

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 30 March 2023

Public Authority: Environment Agency
Address: Horizon House
Deaney Road
Bristol
BS1 5AH

Decision (including any steps ordered)

1. The complainant has requested a health risk assessment for tree removal works carried out by the Environment Agency ("EA"). The EA advised that it does not hold information within the scope of the request. The Commissioner's decision is that on the balance of probabilities, the EA does not hold the information requested and regulation 12(4)(a) of the EIR is engaged. The Commissioner does not require the EA to take any steps.

Request and response

2. On 29 March 2022, the complainant wrote to the EA and requested information in the following terms:
3. "I would like to make the following Freedom of Information Request.

The Environment Agency ("EA") completed tree removal works on Land to the East side of Moor Lane, Staines, TW19 6EG, starting on 19 August 2020 finishing on 20 August 2020.

1) Please provide a copy of the Environment Agency risk assessment that was carried out prior to these works being completed."
4. The EA responded on 27 April 2022 and explained that a risk assessment was produced for the work undertaken in 2020. However,

following the commissioning of its new electronic asset management system in 2021, the risk assessment is no longer held. It therefore refused to disclose the information under regulation 12(4)(a) of EIR.

5. On 5 May 2022 the complainant submitted a request for internal review in which they queried separately, a number of issues with the EA. The Commissioner is aware that the EA provided a separate response to those questions on 4 July 2022 and that matter is not in scope of this investigation.
6. At internal review, the EA stated that the health and safety risk assessment carried out prior to commencing the work in question, was a dynamic risk assessment once its operatives were on site. It stated that any risks identified were mitigated and the work was carried out safely using standard methods and equipment. It added that it is possible that the risk assessment was not kept for future archiving due to staff members not attending the office at that time because of COVID restrictions.

Reasons for decision

7. This reasoning covers whether the EA stated correctly that it does not hold any information falling within the scope of the complainant's request. The Commissioner agrees that the requested information is environmental information falling within the scope of regulation 2(1) of the EIR and therefore the EA was right to handle the request under EIR.

Regulation 12(4)(a)-information not held at the time of the request.

8. Regulation 12(4)(a) of the EIR provides an exception from the duty to make information available if the authority does not hold the requested information at the time of the request.
9. During the Commissioner's investigations, he requested further explanation from the EA surrounding the reasons provided in its refusal letter and the internal review letter. He also requested an explanation as to, whether the risk assessment was documented and how the EA was sure that the information was no longer held. Additionally, the Commissioner asked the EA to confirm its retention policy or disposal schedule in relation to risk assessments.
10. The EA confirmed that there are two different risk assessment stages-a pre-work risk assessment and a dynamic risk assessment, carried out on site. The EA says that, to respond to the complainant's information request, it carried out searches for the pre-work risk assessment but did not hold the information. It explained that the officer who would have

completed the paperwork had left at the time of the information request. It says that at the point where the tree removal work was carried out, risk assessments were filed on the old version of its Asset Inventory Management System ("AIMS"). It says that the AIMS was updated to a new version subsequent to the tree removal works and is aware that some documents were lost during the upgrade. The EA says that, as it was unable to find the pre-work risk assessment for the tree removal works, it considered that it was likely to have been lost.

11. The EA explains that a dynamic risk assessment would have been carried out as a standard for any team undertaking works on the ground. It says that a dynamic risk assessment is a mental "stop and think" done on site in a changing environment to ensure risks and hazards are reviewed and managed in the correct way. The EA states that it is a mental process and not a checklist. It says that a dynamic risk assessment will only result in documentation being produced if risks are flagged as red. The EA says it cannot confirm whether a dynamic risk assessment had flagged any risks as red at the time works were carried out. However it maintains that if a dynamic risk assessment was flagged, it was possible that the documentation was not filed due to staff members not attending the office because of COVID restrictions. The EA confirmed that the retention schedule for risk assessments is 3 years.
12. In their complaint to the Commissioner, the complainant raised additional concerns separate to the concerns they raised at internal review. These follow up questions were to satisfy the complainant that a risk assessment was completed prior to the tree removal works and that the correct processes were followed by the EA. For this reason, the Commissioner has not addressed them with the EA as he does not consider this to be the issue. The Commissioner considers the issue to be whether the information requested by the complainant is held by the EA.
13. The Commissioner accepts the EA's explanation and, on this basis, his conclusion is that on the balance of probabilities, the EA does not hold the requested information.

Other matters

14. The Commissioner considers in the current case, that the EA could have provided additional explanation in its refusal notice regarding the separate risks assessments that it carries out for projects of this kind. While he appreciates that the public authority provided a separate response to the queries raised by the complainant at internal review, in his view, the EA could have explained the two separate risk assessments, the nature of the documentation that is likely to be created from those assessments and how they were stored.

15. While the Commissioner understands the constraints faced during the COVID period, he considers that the EA failed to put in place a system that ensured the appropriate recording of information. It is also advisable to have a system for ensuring that the EA keeps to its retention periods in practice and for reviewing retention at appropriate intervals. It also needs to have appropriate technical and organisational measures in place that prevents accidental losses from occurring during an update of its systems.

Right of appeal

16. 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

17. 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.
18. 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

Esi Mensah
Senior Case Officer
Information Commissioner's Office
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