

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 2 February 2015

Public Authority: The Coal Authority
Address: Berry Hill
200 Lichfield Lane
Mansfield
Nottinghamshire
NG18 4RG

Decision (including any steps ordered)

1. The complainant has requested diverse mining data from the Coal Authority. The Coal Authority relied on regulations 12(4)(b), 12(4)(d), 12(5)(a), 12(5)(c) and 13 to withhold the requested information.
2. The Commissioner's decision is that the Coal Authority incorrectly relied on the aforesaid regulations, save to a limited extent its reliance on regulation 13 was correct. He therefore orders that the majority of the withheld information be released.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Release to the complainant the information requested save for third party data which comprises the property address and property postcode as per the complainant's "Request 1".
4. The public authority must take these steps 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 Act and may be dealt with as a contempt of court.

Background

5. The Coal Authority ("TCA") is a non-departmental public body sponsored by the Department of Energy and Climate Change. It was established by the Coal Industry Act 1994 to undertake specific statutory responsibilities associated with the mining of coal.
6. The Coal Mining Subsidence Act 1991 (as amended) places a duty on TCA to remediate damage to property arising from coal mining subsidence as detailed in the Act, for which it receives grant-in-aid from the Department of Energy and Climate Change.

Request and response

7. On 9 October 2013, the complainant wrote to TCA and requested information in the following terms:

"Request 1

TCA Claims from 1.6.13. xls format to include attributes: Reference, Claim Received Date, Property Address, Property County, Property Post Code, Claim Accepted = Yes/No/Not Determined, monetary compensation paid Yes/No, Amount, Resolution date

Request 2

CMRH (Coal Mining Related Hazard) from 1.6.13. xls format to include attributes: OBJECTID (unique Coal Authority id number), Reference = Reference (unique Coal Authority number), Remedial = Remedial action carried out (True/False), L-Bility = Liability (Accepted/Rejected), Type = Hazard/Enquiry, Rep_Date = Reported Date (dd/mm/yyyy)

Request 3

Mine Gas since 1.6.13. xls format to include attributes: OBJECTID (unique Coal Authority id number), Resolution/Treatment, Remarks

Request 4.

Geological Disturbance (Fissures & Breaklines) from 1.6.13. shp or pdf format plan, to Include attributes: OBJECTID (unique Coal Authority id number), Type = Fissure/Breakline, CNJCTRD = Conjectured (True/False), DOWNTHRW = Dip/Downthrow (Left, Right or No Dip side / downthrow)

Request 5

Additions to the Abandoned Mines Catalogue (or its successor) from 1.8.12. Includes attributes: OBJECTID Decimal(10, 0), CAT_NO Char(20), COLLIERY Char(254), SEAM Char(254), AB_DATE Char(15), WKG_TYPE Char(5), DEPOSITOR Char(254), CREATED_BY, Char(10), CREATED_ON Date, SHAPE_AREA Float, SHAPE_LEN Float

Request 6

Licence Areas from 1.10.94. shp or pdf format plan, together with attributes: L_TYPE = Licence Type (Opencast and Underground), Site Name, OBJECTID (unique Coal Authority id number)

Request 7

Unlicensed Opencast. Relates to pre Coal Authority worked opencast sites i.e. As worked by NCB/British Coal. shp or pdf format plans, to Include attributes: OBJECTID (unique Coal Authority id number)

For the avoidance of doubt, the above data should include that of third party licensees.

... I do not want information that is in the course of completion. Rather, I would like the information only from the date specified up until the end of the month preceding the month the data is delivered. By this I mean, if the data is to be sent in October, I only require it 'date stamping' as up to date as at the 30.9.13.

This information is requested under the provisions of EIR(2004) and I look forward to hearing from TCA within the statutory time period”.

8. On 20 November 2013, TCA responded. It refused to provide the requested information and cited the following exceptions as its basis for doing so:
 - The request was manifestly unreasonable (unreasonable costs) – EIR regulation 12(4)(b).
 - The request was for information that relates to material that was still in the course of completion - EIR regulation 12(4)(d).
 - The disclosure of the information would adversely affect public safety - EIR regulation 12(5)(a).
 - The disclosure of the information would adversely affect intellectual property rights - EIR regulation 12(5)(c).
9. Following an internal review, TCA wrote to the complainant on 28 January 2014. It stated that it upheld its original decision.

Scope of the case

10. On 14 February 2014, the complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. As part of his investigation of the complaint the Commissioner wrote to TCA on 10 April 2014. Paragraphs 12 to 27 below contain a verbatim extract of that letter.
12. "This is your opportunity to finalise your position with the ICO. With this in mind, you should revisit the request. After looking at our guidance, and in light of the passage of time, you may decide to reverse or amend your position. If you do, please notify the complainant and me within the timeframe specified at the end of this letter. This may enable us to close this case informally without the need for a decision notice.
13. In any event, we need the following information from you to reach a decision.
 - If reasonably practicable a copy of the withheld information (clearly marked with which exceptions apply).
 - Detailed explanations for the parts of the EIR cited (please see below).

Regulation 12(4)(b) - Manifestly unreasonable

14. A request can be manifestly unreasonable for two reasons: firstly, if it is vexatious and secondly where it would incur unreasonable costs for a public authority or an unreasonable diversion of resources.
15. The EIR do not provide a definition of what constitutes an unreasonable cost. This is in contrast to section 12 of the FOI Act under which a public authority can refuse to comply with a request if it estimates that the cost of compliance would exceed the 'appropriate limit'. This appropriate limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations) as £600 for central government departments and £450 for all other public authorities.
16. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - Determining whether the information is held;
 - Locating the information, or a document which may contain the information;

- Retrieving the information, or a document which may contain the information; and
 - Extracting the information from a document containing it.
17. Although the Regulations are not directly applicable to the EIR, in the ICO's view they can provide a useful point of reference when public authorities argue that complying with a request would incur an unreasonable cost and therefore could be refused on the basis of regulation 12(4)(b).
18. Therefore, with reference to the four activities set out above, please provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request. In any calculations provided, please include a description of the work that would need to be undertaken (e.g. searching X number of files – 1 hour).
19. Please also confirm that the estimate has been based upon the quickest method of gathering the requested information, e.g. where possible databases would be used rather than searching manual files.
20. Regulation 9 places a duty on a public authority to provide advice and assistance to someone making a request and the ICO believes that this includes assisting an applicant to refine a request if it is deemed that answering a request would incur an unreasonable cost. Therefore, please clarify the nature of any advice and assistance given to the applicant in this case and if no advice and assistance was provided please explain why not.

'would adversely affect'

21. The ICO interprets the wording of 'would adversely affect' in regulation 12(5) to set a relatively high threshold in terms of likelihood which has to be met in order for any of the 12(5) exceptions to be engaged. In other words it is not sufficient that disclosure may or could have some level of adverse effect, but rather that disclosure 'would' have an adverse effect. In the ICO's opinion this means that the likelihood of an adverse effect must be more substantial than remote.

Regulation 12(4)(d) - Material still in the course of completion

22. Please explain why the Coal Authority has concluded that the withheld information falls in the scope of the exception provided by regulation 12(4)(d). In doing so please make it clear which limb of the regulation the Coal Authority is relying on, i.e. material still in the course of completion; unfinished documents or incomplete.

The disclosure of information would adversely affect public safety - EIR regulation 12(5)(a)

23. Please provide detailed submissions to explain why disclosure would result in the adverse effect cited. Please ensure that these submissions demonstrate a clear link between disclosure of the information that has actually been withheld and any adverse effect.

The disclosure of information would adversely affect intellectual property rights - EIR regulation 12(5)(c)

24. Please clearly identify the nature of the intellectual property right that will be affected if the information is disclosed and explain how disclosure would adversely affect this right. In doing so, please ensure that this explanation demonstrates a causal relationship between disclosure of the information that has actually been withheld and any adverse effect.
25. We strongly recommend that your response is guided by recent decision notices, our guidance and our lines to take, which demonstrate the Information Commissioner's approach to the exceptions and procedural sections of the EIR. These can be found on our website:
- http://www.ico.org.uk/enforcement/decision_notices
 - http://www.ico.org.uk/for_organisations/freedom_of_information/guide
 - <http://www.ico.gov.uk/foikb/index.htm>
26. Having revisited the request, you may decide to apply a new exception. We will consider new exception(s) but it is your responsibility to tell the complainant why the new exemption applies and to provide us now with your full submissions.
27. For the avoidance of doubt, you should now do the following.
- Consider whether to change your response to the information request, and let us know the outcome.
 - Send us, where reasonably practicable, the withheld information.
 - Send us your full and final arguments as to why you think the exceptions apply.
 - Answer all of the questions in this letter."
28. TCA substantively replied to the Commissioner's letter of 10 April 2014 in correspondence dated 4 June 2014. Its contents are considered more fully below at the appropriate places.

Reasons for decision

29. Regulation 5(1) of the EIR provides that "a public authority that holds environmental information shall make it available on request". A public authority may only refuse to disclose information where an exception applies.
30. If an exception applies, the information is still to be disclosed unless "in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information" (regulation 12(1)(b)). This is assessed by having regard to the overriding presumption in favour of disclosure.

Regulation 12(4)(b) - manifestly unreasonable

31. The EIR allows public authorities to refuse a request for information that is manifestly unreasonable. The inclusion of the word "manifestly" means that there must be an obvious or clear quality to the unreasonableness.
32. TCA submissions to this, as contained in its letter to the Commissioner dated 4 June 2014, are laid out in paragraphs 33 to 36 below.
33. "(Its) refusal letter of 20 November 2013 relied on the following reasons for applying this exception: (1) that the request would create unreasonable costs; (2) that it would be an unreasonable diversion of resources; and (3) that the supply of such information falls within the TCA's public task. Taking each in turn:
 - (1) the request would create unreasonable costs - TCA no longer wishes to refer to this particular element of this exception, but it does wish to rely on the other elements of this exception, as set out below;
 - (2) TCA considers that it would be a unreasonable diversion of resources given the time it would take to comply with this request (given the context in which the request is made - for further detail see below), and the availability of other routes to obtain the information requested, including the Interactive Viewer which is freely available on TCA's website. To mitigate the impact of the refusal, TCA provided advice and assistance in its letter of 20 November (to the complainant) setting out what information could be accessed using other routes either without charge or on payment of a fee and the agreement of licensing terms, and we would be very happy to discuss meeting the complainant's data requirements under the appropriate terms and access routes; and

- (3) that TCA already has obligations to make this data available as part of its Public Task with appropriate controls and regulations, and does so accordingly.
34. The ICO's Decision Notice in Copeland Borough Council (FS50519261, FS50516358 and FS50522472 of 13 May 2014) noted that there has to be an obvious or clear quality to the unreasonableness to apply this exception. In this Decision Notice, the key test is whether the "purpose and value of the request justifies the distress, disruption or irritation that would be incurred by complying with the request". That is explained more fully with the following components - (i) that the request imposes a disproportionate burden (as we have shown), (ii) that the request is aiming to reopen issues that have been resolved (and we note here that the data in question will become available in the next 6-8 months, as per our introductory paragraphs), (iii) that the request is unjustifiably persistent (and we would note here that there is an aggregation of requests with 3 individuals and a company working in consort), which would also apply to the next two components of the test, namely that
35. (iv) the request is harassing in the circumstances or (v) is vexatious when viewed in context. To provide the context, these individuals and the company have been trying to obtain this information using the Freedom of Information Act, the Environmental Information Regulations, the Information Fair Trader Scheme and other routes. All of this has caused TCA to have to divert considerable internal resources and bring in external resources to assist with all of these requests, which were timed in consort to create the maximum impact on TCA, presumably to try to coerce TCA to releasing the information more generally.
36. TCA agrees that the effect of these requests would not be enough to tip the public interest balance in TCA's favour - i.e. to withhold the information - but when the wider public interest is considered, and particularly the need for public bodies to focus on "carrying out [their] day-to-day functions" (as referred to in the Copeland decision) then the complainant's interest in receiving the information requested does not overcome the wider public interest in allowing TCA to conduct its day to day activities, especially in light of the context of three individuals and a company making requests in concert. In coming to this view, TCA also notes that there are other routes available to obtain the information requested (which it has informed the complainant about), and which can be dealt with as part of its day-to-day activities."
37. The Commissioner notes that this ground (vexatiousness) for relying on regulation 12(4)(b) only arose in TCA's letter to him dated 4 June 2014 which was sent in reply to the Commissioner letter dated 10 April 2014. In the said Commissioner's letter he explained to TCA that it may apply " a new exception. ... but it is your responsibility to tell the complainant

why the new exemption applies and to provide us now with your full submissions". He further informed TCA that it was to provide its "full and final arguments as to why you think the exemptions apply".

38. As stressed in his guidance¹ (in particular paragraph 44 therein) where a complaint is made to the Commissioner, he expects public authorities to be able to support the application of regulation 12(4)(b) with evidence. This could include detailed costs estimates, sample correspondence, correspondence logs or other documentary evidence. The TCA has failed to do this but has merely asserted that the complainant's request was "an aggregation of requests with 3 individuals and a company working in consort". Accordingly for the want of evidence to support TCA's assertion the Commissioner simply cannot find that regulation 12(4)(b) is engaged.

Regulation 12(5)(a) - the disclosure of information would adversely affect public safety

39. Information is exempt from the duty of disclosure on the basis of regulation 12(5)(a) if disclosure would adversely affect, amongst other things, public safety. The Commissioner considers this to mean that it has to be more probable than not that the alleged harm would occur if the information were released.
40. The term public safety is not defined in the EIR. However, in broad terms this limb of the exception will allow a public authority to withhold information when disclosure would result in hurt or injury to a member of the public. It can be used to protect the public as a whole, a specific group, or one individual who would be exposed to some danger as a result of the disclosure.
41. TCA's submissions on this exception are replicated in paragraphs 42 to 45 below.
42. TCA explains that the coalfields of Britain cover 26,000 square kilometres, where there are 7 million properties. Some 2 million of these properties in the coalfields have some current coal risk related to them. It is important that people know accurately what is under their property.
43. TCA has a statutory duty to ensure that the public have access to information about mine workings, the risk of collapse and related

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

subsidence issues. TCA states that it is clear and transparent as to how it conducts those activities, and makes available real time information to do that through its search processes and other tools.

44. If TCA makes available this information to third parties in an uncontrolled manner, and without appropriate protections, it places the public in danger. The public would not have the certainty and assurance that mine workings and subsidence searches undertaken at the time of purchasing a property would be correct, and so they could purchase property which would have subsidence risks or mine shafts within the grounds unbeknown to them
45. It is important that people know accurately what is under their property. Searches undertaken by third parties or reports compiled by them, on the basis of the withheld information, would then be based on incomplete or out of date information as the databases are always changing with new and updated entries
46. The Commissioner has considered similar arguments of the TCA, put forward by another public authority after consultation with the TCA, in his previous Decision Notice (FER0534167)². The Commissioner stresses that he has considered this matter on its own merits and upon the arguments currently put forward by TCA. However he has reached the same conclusions as in FER0534167, that having seen a sample of the database -
 - "...the Commissioner considers it is unintelligible to the lay person. To interpret it, manipulate it, or interrogate it would take a degree of expertise. He considers that those with the necessary expertise to produce reports are most likely to already have some knowledge of such databases, probably gained by working in the property search industry. As such the Commissioner anticipates that such individuals would appreciate the risks in marketing unreliable information. As the complainant points out, if someone wished to market a rival report product in the property search industry this would attract the scrutiny of their rivals who are likely to highlight its weaknesses.
 - ... conveyancing is usually undertaken by solicitors who, being under a duty to act in the interests of their client, are unlikely to rely on a report which is not authoritative... up-to-date,

² https://ico.org.uk/media/action-weve-taken/decision-notice/2014/997610/fer_0534167.pdf

authoritative reports are readily available from the CA. From the information published on the CA's website the Commissioner understands that a variety of coal mining reports are offered by the CA. These range in price from £30 to £99 for residential properties and from £70 to over £1,000 for non-residential sites up to 120 hectares. Whilst recognising that the provision of property search services is a competitive market, the Commissioner is not convinced that the cost of the products available from the CA would deter those offering property search services, or commissioning those services, to seek reports from unreliable sources, particularly when you consider the overall costs involved in purchasing property.

- The Commissioner does not accept that simply because information is out of date it will be misleading to the public. There is nothing to prevent a public authority from making the status of the information clear at the time it is released. In this particular case the involvement of professionals, who are bound to act in accordance with professional standards and codes of practice, also provides some safeguard against the misuse of the requested information”.

47. On balance, the Commissioner finds the exception not to be engaged. He is not persuaded that releasing the requested information would adversely affect public safety as alleged by the TCA. Specifically, he doubts that the released information “would” be acted upon by the public notwithstanding that it has become “outdated” and no longer accurately reflected the then contemporarily known dangers of previous mining activity.

Regulation 13(1) – personal data

48. Regulation 13(1) states that if information requested includes personal data of which the applicant is not the data subject and the disclosure of the information to a member of the public would contravene any of the data protection principles set out in the Data Protection Act (DPA), a public authority shall not disclose the personal data.

49. During the course of the Commissioner's investigation TCA argued that disclosure of the information within the scope Request One would be unfair and thus breach the first data protection principle which states that:

‘Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

50. Personal data is defined in section 1(1) of the DPA as -

"...data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual."

51. In determining whether information is the personal data of individuals other than the requester, that is, third party personal data, the Commissioner has referred to his own guidance and considered the information in question. He has looked at whether the information relates to living individuals who can be identified from the requested information and whether that information is biographically significant about them.

52. Having regard to the previous paragraph the Commissioner is satisfied that only requested information in Request One comprises the personal data of third parties. That is the property address and property postcode as it constitutes the personal data of people other than the requester. As for example, searching a public register or reverse would greatly enable an individual to be identified from an address or postcode.

53. Conversely the Commissioner's view is that the requested information that comprises the "claim received date", "property county", "claim accepted yes/no/not determined", "monetary compensation paid yes/no", "amount", "resolution date" does not represent the personal data of a third party. The reason for this being that this information (unlinked to property address and postcode) is no longer readily linked or linkable to a known person or persons. Accordingly this information cannot be withheld by virtue of regulation 13.

54. The Commissioner returns to the withheld information that is personal data (paragraph 52 above). In considering whether disclosure of personal data would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner considers the following factors:

- The data subject's reasonable expectations of what would happen to their personal data.
- The consequences of disclosure.

- The balance between the rights and freedoms of the data subject and the legitimate interests of the public.
55. There is nothing to suggest that the data subjects have consented to TCA for it to release their personal data to the public in the manner envisaged by the complainant. However, non-expression of consent is not solely determinative as to whether a data subject's personal data will be disclosed. It is one, albeit very weighty, factor that has to be weighed against factors which focus on the legitimate interest in releasing the information.
 56. Acknowledging the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where regulation 13(1) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
 57. The Commissioner cannot find a compelling public interest reason to override the data subjects' right of privacy. Accordingly the Commissioner finds that this information was correctly withheld by virtue of regulation 13(1).
 58. The complainant has made a very helpful submission to the Commissioner regarding TCA's reliance on regulation 13. The complainant makes the assertion that this information is held on a public register, which (whilst not searchable by reference to dates) nevertheless publishes the very same attributes he is seeking as part of a Con29M mining report.
 59. In reply to this TCA says that it does not hold a public register of coal mining subsidence claims therefore it does not publish or make available such a register. It only provides it in the property specific CON29M mining report information when a coal mining subsidence claim for that property has been made, whether it was accepted and if it was, the value of the repairs undertaken. TCA can subsequently provide a property specific subsidence claims history service which is referred to in its scale of fees and charges for services it provides, as set out in its web page at www.gov.uk/coalauthority.
 60. The Commissioner accepts the general veracity of the complainant's submission on this point. That is the said personal data (i.e. the property address and its postcode) is available via a CON29M report. However, in such situations, the Commissioner does not hesitate to recognise that the said property owners give their expressed or implied consent that this personal data is available via a CON29M report. This

being de facto necessary for the sale and purchase of property in areas that are or could be effecting by coal mining.

Regulation 8(3) - charging

61. Regulation 8(3) of the EIR states: "A charge under paragraph (1) shall not exceed an amount which the public authority is satisfied is a reasonable amount". The Commissioner's interpretation of a "reasonable amount" is that it extends to no more than the cost of actual disbursements necessitated by complying with the request, such as postage and photocopying charges.
62. In correspondence (dated 10 November 2014) TCA explained to the Commissioner that it has a duty under section 57 of the Coal Industry Act 1994 to maintain a statutory register identifying licence details including licence area, type and site name. This paper based register is available to the public for inspection at its Mansfield Mining Heritage Centre. The TCA went on to say that it also provides copies of the documents contained in the register for which there is a copying charge. The costs are those only associated with the cost of copying and posting copies from the register to requesters should they request such copies as set out in point 14 of the Commissioner's guidance on the regulation. However on 18 November 2014 TCA confirmed to the Commissioner that the actual charge (certainly at the time of the request) was £40 per copy of a single licence entry.
63. Plainly, in the Commissioner's opinion, a £40 charge to provide a photocopy of a single entry in the licence log is not a reasonable amount. Accordingly, and on the basis of the submissions made by TCA, the Commissioner finds the exception afforded by regulation 8(3) not to be engaged.

Regulation 12(5)(c) – intellectual property rights

64. Regulation 12(5) states that for the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—
 - (c) intellectual property rights
65. The Commissioner's position is that to establish that there would be an adverse effect on IP rights (if the information were to be released), a public authority must demonstrate that:
 - the material is protected by IP rights;
 - the IP right holder would suffer harm - it is not sufficient to show that IP rights have merely been infringed;

- the identified harm is a consequence of the infringement or loss of control over the use of the information; and
 - the potential harm or loss could not be prevented by enforcing the IP rights.
66. TCA's submissions to this, as contained in its letter to the Commissioner dated 4 June 2014, are laid out in paragraphs 67 to 70 below.
67. The intellectual property rights in question are in TCA's databases, and more particularly the database right in the database itself and the copyright in elements within those databases, for example plans of areas and mines and reports into particular workings or issues.
68. TCA's databases meet the test set out in Section 3A(1) of the Copyright Designs and Patents Act 1988. The databases are a collection of plans, entries, reports, surveys and other elements (being "independent works, data or other materials" for the purposes of that definition). The databases are "arranged in a systematic or methodical way" by virtue of their indexing by geographic location and are accessible via electronic and other means.
69. The final part of the test is whether the database is considered original, which depends on the selection or arrangement of the contents of the database so constituting the author's own intellectual creation. The databases are a carefully created, managed and updated set of entries in relation to very complex mine workings and other mine activity. Each entry has taken TCA's officers to spend time recording the details of each and every occurrence requiring recording in the database. No-one else has such a detailed database of this nature, nor is it something that could be compiled without this degree of care in selecting and populating the contents.
70. TCA therefore considers that the databases have database rights attaching to them. In relation to copyright within elements of the databases, each of the copyright items is an original literary or artistic work by virtue of it for example being a report created into a particular mine issue by a TCA officer, or it being a detailed plan prepared for the purpose of the mine workings or subsidence in question.
71. The TCA has persuaded the Commissioner that it has database rights in the databases it has created. In that, for the reasons explained above, it has invested substantial effort in obtaining, verifying, presenting and maintaining the information included in the databases.
72. The Commissioner is not satisfied that TCA holds copyright in the databases as it contends. The TCA has failed to specify which particular

databases attract copyright as the Commissioner asked of it in his correspondence. The Commissioner is not prepared to find that all the withheld information attracts copyright protection given that copyright does not affix where no judgement is required because the arrangement is predetermined by the logic or the purpose of the database as seems to be the case here.

73. The Commissioner next considers the issues concerning the potential harm or loss by releasing the withheld information. TCA's submissions on this, as contained in its letter to the Commissioner dated 4 June 2014, are laid out in paragraphs 74 to 75 below.
74. The harm, by releasing the information could not simply be protected by enforcing TCA's IP rights as the issue is much wider than that. The harm is both to the public [as considered and discounted above] and also to TCA in dealing with and indemnifying claims which would have not occurred had the correct information been provided to purchasers / developers at the right time.
75. For example if there is a substantial risk of property damage but the purchaser/developer was not made aware of this, as the person with access to the database did not undertake the correct search or provide the right advice, the purchaser/developer would purchase the land at its full value, expecting to enjoy all of it. If TCA had made that purchaser/developer aware of the risks and dangers, the purchaser/developer may not have paid the full value for that land, would not expect to build on it or use it in a particular way and TCA would not then need to indemnify for the losses caused.
76. The Commissioner's position is that disclosing information under the EIR does not extinguish any IP rights in the material. Therefore if the right holder became aware of further uses of the information that infringed those rights, either by the original requester or by anyone else who had received the information, the right holder could take action to prevent harm arising from that infringement. The Commissioner thus takes account of the ability of the right holder to enforce their IP rights when considering whether the alleged harm would actually arise.
77. The Commissioner firstly notes that TCA has not identified to him the person or type of person that will commercially exploit the withheld information, how they would do this or the likely financial cost to it.
78. The Commissioner considers that, in any event, in order to commercially exploit the material, it will be necessary to market whatever product or service has been developed using the information. Consequently the infringement will often be easy to detect. The Commissioner therefore considers that it would be possible for TCA to effectively enforce and

protect its intellectual property rights. As the IP rights can readily be enforced the exception is therefore not engaged.

Regulation 12(4)(d) - material still in the course of completion

79. Regulation 12(4) of the EIR states that for the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that – (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
80. In considering the engagement of this exception it is not necessary to show that disclosure would have an adverse effect although this may be relevant to the public interest test which applies in this case.
81. Consideration of this exception is a two-stage process. First the information must fall within one of the classes specified in the exception. Secondly, this exception is qualified by the public interest, which means that the information must be disclosed if the public interest in the maintenance of the exception does not outweigh the public interest in disclosure.
82. TCA's submissions to this, as contained in its letter to the Commissioner dated 4 June 2014, are laid out in paragraph 83 below.
83. The scope of the request should be considered as constituting the material, which is constituted in TCA's various databases. The material is therefore continually being updated as TCA's officers work through their reviewing and reporting of mine workings, shafts, subsidence activity and other recordable matters. At any time, there are significant numbers of records being updated within the databases, so as to add further detail, correct errors or add or amend entries. The databases themselves have millions of entries, some of which is subject to change as new data becomes available.
84. After viewing a sample of the withheld information and taking into account the submissions made, the Commissioner considers that the withheld information is not still in the course of completion.
85. Data that is incomplete because a public authority is still collecting it will be covered by the exception, but where an authority is using or relying on data at the time of the request, then it cannot be considered incomplete simply on the basis that it may be modified or amended in the future. The Commissioner does not doubt that at the time of the request TCA was using and/or relying on the withheld information to

prepare varying and diverse reports³. Notwithstanding that the databases are continually be updated or modified at the time of the request they were in a complete form to do this. This exception is therefore not engaged.

³ <https://www.gov.uk/government/organisations/the-coal-authority/about/about-our-services>

Right of appeal

86. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

87. 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.
88. 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

Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF