

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 8 November 2023

Public Authority: Welsh Government
Address: Cathays Park
Cardiff
CF10 3NQ

Decision (including any steps ordered)

1. The complainant requested from the Welsh Government (WG) information relating to the final Fera Science reports. The WG provided some of the information but redacted certain parts as it considered it personal data about a third party and cited regulation 13(1) (personal information) of the EIR.
2. The Commissioner's decision is that regulation 13(1) of the EIR is not engaged as the withheld information does not comprise personal data.
3. The Commissioner requires the WG to take the following steps to ensure compliance with the legislation.
 - The WG must disclose the information withheld under regulation 13(1) of the EIR.
4. The WG 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. The WG provided the Commissioner with background information. It explained that the request is in relation to the final Fera Science reports about specified investigations into suspected wildlife poisoning incidents in Wales. These are reports the WG hold as part of the Wildlife Incident Investigation Scheme (WIIS). The WG said the complaint focuses on its decision to redact the four-figure grid reference from the reports. These reports detail investigations into wildlife found dead and suspected to have been poisoned.
6. The WG further explained that the standard information provided in each report, includes a four-figure grid reference. This pinpoints the location of the incident being investigated to a one square kilometre, as well as details of the nearest village or town and the local authority area.

Request and response

7. On 26 July 2023 the complainant wrote to the WG and requested information in the following terms:

“I am investigating the contamination of wildlife by rodenticides and am aware of the Wildlife Incident Investigation Scheme. I understand that the Welsh Government is responsible for these investigations and will have access to the analytical reports produced by Fera Science. I am therefore submitting a request under the Environmental Information Regulation 2004 for the final Fera Science reports for the following investigations:

Ref no Location

W08 05 Montgomery
W07 15 Denbigh
W16 02 Cardiff
W16 05 Powys
W16 24 Denbigh
W16 25 Denbigh
W16 26 Powys
W16 29 Powys
W17 02 Powys
W17 04 NPT
W17 05 Gwynedd
W17 10 Denbigh
W18 08 V of Glam

W18 10 Ceredig
W18 15 Powys
W18 18 Pembroke
W18 20 Denbigh
W18 27 Merthyr Tydfil
W18 29 Conwy
W18 30 Powys
W19 15 Conwy
W19 14 Carmarthen
W19 16 Denbigh
W19 18 Denbigh
W20 01 Anglesey
W20 09 Powys
W20 25 Powys
W21 01 Wrexham
W21 02 V of Glam
W21 07 Denbigh
W21 09 RCT
W21 12 Powys
W21 16 Powys
W21 18 Powys
W21 24 Flint
W21 25 Wrexham
W21 30 Gwynedd
W21 31 Wrexham
W 22 01 Denbigh
W 22 02 Powys
W 22 03 Ceredig
W22 10 Angles
W22 25 Bridgend
W22 28 Carmarthen
W22 30 Wrexham

Incident 34 in Appendix 4 of PPA 2005 (page 40)
Incident 45 in Appendix 4 of PPA 2005 (page 41)
Incident 49 in Appendix 4 of PPA 2005 (page 41)
Incident 13 in Appendix 3 of PPA 2006 (page 32)
Incident 33 in Appendix 4 of PPA 2006 (page 44)
Incident 34 in Appendix 4 of PPA 2006 (page 44)
Incident 38 in Appendix 4 of PPA 2006 (page 45)
Incident 45 in Appendix 4 of PPA 2006 (page 45)
Incident 46 in Appendix 4 of PPA 2006 (page 45)

To assist you with this request, I have attached PPA 2005 and PPA 2006 reports.”

8. On 15 August 2023 the WG responded. It disclosed some of the information but decided some of the information was exempt from disclosure under section 12(5)(b) (course of justice) and regulation 13(1) (personal information) of the EIR.
9. On 30 August 2023 the complainant asked the WG for an internal review.
10. On 13 September 2023 the WG provided its review response. It maintained its reliance on regulation 13(1) of the EIR to withhold some of the information. However, the WG did not mention its application of regulation 12(5)(b).

Reasons for decision

11. This reasoning covers whether the Welsh Government was entitled to rely on regulation 13(1) of the EIR to refuse to comply with the request.

Regulation 13(1) – third party personal data

12. 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) is satisfied.
13. In this case the relevant condition is contained in regulation 13(2A)(a). 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 UK General Data Protection Regulation ('UK GDPR').
14. 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.
15. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

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

“any information relating to an identified or identifiable living individual”.

17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
18. 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.
19. 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.
20. The withheld information in this case, is the four-figure grid reference which the WG redacted from the reports in question. The grid reference pinpoints the location of the incident being investigated to a one square kilometre.

The WG's position

21. The WG's position is the withheld information is the personal data of individuals based in the rural locations in which these wildlife poisoning incidents occur.
22. The WG explained "some reports may include information about the location in the narrative section. In combination with the village name, for example, it may be possible to identify where the incident took place and whose land it was on in the same way you can via the four-figure grid reference."
23. The WG said the four-figure grid reference was specific, particularly in the rural locations in which these incidents occur, and it believed that it constituted personal information "because it is possible to identify individuals based on the location." The WG added, "in essence, you would know on whose farm the incidents took place or which gamekeeper had responsibility for activity on that land. In some cases, this also constituted personal information of the person who reported the incident because, for example, their land was the only land adjacent." The WG went on to illustrate this point of how location can enable the identification of individuals, and described how it was checked.
24. The WG considers the withheld information to be personal data about a third party. It said the location data held within each of the wildlife poisoning cases has "the potential to enable the identification of individuals, both those on whose land the incident occurred and those who had reported it...".

25. The WG concluded its argument that this information is third party personal data and stated "a four-figure grid reference can, in many instances, enable the identification of the landowner or land manager."

The complainant's argument

26. The complainant disagreed with the WG's decision that this grid relates to the release of private information. He argued the redaction of this information (the four-figure grid reference) is preventing the element of his research which involves "the map plotting of incidents of chemical exposure". He said "once plotted on a map, it will be even harder to identify the person on whose land the sample was taken."
27. The complainant further argued and said "this information is just the grid square where the animal/bird was found – it might have been exposed to the chemicals miles away. While the six-figure grid ref might identify a precise location, the four-figure grid ref is just a 1km x 1km square – likely to have multiple land owners/occupiers with areas of public access, etc." He is of the view that it is unlikely the information (four-figure grid reference) would identify individuals because it is a small area (1 km x 1km), he said "there is no evidence that person had anything to do with the incident." The complainant gave an example of birds on the road: they could have picked up the poison elsewhere, therefore, not necessary linked to landowners or managers, as there's nothing to suggest that bird was exposed to poisons.

The Commissioner's decision

28. The Commissioner acknowledges the complainant's interest into the "exposure of wildlife to chemicals" for research he is working on, and that the complainant believes the information to be environmentally important.
29. The Commissioner notes the complainant's explanation that his research covers the UK, and he therefore submitted the same EIR request to other government agencies and departments. The complainant said he obtained information without the four-figure grid squares redacted from the other authorities, and so he believes the WG's refusal to provide this information is not consistent with the behaviour of other public authorities. The Commissioner cannot comment on information which other public authorities disclosed, even though it is exactly the same request. Each request must be considered on a case by case basis.
30. Although the WG provided detailed explanations for citing regulation 13 of the EIR to the withheld information, the Commissioner is not persuaded by its argument that the four-figure grid reference could lead to the identification of any individual.

31. The Commissioner recognises that most grid squares will cover more than one landowner or manager. Even where the grid square does relate to a single owner or manager, the fact that a carcass was found there, does not indicate the bird or animal was poisoned on land owned by that same individual. Therefore, it does not relate to the individual in any meaningful way.
32. Having considered the withheld information, the Commissioner is not satisfied that it relates to any individuals. Therefore, this information does not fall within the definition of 'personal data' in section 3(2) of the DPA.
33. The Commissioner's decision is the WG was not entitled to withhold the information under regulation 13(1) of the EIR. He therefore requires the WG to disclose the requested information.

Right of appeal

34. 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

35. 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.
36. 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
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