

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

Decision Notice

Date: 23 April 2012

Public Authority: Marine Management Organisation
Address: PO Box 1275
Newcastle upon Tyne
NE99 5BN

Decision (including any steps ordered)

1. The complainant made two requests to the Marine Management Organisation (the MMO). Request 1 was for information relating to the Port of Tyne dredging trial, and various reports. The MMO provided some information, withheld further information under regulation 13 of the EIR, and advised that the remainder was not held. Request 2 repeated request 1 and requested further information. The MMO refused request 2 under regulation 12(4)(b) on the basis that it was manifestly unreasonable. The Commissioner's decision is that the MMO handled request 1 in accordance with the EIR, except for the names of some officials which were wrongly withheld under regulation 13. However the MMO failed to carry out an internal review in relation to request 2, thus breaching regulation 11 of the EIR.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the names of officials as indicated in the confidential annex to this notice; and
 - Conduct an internal review of the MMO's handling of request 2 which meets the requirements of regulation 11 of the EIR.
3. 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.

Requests and response

Request 1

4. On 2 December 2010, the complainant made an information request to the MMO (request 1). The request comprised nine parts, all relating to the Port of Tyne Dredging Trial. The request is reproduced in full at Annex 1 at the end of this Notice.
5. On 5 January 2011 the MMO advised the complainant that it required additional time to consider the request, as allowed under regulation 7(1) of the EIR. On 17 January 2011 the MMO provided the complainant with some of the requested information. The MMO advised that it required further time to consider the remainder of the request.
6. On 31 January 2011 the MMO provided a substantive response to request 1. The MMO stated that it did not hold some of the requested information. The MMO provided all the information it did hold, except for personal information of third parties which the MMO considered was exempt under regulation 12(3) of the EIR.
7. On 15 February 2011 the complainant requested that the MMO conduct an internal review of its response. On the same day the MMO responded, saying that it would not conduct an internal review of this request.

Request 2

8. On 9 February 2011 the complainant made another information request to the MMO (request 2).

"Further to our telephone conversation please would you provide the two surveys in a different format because I am unable to open them as they are.

Also under the EIR would you please provide all information including a copy of the June 2009 monitoring survey?"

9. The "two surveys" referred to the information the MMO provided to the complainant on 17 January 2011.
10. On 15 February 2011 the MMO advised the complainant that it was refusing request 2 under section 14 of the Act and regulation 12(4)(b) of the EIR as the request was vexatious and manifestly unreasonable.

11. On 24 February 2011 the complainant requested an internal review of the MMO's handling of request 2.

Scope of the case

12. The complainant contacted the Commissioner to complain about the way his requests for information had been handled. The complainant indicated to the Commissioner that the MMO had failed to provide him with all the information he requested. The complainant did not accept that the MMO did not hold the information it did not provide to him. In addition the complainant did not accept that the MMO had correctly withheld personal information under regulation 12(3) of the EIR.
13. The Commissioner considers that this case has been made more complex by the frequency and nature of the correspondence between the complainant and the MMO. In addition, the Commissioner asked the complainant a number of times to clarify the grounds for his complaint, but the complainant remained of the view that he had been clear about the information he had requested and his reasons for making a complaint. Therefore the Commissioner has proceeded to investigate on the basis of the information available to him.
14. Following discussions with the Commissioner, the MMO agreed to conduct an internal review of its handling of request 1. After completing the internal review the MMO remained of the view that it did not hold any relevant information which had not been provided to the complainant. This outcome was communicated by the MMO to the Commissioner on 21 April 2011. However the MMO did not communicate the outcome to the complainant.
15. The Commissioner was unaware of this until the complainant confirmed to him on 26 January 2012 that he had still not received the outcome of the internal review. The Commissioner contacted the MMO, who explained that it had not realised it necessary to communicate the outcome of the internal review to the complainant.
16. Therefore the Commissioner considers the scope of the case to include the following questions:
 - Did the MMO correctly apply the exception at regulation 12(3) to the withheld information in request 1?
 - Does the MMO hold any further information which is relevant to request 1?
 - Did the MMO respond appropriately to request 2?

Reasons for decision

Information withheld under regulation 12(3)

17. Regulation 12(3) of the EIR states that a public authority is not obliged to disclose information if to do so would:

- constitute a disclosure of personal data, and
- this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA).

Would disclosure of the requested information constitute a disclosure of personal data?

18. The MMO advised that the withheld information comprised the names, job titles and contact details of a number of individuals. This information was redacted from emails which were provided to the complainant. In this case, the Commissioner is satisfied that the withheld information is personal data, as the individuals in question can be identified by their names, job titles and contact details.

Would disclosure of the requested information breach any of the data protection principles?

19. The MMO argued that disclosure of the requested information would breach the first data protection principle because it would be unfair to the individuals concerned. In considering whether disclosure would be fair or unfair the Commissioner has taken the following factors into account:

- whether disclosure would cause any unnecessary or unjustified damage or distress to the individuals concerned (i.e. the consequences of disclosure);
- the individuals' reasonable expectations of what would happen to their information; and
- are the legitimate interests of the public sufficient to justify any negative impact to the rights and freedoms of the individuals as data subjects?

20. In relation to the first factor, the MMO argued that the disclosure of information relating to individuals could lead to them being perceived as personally accountable, when in fact they were merely communicating the views of the organisation and had no such personal responsibility.

21. The MMO referred the Commissioner to a previous decision notice¹ in which the Commissioner had found that the MMO was entitled to withhold individuals' names and contact details under regulation 13 of the EIR. The Commissioner disagrees with the MMO's assertion that the circumstances in both cases are nearly identical. This is because some of the individuals whose details were redacted in this case appear to occupy senior positions of authority. The Commissioner accepts that, in many cases, junior staff should not be held personally accountable for decisions made by a public authority, but in this case the Commissioner concludes that the MMO failed to distinguish between junior and senior staff.
22. The Commissioner has gone on to consider whether the individuals concerned would have reasonably expected that their information would be made public. The MMO argued that none of the individuals would expect their personal information to be disclosed, but again the Commissioner notes that the MMO did not distinguish between junior and senior staff. The Commissioner accepts that junior staff may have a reasonable expectation that their information would not be disclosed into the public domain. However the Commissioner is of the clear view that senior staff could not reasonably expect that their names, job titles and contact details should be withheld. In addition, the Commissioner considers it unlikely that individuals whose roles require them to deal directly with the public would expect that their names could – or should – be withheld from the public.
23. The Commissioner asked the MMO whether it had sought consent from any of the individuals to disclose their names and contact details. The MMO advised that it had not sought consent, nor had it asked the individuals for their views on disclosure. Rather, the MMO appears to have assumed that the circumstances were sufficiently similar to the previous case, so as to avoid the need to consider the specific information in this case. The Commissioner would encourage authorities to consider each request for information on its own merits, rather than assume that a previous response in a different case will apply to the case in hand.
24. With regard to the third factor listed above the Commissioner acknowledges that there is a legitimate public interest in accountability and transparency, and the public is entitled to be informed about the operation and decisions of the MMO. Nevertheless, the Commissioner

¹ Decision Notice FER0297270

recognises that the legitimate interests of the public must be weighed against any unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects in considering how the factors balance.

25. The MMO argued that there was no credible or realistic need for personal information to be disclosed into the public domain. In this case the Commissioner also notes that the MMO has disclosed the substantive content of the requested information, only withholding personal information. The Commissioner accepts that disclosure of the personal information is not required in order to inform the public as to the MMO's decision making process. Again, the Commissioner is inclined to agree that there is less likely to be a legitimate interest in disclosing the personal information of junior staff, but this is not the case with senior staff, or those in public facing roles.
26. The Commissioner put the points above to the MMO, and explained that he was minded to order disclosure of personal information relating to four individuals, on the basis that it would not be unfair to disclose this information. The MMO failed to respond to the Commissioner's correspondence, therefore the Commissioner has assumed that the MMO has no further arguments to offer in support of its position.
27. In light of the above the Commissioner finds that the personal information of junior staff was correctly withheld, but the details of the four individuals identified to the MMO should not have been withheld under regulation 13 of the EIR. The Commissioner finds that it would not be unfair to disclose the personal information relating to the four individuals as set out in the confidential annex to this notice.
28. The Commissioner notes that some of the individuals whose details were redacted were not MMO employees; rather, they were employees of the Port of Tyne and Cefas (the Centre for Environment, Fisheries and Aquaculture Science, an executive agency of the Department for Environment, Food and Rural Affairs). The MMO did not distinguish between MMO and non-MMO staff, but it appears to the Commissioner that none of the non-MMO staff occupies a senior or public-facing role. Therefore he concludes that, as with the junior MMO staff, it would be unfair to disclose the personal information of these individuals, and this information was correctly withheld under regulation 13.

Does the MMO hold any further information which is relevant to the request?

29. Regulation 5 of the EIR provides that a public authority must provide information in response to a request unless any of the exceptions to disclosure apply. Regulation 12(4)(a) provides an exception where the

public authority does not hold the requested information, and although the MMO did not cite regulation 12(4)(a) it did state that it did not hold any further information which had not already been provided.

30. In considering whether further information is held, the Commissioner uses the civil standard of proof, i.e. whether it is likely or unlikely on the balance of probabilities. This approach has been supported by the Tribunal in a number of previous cases. In assessing this case the Commissioner will consider the extent and quality of the authority's search for the requested information, any other explanations provided, and the complainant's reasons for believing that the information is held.

Part 1 of the request

31. The MMO advised that, apart from the information redacted under regulation 12(3), it had provided the complainant with all the information it held which was relevant to this part of the request.
32. Although the complainant informed the Commissioner that the MMO had failed to provide all the relevant information, he did not specify which parts, if any, of his request had been answered and which had not. Nor did the complainant provide any indication of the information he expected to receive.
33. In the absence of clarification from the complainant the Commissioner asked the MMO to explain how it searched for information relevant to the request. The MMO advised that it had conducted a thorough search of both physical and electronic files. The MMO was of the view that the searches would have identified all relevant information held by the authority, particularly as the search was carried out by staff working in the relevant area, who would be expected to have adequate knowledge of the information held.
34. The Commissioner has seen no evidence to suggest that the MMO sought to conceal any relevant information, and on the balance of probabilities he is satisfied that the MMO does not hold any further information which is relevant to the request.

Part 4 of the request

35. The MMO advised the complainant that it did not hold the October 2010 monitoring report at the time of the request because it was at that time being developed by another body, the Port of Tyne.
36. The complainant argued to the Commissioner that the MMO must hold the information as it was required to undertake monitoring. However the MMO explained to the Commissioner that it had a Memorandum of Understanding (MOU) with the Port of Tyne, so that the Port Of Tyne

carried out the monitoring for the MMO. The MMO further explained that the October 2010 survey was not in fact carried out until January 2011 owing to poor sea conditions. The Commissioner notes that regulation 12(4)(a) of the EIR provides an exception to disclosure where the public authority does not hold the information at the time the request is received. As the request was made on 2 December 2010, but the survey was not carried out until January 2011, the Commissioner finds that the MMO did not hold this portion of the requested information at the time of the request. However the Commissioner notes that the MMO did not cite the exception at regulation 12(4)(a) and this is addressed at "Procedural Requirements" below.

Part 5 of the request

37. The MMO advised the complainant that it had previously provided him with copies of all the licences issued for the Port of Tyne trial.
38. The complainant told the Commissioner that the MMO had provided him with a licence which expired in January 2010, but that the MMO had previously advised him that the licence had expired on 20 October 2009. The complainant was of the view that this meant there must be another licence.
39. The Commissioner put the complainant's concerns to the MMO, who confirmed that the capping licence expired in October 2009. The MMO had additionally provided the complainant with a copy of the Port of Tyne's "maintenance disposal licence", which explained the confusion. The Commissioner considers that the MMO could have been clearer in its communications with the complainant, but he is satisfied that the MMO has provided a reasonable explanation in relation to this part of the request. Therefore the Commissioner finds on the balance of probabilities that the MMO has provided the complainant with all the relevant information it holds.

Part 6 of the request

40. The MMO advised that, as it was not responsible for the licensing of land disposal or dredging, it did not hold a copy of the dredging licence.
41. The complainant was of the view that the MMO must hold this information because the contaminated dredging material (CDM) was considered too dangerous to move. However the Commissioner does not see how it follows that the MMO must hold this information.
42. The MMO suggested that the dredging licence may be held by another public authority, but clarified that it would not have been consulted on any licence application as that would fall outside its remit. Therefore the

Commissioner is again satisfied on the balance of probabilities that the MMO does not hold this information.

Parts 7, 8 and 9 of the request

43. The MMO advised that it did not hold this information. The complainant had referred to an MOU between the Marine and Fisheries Agency and the Port of Tyne as requiring monitoring reports to be produced. However the MMO explained that the MOU only required such reports to be produced if a storm occurred that exceeded a "1 in 10 year event". The MMO argued that the storms referred to by the complainant did not exceed the "1 in 10 year event"; therefore no reports were required and none were produced.
44. The Commissioner has had sight of the relevant part of the MOU, which states that:
- "2. A bathymetric survey must be carried out within one month in the event of any large storm (1 in 10 year event or greater) at, or close to, the site of the cap."*
45. The MMO also provided the Commissioner with evidence that the Port of Tyne assessed the weather in question, but concluded that it did not fall into the "1 in 10 year" category. The Commissioner understands that the complainant may disagree with this assessment, but in the Commissioner's view the MMO has explained in a satisfactory manner why it does not hold this information.

Procedural requirements

Regulation 14: refusal notice

46. Regulation 14 of the EIR provides that an authority refusing any part of a request for information must issue a valid refusal notice explaining the exemption(s) relied on. As indicated above, the MMO advised the complainant that it did not hold some of the requested information, but it did not cite the relevant exception (regulation 12(4)(a)). Therefore the Commissioner finds that the MMO breached regulation 14 in failing to specify this exception in its refusal notice.

Regulation 11 – internal review

47. Regulation 11(1) of the EIR provides that an applicant may make representations to a public authority, if he considers that the authority has failed to comply with the requirements of the EIR in relation to his request.

48. Regulation 11(3) requires that the authority consider the complainant's representations, along with any supporting evidence provided by the complainant, and to decide whether it has complied with the requirements of the EIR. Finally, regulation 11(4) requires that the authority notify the applicant of its decision in relation to the applicant's representations no later than forty working days after receipt of those representations.
49. The Commissioner notes that, while the MMO did conduct an internal review of request 1, it failed to communicate the findings of the review to the complainant.
50. The Commissioner therefore finds that the MMO failed to comply with regulation 11(4) of the EIR as it failed to provide the complainant with notice of its decision in response to the complainant's representations within the appropriate time period.

Request 2

51. Request 2 asked for "all information", as well as the June 2009 monitoring report and copies of information already provided, albeit in a different format. Therefore the Commissioner considers request 2 to be largely a repeat of request 1.
52. In this case the MMO applied the exception at regulation 12(4)(b) to request 2. Regulation 12(4)(b) provides an exception from disclosure to the extent that the request is "manifestly unreasonable".
53. The complainant requested an internal review of this decision on 24 February 2011, but to date the MMO has failed to carry out a review.

Internal review – regulation 11

54. The Commissioner notes that the complainant in this case clearly requested an internal review in his letter of 24 February 2011, but the MMO refused to conduct such a review.
55. The Commissioner understands that the MMO has been dealing with the complainant, both in terms of information requests and other correspondence, for several years. The MMO is of the view that it has spent considerable time and resources responding to the complainant, and should not be obliged to deal with any further correspondence.
56. However the Commissioner considers that regulation 11 of the EIR provides a clear statutory right for an applicant to have his or her request reconsidered by the public authority in question. This in turn provides the authority with an opportunity to rectify any procedural or

handling issues, as well as an opportunity to explain to the complainant how their request was handled.

57. As the MMO has not carried out an internal review in relation to request 2 the Commissioner must find that the MMO failed to comply with regulation 11(3) of the EIR. Consequently, in failing to provide the complainant with notice of its decision in response to the complainant's representations within the appropriate time period the MMO also failed to comply with regulation 11(4) of the EIR.
58. The Commissioner would however point out that a large part of request 2 has effectively been dealt with by the Commissioner in his analysis of request 1. The Commissioner has found that certain information was not held, and that other information was correctly withheld. These findings would obviously influence the outcome of an internal review of request 2.
59. However, the other parts of request 2 are not repeated elements of request 1, and would need to be reconsidered during the course of the internal review:
 - The request for the June 2009 monitoring report
 - The request for the two documents provided on 17 January 2011 to be provided in a different format.
60. In addition, the Commissioner has found that the MMO did not hold the October 2010 monitoring report at the time of request 1 (i.e. December 2010). As noted above the October 2010 survey was not in fact carried out until January 2011 owing to poor sea conditions. Request 2 was submitted on 15 February 2011, by which time the survey would have either been under way or completed. Therefore the Commissioner also considers it appropriate to reconsider this part of the request as part of the internal review.
61. As the Commissioner finds that the MMO has failed to comply with regulation 11 of the EIR in not carrying out an internal review, the Commissioner has not gone on to consider whether the exception at regulation 12(4)(b) and the exemption at section 14 of the Act were properly applied.

Right of appeal

62. 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

63. 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.
64. 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

Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

Request 1 (2 December 2010)

...Under the Environment Information Regulations I would like to request copies of all information, correspondence, reports, emails, memo's faxes and licences relating to the PoT Dredging Trial after the 20 October 2009.

I would like to request under the EIR a copy of the October 2009 monitoring report.

I would like to request under the EIR a copy of the April 2010 monitoring report.

I would like to request under the EIR a copy of the October 2010 monitoring report.

(Name redacted) stated on the 20th October 2009 that the licence had expired, as I believe this was not the case please under the EIR would you provide a copies of all licences issued for this trial.

I have been contacted by people from Houghton who inform me that 40,000 ton of Tyne dredging were dumped in the Houghton Quarry, under the EIR please would you provide a copy of the dredging licence and a copy of the EIR.

During September 2010 we had 3 severe storms, under the MoU after severe storms further monitoring has to be carried out under the EIR please would you provide copies of the monitoring reports carried out after each one of these storms.

During October 2010 we had 2 severe storms, once again as required by the MoU, monitoring has to be carried out after each storm, under the EIR please would you provide copies of each monitoring report carried after both of these storm.

In November 2010 we had a further 3 storms, once again as is required by the MoU, monitoring after each storm has to be carried out, and the EIR please provide copies of the monitoring reports carried out after these storms.

I would also like to remind you that I am still waiting for a response to my questions relating to the Lessons Learned report that I asked in September.

Reference: FER0379965

Request 2 (9 February 2011)

Further to our telephone conversation please would you provide the two surveys in a different format because I am unable to open them as they are.

Also under the EIR would you please provide all information including a copy of the June 2009 monitoring survey?