

## Environmental Information Regulations 2004 (EIR)

### Decision notice

**Date:** 8 August 2016

**Public Authority:** Great Yarmouth Port Authority  
**Address:** 66, North Quay  
Great Yarmouth  
Norfolk  
NR30 1HE

#### Decision (including any steps ordered)

---

1. The complainant has requested information relating to sea and river depth data from Great Yarmouth Port Authority (the GYPA). The GYPA stated that it was not a public authority for the purposes of the Regulations. It also clarified that it did not consider that it held the majority of the information requested, and that, if it was a public authority, it considered that exceptions may be applicable but had not considered this point fully as it did not consider this was the case.
2. The Commissioner's decision is that the GYPA is a public authority for the purposes of the Regulations. The Commissioner has however refrained from making a decision on the application of the exceptions at this point and requires the GYPA to now consider the requests and the information it holds and respond to the complainant in accordance with its obligations under the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - To reconsider the request and respond to the complainant in accordance with its obligations under the EIR.
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.

## Request and response

---

5. On 6 July 2015, the complainant wrote to the GYPA and requested the following information:

*"1) Digital copies of all sea bed level survey data commissioned by the GYPA or its agents in "DWF" format (or similar agreed). 2000 to date.*

*2) Copies of all dredge campaign details undertaken by the GYPA or its agents including the dates of the campaign, location or dredge and location of disposal area, volumes of material removed with before and after surveys of the sea bed dredged and the disposal area. From January 2007 to date.*

*3) The digital data listed in Table B1 of the HRW report DDM7404-RT001-RO1-00, April 2015 under the 'Dataset titles' of 'Port Limits....' (29 nr. surveys from January 2000 to September 2014 in pdf or ASCII format as listed in the table) and 'River Section.....' (19 nr. surveys from June and October 2006 to September 2014 in ASCII format as listed in the table)."*

6. The GYPA's response, on the 6 August 2015, was that it does not consider itself a public authority for the purposes of the EIR and that it does not hold the requested information.
7. The complainant requested a review on the 7 August 2015 outlining the reasons as to why it considered the GYPA to be a public authority for the purposes of the EIR.
8. With regards to the GYPA's statement that it does not hold the information, the complainant considered that the information would be held by the Great Yarmouth Port Company Limited (the GYPC) on GYPA's behalf.
9. The GYPA responded on the 5 October 2015 upholding its initial response.

## Scope of the case

---

10. The complainant contacted the Commissioner on 27 October 2015 as it did not agree with the GYPA's assertion that it was not a public authority for the purposes of the EIR, and that the information would be held, albeit by the GYPC on the GYPA's behalf.
11. The Commissioner considers the scope of the case is to firstly determine whether the GYPA is a public authority for the purposes of the EIR.

12. If so, the Commissioner will then need to determine if each of the three parts of the complainant's request is a request for environmental information and then if so, would the information be held by the GYPC on behalf of the GYPA.
13. During the course of the Commissioner's investigation the GYPA did disclose information to the complainant which satisfied parts 1 and 2 of the request, however it did so informally, on a 'without prejudice' basis, relating to the ongoing litigation. The Complainant however considered that the information should be disclosed under the EIR rather than on an informal basis, and considered that the disclosure did not therefore resolve the question as to whether the GYPA is a public authority or not. It also considered that the disclosure did not meet the requirements of the third part of their request.

## Reasons for decision

---

### Regulation 2(2)

#### Is the GYPA a public authority for the purposes of the EIR?

14. Section 2(2)(c) of the EIR states that:

*"Subject to paragraph (3), "public authority" means –*

*Any other body or other person, that carries out functions of public administration".*

15. Regulation 2 of the EIR defines a public authority under the Regulations. The relevant section for consideration in this case is Regulation 2(2)(c) which states that a 'public authority' means '*any other body or person, that carries out functions of public administration*'.
16. Organisations perform functions of public administration if they have special legal powers to carry out services of public interest. Special legal powers are created in law and can only be used by the relevant body. They go beyond the normal rules of private law that apply to any company or person.
17. Services of public interest aren't defined in the EIR however the Upper Tribunal in [Cross v Information Commissioner & The Cabinet Office GIA/2187/2013](#) said at paragraph 86 that the relevant entity must under national law be performing specific duties etc relating to the environment. Special legal powers are, by definition, not available to any person or organisation who might want to use them.

18. In the Harbours Act 1964 at s57 a 'harbour authority' is defined as;

*'any person in whom are vested under this Act, by another Act or by an order or other instrument (except a provisional order) made under another Act or by a provisional order powers or duties of improving, maintaining or managing a harbour'*

19. In the recent judgment of *the A-G for the Prince of Wales v the IC and Bruton [2016] UKUT 0154 (AAC)* the Upper Tribunal found that the key questions are:

- is the entity a legal person governed by public or private law;
- if so, has the legal regime applicable to it entrusted it with the performance of services of public interest, inter alia in the environmental field, and
- has it been vested with special powers?

20. However the Upper Tribunal warned that these questions should not be applied in a rigid, box-ticking fashion without an overall 'sense check' (paras 42-43).

21. In this case GYPA has been created by statute and is governed by the various harbour and maritime laws which apply to it.

22. The functions of a GYPA are for the benefit of the public (including commercial users) as it was entrusted with ensuring that the port is conserved and improved as well as making it navigable and safe.

23. The GYPA said in a letter to the Commissioner dated 15 March 2016 that it has functions in relating to *'laying down of buoys, the erection of lighthouses and the exhibition of lights, beacons and sea-marks'*. The Commissioner considers that these are duties which relate to the environment.

24. The Commissioner notes further that the GYPA has the following powers;

- GYPA has a statutory obligation under the Harbours Act 1964 and the Great Yarmouth Port and Haven Act 1866 to keep the river port open as a safe navigable thoroughfare;
- Section 4 of the [Great Yarmouth Port Authority Act 1990](#) gives the GYPA powers to close quayside lands to the public and suspend rights of way.

- GYPA has powers under various Acts to make bylaws (the current version of their bylaws appear to be from [1997](#)) some of which concern the environment; eg in relation to marine pollutants etc.
  - As a Harbour Authority GYPA have obligations in regard to waste management under [the Merchant Shipping and Maritime Security Act 1997](#)
  - The [Harbour Docks and Piers Clauses Act 1847](#) gives Harbour Authorities the power to remove wrecks and unfit vessels.
  - It also appears that GYPA are a 'competent harbour authority' and therefore has some additional responsibilities regarding pilotage which includes licensing, prosecution, collecting dues and the power to prohibit entry.
25. The Department for Transport's '[Port Marine Safety Code March 2015](#)' provides a reference point for harbour authorities and is supplemented by a document called '[A guide to Good Practice on Port Marine Operations](#)'. These highlight some of the specifically environmental duties which apply, including preparing contingency plans for spillages and dangerous substances, establishing Vessel Traffic Services (VTS) to mitigate risk, enhance vessel safety and efficiency and to protect the environment, preparation and execution of a port passage plan to protect the marine environment, detaining a vessel if they have reason to believe that it has committed an offence by discharging oil, or a mixture containing oil, into the waters of a harbour. Also notice must be given to the harbour master before oil is transferred at night to or from a ship in any harbour. This requirement may be supplemented by harbour byelaws regulating transfers at any time. Byelaws may also regulate the offloading of oily water and oil waste residues. All oil spills into harbour waters must be reported to the harbour authority.
26. There are also further examples of unusual powers such as the right to board a ship to investigate potential offences, detaining a vessel, collecting dues, licensing, authorising pilots, prohibiting entry to a port, etc.
27. The GYPA argues that it has few statutory powers compared to other ports (eg Port of London and Mersey Docks). As the Commissioner notes in her guidance on 'Public authorities under the EIR' (which is available from the ICO website at <https://ico.org.uk/media/for-organisations/documents/1623665/public-authorities-under-eir.pdf>) however, in principle an organisation may only need to have one special power in order to be a public authority under the Regulations. The Commissioner also considers that special powers do not have to be used frequently in order to be relevant to the determination. The powers

outlined above are not available to the public and appear to amount to a special legal status.

28. In the recent judgment in [The A-G for the Prince of Wales v the ICO and Mr Michael Bruton \[2016\] UKUT 0154 \(AAC\)](#) the Upper Tribunal found that the Duke of Cornwall, as harbour and lighthouse authority for a harbour on the Isles of Scilly, was a public authority under Regulation 2(2)(c) of the EIR. Having considered the initial First-tier Tribunal case ([EA/2010/0182](#)) which refers to various laws governing that particular harbour (paragraphs 66-88), the Commissioner considers that there are clear similarities to the statutory powers which the GYPA has.
29. The Commissioner has therefore decided that the GYPA is a public authority under Regulation 2(2)(c) of the Regulations.
30. Having considered this to be the case the Commissioner must further consider whether the information which has been requested is held by the GYPA and/or whether any other exceptions apply.
31. However the GYPA confirmed to the Commissioner that it has not fully considered the request under the Regulations because it does not consider itself a public authority which is obligated to do so. It said that it has not fully considered whether any of the exceptions might be applicable but has raised some possible exceptions which it considers might be applicable, for instance it considers that the request may be an attempt to use the Regulations to bypass the usual Civil Procedure Rules governing the process of discovery for litigation purposes. This may bring into question the application of Regulation 12(5)(b) to refuse the request.
32. There is also a clear potential for the GYPA to appeal the Commissioner's decision that it is a public authority. The Commissioner considers it is appropriate to allow this opportunity to the GYPA, in addition to allowing it a period of time to consider its full response under the Regulations as a public authority to the requests under consideration.
33. For this reason the Commissioner considers that the most practical option for her at this stage is to issue a notice regarding his decision as to the status of the GYPA, and to include a step within that notice requiring the GYPA to reconsider the request and respond, as a public authority, in accordance with the Regulations.

## Right of appeal

---

34. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

35. 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.
36. 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** .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**