

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

**Decision notice**

**Date:** 12 July 2019

**Public Authority:** Scottish Power Energy Networks  
**Address:** 10 Ochil House  
Technology Avenue  
Blantyre  
Glasgow G72 0HT

**Decision (including any steps ordered)**

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1. The complainant has requested information about the Kype Muir Wind Farms power cable connection. Scottish Power Energy Networks (SPEN) initially disputed that it is a public authority for the purposes of the EIR. It has now accepted this is the case but, at the date of this notice, SPEN has not provided a response to the complainant's requests.
2. The Commissioner's decision is that SPEN has contravened regulation 5(1) and regulation 5(2) of the EIR.
3. The Commissioner requires SPEN to take the following step to ensure compliance with the legislation:
  - With regard to the complainant's correspondence to it of 19 February 2018, issue a response to the complainant's requests - where those requests are for environmental information - that complies with the EIR.
4. SPEN 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 Act and may be dealt with as a contempt of court.

## Request and response

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5. On 19 February 2018, the complainant submitted a service complaint to SPEN that included the following questions and requests:
6. *"...According to your document 'Major Electrical Infrastructure Projects – Approach to Routeing and Environmental Impact Assessment' (your document)... (3) Do you agree that the KM power cable project falls within the scope of your document? (4) Do you agree that as a resident of Boghead, with an 'interest in your infrastructure', I am entitled to use and rely on your document? (5) Do you agree that your company staff should be operating in accordance with your document? (6) Do you agree that the Scottish Government and Banks are entitled to rely on your company operating in accordance with your document? (7) Have your company staff used your document for the KM power cable project through Boghead?... (8) Since your preference is for an overhead route, could you please explain why you are not using an overhead route to connect KM to the grid? (9) Could you provide details on all the specific circumstances in which you consider an underground approach?...10) For the KM cable project what steps did you take to establish the 'wider publics' view of your proposed route? ... (11) For the KM cable project what steps did you take to engage with local communities of your proposed route? (12) Since the Boghead community is clearly affected by the KM power cable project, what steps did you take to engage with the Boghead community before deciding the route through Boghead? Please give all possible detail for this. ... (13) Do you agree that you have not complied with your own published guidance in regard to the KM power cable project? (14) Specifically, do you agree that you have not complied with your own published guidance in engaging with the community of Boghead before deciding the route through Boghead? I see that for projects below the requirement for a full Environmental Impact Assessment that you produce an Environmental Report. (15) Can you supply a copy of your Environmental Report for the KM cable project? I note, in para 4.3 of your document, you specify that "a double circuit 400kV cables requires a trench and working area of up to 30m wide". (16) Can you provide the 'up to width working area' for a 132,000 volts cable? Your field team carrying out the KM power cable project first contacted residents in Boghead in late September 2017. (17) Do you accept that this was your first contact with residents in Boghead regarding the KM power cable project? (18) Do you accept that this first contact was after you had decided the route for the KM power cable project? At no point in the official normal communications did your field team inform us of the size of the cable. It was clearly your field team's intention was to leave us with a false impression and to keep us in the dark on the size of the cable. Only through our own research did we discover the size of the cable. (19) Why did your field team not act*

*with transparency and why were we not told from the outset of your communications about the size of the cable?... I am now informed by the HSE that you have a duty of care to the public (section 3 of Health & Safety at Work Act), that you are "required to undertake a suitable and sufficient risk assessment" and that this we are entitled to obtain a copy of your risk assessment. (20) Will you now provide a copy of your risk assessment for the KM cable project? (21) Why were we denied a copy of the risk assessment when first requested on 13 November?..."*

7. SPEN provided a response to the service complaint on 9 March 2018. It did not specifically address his requests for information.
8. On 26 March 2018 the complainant wrote to SPEN and said that, as a public authority, it was obliged to address his requests.
9. On the advice of the Commissioner in July 2018, the complainant submitted a complaint to the Scottish Commissioner. In December 2018 the Scottish Commissioner advised the complainant that, having communicated with SPEN, he did not consider that SPEN was a Scottish public authority.
10. The Scottish Commissioner advised the complainant to contact the UK Information Commissioner to obtain an authoritative view on whether SPEN is covered by the UK EIR.
11. The Commissioner contacted SPEN and put to it a number of arguments that the complainant had raised to support his position that SPEN is a public authority for the purposes of the EIR. At this point SPEN accepted that the EIR applies to it, in respect of requests for environmental information. SPEN communicated this new position to the complainant on 28 June 2019 and advised that a further letter would be issued to him shortly.

### **Scope of the case**

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12. The complainant first contacted the Commissioner on 28 June 2018 to complain about the way his requests for information had been handled.
13. Given that SPEN has now accepted that it is a public authority for the purposes of the EIR, the focus of the Commissioner's investigation is now whether SPEN has complied with regulation 5(1) and regulation 5(2) of the EIR.

## **Reasons for decision**

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14. Regulation 5(1) of the EIR places an obligation on a public authority to make environmental information that it holds available on request, if it is not exempt information.
15. Under regulation 5(2) of the EIR the information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
16. The complainant submitted his request to SPEN on 19 February 2018 and, at the date of this notice, has not received a response to it under the EIR. The Commissioner therefore finds that SPEN has contravened regulation 5(1) and regulation 5(2).

## **Other Matters**

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17. The Commissioner notes and acknowledges the regrettable delay in resolving this complaint that was caused by advising that the matter first be considered by the Scottish Commissioner.

## Right of appeal

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18. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. 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.
20. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**