

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

Decision notice

Date: 5 February 2021

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

Decision (including any steps ordered)

1. The complainant requested the addresses of two “orphaned” onshore oil and gas wellbores. The Environment Agency (“the EA”) relied on Regulation 13(1) of the EIR to withhold the information.
2. The Commissioner’s decision is that Regulation 13(1) of the EIR is not engaged in respect of this information.
3. The Commissioner requires the EA to take the following steps to ensure compliance with the legislation.
 - Disclose the two addresses to the complainant
4. The EA must take these steps within 35 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. On 1 March 2020, the complainant contacted the EA via the whatdotheyknow.com website and made the following information request:

“Please advise the total number of known orphaned onshore oil and gas wells in the UK.

"I consider the definition of an orphaned well to be a well bore that has been abandoned and is not subject to environmental monitoring by the Petroleum Licensee, the Environment Agency, Health and Safety Executive or the OGA.¹"

6. The EA responded on 5 March to inform the complainant that it was aware of two sites which would fall within his description.

Request and response

7. On 31 March 2020, the complainant contacted the EA again via the whatdotheyknow.com website and, referring to this earlier request and response, requested information of the following description:

"On 5/3/20 your onshore oil and gas team in response to an foir from me dated 1/3/20 that there are two 'orphaned' oil and gas wellbores in England. [sic]

"Please would you disclose the names and location/addresses of these two wellbores."

8. On 30 April 2020, the EA responded. It refused to provide the requested information and relied on Regulation 12(5)(g) of the EIR (protection of the environment) to do so.
9. The complainant requested an internal review on the same day. The EA sent the outcome of its internal review on 24 June 2020. The EA maintained its position in respect of Regulation 12(5)(g), but now also relied on Regulation 13 (third party personal data) to withhold the information.

Scope of the case

10. The complainant contacted the Commissioner on 17 July 2020 to complain about the way his request for information had been handled.
11. During the course of the investigation, the EA reconsidered its position. It now withdrew its reliance on Regulation 12(5)(g), but continued to

¹ Oil and Gas Authority

maintain its stance that Regulation 13(1) applied to the withheld information.

12. To its credit, the EA also voluntarily disclosed two investigation reports it held in respect of the two wellbores. However, the complainant insisted that he wanted the addresses themselves and asked the Commissioner to issue a decision.
13. The scope of the Commissioner's investigation is to determine whether Regulation 13(1) of the EIR applies to the requested information.

Reasons for decision

Is the requested information environmental?

14. 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;

15. As it is information relating to the location and status of wellbores, the Commissioner considers that the requested information is information on a "measure" (ie. hydrocarbon extraction) affecting the elements of the environment and is thus environmental information. She has therefore assessed this case under the EIR.

Regulation 13(1) – Personal Data

16. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the

requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) of the EIR is satisfied.

17. In this case the relevant condition is contained in regulation 13(2A)(a)² of the EIR. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').³
18. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then regulation 13 of the EIR cannot apply.
19. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

20. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

21. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
22. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
23. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

² As amended by Schedule 19 Paragraph 307(3) DPA 2018.

³ This request was responded to before the UK formally exited from the European Union and thus whilst the UK was still subject to the GDPR. This has now been replaced by the UKGDPR but the relevant provisions are the same.

The EA's position

24. The EA explained that it considered that the withheld information was the personal data of the individuals that owned the land on which the wellbores were situated. It noted that these individuals could be identified from the withheld information because it could be cross-referenced with other sources such as the Land Registry or Electoral Roll to establish ownership of the land.

25. The EA further explained that:

"We have also approached the OGA regarding whether the information is available through its public registers. The OGA has confirmed that it publishes locations for all oil and gas wells drilled in England on its [onshore interactive map](#), however it does not publish the status of a well (i.e. orphaned/dormant/inactive).

"If we were to provide the location of the wells taking account of the information already provided to the complainant (i.e. that there are two orphan wells in England) the complainant would be able to identify the individuals whose land the inactive wells are situated. The fact that these inactive wells are on the individuals land is their personal data and is not public register information." [sic]

The Commissioner's view

26. The Commissioner accepts that placing the two addresses into the public domain would allow the individuals involved to be identified. However, she does not consider that the information that would be revealed via disclosure "relates to" those individuals and it is therefore not their personal data.

27. The majority of residential addresses in the UK can be linked back to the person who lives there from sources already in the public domain – whether that be from electoral data, HM Land Registry data or from other sources. Disclosing that somebody lives at a particular address is therefore unlikely to reveal anything about that person that is not already in the public domain.

28. However, where disclosure of an address would also reveal something about that address (and, hence, the individual living there) that is not already widely known, that information itself might be personal data.

29. In this particular case, it is not the address itself that the EA wishes to protect – it is the fact that there is an orphaned wellbore present on that site.

30. However, as the EA has already pointed out, the locations of these two wellbores are already in the public domain because the locations are published on the OGA's map. Thus the only additional information that would be revealed by disclosure of the addresses themselves would be the status of the wellbore (ie. whether it was active, inactive, dormant or orphaned).

31. In *Durant v Financial Services Authority* [2003] EWCA Civ 1746, Lord Justice Auld commented that:

"Mere mention of the data subject in a document held by a data controller does not necessarily amount to his personal data. Whether it does so in any particular instance depends on where it falls in a continuum of relevance or proximity to the data subject as distinct, say, from transactions or matters in which he may have been involved to a greater or lesser degree. It seems to me that there are two notions that may be of assistance. The first is whether the information is biographical in a significant sense, that is, going beyond the recording of the putative data subject's involvement in a matter or an event that has no personal connotations, a life event in respect of which his privacy could not be said to be compromised. The second is one of focus. The information should have the putative data subject as its focus rather than some other person with whom he may have been involved or some transaction or event in which he may have figured or have had an interest, for example, as in this case, an investigation into some other person's or body's conduct that he may have instigated. In short, it is information that affects his privacy, whether in his personal or family life, business or professional capacity."

32. Having considered the arguments put forward by the EA, the Commissioner is not satisfied that disclosure of the addresses would reveal information whose position on the "continuum of relevance or proximity to the data subject" falls sufficiently close to the data subject as to make it their personal data.

33. Whether a particular wellbore is orphaned or not reveals very little about the person who owns the land on which it is situated. The status of an wellbore does not reveal whether the owner of the land drilled it themselves or whether they played any part in the wellbore's operation. Nor does the status reveal anything else about the purpose for which the surrounding land is used – beyond what is already in the public domain.

34. The focus of the additional information that would be revealed by disclosure is on the wellbores themselves, not the land on which they sit

and certainly not the person who owns the land. The information does not therefore have the land owner as its focus.

35. The Commissioner therefore cannot consider that the withheld information reveals anything about the putative data subjects that is not already in the public domain. The withheld information is therefore not their personal data and thus Regulation 13(1) of the EIR cannot apply.
36. For completeness, even if the Commissioner were to accept that the information in question would reveal personal data, she would still take the view that disclosure was justified. Whilst the EA has carried out some form of inspection of both sites and concluded that both sites have preserved their integrity, its responses indicate that no body is currently monitoring either site and thus any changes to the integrity of the wellbores may not be picked up quickly. There would thus be a strong legitimate interest in placing this information into the public domain to ensure ongoing vigilance in the local areas. The Commissioner considers that publishing such information would have minimal additional impact on the privacy of the data subjects – given the considerable amount of information about these two wellbores which is already in the public domain. On that basis, the Commissioner would consider that, if the information were considered personal data, the legitimate interests in disclosure would be likely to outweigh the rights of the data subjects.

Right of appeal

37. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

38. 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.
39. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF