

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

**Decision notice**

**Date:** 12 July 2017

**Public Authority:** Norfolk and Suffolk NHS Foundation Trust  
**Address:** Hellesdon Hospital  
Drayton High Road  
Norwich  
NR6 5BE

**Decision (including any steps ordered)**

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1. The complainant has requested Norfolk and Suffolk NHS Foundation Trust (the trust) to disclose the legal distance between, clear water pipes, foul water pipes and graves. The trust responded, advising the complainant that it does not hold the requested information.
2. The Commissioner's decision is that the trust does not hold the requested information and so regulation 12(4)(a) of the EIR applies in this case. However, the Commissioner has found the trust in breach of regulation 5 of the EIR, as it failed to respond to the request within 20 working days.
3. As the trust does not hold the requested information, the Commissioner does not require any further steps to be taken.

**Request and response**

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4. On 22 March 2016, the complainant wrote to the trust and requested it to disclose the following information:  
  
"Can you tell me how far foul and clean water pipes should be away from a grave."

5. Although there had been protracted correspondence between the trust and complainant dating back some time relating to the complainant's late wife's grave, no formal response was issued to this request under the EIR. The Commissioner therefore wrote to the trust on 5 January 2017 to request that it responds to the request in accordance with the EIR within 10 working days.
6. The trust issued a response to the complainant on 16 January 2017. It answered the request under the FOIA and confirmed that it does not hold the requested information.
7. Further correspondence and telephone calls took place between the complainant and the trust up to 28 March 2017. The Commissioner is satisfied that such correspondence, given the specific circumstances of this case, can constitute a request for internal review and the trust's internal review response under regulation 11 of the EIR.

### **Scope of the case**

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8. The complainant has been in contact with the Commissioner since November 2016 regarding this request repeatedly raising concerns about how the trust has handled it. The Commissioner accepted the complaint for full investigation in April 2017 following, what she believes, to be the final correspondence from the trust on the matter dated 28 March 2017.

### **Reasons for decision**

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

9. Environmental information is defined in regulation 2(1)(a) to (f) of the EIR. The requested information in this case is the legal distance between clear water pipes, foul water pipes and a grave. The Commissioner considers the requested information therefore falls within the definition of environmental information at regulation 2(1)(a), (b) and (c) of the EIR. It is information (if held) on a policy or legislation (2(1)(c)) which will affect the elements of the environment outlined in regulation 2(1)(a) and 2(1)(b) of the EIR, in particular the water, land, soil and relates to factors such as waste and discharges.
10. The trust should therefore have dealt with the request under the EIR from the outset and informed the complainant that it wished to rely on regulation 12(4)(a) of the EIR for its reasons for refusing the request.

Unlike the FOIA, the EIR provides an exception for requests where the information is not held at the time of the request by the public authority.

**The application of regulation 12(4)(a) of the EIR – is the requested information held?**

11. As just explained, the EIR states that a public authority may refuse to disclose the requested information if it does not hold the requested information at the time of the request.
12. Firstly, the Commissioner considers it is important to highlight here and to the complainant again the rights an applicant has under this legislation and the FOIA when making requests for information.
13. The EIR and FOIA provide a right of access to recorded information held by a public authority. This right does not extend to the right to request answers to questions or to be provided with explanations *unless* the answers to those questions or the explanation required is already held in recorded form. There is no requirement on a public authority to create new information or obtain the information from another source in order to comply with a request. It is about what recorded information *is* held falling within the scope of the request and if recorded information is held whether that information can be disclosed under the EIR or FOIA.
14. In this case the trust has confirmed that it did not hold any recorded information itself at the time of the request which would have provided an answer to the complainant's question. Since the request however it has come into possession of the requested information but only as a result of the complainant providing this himself to the trust. Prior to this, however, it did not hold the information and had no legal or business requirement to do so.
15. It explained that there was a remote possibility that its Estates and Maintenance Department may hold information of this nature and both departments were asked to check whether they did. Both confirmed that they did not and in fact commented that the Estates Manager and his predecessor have both gone out of their way and beyond any legal obligation under the EIR to try and help the complainant as much as possible with his issue and the graveyard adjacent to the hospital grounds. They have been in correspondence with the complainant for some time and have repeatedly informed him that the graveyard is owned and maintained by Norwich City Council, any pipes would either be their responsibility or that of Anglian Water. The likely public authorities to hold the requested information are these public authorities and not the trust.

16. The Commissioner has considered the request and the explanations supplied by the trust and she is satisfied that, on the balance of probabilities, the trust did not hold the requested information at the time of request. It only can in possession of the answer to the question after the complainant's request and because the complainant provided it to them. The trust has explained which public authorities are most likely to hold this information and why (indeed Anglian Water did supply it to the complainant) and explained why it would have no legal or business need to hold this information.
17. The EIR only provides a right of access to recorded information that is held and as the trust did not hold this information at the time of the request, it was correct to inform the complainant so and effectively rely on regulation 12(4)(a) of the EIR.
18. As a result the Commissioner does not consider any further action is required.

### **Procedural matters**

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19. The Commissioner does however note that the trust failed to treat the complainant's request for this information in March 2016 as a valid request under the EIR. The trust did not respond to it until it was asked to do so by the Commissioner in January 2017. As a result the trust breached regulation 5(2) of the EIR in this case.

## Right of appeal

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20. 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)

21. 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.
22. 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** .....

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**