

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 25 September 2014

Public Authority: The Highways Agency
Address: 123 Buckingham Palace Road
London
SW1W 9HA

Decision (including any steps ordered)

1. The complainant requested information about the Maintenance Requirements Plan relating to sweeping and cleaning for Area 2. The Highways Agency originally withheld the information it holds relevant to the scope of the request under regulation 12(5)(e) of the Environmental Information Regulations 2004 (EIR). The Highways Agency has now provided the complainant with all the information it holds relevant to the scope of the request however made redactions to the information disclosed under regulation 13(1) EIR. The complainant is however concerned that in its internal review response, the Highways Agency breached regulation 14(3)(b) and 11(5)(c) EIR.
2. The Commissioner's decision is that the Highways Agency breached regulation 14(3)(b) EIR in the way in which it has dealt with this request. He considers that it did not however breach regulation 11(5)(c) EIR.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 2 April 2014 the complainant asked to be provided with copies of pages from the Maintenance Requirements Plan relating to sweeping and cleaning for Area 2.
5. On 9 May 2014 the Highways Agency responded. It refused to provide some of the information requested but did not specify which exception was applicable.
6. The complainant requested an internal review on 22 May 2014. The Highways Agency sent the outcome of its internal review on 17 June 2014. It upheld its position that the information should be withheld but explained that the exception applicable was regulation 12(5)(e) EIR. It did not consider the public interest test.

Scope of the case

7. The complainant contacted the Commissioner on 26 June 2014 to complain about the way his request for information had been handled.
8. On 30 July 2014 the Highways Agency provided the complainant with the information being withheld under regulation 12(5)(e) EIR but made some redactions under regulation 13(1) EIR.
9. The complainant contacted the Commissioner on 1 September 2014 as he considers that the Highways Agency breached regulations 14(3)(b) and 11(5)(c) EIR in the way in which it handled this request.
10. The Commissioner has considered whether the Highways Agency breached regulations 14(3)(b) EIR and 11(5)(c) EIR in this case.

Reasons for decision

Regulation 14(3)(b) EIR

11. Regulation 14(3)(b) EIR states that:

“The refusal shall specify the reasons not to disclose the information requested, including – (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

12. In this case, at the time the internal review was carried out, the Highways Agency confirmed that it was relying upon regulation 12(5)(e) EIR to withhold the information it held relevant to the scope of the request. It did not however disclose the matters considered in the public interest test. It therefore breached regulation 14(3)(b) EIR.
13. The Commissioner is however aware, as stated above, that subsequent to the internal review, the Highways Agency did disclose the withheld information to the complainant, albeit with redactions made under regulation 13(1) EIR.

Regulation 11(5)(c) EIR

14. Regulation 11(5)(c) EIR states that:

“Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of – (a) the failure to comply; (b) the action the authority has decided to take to comply with the requirement; and (c) the period within which that action is to be taken.”

15. The Complainant is concerned that the Highways Agency breached regulation 11(5)(c) EIR by not saying by when the promised remedial action would be taken.
16. After considering the internal review response the Commissioner is satisfied that the Highways Agency dealt with all of its failures specific to this request within the internal review response other than the breach of regulation 14(3)(b) EIR referred to above. At the end of the internal review response the Highways Agency did however make the following comments:

“As part of the scope of this internal review, consideration has been given to remedial actions which will help to mitigate against similar circumstances arising in the future, the Highways Agency has a high level of compliance with both FOI and EIR legislation. These actions are outlined below:

1. Delivery of refresher FOI/EIR training to team responsible for handling the request
2. Direction to internal guidance
3. Awareness raising of the advisory and support role of the FOI Officer
4. Undertake communications, guidance and template revision to ensure the use of ‘out of office’ meets ICO guidance; the date of receipt of a request by a public authority shall be calculated as: *the day the request is physically or electronically delivered to the public authority*

or directly into the inbox of a member of staff. An exception to this will be: where the request has been emailed to an absent member of staff, and this has generated an 'out of office' message with instructions on how to re-direct the message to another contact; this will advise external customers to address EIR/FOR requests to our main advice line for a response."

17. The Commissioner considers that the remedial action referred to by the Highways Agency and the complainant are general steps it intends to take to prevent the issues which arose in this case from occurring in the future. They are not however actions the Highways Agency was required to take to rectify its handling of this specific request. The Commissioner does not consider that the Highways Agency is required to confirm when these general preventative steps will be undertaken under regulation 11(5)(c) EIR. The Commissioner does not therefore consider that the Highways Agency breached regulation 11(5)(c) EIR in this case.

Right of appeal

18. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.
20. 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

Pamela Clements
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