

**Freedom of Information Act 2000 (FOIA)**  
**Environmental Information Regulations 2004 (EIR)**  
**Decision notice**

**Date:** 9 February 2023

**Public Authority:** North Sunderland Harbour Commissioners  
**Address:** Harbour Office  
Harbour Road  
Seahouses  
Northumberland  
NE68 7RN

**Decision (including any steps ordered)**

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1. The complainant has requested information about the appointment of Commissioners. The above public authority ("the public authority") accepted that it was subject to the EIR, but stated that the requested information was not environmental. It did however, provide some of the information voluntarily.
2. The Commissioner's decision is that the information the public authority has not already provided to the complainant is not environmental information and therefore the public authority is not obliged by the EIR to provide it.
3. As the information is not environmental and the public authority is not covered by FOIA, the Commissioner would be unable to require any remedial steps to be taken.

**Request and response**

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4. On 25 May 2022, the complainant wrote to the public authority and requested information in the following terms:

"Will the Commissioners now please provide the following information:

- [1] The names of the current commissioners;
  - [2] The date on which each commissioner (not being a fisherman Commissioner) was appointed;
  - [3] The name of the appointer of each non fisherman Commissioner;
  - [4] The names of those persons on the register of fishermen;
  - [5] The dates of the last two elections of fishermen's Commissioners and;
  - [6] The names of the elected fishermen's Commissioners.”
5. The public authority responded on 17 June 2022. It accepted that it was covered by the EIR but, as the information was not environmental, it was not obliged to respond. Nevertheless it did voluntarily provide a list of Commissioners, the date they had been appointed and the basis for their appointment.
6. Following an internal review the public authority wrote to the complainant on 9 August 2022. It upheld its position that none of the information was environmental, but voluntarily provided information within the scope of element [5].
7. At the point this complaint was accepted, it would appear that the public authority has voluntarily provided all the requested information with the exception of that falling within the scope of element [4].

### **Scope of the case**

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- 8. It is accepted by all parties that the public authority is subject to the EIR, but not FOIA. Therefore the public authority is only obliged to disclose information to the extent that it is environmental information.
- 9. The complainant has highlighted numerous issues he has with the public authority. The Commissioner cannot consider issues relating to the way in which the public authority is governed. Such matters fall outside his jurisdiction.
- 10. The Commissioner's role is to determine whether a public authority is required to deal with a request under the EIR and, if so, whether it has dealt with that request in accordance with the legislation.
- 11. The complainant has also invited the Commissioner to consider numerous other requests he has made to the public authority dating back to 2020. He alleges a failure to provide advice and assistance, as

well as a failure to deal with the requests under the EIR and to disclose appropriate environmental information.

12. The Commissioner declines to issue any decision in relation to earlier requests as there was an undue delay in bringing them to his attention. However, in dealing with the present request, it is possible that some of the underlying issues behind previous requests will be addressed.
13. Given that the information within the scope of four elements of the request has already been provided, the Commissioner has excluded this information from his decision. He notes, however, that it is unlikely he would have considered such information to be environmental anyway as it is not sufficiently connected to either the elements of the environment themselves or a measure affecting them.

## **Reasons for decision**

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### **Is the remaining requested information environmental?**

14. The remaining information in dispute is the register of fishermen at element [4] of the request.
15. 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);
16. The complainant argued that the information in question fell under parts (a), (c) and (f) of the definition. Indeed he went further and described the information as "a paradigm example of environmental information."
  17. The Commissioner can dismiss parts (a) and (f) easily. A register of fishermen is self-evidently not information "on" any of the elements of the environment. Nor is it information on the state of human health and safety as affected by (or through) the state of the elements of the environment.
  18. With regard to (c), in *Department for Business, Energy and Industrial Strategy v Information Commissioner and Henney* [2017] EWCA 844, the Court of Appeal stressed the importance of identifying whether information, which was not obviously related to the elements of the environment, was nevertheless "on" an environmental measure – that is, a measure likely to affect the elements of the environment. The Court also stressed the importance of taking a purposive approach – that is, to consider the purpose for which the information was created, the purpose for which it was held and whether it had a direct purpose in understanding environmental decision making.
  19. The public authority explained to the Commissioner that it was required by its founding legislation to maintain a register of local fishermen. The purpose of keeping such a register, it explained, was solely for the purpose of determining which individuals were entitled to vote in elections for any of three fishermen's Commissioner posts which might fall vacant.
  20. Being registered did not, the public authority explained, provide the registrant with any privileged access to harbour facilities. Nor was the register used to monitor other actions that might have an environmental impact (such as fishing quotas). Its sole purpose is to act as an electoral register.

21. The public authority provided a copy of the relevant section of the North Sunderland Harbour Commissioners Order 1931, article 9(1) of which states that:

“The Commissioners shall cause a register of fishermen to be kept in accordance with the following provisions and the persons registered therein shall be the registered fisherman of North Sunderland for the purposes of this Order.”

22. Article 9(2) goes on to describe the requirements each registrant must meet in order to be (or remain) registered.
23. Only registered fishermen are entitled to be elected as a fishermen's Commissioner.
24. Having considered the matter, the Commissioner is satisfied that the register itself has no environmental purpose. Its purpose is to provide a list of eligible voters (and candidates) in the event of an election for a fishermen's Commissioner. The election itself is not an environmental measure either as the outcome has no direct effect on any of the elements of the environment.
25. The Commissioner is thus satisfied that register of fishermen is not environmental information and therefore the public authority was not obliged to disclose it.
26. The Commissioner also notes that, even if the register were environmental information, it is highly likely that disclosing the information to the world at large would breach the first data protection principle and so would be unlawful.

## Right of appeal

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27. 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](mailto:grc@justice.gov.uk)

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

28. 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.
29. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**