

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

**Decision notice**

**Date:** 15 December 2015

**Public Authority:** Health and Safety Executive  
**Address:** Redgrave Court  
Merton Road  
Bootle  
Liverpool  
L20 7HS

**Decision (including any steps ordered)**

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1. The complainant has requested information about residual risk estimates associated with a petroleum storage depot at Redcliffe Bay. The Health and Safety Executive (HSE) has released some information and the complainant disputes that the HSE does not hold any further information that would fall within the scope of his request.
2. On balance, the Commissioner's decision is that the HSE correctly interpreted the complainant's request and has released all the relevant information that it holds. The HSE has consequently complied with its obligation under regulation 5(1) and the Commissioner does not require it to take any steps.

**Request and response**

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3. On 2 April 2015, the complainant wrote to the Health and Safety Executive and requested information in the following terms:

*"...please allow me to renew my EIR request for the results of your 2013 Residual Risk estimates but now for a different reason ... your RR estimates may help me to get the HSA to take some action now to stop*

*operations on the basis of an outdated and erroneous SR. I hope that you can give me your estimates with and without Tanks 14 and 15?"*

4. On 13 April, the HSE responded and refused to provide the requested information. It said that it was subject to the exception under regulation 12(4)(d) of the EIR because the request relates to material that is still in the course of completion, to unfinished documents or to incomplete data.
5. Following an internal review the HSE wrote to the complainant on 22 June. It maintained its position that the information was excepted from disclosure under regulation 12(4)(d) as it was in the course of completion; it formed part of an on-going process that had not yet concluded.
6. During the Commissioner's investigation, the HSE changed its position and said it no longer wishes to rely on regulation 12(4)(d). It told the Commissioner that it holds two items of material that fall within the scope of the complainant's request – an HSE report relating to the petrol storage depot (PSD) at Redcliffe Bay dated July 2012 ('the report') and an email relating to the Hazardous Substance Consent Pre-Application for tanks 14 and 15 at the depot dated 9 October 2013 ('the email').
7. HSE said it had already disclosed the report to the complainant in March 2013. It said that the email represents the only residual risk estimate that the HSE has so far identified with respect to the Pre-Application process concerning tanks 14 and 15 at Redcliffe Bay PSD. It had originally withheld this email under the exception at 12(4)(d) because the Pre-Application process to which the residual risk relates has not yet concluded. This means that all the residual risks relating to this Application have not been identified. HSE said it was originally of the view that disclosing this information into the public domain before the Hazardous Substance Consent process has concluded would be likely to distract any public debate because the public would be assessing inaccurate and incomplete information.
8. Subsequently however, the HSE had learned that North Somerset Council had already disclosed this email to the complainant. Because of this, 12(4)(d) no longer applied.
9. On 16 October, the HSE wrote to the complainant. It told him that, because it has not concluded its assessment of the Hazardous Substance Pre-Application process relating to tanks 14 and 15, it holds very little information relating to residual risk estimates. It released the October 2013 email to him (withholding some personal data under regulation 13) and confirmed that the only information within the scope of his request is this email and the report, which it had already released to him.

## Scope of the case

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10. The complainant contacted the Commissioner on 3 July to complain about the way his request for information had been handled. He initially considered that the information he has requested concerns residual risk data that the HSE produced in 2013 and that the data is sufficiently complete as to make it unnecessary to invoke the exception under 12(4)(d). Following subsequent correspondence with the Commissioner, his complaint is now that the HSE has not interpreted his request correctly and it must hold further relevant information.
11. The Commissioner has focussed his investigation on whether there is an alternative interpretation of the complainant's request and whether, on balance, it holds any additional information, based on that alternative interpretation, which it could release to him.

## Reasons for decision

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### **Is the information environmental information?**

12. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR rather than the FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.
13. The Commissioner considers the information in this case can be broadly classed as environmental information, as defined in regulation 2(1)(c) of the EIR. This says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(a) will be environmental information. Elements listed under 2(a) include air and atmosphere, water, soil and land.
14. The request is for information relating to residual risks associated with a petrol storage depot. The Commissioner is satisfied that this information can be categorised as a measure likely to affect the elements of the environment listed in regulation 2(a) and therefore the request falls under the EIR.

### **Background**

15. HSE has told the Commissioner that to store hazardous chemicals in tanks at the PSD, the company operating the depot require Hazardous Substance Consent for each tank that stores Hazardous Substances above a prescribed limit. Any Hazardous Substances Consent granted to a tank or tanks will specify the amount of hazardous substances each

tank can store. This means that tanks 14 and 15 at the PSD in question already hold Hazardous Substances Consent to store hazardous substances up to specified limits.

16. Tanks 14 and 15 have been operational for a number of years. In 2011 however, during a routine regulatory inspection, the HSE established that the volume of hazardous chemicals stored in both tanks was in excess of their Hazardous Substance Consent. This meant the site was operating in breach of this consent.
17. The HSE says it immediately informed the Hazardous Substance Authority (HSA) responsible for enforcing Hazardous Substances Consent in order that it could pursue the matter with the petroleum storage depot. The HSA in this case is North Somerset Council. As part of the Hazardous Substance Consent process, North Somerset Council, as the HSA, has to consult the Health and Safety Executive.
18. As a statutory consultee in the Hazardous Substances Consent process, HSE assesses the Hazardous Substance Consent Application provided by the HSA and advises the Authority on the risks to people arising from the presence of hazardous substances. However, the decision as to whether the risk from hazardous substances are tolerable, in the context of existing and potential uses of neighbouring land, is made by the HSA, ie North Somerset Council in this case.
19. As a result of the HSE's notification referred to at paragraph 17, the owners of the petroleum storage depot made a new Hazardous Substances Consent Application to North Somerset Council to store larger quantities of Hazardous Substances within tanks 14 and 15 than their current Hazardous Substances Consent allowed. The HSE says that it is this new application that HSE's email of 9 October 2013 relates to.
20. The HSE's email of the 9 October 2013 says that its assessment of the information provided to date was incompatible with the neighbouring population. This required the petroleum storage depot to amend its Hazardous Substances Consent Application and resubmit it to North Somerset Council. North Somerset Council would then consult HSE in order that it could re-assess residual risk based on the revised information. HSE says that to date, this has not happened. This means that the petroleum storage depot is currently operating in breach of the Hazardous Substances Consent it already has relating to Tanks 14 and 15.
21. As North Somerset Council has, to date, not authorised the petroleum storage depot with a new Hazardous Substances Consent relating to tanks 14 and 15, HSE has not as yet identified all the residual risks.

This is because its assessment of the Hazardous Substances Consent Application has not finished and is the reason why the HSE originally applied regulation 12(4)(d) to the request.

### **The complainant's arguments**

22. In correspondence to the Commissioner dated 18 October the complainant said that his request did not concern the report, which he acknowledged that he already had. He referred to a separate email dated 31 March 2015, written by the member of HSE staff who also wrote the email dated 9 October 2013. The complainant told the Commissioner that the content of the March 2015 email suggested to the complainant that the HSE *does* understand what he is requesting and that if the HSE was to send him "*the heat flux distributions as given in Tables 3, 4 of the AAB Fire Risk Assessment Paper (quoted in the report)*" he could answer his own question.
23. In the Commissioner's view a request for "the heat flux distributions..." would be a new request and he advised the complainant on 21 October to submit this to the HSE or other appropriate authority, separately.
24. The complainant disputes the Commissioner's view. He says that the member of HSE staff referred to at paragraph 22 must have calculated the numerical risks before saying, in the disclosed email of October 2013, that they were incompatible with the population at Waterside Park.

### **The HSE's submission**

25. The Commissioner's initial correspondence to the HSE of 27 August concerned its position at that stage, which was that regulation 12(4)(d) applied to the requested information. In its response to the Commissioner, the HSE had changed its position and its submission concerned the fact that it had released some information to the complainant and does not hold any more. It did not initially provide detailed and comprehensive arguments to support its position that it does not hold further relevant information, such as any searches it had carried out. However, the Commissioner has corresponded extensively with the HSE during his investigation and it has answered his questions about its submission fully.
26. In its submission the HSE told the Commissioner that it is one of the competent authorities responsible for regulating Redcliffe Bay PSD under Control of Major Accident Hazards (COMAH). The HSE has a statutory responsibility to provide regulatory oversight of this high hazard site because the site stores quantities of dangerous substances that fall within scope of the COMAH Regulations.

27. With regard to the HSE's 2012 report referred to at paragraph 6, the HSE says that it is the HSE's assessment (ie official response) of the Express Hazardous Substances Consent Application (12/P/0714/HAZ) related to the re-use of tanks 4, 5 and 9 at the petroleum storage depot. The report is not an assessment with regard to the Hazardous Substances Consent Pre-Application process concerning the use of tanks 14 and 15 at the depot, although tanks 14 and 15 are mentioned in this report.
28. During the Commissioner's investigation, the HSE clarified that the report does not advise against Hazardous Substances Consent because the report concerns the Express Hazardous Substances Consent Application (12/P/0714/HAZ) regarding the use of tanks 4, 5 and 9. It is not an official assessment of the Hazardous Substances Consent Pre-Application process relating to tanks 14 and 15. The report does mention tanks 14 and 15 and specifies that the eventual conclusion of the hazardous substances held in tanks 14 and 15 may lead to the site becoming incompatible with the neighbouring population at Waterside Park. However, HSE says that until such time as the Hazardous Substances Consent Pre-Application process relating to tanks 14 and 156 has concluded, HSE did not advise against Hazardous Substances Consent regarding the use of Tanks 4, 5 and 9.
29. HSE has told the Commissioner that it did not consider this report to fall within the scope of the complainant's request because it does not relate to the residual risk estimates relating to the Hazardous Substances Consent Pre-Application process regarding tanks 14 and 15 at the petroleum storage depot. The HSE went on to release this report to the complainant as part of the internal review process, even though it had previously been disclosed to him. It did this because the report contains a reference to perceived residual risk information relating to tanks 14 and 15 as identified during the Express Hazardous Substances Consent Application (12/P/0714/HAZ) concerning the use of tanks 4, 5 and 9 at the petroleum storage depot, mentioned above.
30. The HSE disputes that the request was for "numerical risks" and said that, in any case, it does not hold that information. The HSE confirmed to the Commissioner that it considers that the complainant's request specifically concerns the residual risk estimates the HSE had identified to North Somerset Council following its assessment of the Hazardous Substance Consent Pre-Application for the operation of tanks 14 and 15.
31. The HSE confirmed that the 2013 email it has provided to the complainant is all the information that it held on this matter at the time of the complainant's request.

32. In June 2013, North Somerset Council, the HSA responsible for granting Hazardous Substances Consent at the petroleum storage depot, provided HSE with a copy of the Draft Hazardous Pre-Application process that the depot had provided to it. In September 2013, HSE wrote to North Somerset Council advising that it had commenced its assessment of the Draft Hazardous Substances Pre-Application process relating to tanks 14 and 15 at this site but that it was unable to progress its assessment because it had some questions and needed additional information. Between 6 September and 9 September the Oil and Pipeline Agency (OPA) provided HSE with the additional information it needed and, based on this, the HSE concluded that the volume of hazardous substance within tanks 14 and 15 was incompatible with Waterside Park. This is the substance of the 9 October 2013 email, which the HSE has told the Commissioner is also quite separate from the 2012 report.
33. The HSE says that the Specialist Inspector responsible for regulating the petroleum storage site has advised that, to date, the HSE has not received any further information from either North Somerset Council or the OPA with regard to the Hazardous Substance Consent Application relating to tanks 14 and 15. This means that HSE has been unable to identify any further residual risks with regard to this Application, other than those risks detailed in the October 2013 email.

### **The Commissioner's decision**

34. Regulation 5(1) of the EIR says that a public authority that holds environmental information must make it available on request.
35. The Commissioner has reviewed the complainant's request of 2 April. He is satisfied with the HSE's interpretation of it as a request for its estimates of the residual risk associated with tanks 14 and 15 at the petroleum storage depot in question. The complainant has not requested information the HSE may have used in order to form an assessment of any risk.
36. During the Commissioner's investigation of this case, the HSE has confirmed more than once that the report and the email is the only information that it holds that is relevant to the request. It has explained in depth why this is the case.
37. The complainant says that the member of HSE staff referred to at paragraph 22 must have calculated the numerical risks before saying, in the disclosed email of October 2013, that they were incompatible with the population at Waterside Park. The HSE has explained that it did not 'calculate numerical risk'. It based the assessment it provided in its



October 2013 email on the additional information it received from the OPA.

38. The Commissioner acknowledges that the complainant already had these two items and did not specifically request them again but it happens that these two items are the only material the HSE holds that falls within the scope of his request.
39. The Commissioner appreciates that the complainant has concerns about the petroleum storage depot in operation at Redcliffe Bay. However, it is not the Commissioner's role to comment on the technical content of particular information that has been requested (and released) or to comment on whether or not the HSE *should* have carried out particular actions with regard to the two storage tanks in question or *should* hold particular information. His role in this case has been to consider whether the HSE has handled the complainant's request for information appropriately and whether it has released to him all the relevant information that it held at the time of the request.
40. Having considered all the circumstances of this case, the Commissioner is prepared to accept, on balance, that the HSE correctly interpreted the request, has released to the complainant all the relevant information that it holds, and that it has consequently met its obligations under regulation 5(1).



## Right of appeal

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41. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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