

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 9 June 2021

Public Authority: Health and Safety Executive
Address: Redgrave Court
Merton Road
Bootle
Merseyside
L20 7HS

Decision (including any steps ordered)

1. The complainant requested information from the Health and Safety Executive ("HSE") relating to an investigation concerning an addressed property.
2. The Commissioner's decision is that the HSE has failed to respond to the complainant's request within 20 working days of receipt and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner requires the HSE to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request in accordance with the EIR.
4. The HSE 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 22 January 2021, the complainant wrote to the HSE via two separate emails and requested information in the following terms:

"Please supply me with all internal correspondence sent by any Gas Safe Register employees relating to the Gas Safe Register investigation concerning the property at [Address redacted]. Please include any items sent by post or via email. The timeframe that I am interested in is 1st December 2018 to 28th February 2019."

And:

"Please supply me with all internal correspondence sent by any Health and Safety Executive employees to other Health and Safety Executive employees relating to the Health and Safety Executive investigation concerning the property at [Address redacted]. Please include any items sent by post or via email. Please also include any minutes for internal meetings where the above investigation was discussed. The timeframe that I am interested in is 1st December 2018 to 28th February 2019."

6. The HSE wrote to the complainant on 5 March 2021 to acknowledge the requests.
7. By the date of this notice, the HSE failed to provide a substantive response to the complainant.

Scope of the case

8. The complainant contacted the Commissioner on 19 April 2021 to complain about the failure by the HSE to respond to the requests.
9. In line with her usual practice, the Commissioner contacted the HSE on 20 May 2021 to highlight the outstanding responses. She requested that the HSE respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
10. The Commissioner also contacted the complainant on 20 May 2021 to explain that the HSE had been given 10 working days from that date within which to provide a response to his requests.
11. Despite this intervention, the complainant has not received a substantive response to his information requests.

12. The Commissioner considers that the scope of her investigation is to determine whether the HSE has complied with regulation 5(2) of the EIR.

Reasons for decision

13. 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);*
14. The Commissioner has not seen the requested information but has considered the wording of the request and notes that it is information about land and energy. Therefore she believes that it is likely to be information about *the state of the elements of the environment, such as land, referred to in (a); and factors, such as energy, referred to in (b).*

For procedural reasons, she has therefore assessed this case under the EIR.

15. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"
16. 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.*"
17. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
18. 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 HSE advised the complainant that it was relying on regulation 7.
19. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the requests within 20 working days, the HSE has breached regulation 5(2) of the EIR and it is now required to respond to the request in accordance with the EIR.

Other matters

20. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the EIR.

Right of appeal

21. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

22. 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.
23. 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

Phillip Angell
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Wycliffe House
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Wilmslow
Cheshire
SK9 5AF