

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

Decision notice

Date: 5 March 2024

Public Authority: Environment Agency
Address: Horizon House
Deaney Road
Bristol BS1 5AH

Decision (including any steps ordered)

1. The Commissioner finds that the Environment Agency (EA) holds no further information within scope of the complainant's request for information about the Devonport energy from waste plant. However, his decision is that EA did not comply with regulation 5(2) of the EIR as it took longer than 20 working days to make available all the relevant information it holds.
2. It's not necessary for the EA to take any corrective steps.

Background

3. In its submission to the Commissioner, the EA has explained that the complainant has made various allegations that the Devonport energy from waste plant, operated by MVV Environment Devonport Ltd, causes pollution that endangers the lives of Plymouth residents. They further allege that the operator routinely falsifies evidence of its emissions, and that the EA are complicit in this. Two teams from the EA's Regulated Industries Department, the Installations Team and the Enforcement Team, have regularly corresponded and engaged with the complainant over a period of several years. These teams have supplied evidence to show that the site is regulated in accordance with the EA's duties and powers.

Request and response

4. The complainant made the following information request to the EA on 30 July 2023:
 - “1. A copy of the “full review” of the regulatory approach of the site
 2. A copy of all the plant audits and inspections
 3. A copy of the official email trail confirmation from [redacted]”
5. The EA advised that it had provided the report requested in Q1 on 27 June 2023 and provided the information requested in Q2 through a link to a shared file. Regarding Q3, the EA provided a “copy of your emails dated 20/06/2023 and 30/07/2023.” EA advised it had redacted personal data from the information it disclosed.
6. The EA’s final position following its internal review was to uphold its response to Q1 and Q2 and to confirm it held no further information relevant to those questions. The EA also then confirmed that it doesn’t hold information within scope of Q3; that is, the “official email trail confirmation.”

Reasons for decision

7. This reasoning covers the EA’s compliance with regulation 5 of the EIR in respect of the three parts of the complainant’s request.
8. Regulation 5(1) of the EIR obliges a public authority to make information available on request if it’s held and isn’t subject to an exception.
9. Under regulation 5(2) a public authority must comply with regulation 5(1) as soon as possible and within 20 working days following the date of receipt of the request.
10. Q1 is for a copy of the “full review” of the regulatory approach for the site. The EA says that following the complainant’s complaint about its regulatory approach in respect of the site and the operator, the Enforcement Team Leader within the Regulated Industries Department conducted a full review of the site and its regulatory approach. The review found that the EA had regulated the site appropriately. A single report was written as a result of this review, which was provided to the complainant. Both the Enforcement team and the Installations team have confirmed that no other report exists, as no other review has taken place. The teams consider that the EA has made a full disclosure of the report into the review of the site and its regulatory approach.

11. The complainant remained dissatisfied with the finding of the review into the site and the EA's regulatory approach, and raised a complaint that it must be further reviewed. The former EA Operations Manager subsequently undertook a further review of the site and regulatory approach. The findings of the review were ratified, and it was again confirmed that the full review and report had been provided.
12. Concurrently, the EA says, its Director of Operations wrote to the complainant with the outcome of the 2-stage review of their complaint about its regulatory approach in respect of the site and operator.
13. The EA now considers that if the complainant wishes to complain about its regulatory role, the correct route of challenge is via the relevant ombudsman. This would be the Parliamentary and Health Service Ombudsman for a regulatory matter and a referral must be made through an MP.
14. The Commissioner is satisfied with the EA's explanation of its handling of Q1 of the request. The complainant requested a copy of a particular "full review" and the EA has previously provided them with a copy of that review. The Commissioner's satisfied that the EA holds no further information within scope of this question.
15. Q2 is for "a copy of all the plant audits and inspections." The EA has told the Commissioner that it supplied [the complainant with] "117 records of plant audits and inspections by means of their official record, Compliance Assessment Report (CAR) forms" in its original response to the request. This was for the period from the site being commissioned up to the date of the response to the request on 25 August 2023. The EA says it obtained these from its electronic Document Management System (DMS). These 117 CAR forms have since been cross-checked with the database (NCAD) that it uses to create them. The EA found a further 28 CAR forms which are not present on the DMS system. It says it promptly provided these 28 CAR to the complainant and it has apologised for not supplying these originally.
16. The EA has explained that this omission was due to a countrywide error in filing to DMS, which was scheduled to be corrected during maintenance downtime 1 March 2024. The EA says it's important to note that the discovery of these 28 CAR forms doesn't alter its position on how the site is operated and regulated, which it previously communicated to the complainant. Going forward, the EA says, its technical team has identified that to improve its service, it will check both DMS and NCAD systems before responding to applicant requests.

17. The Commissioner is satisfied with the EA's explanation of its handling of Q2 of the request. The complainant requested a copy of plant audits and inspections; the EA provided a significant amount of relevant information when it responded to the request and having undertaken further searches, it found additional information that it's now communicated to the complainant. The EA has explained why this further information wasn't identified originally. The Commissioner's satisfied that the EA holds no further information within scope of this question.
18. Q3 is for "a copy of the official email trail confirmation" from five named individuals. The EA notes in its submission that the complainant believes it holds further information relevant to this question; information which would prove receipt of their email, which they requested was forwarded to the five individuals. The EA has confirmed that the complainant's email was forwarded to the individuals (and it has provided the Commissioner with a copy of that correspondence). However, those individuals didn't reply to the email, and neither the Customer and Engagement team that sent the email, nor the email recipients had 'read receipts' turned on in their email accounts. Unless a user has 'read receipts' turned on in their email account there won't have been any confirmation that the email was received by these individuals. The EA says using 'read receipts' isn't standard practice in the EA, as 'read receipts' generate additional email traffic and increase carbon footprint.
19. The EA has explained that at the time of the complainant's request for an email trail, it had searched the correct inboxes for read receipts or replies and didn't identify any emails in scope of the request. The EA says it has checked and verified that there still hasn't been a response to the complainant's email which was forwarded. As noted, read receipts are turned off by default in its standard email settings to help the organisation reduce carbon, so an email user would have to opt to actively turn on this function.
20. In addition, the EA notes, none of the individuals responded with an email reply; the complainant's email was forwarded to them for information only. As such, there's no email chain correspondence to provide to the complainant.
21. The Commissioner is satisfied with the EA's explanation of its handling of Q3 of the request. The complainant requested a copy of "official email trail confirmation" and for the entirely reasonable reasons it's given, the Commissioner accepts that the EA doesn't hold this information.
22. The Commissioner's decision is that the EA holds no further information within scope of the complainant's request. However, the EA didn't fully comply with regulation 5 of the EIR as it took longer than 20 working days to make available all the relevant information it holds.

Right of appeal

23. 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

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF