

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 14 July 2014

Public Authority: Office for Nuclear Regulation
Address: Building 4 Redgrave Court
Merton Road
Bootle
Liverpool
L20 7HS

Decision (including any steps ordered)

1. The complainant has requested details of nuclear incidents with details over the last ten years. The Office of Nuclear Regulation considered that responding to the request would exceed the appropriate cost limit and divert significant resources and was therefore manifestly unreasonable (regulation 12(4)(b)).
2. The Commissioner's decision is that the ONR has correctly applied the regulation 12(4)(b) exception and after considering the public interest test, he has concluded that the public interest favours maintaining the exception. He requires no steps to be taken.

Request and response

3. On 4 February 2014 the complainant wrote to the Office of Nuclear Regulation (ONR) and requested information in the following terms:
"I'd be grateful if you could arrange for the number of 'incidents' as per pdf – <http://www.hse.gov.uk/nuclear/operational/inspection/onr-opex-gd-001.pdf> that have been reported over the past 10 years from today's date to be released to be and full details of these 'incidents' – when, where, who, what, how, etc In addition, I also request that the outcome of the associated inquiries be released to me."
4. ONR responded on 11 February 2014. It stated that it would be difficult to provide the requested information without exceeding the appropriate

limit under regulation 12(4)(b). ONR did explain that some information had been released as part of the Chief Nuclear Inspectors Annual Report 2013¹. In addition to this ONR also explained that it intended to publish reports of incidents and events on nuclear sites from 2001 and from 2015 would produce this information annually.

5. Following an internal review ONR wrote to the complainant on 11 March 2014. It stated that in order to comply with the request it would have had to search for information on more than 2500 events covering the ten year period of the request and the information is not stored in a form where it is easily identifiable or where the information is suitable for release without redaction. The ONR therefore upheld its decision to refuse the request as manifestly unreasonable.

Scope of the case

6. The complainant contacted the Commissioner on 12 March 2014 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of his investigation to be to determine if the ONR has correctly refused the request as manifestly unreasonable under regulation 12(4)(b) of the EIR.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

8. Regulation 12(4)(b) states that:

"For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(b) the request for information is manifestly unreasonable ..."

9. The Commissioner's guidance on the application of regulation 12(4)(b)² contains the Commissioner's definition of 'manifestly unreasonable'

¹ <http://www.hse.gov.uk/nuclear/documents/cni-annual-report-2013.pdf>.

²

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/manifestlyunreasonable-requests.ashx

which is taken to apply to requests in two circumstances – where the request is vexatious and where the cost of compliance with the request would be too great.

10. The EIR does not contain a limit at which the cost of compliance with a request is considered to be too great. However, the Commissioner's guidance suggests that public authorities may use The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as an indication of what Parliament considers to be a reasonable charge for staff time. It has been established that £25 per hour is a reasonable charge when determining the cost of staff time in responding to a request.
 11. For the purposes of EIR, a public authority may use this hourly charge in determining the cost of compliance. However the public authority is then expected to consider the proportionality of the cost against the public value of the request, before concluding whether the request is manifestly unreasonable.
 12. The ONR's position is that responding the complainant's request would incur unreasonable costs but would also cause a significant diversion of resources.
 13. The ONR has explained that it has been working on a report describing events for the period 2001-2011 to be published in the public domain. Work on this report had been ongoing for approximately two years at the time the request was made. The report is intended to cover about 2500 events over the period. The request asked for information from the last ten years and ONR has explained there have been approximately 400 events per year in both 2012 and 2013. ONR has clarified that the report is intended to provide limited information on the events in each year and not the "outcome of the associated inquiries" as requested by the complainant but the fact that this has taken two years to compile with less details is indicative of the amount of staff time and resources that would be needed to comply with the request.
 14. Despite the fact that some of the events would be included in the report, ONR would still need to consider the approximately 800 events that occurred in 2012 and 2013. ONR did attempt to find the requested information for 100 of these 800 events before it responded to the complainant citing the regulation 12(4)(b) exception. Whilst doing this, ONR was able to process 10 records a day so spent 10 days processing
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information relating to 100 events in order to compile this for responding. ONR has explained that the length of time taken to process these reports was due to the fact that reports were not designed to be publicly available so to provide the information as requested by the complainant, including information on associated inquiries which are not necessarily linked to the reports as they are often included in other reports, would require significant time and resources.

15. The Commissioner asked the ONR to provide further detail on the sample of 100 reports and the time taken to identify relevant information and extract this. ONR further explained that the information requested for each event typically existed in a number of different documents, several of which were only paper records and not indexed in an easy manner to assist location and extraction of relevant information.
16. The ONR has further stated that for each event there are on average three or four documents which can consist of between ten and 100 pages, only some of which will be within the scope of the request. From the sampling exercise relating to the 100 events, ONR established that the time taken to identify, locate and extract information from these reports was approximately 45 minutes. For just the 800 events from 2012 and 2013 the ONR therefore considered the process of identifying, locating and extracting relevant information from the various reports would exceed over 600 hours of staff time. This is based on the inclusion of the outcome of the associated inquiries.
17. Having considered the financial cost in terms of staff time that would be required to comply with the request, in addition to the apparently limited resources of the public authority, the Commissioner is satisfied that compliance with the request would be manifestly unreasonable on the grounds of cost and diversion of resources and therefore the ONR correctly engaged regulation 12(4)(b).
18. The EIR explicitly requires a public authority to apply a public interest test, in accordance with regulation 12(1)(b), before deciding whether an exception should be maintained. The Commissioner accepts that public interest factors such as proportionality and the value of the request will have already been considered by a public authority in deciding whether to engage the exception, and that these arguments will still be relevant considerations in the public interest test.
19. However, regulation 12(2) of the EIR specifically states that a public authority must apply a presumption in favour of disclosure. In effect this means that the exception can only be maintained if the public interest in withholding the information outweighs the public interest in disclosure.

20. The Commissioner understands that this request relates to incidents and events on nuclear sites over the last ten years. Neither the complainant or the ONR has specifically raised any arguments in favour of the public interest in disclosure but it seems likely given the nature of the information requested that there would be a wider public interest in this information being disclosed to increase transparency and the public's understanding of the nature of these incidents and the way they are managed. This would appear to be acknowledged by the fact the ONR are in the process of producing a series of reports on incidents and events from 2011 in order to be as open and transparent as possible.
21. However, the ONR considers that whilst work to produce these reports is ongoing and has been for two years, it would be a diversion of its resources to separately provide a response to this request, particularly as it is more in depth than that already being provided for the reports by virtue of asking for outcomes of the related inquiries. Complying with the request would slow down the production of the reports for publication and divert staff away from their core duties for what would be an extensive amount of time based on the sampling exercise that has been conducted.
22. The Commissioner recognises the inherent importance of accountability and transparency within public authorities and the necessity of a public authority bearing some costs when complying with a request for information. However, in considering the public interest test in this case, the Commissioner must assess whether the cost of compliance is disproportionate to the value of the request.
23. The Commissioner considers that there is value to the request and this is also clearly recognised by the ONR who are working to publish information on incidents at nuclear sites from 2011. Whilst this information will not be as in depth as that requested by the complainant, it will still meet much of the public interest in this issue by providing information on the types of incidents that occur. For the years of 2012 and 2013, the Commissioner notes that the ONR does intend to produce these reports on an annual basis once it has published the information for previous years. He accepts the arguments from the ONR that to divert resources to compile this information now, alongside the costs involved in the process, would not be in the public interest as it would detract from the work being done to get information for previous years into the public domain as soon as possible.
24. For this reason the Commissioner has concluded that the public interest favours maintaining the exception in this case.

Right of appeal

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

26. 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.
27. 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
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