scottish Hydro Electric Transmission. The contractual interface with customers (in this case, generation projects) connecting to/using the national system is with the licensed system operator NG, and the requirements governing these connections are set out within the Connection and Use of System Code (CUSC). The arrangements between NG and the transmission owners are managed through the System Operator-Transmission owner code. Terms for connection with customers reflect those provided by the transmission owners to NG but it is the transmission owners who determine the design of the connection to/on its system.
41. NG has explained to the Commissioner what the commercial implications for developers (the "customers") would be. NG states that it is very important to note that these generation projects are developed by commercial companies who are independent of NG and the transmission owners. At the time they apply for a grid connection they are competing with other projects from other companies - eg for capacity on the NETS,

⁴ https://ico.org.uk/media/for-organisations/documents/1624/eir_confidentiality_of_commercial_or_industrial_information.pdf

funding, subsidy schemes - and all parties have invested development money which is at risk in a very competitive environment.

42. The public authority's view is that releasing information about the project (more than it is already required to put in the public domain, in accordance with industry codes) could result in the information finding its way to a competing developer, or indeed open up the opportunity for competing developers to make EIR requests themselves about other projects.
43. NG's concern about releasing this data is the potential consequence to the commercial developer, rather than any impact on NG or the transmission owners. This is not information that would ordinarily be visible to competing parties in any market sector and is purely provided to the transmission owners and system operator to enable them to carry out Ofgem's aim of protecting the interests of existing and future consumers, and complying with their licence obligations including developing, maintaining and operating an efficient economical and coordinated system of electricity transmission.
44. Finally, NG specifically states that, in relation to Broken Cross, it is important to note that this particular wind farm is not yet connected, so is still competing with other projects in order to get an investment decision and build. For that reason NG would be concerned about releasing information relating to key dates and connection design at this current point.
45. The Commissioner does not accept that this part of the test has been met as it relates to the requested information for Beinneun, Kilgallioch and Kype Muir. She does not agree that there is a legitimate economic interest that is being protected by confidentiality regarding these three wind farms. The information itself is not financial which would have had a more obvious adverse effect on other projects the developers may compete for. Big projects will be subject to variation, dates may be adjusted, but she does not accept that the economic interests being kept confidential regarding the information requested are compelling enough to meet this test.
46. Therefore, the Commissioner considers that the information relating to Beinneun, Kilgallioch and Kype Muir has been inappropriately withheld and should now be disclosed. The exception is not engaged as it relates to these three wind farms.

Would the confidentiality be adversely affected by disclosure?

47. However, she does accept that it is engaged regarding the requested information for Broken Cross.

48. NG's opinion is that the confidentiality is provided by law to protect the economic interests it has identified, therefore disclosure in response to the complainant's request would adversely affect that confidentiality.
49. As the Commissioner has decided that the first three tests have been made in relation to the information requested regarding Broken Cross, the fourth test is inevitably met.

Public interest test

50. Although the Commissioner accepts that disclosure of the requested dates would adversely affect the commercial confidentiality of the developer in relation to Broken Cross, she has gone on to consider if it would nevertheless be in the public interest to release it.

Public interest in favour of disclosing the information

51. NG acknowledges the particular public interest in the dissemination of environmental information and the contribution it makes to informed public debate on environmental matters. The public authority also considered the value in local communities being given an opportunity to understand and participate in decisions that affect their environment. Additionally, there is a public interest in NG being accountable for the decisions it makes in respect of its functions under its system operator licence in developing and operating economic and efficient networks and in facilitating competition in the supply of electricity in Great Britain, in particular to consumers and especially where its functions include environmental considerations. However, NG argues that it routinely publishes information about its role in developing, maintaining and operating economic and efficient networks and in facilitating competition in the supply of electricity to consumers.
52. The complainant argues that he does not believe that his request impinged upon commercially sensitive information, such as costs and commercial terms. He explained that he was simply requesting information on when key stages and milestone dates in the planning and development of the power cables were achieved. Generally he suggested that this would be past events and historic data which shows the timing of decisions relating to the provision of wind farm power connection infrastructure. In many ways this is similar to decisions by planning authorities or statutory undertaking on development under the Town and Country Planning Authorities, which the ICO guidance makes clear is subject to the EIR.
53. He stresses the importance of recognising that NG undertakes the provisioning of wind farm power cable connections to the national power grid network as a public authority. It operates this infrastructure on

behalf of the government and the nation. This is not a private commercial enterprise. NG are utilising special powers which clearly fall under the EIR. NG reference their 'regulated framework', statutory licence, the Ofgem regulated CUSC shows that these matters are indeed concerned with the powers of a public authority.

54. Regarding developers he states that it is highly likely that they are developing wind farms with public subsidy and public financial support. Their developments certainly affect the environment. All of this suggests that the environmental information on the provisioning of high voltage power cables fall within the public domain. As such it should be subject to public disclosure under the EIR. His view is that the presumption in favour of disclosure should be upheld.

Public interest in favour of maintaining the exception

55. NG's view is that there is the potential for damage of the economic interests of the relevant parties should commercially sensitive information be disclosed to the public.
56. NG further argues that the developers may be reluctant to supply all of the information required as a consequence of disclosure. A reduction in the quality and quantity of such information would undermine the ability of the transmission owner to adequately assess the application and may reduce their ability to achieve the best value for the consumer through the identification of optimal connection locations. It is therefore clearly in the public interest to ensure that the flow of information is not inhibited by the prospect of disclosure which would risk flawed connection-option decisions and higher electricity prices being charged to customers.
57. Finally, the public authority argues that certain information such as locations and type of equipment adversely affects national security and/or public safety. Specifically, there are aspects of this kind of civil infrastructure which have the potential to create a terrorism or other security risk if placed in the public domain. The nature and extent of this risk includes the security of electricity supplies to relevant parts of the country including vulnerable customers, such as hospitals schools and households.

Balance of the public interest

58. The question of national security and/or public safety is only relevant to Regulation 12(5)(a). This last point made by NG has not been considered by the Commissioner because NG has only confirmed its reliance on Regulations 12(4)(d) and 12(5)(e). It has been included as

part of the public interest test for these regulations but the Commissioner does not accept that it is relevant to either.

59. The Commissioner is not persuaded by the arguments put forward by NG about the reluctance of developers to provide the necessary information to assess applications or what might flow from an inability to assess an application properly such as poor value for money and increased costs to the consumer. The Commissioner's view is that developers will still provide the details required and are unlikely to be deterred by the prospect of the disclosure of this particular information. However, she is persuaded that it is not currently in the public interest to disclose the information relating to Broken Cross as the wind farm is not yet connected and, as NG states it is competing with other projects in order to get an investment decision and build, it should have remained confidential at the time of the request so as not to cause an adverse effect. The public interest, even regarding environmental information, does not equal the maintenance of confidentiality regarding this part of the request.

Regulation 12(4)(d) - Material still in the course of completion

60. Regulation 12(4)(d) provides that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
61. If the information in question falls into one of those categories, then the exception is engaged. It is not necessary to show that disclosure would have any particular adverse effect in order to engage the exception, but any adverse effects of disclosure may be relevant to the public interest test.⁵
62. NG has applied this exception to the remainder of the documents relating to Kilgallioch and Broken Cross not covered by commercial confidentiality. Again there seems to be some confusion over the scope of the requests as the request was not for documents.
63. Draft documents will engage the exception because a draft of a document is by its nature an unfinished form of that document. Furthermore, the Information Tribunal has found that a draft version of

⁵ https://ico.org.uk/media/for-organisations/documents/1637/eir_material_in_the_course_of_completion.pdf

a document is still an unfinished document, even if the final version of the document has been published.⁶

64. NG has argued that the wind farms at Broken Cross and Kilgallioch are not, as yet, completed. The remainder of the information in the construction agreements was unfinished or an incomplete document and/or in the course of completion at the date of the request. NG explains that the connection process is evolutionary and is a continuous work in progress. No phase or stage is independent of the other and each preceding stage/phase is prerequisite for the successive stage/phase. It describes it as "*essentially organic*". For any project, the overall connection process is not considered concluded or complete until all construction work is concluded and the project becomes operational.
65. This EIR exception refers to material still in the course of completion, unfinished documents and incomplete data. It can also be engaged if it refers to drafts where there is a finished document. The Commissioner's guidance however states that the fact that a public authority has not completed a particular project or other piece of work does not necessarily mean that all the information the authority holds relating to it is automatically covered by the exception.
66. The Commissioner has had sight of the withheld information. The fact that the requested information does not appear to have been identified but just subsumed in the overall surrounding documents until late in the investigation does not persuade her that this exception has been correctly cited, at least in relation to Kilgallioch. She does not agree with NG's argument that the withheld information is incomplete because the connection process is not concluded or complete until the project becomes operational. Clearly any large project that takes place over a series of years will be subject to change or variation agreements but she does not consider the exception to be engaged because of this.
67. However, she does accept that the exception is engaged with regard to Broken Cross. The document the Commissioner was provided with is dated after the request and appears to be a finished document. It should have been the draft version which she has not been provided with. Nevertheless, the final version is dated after the request. The version control would indicate that the document was in draft form until after the request and that the requested information in the previous drafts would not have been complete.

⁶ *The Information Tribunal case of Secretary of State for Transport v the Information Commissioner (EA/2008/0052, 5 May 2009)*

68. As she does not accept that NG was correct to cite Regulation 12(4)(d), regarding Killgallioch, she has not gone on to consider the public interest in this matter except in relation to Broken Cross.
69. The Commissioner has decided that what NG describes as "*the remaining information*" now needs to be disclosed to the complainant regarding Kilgallioch.

Public interest in disclosing this information

70. NG provided the same public interest grounds as is set out in paragraph 51 in this decision notice regarding Regulation 12(5)(e).
71. The complainant's view is that it is in the public interest for this information to be disclosed because he believes that it relates to the environmental effects which might arise with the physical provision and permanent effects of high voltage cable.

Public interest in maintaining this exception

72. NG provided public interest arguments which were the same as it set out in relation to commercially confidential information in paragraphs 55-57.
73. As only part of the public interest argument related to this exception the Commissioner has had difficulty weighing the public interest in this matter. However, one matter that does relate to this information is the fact that the wind farm is not yet connected and it is competing with other projects in order to get an investment decision and build. The Commissioner has seen the withheld information and accepts that, at present, the public interest in maintaining the exception outweighs the public interest in disclosing it.

Regulation 5(1) – Duty to make environmental information available on request

74. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request.
75. Regulation 5(2) states:

"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."
76. 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 ICO, 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).

77. NG made the following comments in its response to the Commissioner which had arisen from points made in the complainant's request for a review. The Commissioner outlined NG's response to her initial investigation letter to the complainant on 17 March 2020:

- *In relation to the physical provision of infrastructure cables, NG states that the infrastructure is designed, consented and built by the relevant Transmission Owners. NG does not hold information on the options that the Transmission Owner considered in this case and how they came to their design decisions.*
- *NG stated that it did not hold any information regarding the environmental effects which might arise with the physical provision and permanent effects of high voltage cable.*
- *NG explained that it did not hold information relating to environmental decisions, including when decisions were made and what processes were gone through to arrive at the choice of cable routes. NG explained that these decisions and processes would be carried out by the Transmission Owners.*
- *Additionally, the public authority explained that it is unable to access back copies of the information on the TEC register. The reason it does not publish historic versions of the TEC register is due to the fact that it is contemporaneous and ever-changing. The register shows a snapshot of the contracted position at that point in time – megawatt, site and date of connection. An updated version is uploaded every week to its website, in place of the old one.*
- *Specifically, in relation to this request, NG suggested that the complainant's questions seem to concern decisions on choice of connection design. The only information that the registers could provide is the date when the four projects he was interested in first appeared on the register which would indicate when they were first contracted.*

78. The Commissioner outlined NG's response to the complainant on 17 March 2020.

79. The complainant did not accept that some of the information he had requested was not held. He pointed out that the wind farms about which he had requested information are large power stations and are directly connected generation. Therefore according to H2C2NETS⁷ - these wind farms require "*...a bilateral connection agreement (BCA) and a construction agreement (Consag) with National Grid*" (p10). Additionally, "*...all customers wishing to connect to the NETS will require a BCA with National Grid*" (p10). H2C2NETS confirms that fees are paid by generators to NG (p18). The contractual relationship is between generators and the NG, not the Transmission Owner.
80. The complainant underpinned his argument by sending the Commissioner a letter from a generator to the NG that he obtained from another public authority because, he argues, the generator's contract for the construction of the power cable is with NG, not the Transmission Owner.
81. The complainant stated that two public authorities are involved in the power cables being constructed and operated in Scotland - these are NG and Scottish Power Energy Networks. NG has a central legal role in the physical provision of cables. The complainant's view is that a contract for the provision of a power cable without details of the start and end point locations, the voltage, the length and whether overhead or underground would be meaningless.
82. The complainant additionally argued that because NG subcontracts the provision of the cable to Scottish Power Energy Networks this means that all the environmental information held by it (acting for the transmission owner with regard to the requested information) is held on behalf of NG.
83. The Commissioner included these views when she wrote to NG on 23 March 2020 and asked further questions in order to determine what NG held in relation to this request. She asked certain generic questions concerning the searches that had been carried out - how information is held, what search terms were used, whether any information had been deleted/destroyed and questions about NG's formal records management policy. She asked more specific questions about the contractual relationship between NG and Scottish Power Energy Networks and whether it held information on behalf of NG. She also asked if the information is electronic data which has been deleted and

⁷ <https://www.nationalgrideso.com/document/45796/download>

whether copies had been made and held in other locations. She asked this specifically with regard to the TEC Register.

84. On 21 April 2020 NG responded. The public authority agreed that the complainant was correct that the customer is contracted with NG as the operator of the transmission system and NG is contracted with the transmission owner. NG explained that it is the operator in terms of the overall operation of the system but that the Transmission Owner builds and owns the assets. There are two Transmission Owners in Scotland as outlined in paragraph 15.
85. The Commissioner asked if Scottish Power Energy Networks holds information on behalf of NG in relation to this request. NG stated that the transmission owner would hold all the detailed information because they develop, build, own, maintain and operate most of the assets. It also said that there was some limited information on the connection taken from the Transmission Owner Construction Agreement and it gave the examples of the connection voltage, grid coordinates of the connection point and a brief description.
86. In response to the Commissioner's question concerning what searches had been carried out to check no information was held within the scope of the request and why these searches would have been likely to retrieve any relevant information, NG said that it had reviewed the information provided in the contract submitted to it by the transmission owner for the construction of the connection.
87. Responding to further queries NG stated that all its records in relation to the request were electronic and saved on a network drive. It did not provide any search terms used but repeated that the documents were saved in a team network area. NG confirmed that no relevant recorded information had been deleted or destroyed and that its record retention schedule meant that no contract documents had been deleted or destroyed. In relation to the TEC Register NG explained that it had weekly registers going back to 2014 but that it never disclosed old registers due to them being potentially inaccurate and not up-to-date.
88. NG told the Commissioner that it held this information for the purpose of its licensed activities although it did not hold some of the requested information which was held by the transmission owners. NG was not aware of any similar information to which it could have directed the complainant.
89. The Commissioner was not satisfied with the level of detail provided and went back to NG on 22 April 2020 asking for further detail concerning certain points.

90. NG responded on 29 April 2020. As there was some misunderstanding over what exactly was held in relation to the request, NG said it held a construction agreement for each project which was provided to the Commissioner and that it considered this information to be confidential.
91. NG did not provide details of searches or search terms other than to state that it had reviewed the information provided in the contract (presumably the Transmission Owner Construction Agreements) submitted to NG for the construction of the connection. In response to the Commissioner's question how it could be certain that it had located all the relevant information held? NG said that it is all in a standard format and that it had targeted its review where information would be held. No further information was provided about the network drive, such as how it was searched and how extensive it is. In response to the Commissioner's request for more specific detail about its retention and deletion policy, NG stated that it did not actively delete contract-related documentation.
92. The Commissioner was not clear about the TEC Register explaining that her original understanding was that the Register was contemporaneous and continuously updated and that one copy replaced the previous one. However, NG's previous response on 21 April 2020 had said that it holds the Register back to 2014. In which case she asked, what exception had this information been withheld under? NG repeated again that all previous versions were outdated and the most recent copy superseded previous versions.
93. Some of the responses from NG to the Commissioner about what is held were not detailed enough regarding what information it actually holds. This partly because of the original request with its use of the word "like" in respect of the requested "*basic technical details*" which implied other non-specified information than what had been listed was being requested. The review request contained a number of comments from the complainant about his original request which led to NG extending the scope and stating that this information was not held, as set out in paragraph 77.
94. The Commissioner has concluded that some of the information that has been provided as withheld information has not had an exception applied to it. The key dates and milestones were withheld under Regulation 12(5)(e) and the remainder under Regulation 12(4)(d) but this last exception was only applied to Broken Cross and Killgallioch. This leaves the rest of the information that NG holds and has been provided to the Commissioner – the technical information relating to Beinneun and Kype Muir without an exception applied to it. Having considered this information, the Commissioner has therefore decided that the information relating to Beinneun and Kype Muir should now be disclosed

to the complainant because it would not, in her opinion, have engaged either of the exceptions.

95. Consequently, the Commissioner has decided that NG has breached Regulations 5(1) and 5(2) of the EIR by not providing the information requested within the time for compliance.

Regulation 9 – Advice and assistance

96. Regulation 9 states that:

(1) A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall—

(a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and

(b) assist the applicant in providing those particulars.

97. NG did ask the complainant to be more specific in its refusal notice which it sent only a week after the request. This only allowed him to act on this advice and assistance in his request for a review. Here he was specific that his request was environmental and that it was focused on the key dates and milestones. He repeated his need for more technical details but did not specify anything further than the examples he had provided in the original request.
98. Although NG's advice and assistance was limited to asking the complainant to identify more precisely what information he was requesting and providing some general information that it thought he wanted, the Commissioner is satisfied that NG has not breached Regulation 9(1).

Right of appeal

99. 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

100. 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.

101. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF