

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

Date: 12 November 2024

Public Authority: Health and Safety Executive
Address: Redgrave Court
Merton Road
Bootle
L20 7HS

Decision (including any steps ordered)

1. The complainant has requested records relating to the use of specific chemicals in the Wrexham area. The above public authority (“the public authority”) stated that it did not hold the information.
2. The Commissioner’s decision is that the requested information is held on behalf of the public authority.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response, to the request, on the basis that the information is held for the purposes of the EIR.
4. The public authority must take these steps within 30 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

5. On 29 February 2024, the complainant wrote to the public authority. He provided a map showing an area east of Wrexham and, referring to that map, requested information in the following terms:

“In relation to these sites, we would be grateful if you could provide any data held by HSE which would help to identify quantities of (i) biocides and (ii) plant protection products being used within the purple area on the map, for each calendar year 2020 to 2023.”

6. The public authority responded on 28 March 2024. It denied holding the requested information – a stance it upheld following an internal review.

Scope of the case

7. The Commissioner commenced his investigation by writing to the public authority on 25 October 2024. The Commissioner set out his preliminary view that the information would be held on behalf of the public authority. Rather than go straight to a decision notice, the Commissioner suggested that the most sensible way forward was for the public authority to simply issue a fresh response on the basis that the information was held.
8. Recognising that collating the requested information may not be an easy task, the Commissioner explained to the public authority that he was prepared to allow up to 20 working days for it to issue its fresh response. However, he wanted to be informed, by Friday 8 November 2024, whether the public authority was intending to issue a fresh response. If the public authority still wished to maintain that it did not hold the information, it was to provide its reasons by 8 November.
9. The Commissioner made clear to the public authority that, if it failed to respond by Friday 8 November 2024, he would assume that it was maintaining its stance that the information was not held and would proceed straight to a decision.
10. The Commissioner has received no response or even acknowledgement from the public authority at the date of this notice. He has therefore proceeded to determine whether the information is held.

Reasons for decision

Would the requested information be environmental?

11. Although he has not seen the requested information, as it is information relating to the spraying of various chemicals, the Commissioner believes that the requested information will be information on activities affecting the elements of the environment – namely soil, water and biological diversity. For procedural reasons, he has therefore assessed this case under the EIR.

Is the information held?

12. It is not disputed that the public authority does not hold the information itself. However, the EIR will also apply to information that is held, by a third party, on behalf of a public authority.
13. The public authority claimed that the information was only held by the local landowners and that it did “not require this information to be routinely shared with us.” It did note that it was able to request these records in the case of an “adverse incident” but that, as no such incident had occurred in that area, it had not sought the records and so did not hold them.
14. As the [Commissioner’s guidance](#) explains, when deciding whether information may be held on behalf of a public authority, it is necessary to consider the degree of connection between the information and the public authority’s functions.
15. In this case, the complainant has pointed to [Regulation \(EC\) No 1107/2009](#) (“the Regulation”) which has now been assimilated into UK law. Article 67(1) of that regulation requires users of Plant Protection Products (such as pesticides and herbicides) to:

“for at least 3 years, keep records of the plant protection products they use, containing the name of the plant protection product, the time and the dose of application, the area and the crop where the plant protection product was used. **They shall make the relevant information contained in these records available to the competent authority on request.**” [emphasis added]
16. The public authority is the competent authority for the purpose of this part of the Regulation.
17. In the Commissioner’s view, the wording of the Regulation provides the appropriate connection between the public authority’s functions and the information.

18. Landowners must keep records of the Plant Protection Products used on their land. They must do so in case the public authority wishes to inspect those records – which it has an absolute right to do.
19. The public authority may well have legitimate policy reasons for not routinely inspecting these records. However, nothing in the legislation restricts the public authority's right of inspection to investigating adverse incidents. If it wished to inspect the records, or have them provided, routinely, it could do so.
20. The Commissioner also notes that Article 67(1) of the Regulation gives third parties the right to access the records via the competent authority. The competent authority is required to provide access to this information "in accordance with applicable national law."
21. On the basis of the available evidence, the Commissioner is satisfied that there is a sufficient degree of connection between the information and the public authority's functions.
22. The public authority is designated as a "competent authority" by the Regulation and is responsible for overseeing the use of Plant Protection Products. As part of exercising this function the public authority has a legal right to inspect the records of those using such products – who are required to keep such records so that the public authority can inspect them if it wishes to do so.
23. The Commissioner also notes that the public authority has refused a request for similar records, covering a different area, relying on regulation 12(4)(b) of the EIR, on the basis that complying with that request would impose a manifestly unreasonable burden. There could be no burden if the public authority did not hold the records.
24. The Commissioner is therefore satisfied that this information is held on the public authority's behalf.
25. Given that the public authority has not yet had the opportunity to consider whether any of the requested information may be covered by exceptions from disclosure, the Commissioner is ordering the public authority to issue a fresh response to the request. It can either provide the information or issue a refusal notice.

Right of appeal

26. 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

27. 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.
28. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF