

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 January 2016

Public Authority: Health and Safety Executive for Northern Ireland

Address: 83 Ladas Drive
Belfast
BT6 9FR

Decision (including any steps ordered)

1. The complainant has requested information relating to an explosives store at a site in County Tyrone, Northern Ireland. The Health and Safety Executive for Northern Ireland (HSENI) has disclosed part of the requested information, however it has refused to disclose the remainder ("the withheld information"), citing the exception as set out in regulation 12(5)(a) of the EIR as a basis for non-disclosure.
2. The Commissioner's decision is that the HSENI has correctly applied the above exception to the withheld information and that, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the withheld information.
3. Therefore the Commissioner requires no steps to be taken.

Background to request

4. The Canadian company Dalradian Gold Limited is carrying out a gold exploration project in Northern Ireland. As part of this project it has purchased a 999 year lease on land near Omagh, County Tyrone, and is currently seeking to develop the first underground gold mine in Northern Ireland.

5. The project has caused contention amongst residents of the area due to concerns about the environmental impact on the area and health and safety concerns such as the storage and use of explosives on the site to be used in the blasting process underground.

Request and response

6. On 28 January 2015, the complainant wrote to the HSENI and requested information in the following terms:

"I request copies of any and all correspondence about and records relating a Meeting in or around October 2013 involving representatives of HSENI, HSEGB and HM Inspectorate of Mines together with follow up clarification from HSEGB or other re separation distances of a proposed Explosives Store from dwelling houses, from mine vent shafts, from mine egresses etc. We request copies of any email or other correspondence from or to any of the aforementioned parties and/or any such correspondence to / from the DOE / SPD or the developer."

7. The HSENI responded on 24 March 2015 and refused to provide the complainant with the requested information, citing regulation 12(5)(a) of the EIR as its basis for that refusal
8. Following an internal review the HSENI wrote to the complainant on 20 May 2015. It stated that it was now able to provide some of the requested information and did so, with redactions. However, the remaining information ("the withheld information") was still being withheld under the exception set out in regulation 12(5)(a) of the EIR.

Scope of the case

9. The complainant contacted the Commissioner on 3 June 2015 to complain about the way his request for information had been handled. He was not satisfied with the information he had received.
10. The Commissioner has considered whether the HSENI has correctly applied regulation 12(5)(a) of the EIR in this case.

Reasons for decision

11. Regulation 12(5)(a) of the EIR sets out an exception to the duty to disclose environmental information, where disclosure would adversely affect international relations, defence, national security or public safety.
12. The HSENI has explained to the Commissioner that it has applied the exception in regulation 12(5)(a) to the withheld information as it considers that any further disclosures (over and above that already released as a result of its internal review) could potentially lead to outcomes which could impact directly on national security and public safety when set against the current threat level in Northern Ireland (from Northern Ireland Related Terrorism) which remains 'SEVERE', i.e. an attack is highly likely – taken from 'The Northern Ireland Security Situation'¹
13. The withheld information provides specific details of the quantity of explosives to be stored at a particular site and the precise location of the munitions store. This information is not in the public domain as claimed by the complainant and HSENI considers that its disclosure would constitute a threat to public safety if it were acted upon by an individual representing a terrorist organisation who could (a) target specific areas of the site to induce a more effective attack and/or (b) implement the theft of explosives for a future attack on security forces. Based on advice obtained from the Department of Justice (DOJ), HSENI consider the likelihood of such adverse effect to be substantial rather than remote.
14. The Commissioner, having perused the withheld information and the advice provided by the DOJ, is satisfied that there is a substantial likelihood of the adverse effect, i.e. threat to national security and public safety, occurring if the withheld information were to be disclosed.
15. As the Commissioner is satisfied that the exception as set out in regulation 12(5)(a) of the EIR has been correctly applied to the withheld information, he has now gone on to consider whether, in all

¹ <https://www.gov.uk/government/speeches/villiers-the-northern-ireland-security-situation>.

the circumstances of the case, the public interest in maintaining the exception outweighs that in disclosure of the withheld information.

Public interest arguments in favour of disclosing the withheld information

16. The Commissioner considers that some weight must always be given to the general principle of achieving accountability and transparency through the disclosure of information held by public authorities.
17. Disclosure of information held by public authorities can assist the public in their understanding of how public authorities make their decisions and the basis of them. In turn, disclosure fosters trust in public authorities and may allow greater public participation in the decision making process. The HSENI understands that this is a strong public interest argument in favour of disclosing the withheld information.
18. In this case, the HSENI has informed the Commissioner that disclosure of the withheld information would help the public to determine whether the HSENI is acting appropriately and discharging its statutory functions.

Public interest arguments in favour of maintaining the exception

19. The HSENI states that the withheld information contains specific details which, in its view, would constitute a threat to public safety if they were acted upon by an individual representing a terrorist organisation. Since the DOJ has advised that there is a substantial likelihood of this happening, it would not be in the public interest to disclose information which is likely to lead to a terrorist attack.
20. It is clear to the Commissioner that disclosure of the withheld information would make it easier for those with a terrorist or criminal intent to research and plan future attacks.

Balance of the public interest arguments

21. It is clear to the Commissioner that disclosure of the withheld information could lead to greater transparency and accountability in the planning processes undertaken by the Council. The Commissioner does accord some weight to this.
22. Nevertheless, the Commissioner cannot reconcile the public interest in transparency and accountability with the potential impact that disclosure could have in respect of the safety of the people of Northern Ireland.

23. The Commissioner accepts that the withheld information would be of interest to the public. However this is different from being in the public interest. The Commissioner considers that the inherent public interest in maintaining public safety far exceeds any public interest in the disclosure of the withheld information in this case, therefore he considers that the exception as set out in regulation 12(5)(a) should be maintained in this case.

Right of appeal

24. 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

25. 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.
26. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF