

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 4 July 2024

Public Authority: Department for Levelling Up, Housing and Communities

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested a copy of a report assessing the risks associated with 'volumetric' modular construction that is held by the Department of Levelling Up, Housing and Communities (DLUHC).
2. The DLUHC issued a refusal notice in response to the complainant's request, citing section 35(1)(a)(formulation of government policy) of the Freedom of Information Act 2000 (FOIA).
3. The Commissioner's decision is that the complainant's request is for environmental information, and therefore should have been considered under the EIR.
4. The Commissioner requires the DLUHC to take the following step to ensure compliance with the legislation.
 - Reconsider the complainant's request under the EIR, and either provide the requested information, or issue a refusal notice citing a valid exception.
5. The DLUHC must take this step within 30 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

6. On 26 September 2023, the complainant wrote to the DLUHC and requested information in the following terms:

“Please provide a copy of the report produced by academics at Edinburgh Napier University and Harlow Consulting on the risks associated with ‘volumetric’ modular construction. There may be other parts to that report; please include them too.”
7. On 20 October 2023, the DLUHC issued a refusal notice, citing the exemption at section 35(1)(a) of FOIA. The DLUHC went on to confirm that it considered the public interest to favour withholding the requested information in this case.
8. On 24 October 2023, the complainant requested an internal review, and on 28 February 2024, the DLUHC provided its response. The DLUHC upheld its original decision to refuse the request under section 35(1)(a) of FOIA, and provided the complainant with further explanations in support of its position. The DLUHC also stated that the requested report will be released “once the policy is no longer evolving.”

Reasons for decision

9. This reasoning covers whether the DLUHC has considered the complainant’s request of 26 September 2023, under the appropriate legislation.

Is the requested information environmental?

10. 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).
11. The Commissioner, when making his decision as to whether the requested information is environmental, has had regard to decision notice IC-277930-S7L5¹, issued on 17 June 2024. That decision notice considered a request submitted to the DLUHC on 5 October 2023, by another individual, for the same report requested by the complainant in this case.
 12. In decision notice IC-277930-S7L5, the Commissioner concluded that the information contained within the relevant report fell squarely within the definition of environmental information provided by regulation 2(1)(c) of the EIR.
 13. The Commissioner has found no significant material difference between the circumstances relevant to decision notice IC-277930-S7L5, and the case currently under consideration. Given this, it is the Commissioner's view that the explanations provided within paragraphs 14 -26 of decision notice IC-277930-S7L5, are directly relevant and applicable to this case.
 14. The Commissioner therefore finds that, for the same reasons set out in decision notice IC-277930-S7L5, the DLUHC should reconsider the complainant's request under the EIR and issue a fresh response disclosing the requested information, or issue a refusal notice, citing a valid exception.

¹ [ic-277930-s7l5.pdf \(ico.org.uk\)](https://ico.org.uk/decision-notice/277930-s7l5)

Right of appeal

15. 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

16. 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.
17. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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