

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

Date: 6 June 2024

Public Authority: Department for Energy Security and Net Zero
("DESNZ")

Address: 3 – 8 Whitehall Place
London
SW1A 2EG

Decision (including any steps ordered)

1. The complainant has requested information on the future availability and cost of hydrogen for home heating. DESNZ refused the request in reliance of EIR regulation 12(4)(d) – material in the course of completion.
2. The Commissioner's decision is that the exception is not engaged.
3. The Commissioner requires DESNZ to take the following steps to ensure compliance with the legislation.
 - Disclose the information withheld under regulation 12(4)(d)
4. The public authority must take these steps within 30 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.

Background

5. DESNZ provided the Commissioner with the following background information:

“Unlike other low-carbon heating technologies, using 100% hydrogen as the fuel for heating is not yet an established technology. Further work is required to understand the feasibility, costs and convenience of transporting 100% hydrogen in the gas grid and using hydrogen for heating and cooking. The Government has therefore established a wide-ranging ongoing R&D programme on hydrogen for heating. It is working with industry, regulators and others to deliver a range of research, development and testing projects to help establish the evidence required to inform strategic decisions in 2026 on the role of hydrogen in heat decarbonisation. As part of these decisions, we will consider the latest evidence with respect to a range of low carbon heat technologies, including opportunities for mixed deployment of hydrogen heating alongside mass deployment of heat pumps and the relative merits of different approaches, taking into account the full range of potential costs, benefits and delivery challenges.”

Request and response

6. On 7 August 2023, the complainant wrote to DESNZ and requested information in the following terms:

“I write to request, under EIR/FOI, copies of assessments or reports held by BEIS or DESNZ concerning the potential future availability and cost of hydrogen for home heating.

I would like any reports or assessments produced since January 2021.”

7. DESNZ responded on 12 October 2023 refusing the request in reliance of regulation 12(4)(d) – material in the course of completion.
8. Following an internal review DESNZ wrote to the complainant on 13 November 2023 upholding the initial response.

Scope of the case

9. The complainant contacted the Commissioner on 28 November 2023 to complain about the way their request for information had been handled. They explained:

"I disagree with DESNZ's claim that disclosing information it holds about the potential future availability and cost of hydrogen for home heating would create confusion and misunderstanding. I believe it would do the opposite as giving more information can help public discussions and official numbers would potentially limit the lobbying activities of vested interests. I also disagree that disclosing the information would stop officials having frank conversations – surely it would force them to have more frank conversations. The planned 2026 decision on hydrogen is too important to happen behind closed doors.

While the cost estimates for hydrogen for home heating may change over time, the available independent evidence consistently suggests the cost will be very high. More than 1.5million households make decisions each year on purchasing a new heating system and more than 95% of them currently choose new fossil boilers, partly because they have been led to believe by the gas industry that hydrogen will be available in future to replace gas. Some households would be more likely to choose a low carbon alternative form of heating if they knew that the government best current estimate for hydrogen for home heating was that it will be very expensive."

10. The Commissioner considers the scope of his investigation to be the application of regulation 12(4)(d).

Reasons for decision

Is the requested information environmental?

11. Regulation 2(1) of the EIR defines environmental information as being information on:
- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other

releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
12. The Commissioner considers that the requested information is environmental information. The material falls within the scope of paragraph (c) as it comprises information on reports and assessments affecting and protecting the elements set out in (a). He is therefore satisfied that the information is environmental.

Regulation 12(4)(d) – material in the course of completion

13. Regulation 12(4)(d) of the EIR states that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
14. The exception is class-based, which means that it is engaged if the information in question falls within its scope. If the information falls into one of the three categories, then the exception is engaged. It is not necessary to show that disclosure would have any particular adverse effect in order to engage the exception.
15. If engaged, regulation 12(4)(d) is a qualified exception, so the public authority must consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
16. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.

17. DESNZ determined that the part of the exception which was engaged in this case is that which relates to material still in the course of completion.

18. DESNZ explained:

"The department is working towards an ambitious and complex assessment to inform the strategic decisions in 2026. This is currently at a very early stage. In 2026, the department is aiming to undertake a whole energy system assessment of pathways with different mixes of low-carbon heating technologies to help understand how the scale and distribution of different costs vary with different heat decarbonisation approaches using a range of technologies. While the department does hold an early cost assessment of hydrogen for heating in comparison to electrification, it is based on incomplete data and evidence and therefore it would be misleading to release it in its partial nature.

... The data does not undermine the government's position to continue to explore hydrogen heating as an option for heat decarbonisation. No decisions have been made based on this analysis (although the preliminary data has been referred to in submissions where we have sought Ministerial decisions on e.g. funding), and based on current evidence and analysis it is not possible to come to any firm conclusions regarding the potential role of hydrogen heating. However, we have taken the judgement that it would not be suitable for publication given we know that this assessment is incomplete – it is based on significant weaknesses/shortcomings that we are seeking to address ahead of 2026."

19. DESNZ went on to highlight particular areas where it considers the analysis to be incomplete and its plans to address the "gaps".

20. The Commissioner has considered whether the withheld information comprises material in the course of completion. The Commissioner's published guidance on this exception¹ explains that, for this limb to be engaged, either the requested information itself must be still in the course of completion, or the requested information must relate to material which is still in the course of completion. The term "still in the course of completion" refers to the process of preparing "material". It must be the material itself which is in the course of completion, rather than any wider 'project' or 'process'. In the case of [Highways England v](#)

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/regulation-124d-eir/>

[Information Commissioner and Manisty \[2018\] UKUT 423 ACC](#) the Upper Tribunal said that "material" must have a physical existence. It cannot be something that does not physically exist, like a project, an exercise, or a process.

21. Again cited in the Commissioner's guidance, is the following example which the Commissioner highlighted to DESNZ in the course of his investigation:

"In [Chris Ames v the Information Commissioner and the Department of Transport EA/2015/0283 \(2015\)](#), the First-tier Tribunal considered that regulation 12(4)(d) did not apply to completed information that was withheld because the Department considered it related to the larger process of setting government policy on the provision of airport capacity – an ongoing task at the time of the request. The Tribunal said, however, that the exception could not apply because, "An ongoing policy process is not in and of itself 'material' within the meaning of reg 12(4)(d)." (paragraph 38)"

22. The Commissioner is persuaded that the withheld information relates to a process which is currently underway at DESNZ in that he accepts that the analysis reported so far will be built on further and that the process to inform strategic decisions in 2026 will continue. He would also expect the public to understand that information held at the time of the request in 2023 will be added to during the journey to the position reached at 2026. However, the material currently held within the scope of the request is in itself complete. It comprises a presentation and reports concerning heat decarbonisation assessments which are separate, complete and independent pieces of work. The Commissioner notes that there are uncertainties raised in the material and additional work will be required to inform policy decisions. Notwithstanding this, the material held represents the position at the time or stage at which it was created; it is not in the course of completion and falls within the scope of the request made. The Commissioner is also satisfied that the information does not fall within the other two limbs of the exception (unfinished documents or incomplete data).
23. On this basis, the Commissioner does not consider the exception at regulation 12(4)(d) to be engaged and therefore the withheld information is not exempt from disclosure on that basis.

Procedural matters

Regulation 5 - Duty to make environmental information available on request

24. Regulation 5(2) of the EIR states that information should be made available "as soon as possible and no later than 20 working days after the date of receipt of the request". In this case, DESNZ has breached regulation 5(2) because the Commissioner has found the exception at regulation 12(4)(d) not to be engaged and the information should have been disclosed in accordance with regulation 5.

Regulation 14 - Refusal to disclose information

25. Regulation 14 of the EIR states that if a request for information is refused by a public authority under regulation 12(1) or 13(1) the refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request. In this case DESNZ responded with a refusal notice after 48 working days and therefore breached this regulation.

Right of appeal

26. 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

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Susan Hughes
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