

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

Decision notice

Date: 13 March 2014

Public Authority: The Oil and Pipelines Agency¹
Address: York House
23 Kingsway
London
WC2B 6UJ

Decision (including any steps ordered)

1. The complainant requested information redacted from a report on an emergency preparedness exercise at Redcliffe Bay Petroleum Supply Depot. The public authority withheld the information on the basis of the exceptions at regulation 12(5)(a) and regulation 13 of the EIR.
2. The Commissioner's decision is that the public authority is entitled to withhold the information referred to as the 'disputed information' in this notice on the basis of regulation 12(5)(a).
3. The Commissioner does not require the public authority to take any steps.

¹ The Oil and Pipelines Agency (OPA) is a public corporation formed in 1986 by virtue of the Oil and Pipelines Act 1985, and currently operates and maintains the Government Pipelines and Storage System (GPSS) on behalf of the Ministry of Defence (MOD). Although, the request was made to the OPA, the MOD responded on its behalf given the broader management responsibility it currently has for the Agency. The MOD also dealt with queries from the ICO following the complaint. The decision notice is however addressed to the OPA because it is a public authority in its own right for the purposes of the FOIA.

Request and response

4. On 6 June 2013, the complainant requested information from the public authority in the following terms:

'Please could I have a complete copy of the BIS report on Exercise Weaver/Learning Outcomes under the EIR provisions? The exercise was held on 21 May 2008 and the report on the exercise is dated Jan 2009. I first requested this report on 22 May 08, but the version I received dated 29 4 09 was so heavily redacted that very little useful information could be extracted from it. [Following an internal review], a second version of the report with fewer redactions [was provided].....Since 2009, there have been several changes which affect the process of redaction. The HSE have withdrawn the SPC Permissioning Document which determined the basis of the Exercise W redactions. The OPA have released most of the 08 Safety Report despite earlier redactions. Likewise, the OPA have released much of the On-Site Emergency Plan.....'

5. The public authority responded on 1 July 2013. It considered that the request was for a copy of a report produced by Babcock Infrastructure Services on 'Exercise Weaver', an emergency preparedness exercise that took place at the Redcliffe Bay Petroleum Supply Depot (RBPSD) on 21 May 2008 (the report). It explained that the information redacted from the report 'may' be exempt from disclosure on the basis of the exception at regulation 12(5)(a)² of the EIR. However, the public authority also informed the complainant that it required an additional 20 working days to determine the balance of the public interest.
6. On 16 August 2013 the public authority issued a substantive response to the request. It withheld the information redacted from the report, relying on regulation 12(5)(a).
7. On 22 August 2013 the complainant requested an internal review.
8. The public authority wrote to the complainant on 3 December 2013. It upheld the original decision to withhold the information redacted from the report. It also considered some of the redacted information exempt from disclosure on the basis of the exception at regulation 13 (personal data) of the EIR.

² Adverse effect on international relations, defence, national security or public safety.

Scope of the case

9. The complainant contacted the Commissioner on 14 December 2013 to complain about the way his request for information had been handled. He challenged the application of regulation 12(5)(a) on a number of grounds which are addressed further below. He subsequently confirmed that he was content for the names of staff, their email addresses and phone numbers to remain redacted from the report.
10. Most of the information redacted from the report was withheld on the basis of regulation 12(5)(a). A very small amount of information was withheld on the basis of both regulation 12(5)(a) and regulation 13.³ The identities of individuals and/or information in the report which could assist in identifying them were withheld on the basis of regulation 13.
11. The scope of the Commissioner's investigation therefore was to consider whether the public authority was entitled to withhold the information redacted from the report on the basis of the exceptions at regulations 12(5)(a) and 13 of the EIR (the disputed information). However, in view of the fact that the complainant is content for the identities of staff to remain redacted, the scope of the Commissioner's investigation did not extend to the information redacted on the basis of regulation 13 only.

Reasons for decision

12. The Commissioner first considered whether the exception at regulation 12(5)(a) is engaged.

The disputed information

13. The public authority described the nature of the information withheld on the basis of regulation 12(5)(a) as follows⁴:
 - Volume of fuel stored
 - Details of the alarm systems, safety measures and migration of fuel

³ The Commissioner is referring specifically to the information redacted from page 24 of the report.

⁴ This list was also provided to the complainant by the public authority.

- Staff procedures to be followed in the event of an emergency and key words used
- Details of emergency response equipment and procedures
- Details of the safety equipment and procedures
- Location of the control centre
- Details of security arrangements
- Details of site power supply
- Staffing levels
- Timings of exercise

Regulation 12(5)(a)

14. Information is exempt from disclosure on the basis of regulation 12(5)(a) if it would adversely affect international relations, defence, national security or public safety.
15. The public authority explained that RBPSD is a component of the Government Pipeline and Storage System (GPSS) which supplies aviation fuel across the United Kingdom (UK) to both Ministry of Defence (MOD) and commercial/private sector customers (including the airports at Heathrow and Gatwick). The public authority considered that if disclosed, the disputed information would constitute a threat to security or public safety if it were acted upon by someone with malevolent intent of which there are two categories: the casual vandal or thief, or an individual representing a terrorist organisation who could target particular areas of the site to induce a more effective attack. It considered that the likelihood of such an adverse effect is substantial rather than remote. The public authority also explained it has been guided in its approach by the guidance on National Security considerations issued by the Health and Safety Executive (HSE).⁵

Complainant's arguments

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61217/hse_guidance_note_eir.pdf

16. The arguments submitted by complainant in support of his view that the exception is not engaged are summarised below at paragraphs 17 to 18 .
17. The reasons given for non-disclosure are too generalised tending towards an 'over-safe' and simplified policy of merely releasing as little as possible, against the intention of the EIR.
18. There is already enough information in the public domain regarding RBPSD to aid a potential terrorist. The disputed information is unlikely to increase the chances of a terrorist attack.
19. The complainant also suggested that some or most of the disputed information is in the public domain or may have been disclosed to him in the past.

Commissioner's assessment

20. The Commissioner considers that '*national security*' means the security of the UK and its people. It is not necessary to show that disclosing information would lead to a direct or immediate threat to the UK. A real possibility of such a threat would suffice.⁶ The Commissioner recognises that terrorists can be highly motivated and may go to great lengths to gather information. Therefore, the possibility that seemingly harmless information (and he is by no means suggesting that is the case here) when pieced together with other information terrorists already possess or could obtain, could result in harm, would also constitute sufficient grounds for withholding information on the basis of regulation 12(5)(a).
21. A public authority may also withhold information on the grounds of public safety if there is a real possibility that disclosure could result in physical hurt or injury to the public.
22. In terms of the claim by the complainant that the disputed information has been disclosed to him in the past, the public authority explained that similar information could have been disclosed but it is not the case that the disputed information has previously been placed in the public domain by the authority. In view of the public authority's explanation, his consideration of the withheld information and the lack of specific evidence that the information is in the public domain the Commissioner

⁶ The Commissioner has been guided in his approach by the Lords' observations in *Secretary of State for the Home Department v Rehman* [2001] UKHL 47.

is satisfied that the disputed information has not been disclosed by the authority.

23. In view of the nature of the disputed information and the context in which it was produced (ie as part of a report on an emergency preparedness exercise at RBPSD), the Commissioner is satisfied that there is a real possibility disclosure would adversely affect national security or public safety. The information would be particularly useful to anyone who intends to vandalise property at the RBPSD and/or carry out a terrorist attack on the site and beyond. He is satisfied that the possibility of the harm envisaged is substantial rather than remote.
24. The Commissioner therefore finds that the exception at regulation 12(5)(a) was correctly engaged.

Public interest test

25. The exception at regulation 12(5)(a) is subject to a public interest test. Therefore, the Commissioner next considered whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Complainant's arguments

26. The arguments submitted by the complainant in support of his view that the public interest is favour of disclosure are summarised below at paragraphs 27 to 29.
27. The report is relevant to the assessment of public safety. It is in the best interests of public safety to disclose it in full. It would reassure residents about the safety of RBPSD.
28. Disclosure would provide a practical and realistic understanding of the risks from RBPSD and the arrangements in place to control such risks.
29. The HSE have withdrawn the SPC (Semi-Permanent Circulars) Permissioning Document which determined the basis of the redactions from the report.

Public authority's arguments

30. The public authority's public interest considerations are summarised below at paragraphs 31 to 36.
31. Disclosure would demonstrate the public authority's commitment to openness and transparency. However, it should be noted that local residents who live within the Public Interest Zone have already been

given (as required by Control of Major Accident Hazards regulations 1999 (COMAH)) information about the nature of material stored and the hazards and emergency response.

32. It is also likely to enhance understanding of the operation of the site in an emergency situation and give greater assurance to the local residents.
33. Petroleum Supply Depots (PSD) are a strategic UK defence asset providing aviation fuel to MOD sites. If precise information about equipment and operations on site were to be placed into the public domain, parties with malicious intent could identify the site's vulnerabilities and allow hostile parties to disable critical parts of the site and/or associated pipeline in multiple, simultaneous attacks.
34. A suitably redacted copy of the report has previously been made available to the complainant. Any release of further information from the report would have a detrimental effect to ensuring the integrity and safety of the site.
35. SPCs are internal HSE documents which have Open Government status and are intended as a guide for HSE inspectors. The withdrawal of section 11 of the HSE's SPC Permissioning document has no bearing on exceptions invoked under the provision of the EIR nor do they affect exceptions which have been applied in previous cases.
36. The public authority is committed to placing general information about PSDs into the public domain which serves to increase public confidence about the safety of the sites and informs the public about its role. It is recognised that there is a public interest in releasing site safety reports. However, to release full details of the report would jeopardise the overall security of the operation at RBPSD. That would not be in the public interest.

Balance of the public interest

37. The Commissioner shares the view that there is a specific public interest in releasing the full report so that local residents could assess for themselves the level of preparedness in the event of an emergency at RBPSD. He accepts that the disputed information would enhance the public's knowledge in that regard. More generally, disclosure would further demonstrate the public authority's commitment to openness and transparency regarding information relating to the site.
38. However, a balance must be struck between being fully transparent by disclosing the full report and the safety of local residents and beyond.

There is a strong public interest in protecting the local residents and the public at large from the risk of a terrorist attack. It is also in the public interest to protect the site from vandalism which could have serious consequences for the UK's economy, and the operation of its armed forces and therefore national defence.

39. The Commissioner is mindful of the fact that public authority has disclosed a significant amount of information from the report. He believes the disclosures demonstrate the public authority recognises that there is a public interest in ensuring that local residents and the public are confident about the safety measures in place at RBPSD. He agrees with the public authority that the withdrawal of section 11 of the HSE's SPC Permissioning document is not in itself a reason to disclose the disputed information. The key is whether it is more probable than not that the information would be of real use to those intent on causing harm to the UK, the Commissioner considers that it would be.
40. The Commissioner therefore finds that in all the circumstances of the case, the public interest in maintaining the exception at regulation 12(5)(a) outweighs the public interest in disclosing the disputed information.
41. In view of his decision that regulation 12(5)(a) was correctly engaged, the Commissioner did not have to consider whether regulation 13 applies to the small amount of information withheld on the basis of both exceptions.

Procedural Matters

42. A public authority is required by virtue of regulation 14(2) to respond to a request for information as soon as possible and no later than 20 working days following the request. Under the EIR, a public authority is not permitted to extend the time to respond to a request in order to specifically conduct a public interest test.
43. The Commissioner therefore finds the public authority in breach of its obligations under regulation 14(2).
44. A public authority is required by virtue of regulation 11(4) to notify an applicant of the outcome of its internal review within 40 working days. As mentioned, the internal review was requested on 22 August 2013 and completed by the public authority on 3 December 2013.
45. The Commissioner therefore finds the public authority in breach of its obligations under regulation 11(4).

Right of appeal

46. 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: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

47. 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.
48. 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

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