

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

Date: 19 July 2024

Public Authority: The Council of the University of Essex
Address: Wivenhoe Park
Colchester
CO4 3SQ

Decision (including any steps ordered)

1. The complainant has requested information about a study. The above public authority ("the public authority") relied on regulation 12(4)(a) of the EIR because it did not hold the information.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority has correctly relied on 12(4)(a) of the EIR because it does not hold the requested information.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 14 November 2023, referring to two specific studies carried out in 2007, the complainant requested information of the following description:

"For both STUDY I and STUDY II, all communications, in both written and electronic form, between any member of the study team and "Red M" who was the equipment and software supplier.

"For STUDY I, all communication, in both written and electronic form, between any member of the study team and the MTHR. In addition, all communication, in both written and electronic form, between [names

redacted], and any member of the study team, commencing the start of testing the volunteers, including any post study communications.

“For STUDY II, all communication, both written and electronic form, between any member of the study team and any Director, manager or employee of MM o2 Airwave, commencing study design protocols, including any post study communications.”

5. On 1 December 2023, he added to his request in the following terms:

“Further to my initial request, I would like copies, of the spreadsheets containing all the test results, for the 3G - UMTS study, Professor Fox supplied, a section of one of them in 2007.”

6. On 11 December 2023, the public authority responded to the first part of the request and, on 9 January 2024, it responded to the second part. It denied holding any of the requested information. The public authority upheld this outcome following an internal review.

Reasons for decision

7. Both the complainant and the public authority have explained that the requested information relates to a study carried out in 2007. This study examined the effect of specific types of radiation, emanating from phone masts, on particular individuals.

Would the requested information be environmental?

8. 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);
9. As it is information relating to the effect of microwave radiation from phonemasts, the Commissioner believes that the requested information is likely to be information on either factors (radiation) affecting the elements of the environment (such as air and atmosphere), measures affecting those factors, or information on human health as it is affected, through the elements of the environment, by those factors or measures. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 12(4)(a) – information not held

- 10. A public authority may rely on this exception when it does not hold the specific information that has been requested.
- 11. Where there is a dispute over the extent of the information a public authority holds, the Commissioner must decide whether it is more likely than not that the public authority has provided all the information it holds. More information on his approach can be found among the [decision notice support materials](#) (under “FOIA section 1” – the process is the same for both FOIA and EIR).

The complainant’s position

- 12. The complainant noted that he was one of the original study participants and therefore had a particular interest in the outcome and the raw data supporting it.
- 13. He drew the Commissioner’s attention to several academic articles which criticised the findings of the study, arguing that the team involved had either collected inadequate data, or had failed to analyse their data properly, or both.

14. He also noted that a study was published in 2018 based on a re-assessment of the data from the original 2007 study. This study included a participant currently listed as working for the public authority. He argued that those participants must have had the data in order to have re-analysed it.

The public authority's position

15. The public authority explained to the Commissioner that, due to the age, whilst it had probably held the information many years ago, it no longer did.
16. The public authority went on to say that:

“Research data (to which this request relates) is usually organised and retained by the Principal Investigator (PI) for the study, which in this case was Professor Elaine Fox. Following Professor Fox’s departure from the University in 2013, data relating to these studies was not retained by other members of the research team within the Department of Psychology. The research study in which the requester was involved was conducted in 2007 and any data associated with the study would have been retained for the period as stipulated by the research funder, MTHR, and in line with the usual research council policy, which would usually be up to ten years after the completion of the project. Consequently, it is likely that the data was deleted in 2017 at the latest. Retention periods are often determined by research funders or data providers. For example, the Arts and Humanities Research Council (AHRC) specifies three years after the completion of the project, whilst other research councils specify ten years after the completion of the project, although these can vary.”
17. Whilst it considered it unlikely that the information would be held, the public authority noted that it had consulted staff in its Department of Psychology, School of Computer Science & Electronic Engineering and Research and Enterprise Office who had all confirmed that they were not aware of any relevant information.
18. In addition, the public authority had searched shared repositories and mailboxes of current staff who had previously been involved in the studies. These searches had been conducted using the names of the individuals and companies specified in the request. Again, no relevant information had been retrieved.
19. The public authority had consulted with its IT department who had confirmed that, given that Prof Fox had left the organisation more than ten years ago, any emails in her account would now be irretrievable. Despite this, the public authority had made efforts to search for any

emails that had been retained by either Prof Fox or the other members of the original research who had since left their positions. No information had been identified.

20. Finally and specifically in relation to the 2018 study, the public authority stated that:

"The Head of the Department of Psychology confirmed that all existing University of Essex paperwork relating to the 2018 study had been destroyed via confidential waste in line with our departmental retention policies (carried out by a technical manager who has long retired). The one Research Assistant who had worked on the 2018 study and who is still employed by the University was contacted about the data, and confirmed that they have not retained any information from the project; they also confirmed that the paper was published in 2018 but was written and worked on in 2016 at the latest date.

"Additional enquiries in relation to research data management and retention were also made with colleagues in the Research and Enterprise Office who confirmed that there is no centralised record of the data or the correspondence that is being requested. They confirmed that the data would be the responsibility of the PI on the original project, who was also involved in the 2018 data analysis, and that the people employed at Essex in 2018 who held that role on this project have since left the University. We note that the data reassessment undertaken after the original study concluded, only reviewed the outputs published online in 2007.

"In view of this, and the fact that the raw data spreadsheets which the requester required were not available, there was nothing more for them to add to our response to the requester. Upon receipt of your letter, we made follow-up enquiries with colleagues in the Research and Enterprise Office. This confirmed that the original response was still correct."

The Commissioner's view

21. It is rare that the Commissioner can be 100% certain that information is not held. Nor is he required to prove beyond doubt that the information is not held.
22. The Commissioner has set out the public authority's submissions to him at some length in this decision notice. This because, in his view, those submissions demonstrate the thoroughness with which the public authority has carried out its searches.
23. The public authority's submissions demonstrate to the Commissioner that it is inherently unlikely to hold the specific information the

complainant has requested. This is because of the age of the records (created 18 years ago) and because of the way such records are managed (retained by the principal investigator – who no longer works for the public authority).

24. However, even though the public authority did not think that the records would be held, it has carried out searches to confirm that that is the case. The Commissioner has been unable to identify any obvious error or gap in those searches.
25. The Commissioner recognises the complainant's strong personal interest in the information and his strong conviction (as well as the convictions of others) that the original study was flawed. Emissions from phone masts and their effect on human health has been a controversial subject and there is a public value to information that might shed light on the matter.
26. However, the value of the information makes it no more or less likely that a particular public authority holds it. The Commissioner has not been presented with any arguments that undermine the public authority's position or expose any flaw in the searches it has carried out.
27. The Commissioner is therefore satisfied that it is more likely than not that the information is not held. Regulation 12(4)(a) applies.
28. Whilst regulation 12(4)(a) is technically subject to both the public interest test and the presumption in favour of disclosure, the Commissioner can see no public interest argument capable of requiring a public authority to disclose information it does not hold.

Right of appeal

29. 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

30. 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.
31. 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

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