

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 4 April 2023

Public Authority: Department for Business and Trade
Address: Old Admiralty Building
London
SW1A 2DY

Decision (including any steps ordered)

1. The complainant has requested information about stain repellent and flame retardant chemicals from the public authority that was then known as the Department for Business, Energy and Industrial Strategy ("BEIS")¹. By the date of this notice the Department for Business and Trade, which succeeded BEIS, has not issued a substantive response to this request.
2. The Commissioner's decision is that BEIS failed to respond to the request within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner requires the Department for Business and Trade ("DBT") to take the following step to ensure compliance with the legislation.

¹

On 7 February 2023, under a Machinery of Government Change, the Department for Business Energy and Industrial Strategy ("BEIS") began the transition into four separate departments, including the Department for Business and Trade ("DBT"). The request in this decision was made to BEIS, however the notice will be served on DBT as the appropriate authority.

- DBT must provide a substantive response to the request in accordance with its obligations under the EIR.
4. DBT must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. On 16 November 2022 the complainant wrote to BEIS and requested information in the following terms:

"I am not sure if you can help, but I am trying to find out who has overall responsibility and have tried the HSE. I have the following questions please to request under a freedom of information request please.

1. From An EIR 2004 request the Secretary for the Environment has confirmed that stain repellent and flame retardant chemicals are now the main chemicals being found in sewage waste water and passing into our rivers and streams. Is the OPSS carrying out any research on this, or considering this when looking at which chemicals should be banned in our consumer products? These chemicals are found on clothes/household products. I have checked with the main supermarkets, who confirm that these comply with UK safety standards.

2. What is the process for the banning of these forever chemicals? How do you decide which these should be? Research in 40 studies has been carried out that shows these chemicals are being found in the blood in the umbilical cord. So not only are they affecting the environment, but also are getting into a persons body. Who decides that these products are safe for us and the environment?

3. Is there any consideration/research being given to the harm of these forever chemicals, eg toxic chemicals on children's uniforms? I have contacted the main supermarkets who confirm that they follow the COSHH regulations in regards to their flame retardants and stain repellents.

4. In a recent article the head of the environment agency confirmed that people should get used to the idea of drinking recycled and clean

sewage water. Has the OPSS considered how these chemicals, that are in some cases are forever chemicals are going to be going straight into the drinking water from consumer goods. At present there is only early investigations as how to clean these forever chemicals from our waters and environment. Is this something that the OPSS is taking into account when reviewing it chemicals?

5. Does any of the government agencies who are involved in these areas, actual work collaborate on these issues of forever chemicals and the risks they pose?

Lastly please can you confirm how I can start to get these issues raised. I am contact with MP and have two years worth of research on a related subject which has led me to find out these issues. At present I have a formal complaint in with the office for the Environmental Protection"

6. BEIS acknowledged the request on 16 November 2022. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 7 March 2023 to complain about BEIS's failure to respond to their request.
8. The Commissioner has considered whether BEIS has complied with its obligations in relation to the time for compliance under regulation 5(2) of the EIR.

Reasons for decision

9. Regulation 5(1) of the EIR states that:

"a public authority that holds environmental information shall make it available on request."

10. Regulation 5(2) of the EIR states that:

"Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."

11. On 9 March 2023 the Commissioner wrote to BEIS reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days.
12. On 10 March 2023 BEIS responded and explained that it had been treating the request as an enquiry rather than as a request for recorded information.
13. On 13 March the Commissioner wrote to BEIS and explained that he considered the request to be valid under the EIR. The Commissioner granted BEIS an amended deadline of 10 working days from 13 March 2023 to reply to the request.
14. Despite this intervention BEIS has failed to respond to the complainant.
15. From the evidence provided to the Commissioner in this case, it is clear that BEIS did not deal with the request for information in accordance with the EIR. The Commissioner's decision is that BEIS has breached regulation 5(2) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the EIR.

Right of appeal

16. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatorychamber

17. 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.
18. 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

Catherine Fletcher
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