

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

Decision notice

Date: 16 February 2016

Public Authority: Health and Safety Executive
Address: 1.G Redgrave Court
Bootle
L20 7HS

Decision (including any steps ordered)

1. The complainant has requested information about noise related tests carried out on wind turbines at Hunterston in North Ayrshire. The Health and Safety Executive (HSE) says it does not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, HSE does not hold the information that has been requested and that regulation 12(4)(a) of the EIR therefore applies. The Commissioner does not require HSE to take any steps.

Request and response

3. On 4 August 2015, the complainant wrote to HSE and requested information in the following terms:
"...That being the case, I will be grateful if you will forward to me details of those tests and the results recorded therein. If it helps I am happy for you to consider this as a request for information under the Freedom of Information Act."
4. HSE responded on 7 August 2015. It denied holding the requested information. HSE sent the complainant a web link to where information it had drawn on to make a particular decision regarding the wind turbines in question is published.

5. Following an internal review HSE wrote to the complainant on 1 September 2015. It maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 29 September 2015 to complain about the way his request for information had been handled.
7. The Commissioner has focussed his investigation on whether, on balance, HSE holds the information that the complainant has requested.

Reasons for decision

8. Regulation 12(4)(a) of the EIR says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
9. In its submission to the Commissioner, HSE explained that its role with regard to windfarms is to make sure health and safety legislation is complied with during the construction phase. HSE does not regulate or enforce environmental issues such as noise once a windfarm/wind turbine becomes operational. In this case, responsibility for noise falls to the relevant local authority; North Ayrshire Council in this case. HSE has told the Commissioner that it has informed the complainant of HSE's role, and the limits of its remit, with regard to the site in question on many occasions.
10. HSE says that it holds hard copy information in either registered files or it is scanned and stored electronically. Electronic information is stored either in its electronic document records management system or its corporate operations information system.
11. HSE conducted a search of its corporate systems and was not able to locate the information that has been requested – details about, and results of, tests undertaken on wind turbines at Hunterston.
12. HSE says that its staff are not permitted to use personal laptops to undertake HSE work and must use laptops provided to them by the business. All of these laptops have access to HSE's corporate systems to make sure corporate information is stored in line with HSE's record management and retention policy.
13. HSE has told the Commissioner that, during the internal review process, it spoke at length to the key official involved with the offshore windfarm at Hunterston and she confirmed that the test data the complainant has

requested is not held by HSE and never has been because it has never been given to HSE by the duty holder that conducted the tests.

14. Finally, HSE has confirmed that there is no business purpose for which it would acquire or hold the requested information.
15. The complainant has not provided the Commissioner with any arguments that suggest HSE holds the requested information. Having received the Commissioner's preliminary assessment of the complaint, the complainant's concern appeared to be that HSE has made statements about the turbines in question that he considers to be misleading, without holding supporting evidence. The complainant requested a formal decision from the Commissioner for that reason.
16. Having considered HSE's submission and its role with regard to windfarms, the Commissioner is satisfied that, on the balance of probabilities, HSE does not hold the information that the complainant has requested and that regulation 12(4)(a) therefore applies in this case.

Right of appeal

17. 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

18. 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.
19. 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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