

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

Decision notice

Date: 6 February 2023

Public Authority: Sutton Decentralised Energy Network (SDEN)
Address: Civic Offices
St Nicholas Way Civic Centre
Sutton
SM1 1EA

Decision (including any steps ordered)

1. The complainant has requested SDEN to disclose all correspondence with Barratts up to and including 31 December 2017. Sutton Council (the council, on behalf of SDEN) refused the request in accordance with regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that regulation 12(4)(b) of the EIR does apply. He has however recorded a breach of regulation 14(2).
3. The Commissioner does not require further action to be taken.

Request and response

4. On 5 January 2022, the complainant wrote to SDEN and requested information in the following terms:

"Please provide, by email and in PDF format, the communications between Barratts and SDEN (including its staff and consultants) up to and including 31 December 2017. The communications should include, but not be limited to, minutes of meetings, records of telephone calls, letters and emails.

The information requested is environmental because the Sutton Decentralised Energy Network (SDEN) claims to have environmental objectives such as to “maximise efficiency” (<https://sden.org.uk/how-it-works/>), to use “low carbon heat” (<https://sden.org.uk/>) in order to reduce the need for fossil fuels (<https://sden.org.uk/>) and be “sustainable” (<https://sden.org.uk/>). The claimed objectives of the company are therefore environmental in nature and the company’s actions, in so far as they comply with the company objectives, are covered by the EIR. Furthermore, the communications between SDEN and Barratts up to and including 31 December 2017 had significant environmental consequences because:

1. They determined whether the energy network (with the anticipated environmental benefits) would go ahead as planned.
2. They can be expected to significantly impact whether it would be possible to extend the energy network in the future to both other sources of energy and other energy consumers.
3. They would greatly impact the amount of any short-term heat that may be necessary prior to the heat network being operational, and therefore the environmental impact of the provision of that heat (e.g. emissions from gas boilers).
4. They would influence the amount of any future top-up heat that may be necessary from time to time, and therefore also the environmental impact of the provision of that heat (e.g. emissions of gas-fired boilers).
5. They would affect the resulting agreement between the developer and SDEN (and therefore also the Council as owner of SDEN) on such matters as the ownership and maintenance of aspects of the heat network and heat exchangers. These matters too can be expected to have efficiency and environmental impacts.
6. Whether the Felnex planning development would go ahead (with the impacts of that development on the environment).

Given the public ownership of Sutton Decentralised Energy Network Ltd, the significant environmental consequences of the discussions with the developer and the significant public interest in SDEN, the release of the requested information is in the public interest.”

5. SDEN is wholly owned by Sutton Council (the council) and there were initially various emails between both, and the complainant, over which should respond. The council confirmed that whilst SDEN is wholly owned by the council, the FOIA/EIR function is dealt with by the council. Although this notice is served to SDEN as it is the public authority, the remainder of the notice will refer to the council, as it was the council that considered and responded to the request.
6. The council wrote to the complainant on 1 April 2022 to ask the complainant to stipulate a start date for the request.

7. The complainant responded on 5 April 2022 and advised the council that they required the information from the date SDEN was incorporated i.e. 23 February 2016.
8. The council responded on 7 April 2022. It applied regulation 12(4)(b) of the EIR.
9. The complainant requested an internal review on 12 April 2022.
10. An internal review was completed on 16 May 2022. It upheld the application of regulation 12(4)(b) of the EIR.

Scope of the case

11. The complainant contacted the Commissioner on 22 May 2022 to complain about the way their request for information had been handled.
12. The Commissioner has obtained additional submissions from the council and he is satisfied that regulation 12(4)(b) of the EIR applies. The following section of this notice will now explain why.

Reasons for decision

13. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request is manifestly unreasonable.
14. This exception may be used where dealing with a request would create unreasonable costs or an unreasonable diversion of resources. These are grounds on which the council relies in this case.
15. It is subject to the public interest test.
16. The council explained that SDEN is wholly owned by the council and officers working on SDEN matters would have been employed by the council. SDEN does not have a separate IT department. Given that the request dates back to 2016 it is not easy to clarify which specific email accounts would hold the requested information, therefore a search of all accounts has been necessary initially to identify where the majority of correspondence is held.
17. It said that it is unsure how the initial search (as communicated to the complainant in its refusal notice and internal review) identified 1412 separate accounts, therefore, it has rerun the search for all information

held by the council within the dates specified in the request, using the broad search terms 'Barratts' and 'SDEN' together.

18. The search identified 8425 emails within 150 email accounts that hold information relating to those search terms within the specified dates. The search identified one particular member of staff holding the majority of the correspondence relating to SDEN and Barratts. The council therefore focused on that account alone. However, as the search results showed there are 149 other accounts that hold potentially relevant information to the request, it is not possible to say that focussing on this one account would meet the terms of the request.
19. A search of this member of staff's account identified 2197 emails using the search terms and date provided. Whilst some emails will take longer than others, the council estimated that it would take 1.5 minutes to read, review and document whether it was in the scope of the request.
20. With regards to the specific search terms the complainant suggested in their internal review request, the council advised that it conducted a search using those terms and this did reduce the results slightly. Using those terms it identified 4368 emails across 98 accounts. For the one member of staff who has the majority of information, it identified that they held 1449 emails.
21. However, it still estimates that it would take 36 hours to respond to the complainant's request for information using this member of staff's account alone and this, as stated above, does not meet the terms of the request or cover all the information that is potentially held. It used the rate of 1.5 minutes per email again here.
22. It said that compliance with the request would create a manifestly unreasonable burden on the council.
23. The Commissioner agrees that regulation 12(4)(b) of the EIR applies and the request is manifestly unreasonable based on the time and resources it would take to comply. As stated above, limiting the consideration to the one member of staff's email account who holds the majority of information does not meet the terms of the request. The request asked for all the recorded information SDEN holds so to comply the council would need to consider all accounts.
24. Based on the complainant's own suggested search terms, there is still information held across 98 accounts and a total of 4368 emails. At just one minute per email this equates to over 72 hours of work. To comply would create an oppressive burden on the time and resources of the council.

25. In terms of the public interest, there is a public interest in openness and transparency and in allowing members of the public to access information to enable them to scrutinise the decisions made by a public authority.
26. However, there is a greater public interest in this case in protecting the resources of the council. It is not in the wider interests of the public to compel the council to respond to an information request of this scale, especially when it would take in excess of 50 hours to do so. This would divert the council away from other priorities and functions and would not equate to an appropriate diversion of resources.
27. For these reasons, the Commissioner is satisfied that the public interest rests in maintaining the exception.
28. Regulation 9 of the EIR requires the council to provide the complainant with appropriate advice and assistance so far as it is reasonable and practicable to do so.
29. The council advised the complainant to consider revising their request to a search for information referencing a named individual or another key specific search term. The complainant could also focus a refined request on a smaller timeframe.
30. The Commissioner considers this is appropriate advice and assistance for this case and therefore the council complied with regulation 9 of the EIR.

Procedural matters

31. The arrangements between SDEN and the council should not impact on its ability to respond to requests within the statutory timeframe. SDEN and the council are permitted to have specific arrangements in place for the handling of requests but this should not impact on timeliness.
32. Although the council is entitled to cover the FOIA/EIR function for SDEN, there should be appropriate procedures in place to ensure wherever a request is sent to, it is directed to that function so it can be processed within the statutory timeframe. This did not happen here. There was correspondence over who would respond but neither logged the request.
33. The council therefore failed to respond to this request within the statutory timeframe of 20 working days. The Commissioner has therefore recorded a breach of section 14(2) of the EIR. It failed to issue its refusal notice within 20 working days of request.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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SK9 5AF