

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 20 September 2023

**Public Authority:** Ministry of Defence

**Address:** Whitehall  
London  
SW1A 2HB

#### **Decision (including any steps ordered)**

---

1. The complainant requested information from the Ministry of Defence (the public authority). The public authority initially stated that it did not hold information within scope of the request, however reversed its position at internal review and stated that it would reprocess the request and provide the complainant with a fresh response. By the date of this notice the public authority had not issued a substantive fresh response to this request.
2. The Commissioner's decision is that the public authority has failed to respond to the request within 20 working days and has therefore breached regulation 5(2) of the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a substantive response to the request in accordance with its obligations under the EIR.
4. The public authority 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 Freedom of Information Act and may be dealt with as a contempt of court.

## **Request and response**

---

5. On 8 February 2023, the complainant made the following request for information to the public authority:

“Our client accordingly requests a summary of the evidence on which the MOU was terminated. For the avoidance of doubt, this request is made under the Environmental Information Regulations 2004”

6. The public authority responded on 14 March 2023 stating that it did not hold the requested information.
7. On 18 May 2023 the public authority provided an internal review. It stated that it had located information within scope of the request and was processing the request again. The public authority stated it would provide the complainant with a fresh response within 20 working days of the date of the internal review and by no later than 18 June 2023. The failure of the public authority to provide a fresh response within 20 working days forms the basis of this decision.

## **Reasons for decision**

---

8. Regulation 5(1) of the EIR states that:

“a public authority that holds environmental information shall make it available on request.”

9. Regulation 5(2) of the EIR states that:

“Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.”

10. The complainant contacted the Commissioner on 27 June 2023 to complain about the public authority’s overdue fresh response.
11. The Commissioner accepted the complaint for investigation on 7 July 2023.
12. The Commissioner contacted the public authority via email on 19 July 2023, 4 August 2023, and 21 August 2023 to query the overdue fresh response, however did not receive a reply.

13. On 23 August 2023 the Commissioner spoke directly with an officer at the public authority about the overdue fresh response. The officer explained that the fresh response would be provided to the complainant by 19 September 2023. Despite the Commissioner's intervention the public authority has failed to respond to the complainant.
14. From the evidence provided to the Commissioner in this case, it is clear that the public authority did not deal with the request for information in accordance with the EIR. The Commissioner's decision is that the public authority has breached regulation 5(2) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the EIR.

## Right of appeal

---

15. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

16. 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.
17. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**