

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

**Date:** 21 April 2023

**Public Authority:** The Board of Governors of Leeds Beckett University

**Address:** City Campus  
Leeds  
LS1 3HE

**Decision (including any steps ordered)**

---

1. The complainant has requested information about a study on attitudes to hydrogen gas as an alternative fuel source. The above public authority ("the public authority") stated that it held no information.
2. The Commissioner's decision is that the first part of the request does not seek recorded information and is thus not valid. The Commissioner considers that the second part of the request fell to be dealt with under the EIR. As the public authority has not responded to the second part of the request, it has breached regulation 5(2) of the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Confirm whether it holds any information within the scope of the request and, if it does, either provide a copy of that information or issue a refusal notice that complies with regulation 14 of the EIR.
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.

## Request and response

---

5. On 23 January 2023, the complainant wrote to the public authority in the following terms ("the first part"):

"I am researching the background information provided to Leeds Beckett as part of the H21 social science research - <https://h21.green/projects/h21-social-science-research/>

"In particular, but not limited to, the information provided to the Leeds Beckett researchers from other project partners such as Cadent and NGN in relation to the information subsequently provided to research participants regarding the properties of hydrogen.

"I have been trying to have a conversation with [redacted] regarding the H21 social science research paper for several months to no avail.

"I'm very concerned that the information Leeds Beckett were presented with, and in turn presented to your research participants, was incomplete and inaccurate.

"For example, the report (p14) recommend using messaging such as that listed below.

Most appealing benefit messages

1. Hydrogen is a renewable energy source, unlike natural gas
2. Hydrogen is safer for you, with no risk of carbon monoxide poisoning
3. Hydrogen is a more environmentally friendly gas to use

Reassurances required

1. My bills would not be more expensive
2. Hydrogen is 100% as safe as the current gas
3. My boiler would not need to be replaced

"But each point is factually incorrect:<sup>1</sup>

---

<sup>1</sup> The Commissioner notes that this is disputed. He has included it here because, in his view, the contents of the correspondence influenced the way it was dealt with.

- Blue hydrogen isn't renewable – it's made from natural gas. Green hydrogen is made using renewable electricity, but there is nowhere near enough capacity to produce it in sufficient quantities, and won't be for at least a decade or more
- Hydrogen is likely to cause up to four times as many explosions as gas – according to research prepared for the HSE by Arup
- Blue hydrogen may have a carbon footprint up to 20% higher than natural gas, and burning hydrogen in the home will produce NOx emissions, a pollutant in their own right and a precursor to ozone formation
- Bills will be more expensive – there is an extensive body of research – including by the hydrogen industry – that indicates bills will double.
- Hydrogen is not 100% safe as natural gas
- All appliances currently using natural gas will need to be replaced, at homeowners expense (estimated to be around £3-4k)

"It is of great concern to myself and others in this space that information in the public domain is not an accurate reflection of the reality of hydrogen for heating.

"To that end, I am wanting to find out how such information was passed to researchers at Leeds Beckett, and how it ended up in the public domain without apparently being fact-checked or peer-reviewed by any academics with knowledge of hydrogen."

6. The complainant then sent follow-up correspondence on the same day in these terms ("the second part"):

"In addition to my FOI request submitted via your website, I wish to clarify that I wish to see all emails and other correspondence between project participants; any background presentations, briefings or other information on hydrogen provided to the research team; the terms of reference and timeline for the research; copies of any preliminary results shared with any project participants; and all drafts of the final report."

7. The public authority responded on 20 February 2023. The response only quoted the first part of the request and, in particular, the final paragraph. It provided a very small amount of general information about the survey that had informed the research.

8. Following an internal review the public authority wrote to the complainant on 17 March 2023. It upheld its position that it had provided all the information it held, but provided some additional information on the research methods which it claimed was being done "outside of FOIA". It did not mention the second part of the request.

## **Reasons for decision**

---

### **Would the requested information be 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. In *Department for Business, Energy and Industrial Strategy v Information Commissioner and Henney* [2017] EWCA 844 ("Henney"), 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.

11. The overview of the study cited in the request cites the following:

“The need to understand public perceptions, including what barriers may exist and the perceived possible risks to safety, is vital as these perceptions could affect the role hydrogen has to play in the future energy system as well as how it can be integrated into everyday activities.

“As part of the H21 NIC project a programme of social science research is being undertaken by Leeds Beckett University, on behalf of the H21 team. This research will ensure that some of the issues regarding perceptions of hydrogen are confronted and new knowledge generated. The research aims are as follows:

- Research Aim One – Generate insight into baseline public perceptions of the safety of hydrogen and other energy technologies/vectors including how they vary by a range of socio-demographic and geographic variables.
- Research Aim Two – Generate insight into how people respond to the possibility of using 100% hydrogen in the three-key, gas-fuelled social practices (heating, cooking, travelling), including how they vary by a range of socio-demographic and geographic variables.
- Research Aim Three – Understand how public perception of the safety of hydrogen evolves across the range of socio-demographic and geographic variables when considering the H21 NIC evidence.
- Research Aim Four – Build a hydrogen research network of social scientists across the UK who may then become involved in the delivery of the proposed research activity or who may play advisory roles in the development of a body of research, data and expertise around the opportunities and challenges of hydrogen.”

12. In this case, the Commissioner considers that the environmental “measure” in question is the use of hydrogen gas as an alternative fuel source.

13. Hydrogen has been proposed as an alternative domestic energy source to natural gas. Its proponents claim that it is a "cleaner" source of energy – although this is disputed.
14. It is not for the Commissioner to determine whether hydrogen is, or is not, a "cleaner" source of energy. He is only required to determine whether changing the source of domestic energy would be likely to have an environmental impact (positive or negative). The Commissioner is satisfied that the purpose of effecting such a change would be to have an environmental impact – it is irrelevant (in this context) whether that environmental impact would ultimately come to fruition. The intent is what matters.
15. The "Henney" case involved information relating to Smart Meters. When the case came before the Upper Tribunal, the judge ruled that information on the particular project that was the subject of the request was environmental information because it formed an important part of the Smart Meter programme as a whole. He drew a contrast between such information and information relating to the marketing of programme which, he argued, was much more loosely connected to the environmental measure and so not environmental information.
16. The Court of Appeal ruled that (though information on marketing did not form part of the request) this would be incorrect. The way Smart Meters were marketed would have an impact on their takeup and ultimately on the environmental impact the project was able to have.
17. By the same token, the Commissioner considers that the information in question – which concerns the measuring of current attitudes towards hydrogen gas – would still be information "on" the conversion. The environmental impact will be determined by the number of households that convert to hydrogen. The number of households that convert will be determined, at least in part, by successful efforts to persuade them that such a conversion is in their best interests or the best interests of society as a whole.
18. The research would therefore have a purpose in helping individuals and companies to better understand and better participate in an environmental decision. This is implicitly confirmed by the summary and research aims. Information covering how the research was conducted and which parties were involved will feed into that purpose and will hence be information "on" the environmental measure.
19. The information in question will therefore be environmental information.

## **Procedural matters**

---

### **Validity of request**

20. Regulation 5(2) of the EIR requires a public authority to respond to valid requests within 20 working days.
21. The EIR do not contain an explicit definition of what constitutes a request for information. Nevertheless, they only permit the right of access to information held in recorded form. They do not oblige a public authority to provide explanations or opinions.
22. The Commissioner is therefore of the view that, in order to be valid, a request must seek recorded information and must identify the particular recorded information that the requester wishes to have made available to them.
23. The first part of the request does not identify any recorded information that the complainant wishes to receive. It simply asks how the public authority came to publish the report in its present form. That is a request for an explanation.
24. By contrast, the second part of the request is very specific in seeking correspondence, previous drafts of the report and input from third parties. This is all recorded information that the public authority could reasonably be expected to hold.
25. The public authority mis-directed itself by focusing on the first part of the request and defending the implied attack on the integrity of its research. It should instead have focused on the second part of the request and the recorded information that was actually being sought.
26. From the evidence provided to the Commissioner, the public authority does not appear to have addressed the second part of the request at all. In the Commissioner's view it is likely that the public authority will hold more information beyond that which has been provided.
27. As the public authority has failed to respond to the second part of the request, the Commissioner considers that it has breached regulation 5(2) of the EIR.

### **Remedial steps**

28. Having recorded a breach, the Commissioner must next consider whether it is proportionate to order the public authority to take remedial steps.

29. In the Commissioner's view, the public authority appears to have recognised the wrong part of the request as being valid. As a result it has misdirected itself into defending the integrity of the research rather than focusing on the recorded information that was being sought.
30. Given the nature of the study, the Commissioner considers it would be very unlikely that the public authority would hold no information whatsoever within the scope of the second part of the request. The public authority has also failed to consider its responsibilities under the EIR. In the circumstances, the Commissioner considers that the pragmatic way forward is to require the public authority to go back to the beginning, but this time consider the correct part of the request under the correct access regime.
31. The public authority must first identify what information it holds within the second part of the request. Once it has done that, it then has the option of either providing that information (assuming some is held) or relying on an EIR exception to withhold it.



## Right of appeal

---

32. 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)

33. 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.
34. 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**