

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

Date: 5 October 2023

Public Authority: Department for Transport
Address: Great Minster House
33 Horseferry Road
London
SW1P 4DR

Decision (including any steps ordered)

1. The complainant has requested information relating to the procedure for retrofitting classic cars in order to reduce their emissions. The Department for Transport's ("DfT") position is that it does not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, DfT does not hold any information in relation to the request and has correctly applied regulation 12(4)(a) of EIR, but that it failed to carry out an internal review within the statutory time limit and breached regulation 11(4) of EIR.
3. The Commissioner does not require further steps.

Request and response

4. On 30 April 2023, the complainant submitted the following request for information:

"... under the FOI , I need to know the Procedure required, where to get it done, what needs to be done to Retrofit the 2 Below CLASSIC Cars

Which , would not be in the For Remit as they are not New Cars,
BUt Classics,

E280 BFE 1987
V224 MCA 1999

So, how do I retrofit these 2 cars, Actual Answer is required, with all the Details on How, where, How Long, and Grant available to deliver what you said was like a Catalytic Converter? Not passing me to anyone else, I need you to do the work to find the answer for me on what it all entails to be done”

5. DfT responded on 18 May 2023, stating that it did not hold the requested information.
6. The complainant wrote to DfT on 18 May 2023, expressing their dissatisfaction with its response to their request. The Commissioner would normally expect such a communication to be treated as a request for internal review.
7. To date, DfT has not provided the complainant with the outcome of an internal review.

Scope of the case

8. The complainant contacted the Commissioner on 25 June 2023 to complain about the way their request for information had been handled.
9. The Commissioner considers the scope of his investigation is to determine, on the balance of probabilities, whether DfT holds any information falling within the scope of the complainant’s request. He will also consider whether DfT complied with its obligations under regulation 11(4) of EIR.

Reasons for decision

Would the requested information be environmental?

10. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity

and its components, including genetically modified organisms, and the interaction among these elements;

- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
11. The Commissioner is satisfied that the information requested (the procedure for retrofitting emissions reductions systems to classic cars), comprises environmental information falling within regulation 2(1)(c) as it concerns activities affecting or likely to affect the air and atmosphere, and measures or activities designed to protect those elements.
12. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. Regulation 12(4)(a) of the EIR states 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". The Commissioner is not expected to prove categorically whether the information is held.

14. The DfT explained to the Commissioner that this request for information was received following previous correspondence it had had from the complainant, in which the complainant had requested:

“advice from Government on a retrofit solution for historic vehicles including how and where this retrofit solution can be accessed as well as what grant funding central government may provide for this to be done.”

15. The DfT stated that it dealt with this previous correspondence outside of FOIA/EIR as it did not consider it to be a request for recorded information.
16. The DfT stated that within its response to the previous correspondence with the complainant, it had advised them that “there are currently no accredited retrofit solutions for passenger cars.”
17. In the circumstances, the Commissioner accepts that, on a balance of probabilities, DfT did not hold the requested information for the purposes of the EIR and it was therefore correct to rely on regulation 12(4)(a).

Public interest test

18. Technically, regulation 12(4)(a) contains a public interest test. However the Commissioner cannot conceive of a public interest argument that would require a public authority to disclose information that it did not hold.

Procedural matters

Regulation 11 – internal review

19. Regulation 11 of the EIR covers public authorities’ obligations in relation to the carrying out of internal reviews of the handling of requests for information.
20. In essence, any expression of dissatisfaction with the handling of a request an authority receives should be treated as a request for an internal review. There is no obligation for requesters to submit their review request via any specific procedure provided by authorities in this regard.
21. Regulation 11(4) requires authorities to provide an internal review decision within 40 working days of the date of receipt of a request for review.

22. In this case, the complainant submitted their expression of dissatisfaction on 18 May 2023, but the DfT did not treat this as a request for internal review and therefore did not carry out such a review. The DfT has explained that it did not interpret the complainant's email of 18 May 2023 as a request for an internal review because it did not identify a question in the complainant's request. It therefore confirmed that it did not reply in this case, and apologised for this oversight.
23. The Commissioner has therefore concluded that DfT failed to comply with regulation 11(4) in this case.

Other matters

24. During this investigation, the complainant raised concerns that the Commissioner had not considered all of the questions raised in their email to DfT dated 30 April 2023. The complainant's full original request email to DfT was as follows:

"This is now a direct request for the Information

You have been very wishy-washy about what retro fit is and what it means and how it works,

I know, you won't admit it, but it is all a fake as the whole CAZ and ULEZ is fake, the air is not Dirty, this is 2023 not the 1940/50s, which back then maybe,

These Jet Planes are more the Issue, if there actually is any issue, other than a Money Making Scam

MOT was set in place to control emissions and set to the Correct Level, as per the evolution of the vehicle, that is the gas standard,

There are inconsistencies, as per when you run a car on a Dyno, the faster it goes the Emmissions DROP.....More of the Fuel is burnt and less chucked out tail Pipe, ...so why is the M602, in Salford Downsped to 60, which by reducing 70 to 60 the level of emissions will be more not less, very inconstant.

Apparently given the issue of this , also questions why , Housing Estates were built on the Side of the M602, and a New one is still being finished off, again if some issue, why down speed and put houses next door to a motorway? all contradict the narrative.

Chapel Street in Salford, had its own Created Congestion Zone Years ago, by making one lane a Bus Lane, so a Created problem, and then why again , apparently Dirty air and bare in mind that this is a Salford Created Zone, why Shoehorn in Flats by the Bucket load into this already congested area, it questions the logic of why , clog the area deliberately.

VED, now this real questions belief, the VED relates to the Emissions of the Vehicle at the Tail Pipe.... EVS are due to be charged VED....now apparently they are ZERO at a NON-Exsistant Tail Pipe, so being ZERO Emmisions apparently , how can they be VED Charged, questions logic.

OK , so Coming back to RETRO FITTING that you told me was like aa Catalytic Converter type thing, which all cars from 1982 "J" year were a standard

so, I asked Ford, about Retro Fit and they were well unsure, asked aload of Questions but I really dont think they grasped the issue.

SO Now , over to you , under the FOI , I need to know the Procedure required, where to get it done, what needs to be done to Retrofit the 2 Below CLASSIC Cars

Which , would not be in the For Remit as they are not New Cars, BUT Classics,

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25. The Commissioner explained to the complainant that FOIA gives the public the right to access recorded information held by public authorities. FOIA does not require public authorities to generate information or to answer questions, provide explanations or give opinions, unless this is recorded information that they already hold.
26. In this case, the only clear request for recorded information in the complainant's email of 30 April 2023 is detailed at paragraph four of this decision notice, and has been specifically marked as being requested "under the FOI".

27. Whilst the Commissioner recognises that the complainant's email to DfT dated 30 April 2023 did contain other points about down speeding roads, building near roads, blocking roads, and various other road related issues, these appeared to be general questions and assertions rather than clear requests for recorded information from DfT. Given the overall wording of the communication, the Commissioner does not consider it to be unreasonable for DfT to have considered that the actual information request to be that detailed at paragraph four.

Right of appeal

28. 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-regulatory-chamber

29. 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.
30. 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
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF