

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

Date: 22 March 2023

Public Authority: EDF Energy PLC
Address: 90 Whitfield Street
London
W1T 4EZ

Decision (including any steps ordered)

1. The complainant has requested statistics relating to vulnerable customers and their payment of energy bills. EDF Energy PLC (EDF) accepted that it was subject to the EIR, but stated that the requested information was not environmental.
2. The Commissioner's decision is that the requested information is not environmental information and therefore EDF is not obliged to provide it under the EIR.
3. As the information is not environmental and EDF is not a public authority for the purposes of FOIA, the Commissioner is unable to order any remedial steps to be taken.

Request and response

4. On 10 August 2022, the complainant wrote to EDF and requested information in the following terms:

"Where possible, please provide the following information broken down by postcode area or the location measure you use e.g. region.

1a. Between 15 December 2020 and 15 August 2022, how many customers are known to have self-disconnected from either their gas or electricity? (Please give a total for each.)

1b. Of the total number of customers, how many were known to be vulnerable on the system?

1c. Of the total number of customers, how many were officially on a Priority Services Register, or equivalent?

1d. If known, for what reason(s) were they vulnerable? E.g. age, disability

2a. Between 15 December 2020 and 15 August 2022, how many customers are known to have self-rationed for either their gas or electricity? (Please give a total for each.)

2b. Of the total number of customers, how many were known to be vulnerable on the system?

2c. Of the total number of customers, how many were officially on a Priority Services Register, or equivalent?

2d. If known, for what reason(s) were they vulnerable? E.g. age, disability

3a. Between 1 April 2022 and 1 August 2022, how many customers have been put on a pre-payment meter (PPM)?

3b. Of the total number of customers, how many were offered alternative options before being put on a PPM?

3c. Of the total number of customers, how many expressed that this action was against their wishes?

3d. Of the total number of customers, how many were known to be vulnerable on the system?

3e. Of the total number of customers, how many were officially on a Priority Services Register, or equivalent?

3f. If known, for what reasons were they vulnerable? E.g. age, disability

4a. Please provide the latest policy that outlines how your company should deal with customers who are in debt and/or arrears, or

struggling to pay their bills, in relation to Ofgem's Ability to Pay principles."

5. EDF responded on 15 August 2022. It refused the request on the basis that the requested information does not fall within the description of "environmental information" at regulation 2(1) of the EIR.
6. Following an internal review EDF wrote to the complainant on 3 November 2022. It maintained its original position that the requested information is not environmental.

Scope of the case

7. It is accepted by all parties that EDF is subject to the EIR, but not FOIA. Therefore EDF is only obliged to disclose information to the extent that it is environmental information.
8. The Commissioner's role is to determine whether EDF is required to deal with the request under the EIR and, if so, whether it has dealt with that request in accordance with the legislation.

Reasons for decision

Is the requested information environmental?

9. 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);
10. The complainant argued that the information in question fell under parts (c) and (f) of the definition.

Regulation 2(1)(c)

11. With regard to regulation 2(1)(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.
12. EDF also made comparisons to *DfT, DVSA and Porsche Cars GB Ltd v Information Commissioner and John Cieslik* [2018] UKUT 127 (AAC), in which the Tribunal determined that whilst the measures in question related to a motor car which clearly impacts the elements of the environment, that does not mean that anything to do with a motor is environmental.
13. The measures in this case are the supply of gas and electricity, methods of payment, and then the steps taken by the customers to regulate their own usage, as well as steps taken by EDF such as installation of PPMs to ensure that energy usage is paid for.
14. The Commissioner is satisfied that there is not a sufficiently close connection between these measures and any incidental affect on the elements of the environment which may occur from them, for the measures to be considered to have any environmental purpose. The measures are purely financial or economic in nature, rather than measures designed to affect or protect the elements and factors at regulations 2(1)(a) and 2(1)(b). The Commissioner is therefore satisfied

that the requested information does not fall under regulation 2(1)(c) of the EIR.

Regulation 2(1)(f)

15. For information to meet the description at regulation 2(1)(f), not only must it relate to the state of human health and safety, conditions of human life, or cultural sites and built structures, it must also be about how those matters are or may be affected by the state of the elements at regulation 2(1)(a), or, through those elements, any of the factors, measures or activities referred to in regulations 2(1)(b) and 2(1)(c).
16. EDF acknowledged that whilst information about its customers ability to pay their bills would relate to the conditions of human life, it does not concern how human life is impacted by or through the elements of the environment.
17. The Commissioner's guidance explains that 'conditions of human life' covers, for example, information on housing, poverty, employment, social welfare, heating, access to clean water, sanitation and healthcare. He is therefore satisfied that the requested information concerning EDF customers ability to pay their energy bills does relate to the conditions of human life.
18. However, the Commissioner finds that the requested information does not meet the second part of the definition at regulation 2(1)(f), as it is about EDF customers ability to pay their bills due to financial or economical circumstances, rather than their ability to pay their bills being affected by, or through, the state of the elements of the environment.

Conclusion

19. The Commissioner is thus satisfied that the customer statistics are not environmental information and therefore EDF was not obliged to disclose them under the EIR.

Right of appeal

20. 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

21. 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.
22. 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

Catherine Fletcher
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Wycliffe House
Water Lane
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SK9 5AF