

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 24 April 2014

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested information concerning the Habitats Directive. The Home Office stated that it did not hold this information as responsibility for the Habitats Directive lies with the Department for Environment, Food and Rural Affairs (DEFRA) and advised the complainant to re-direct his request to DEFRA. The complainant declined to do so and maintained that the information he had requested would be held by the Home Office.
2. The Commissioner's decision is that the Home Office stated correctly and in accordance with regulation 5 of the EIR that it did not hold the information requested by the complainant. However, it should have recognised that the request was for environmental information and cited regulation 12(4)(a) when advising the complainant that the requested information was not held.

Request and response

3. The request was originally emailed to the Home Secretary's *parliament.uk* email address and was received by the Home Office when it was forwarded to it by the ICO on 9 July 2013. It was worded as follows:

"what procedures are in place for one to make a complaint of illegal damage to the habitat/s of an EU protected [species]?"

4. The response to this request was dated 23 July 2013. This stated that the Home Office did not hold the requested information and advised the

complainant that this information may be held by DEFRA. The Home Office stated at this stage that it had carried out a "*thorough search*" for this information.

5. The complainant responded on 23 July 2013 and requested an internal review. The Home Office responded on 31 July 2013 with the outcome of the internal review. The complainant was informed that the "*Habitats Directive*" falls within the remit of DEFRA and he was again advised to contact that department and was provided with an email address to do so.

Scope of the case

6. The complainant contacted the Commissioner on 10 May 2013 to complain about the failure of the Home Office to respond to his email of 21 February 2013 to the *parliament.uk* email address of the Home Office, to which he had originally directed the information request set out above. The complainant had been advised by the office of an MP that this was the appropriate address for his information request.
7. In view of the complainant having been given inaccurate advice as to where to direct his information request and in order to assist him, his request was forwarded to the Home Office by the ICO on 9 July 2013. The response of the Home Office to this was as set out above.
8. Following this the complainant was contacted by the ICO and advised that the most likely route for him to gain access to the information he sought would be to make an information request to DEFRA, given that department is responsible for the policy area referred to in his request. The complainant declined to accept this and maintained that he wished the Commissioner to consider whether the Home Office held the information he had requested. The analysis in this notice therefore covers whether the Home Office was correct in stating that it did not hold this information.

Reasons for decision

Regulation 2

9. The first question for the Commissioner to address here is whether the information is environmental in accordance with the definition given in regulation 2(1) of the EIR, which defines environmental information as follows:

"any information in written, visual, aural, electronic or any other material form on –

(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands...

(b) factors, such as substances, energy, noise, radiation or waste, emissions...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...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".

10. The view of the Commissioner is that this information is 'on' legislation that falls within the scope of regulation 2(1)(c). The request relates to Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora, which is commonly known as the Habitats Directive. The view of the Commissioner is that the Habitats Directive is legislation that is likely to effect a number of elements and factors referred to in regulations 2(1)(a) and (b) and that the information requested by the complainant would be 'on' that legislation. The information requested by the complainant is, therefore, environmental under regulation 2(1)(c) and it is correct to consider this request under the EIR.

Regulation 5 / 12(4)(a)

11. Regulation 5(1) requires a public authority to make environmental information available on request. In order to comply with that requirement, a public authority must identify accurately what information it holds that is within the scope of a request it has received. Regulation 12(4)(a) is also relevant here in that it provides that a public authority may refuse a request where it does not hold the requested information at the time that the request is received.
12. The task for the Commissioner here is to determine whether the Home Office was correct in stating that it does not hold the requested information. In line with the practice of the First-tier Tribunal (Information Rights), the test applied by the Commissioner is whether on the balance of probabilities the Home Office holds the requested information.
13. The approach of the Commissioner where there is a dispute between public authority and requester on the extent to which information is held

is to take into account a description of the searches carried out by the public authority, and / or any explanation provided by the public authority as to why it should not be expected to hold further information.

14. Initially the Home Office relied entirely on the subject matter of the request being outside its remit. As mentioned several times above and as was made clear to the complainant, this area is the responsibility of DEFRA. The Commissioner does not dispute this point and recognises that this is a valid supporting factor as to why the Home Office should not be expected to hold the requested information.
15. However, his view was that this was not a sufficient basis alone on which to conclude that the Home Office does not on the balance of probabilities hold this information. Instead his view was that it was possible that the Home Office may hold information about the work of DEFRA in this area and that such information may be within the scope of the request.
16. Noting that the Home Office, as mentioned above at paragraph 4, had referred in its refusal notice to having conducted a "*thorough search*" for the requested information, it was asked by the Commissioner to supply a description of that search. In response to this point, the Home Office stated that the wording referring to a search had been included in its refusal notice in error and that no such search had been carried out. The Home Office stated that it does not carry out searches where a request relates to matters outside its remit; instead, the requester is referred to the correct public authority.
17. In response to the point about the Home Office not carrying out searches for information outside its remit, the Commissioner acknowledged that this was an appropriate approach to take where the requester accepts this and re-directs their request to the more relevant public authority. Where, however, as in this case, the complainant does not accept this, this approach is unlikely to be appropriate. Therefore, the Commissioner asked the Home Office to carry out a search for the information requested by the complainant and to respond to him with details of this search and its outcome.
18. The Home Office subsequently carried out this search and supplied a description of this to the Commissioner's office. This had entailed carrying out an electronic search for files that may have contained information within the scope of the request. Hard copies of those files with titles that suggested that they may contain information within the scope of the request were retrieved from storage and searched. These files did not contain relevant information and so following this exercise

the Home Office maintained its position that it did not hold any information falling within the scope of the complainant's request.

19. The conclusion of the Commissioner is that, on the balance of probabilities, the Home Office does not hold any information falling within the scope of the complainant's request. The basis for this conclusion is the description provided by the Home Office of the searches it carried out, combined with the subject matter of the request being outside the remit of the Home Office.
20. Whilst the Home Office should not have misled the complainant by stating that a search had been carried out where none had been (the Commissioner comments further on this issue in the "Other matters" section below), and should have recognised that the request was for environmental information and cited regulation 12(4)(a), the Commissioner finds that it complied with regulation 5 when stating that the requested information was not held. The Home Office is not, therefore, required to take any further action in this case.

Other matters

21. When explaining why the complainant had been erroneously informed that a search had been carried out for the information he requested, the Home Office stated that had been included as part of a standard letter that is sent where the requested information is not held. The Home Office should ensure that it takes whatever steps are necessary to avoid any future requesters being misled in this way.

Right of appeal

22. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

23. 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.
24. 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

Jon Manners
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