

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

Date: 8 October 2013

Public Authority: Department for Environment, Food and Rural Affairs ("Defra")

Address: Nobel House
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested from Defra information it held about spending by the Marine Management Organisation ("the MMO"). Defra did not provide a response within 20 working days of the request and when it did provide a response, it did not inform the complainant whether the information was held.
2. The Commissioner's decision is that Defra breached regulation 5(1) by not confirming to the complainant that it held information falling within the scope of her request and by not providing it to her. It also breached regulation 5(2) by not providing an initial response to the complainant within 20 working days of the request.
3. As Defra has now confirmed that it held the requested information at the time of the request and has published the information on its website, the Commissioner does not require Defra to take any steps to ensure compliance with the legislation.

Request and response

4. On 9 January 2013, the complainant wrote to Defra and enquired about reports on spending since March 2012 which were normally published on Defra's website. Following a request for clarification, on 18 January 2013 the complainant confirmed that she was "*...interested in MMO and Defra spends over £25,000.00 since March.*"
5. On 4 March 2013, having received no response to her request, the complainant asked Defra to carry out an internal review with regard to its failure to provide her with a response.
6. On 4 March 2013, Defra wrote to the complainant and explained that there had been a delay in publishing the information that she was seeking on its website due to structural changes within Defra.
7. Following an internal review, Defra wrote to the complainant on 28 March 2013. It stated that the request should have been handled under the EIR and confirmed that her complaint about the handling of her request had been upheld. It informed her that staff in the relevant business areas had been asked to contact her as soon as the relevant data became available.

Scope of the case

8. The complainant contacted the Commissioner on 17 April 2013 to complain about the way her request for information had been handled. She specifically complained about Defra's delay in providing her with a response and that it had not confirmed whether or not it held the information that she had requested.
9. During the course of the Commissioner's investigation, the complainant confirmed that her complaint related to Defra's handling of her request in respect of information that it held about the MMO, rather than about Defra.
10. During the course of the Commissioner's investigation, Defra confirmed that, at the time of the request, it did hold the information that the complainant had requested and that the information was now available on its website. In light of this, the complainant asked the Commissioner to consider whether Defra's initial responses complied with the EIR.
11. The Commissioner considered whether Defra had complied with the EIR in responding to the complainant.

Reasons for decision

Regulation 5(1) – Duty to make environmental information available on request

12. Regulation 5(1) requires a public authority, subject to the exceptions in regulation 12, to make environmental information available on request. Defra did not confirm to the complainant whether or not it held the requested information. It did not provide the information to her or apply an exception under regulation 12. It therefore breached regulation 5(1).

Regulation 5(2) – Time period for response to request

13. Regulation 5(2) requires a public authority to provide a response to a request under the EIR within 20 working days. Defra did not respond to the complainant's request within the required time period and therefore breached regulation 5(2)

Other matters

14. On 11 March 2013, following Defra's initial response, and on 28 March 2013, following receipt of the outcome of the internal review, the complainant wrote to Defra to voice her concerns that she had not been informed whether or not it held the information that she had requested. Despite this Defra did not make clear to her whether the relevant information was held.
15. In responding to a request for information, a public authority must ensure that it clearly informs a requester whether information is held. Defra's failure to do so in this case resulted in a complaint being made to the Commissioner and the consequent need for the expenditure of time by all of the parties involved in trying to resolve the complaint. The Commissioner expects that in future Defra will state clearly, when responding to requesters, whether it holds the information that has been requested.

Right of appeal

16. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

17. 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.
18. 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

Rachael Cragg
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