

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 August 2021

Public Authority: Environment Agency

Address: Horizon House
Bristol
BS1 5AH

Decision (including any steps ordered)

1. The complainant has requested a copy of a particular "report" he believes was written. The Environment Agency handled the request under the Environmental Information Regulations (EIR) and its position is that it does not hold this information.
2. The Commissioner's decision is as follows:
 - The Environment Agency wrongly handled the request under the EIR, but it does not hold the specific information the complainant has requested and has complied with section 1(1)(a) of the FOIA.
3. The Commissioner does not require the Environment Agency to take any remedial steps.

Background

4. In its submission to the Commissioner the Environment Agency (EA) has provided the following background. It says that it has been corresponding with the complainant for over one year. EA has handled the complainant's correspondence through its complaints process, executive correspondence, as well as through the FOIA/EIR and general enquiries. In the course of this correspondence EA says it has tried to explain its position around the regulation of the MVV Devonport facility

(an Energy from Waste plant) and has provided the complainant with a lot of associated information/documentation.

5. With regard to an earlier request the complainant had submitted to it, EA says it provided the complainant with an internal review of its handling of that request in a letter to him dated 31 January 2020. This letter is signed by one person but records the review findings of Tim de Winton (an Area Environment Manager). Further correspondence with the complainant about this internal review followed.

Request and response

6. On 9 November 2020 the complainant wrote to EA and requested information in the following terms:

“Can you please supply a copy of the full Tim de Winton report.”

7. EA responded on the same day. It handled the request under the EIR and advised that regulation 12(4)(a) of the EIR was engaged as the requested information does not exist.
8. Following an internal review, EA wrote to the complainant on 19 November 2020. It confirmed that it was not withholding the information the complainant has requested; rather, that information does not exist.

Scope of the case

9. The complainant contacted the Commissioner on 19 November 2020 to complain about the way his request for information had been handled.
10. The Commissioner has first considered whether EA handled the request under the correct information legislation. Her investigation has then focussed on whether, on the balance of probabilities, EA holds the information the complainant has requested.

Reasons for decision

Is the requested information environmental information?

11. To broadly summarise the definition given under regulation 2(1) of the EIR, ‘environmental information’ is any information on the state of the

elements of the environment and on factors, measures and activities affecting or likely to affect the elements of the environment.

12. The Commissioner appreciates that the original request that resulted in the internal review response of 31 January 2020 is likely to have been for environmental information as the complainant's substantive concern is an Energy from Waste plant.
13. However, the current request is for a Manager's internal review "report" associated with EA's handling of that original request. In the Commissioner's view, such information – if it is held – is too far removed from the definition under regulation 2(1) of the EIR to be categorised as environmental information. The Commissioner considers that the FOIA is the correct legislation under which EA should have handled the current request.

Section 1 – general right of access to information held by public authorities

14. Under section 1(1) of the FOIA, anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
15. In its submission to the Commissioner, EA has explained that in most scenarios where a customer writes to an Area Director, or to the EA's Chief Executive or Chair, the correspondence is passed to the most appropriate of its Areas to respond, based on the location of the issue and the required knowledge of the Area team. A draft response is usually written by a Team Leader, approved by a member of "ALT" and then signed-off by the Area Director. Where appropriate, "ALT" drafts the Area Director response, rather than a Team Leader.
16. EA says that, in this case, the internal review of 31 January 2020 was conducted by Area Environment Manager, Tim de Winton. The complainant had emailed his request for a review to a particular Area Director, but it was more appropriate for the review response to be sent from another Area Director, Helen Dobby, in line with EA's executive correspondence process explained above. Tim de Winton's review findings were written directly into a draft response letter from Helen Dobby. Following Helen Dobby's approval, the letter was then sent to the complainant in Helen Dobby's name. EA has provided the Commissioner with a copy of that 31 January 2020 letter.
17. EA says there had been an internal meeting on 20 January 2020, which included Tim de Winton, at which the matter of the internal review had

been discussed. But Tim de Winton had not created a separate report or document of his internal review findings. EA has confirmed to the Commissioner that, as such, it was not necessary to carry out any searches for this information when it received the request being considered in this notice.

18. The Commissioner considers that EA's explanation of the circumstances of the internal review it provided to the complainant on 31 January 2020 is entirely credible and reasonable. She accepts that Tim de Winton did not produce a discrete, internal review 'report' document but that his observations on EA's handling of the complainant's earlier request – which may have been discussed at the 20 January 2020 meeting – had informed the internal review correspondence that was signed by Helen Dobby. Indeed, Tim de Winton's review findings appear to be included in Helen Dobby's letter in their entirety and so it is not clear what other findings would have been included in any separate internal review "report" had such a document existed.
19. As it is, the Commissioner has decided that, on the balance of probabilities, EA does not hold the specific information the complainant has requested and complied with section 1(1)(a) of the FOIA.

Right of appeal

20. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

21. 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.
22. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF