

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

Date: 22 November 2023

Public Authority: SGN
Address: St Lawrence House
Station Approach
Horley
RH6 9HJ

Decision (including any steps ordered)

1. The complainant has made a six-part request for information relating to a Hydrogen Consequence Testing study. SGN provided the information it held in respect of parts 1), 2) and 5) of the request. It refused to provide the information requested in parts 3), 4), and 6) of the request, citing regulation 12(5)(e) of the EIR (confidentiality of commercial or industrial information provided by law). It also refused to provide some of the information requested in part 6) of the request citing regulation 6(1)(b) (information already publicly available and easily accessible to the applicant in another form or format).
2. The Commissioner's decision is that SGN was entitled to rely on regulation 6(1)(b) of the EIR to refuse to provide two documents falling within the scope of part 6) of the request. However, he finds that SGN breached regulation 5(2) of EIR as it failed to inform the complainant that these two documents are readily accessible and direct them to where the information is available.
3. The Commissioner also finds that SGN cannot rely on regulation 12(5)(e) to withhold the information requested in parts 3), 4), and 6) of the request as it is information on emissions for the purposes of regulation 12(9) of the EIR. Regulation 12(9) prevents such information from being withheld under regulation 12(5)(e).
4. The Commissioner requires SGN to take the following steps to ensure compliance with the legislation.

- inform the complainant of the documents falling within the scope of part 6) of the request that are readily accessible and direct them to where the information is available, and
 - disclose the information identified as being information on emissions – namely the investigation report.
5. SGN 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.

Request and response

6. On 13 December 2022, the complainant made the following request for information:

“I understand that SGN commissioned Kiwa Gastec to do a Hydrogen Consequence Testing study for the H100 project. Phase 1 of the study investigated the behaviours and consequences of hydrogen leakage into properties by conducting experimental and destructive testing with natural gas and hydrogen in order to compare the results between the two.

Please provide:

- 1) The location (address or coordinates) where the simulated explosions took place
- 2) The dates and times of the simulations
- 3) Any high-speed videos and or photographs of the simulated explosions
- 4) Any charts or diagrams showing measurements taken during the simulated explosions and comparing values of hydrogen and natural gas
- 5) A list of the simulation scenarios (gas mixtures, leak sizes, gas concentration levels, and whether the simulated leaks were in the pipes or in the appliances)
- 6) Any documents containing conclusions of the study or executive summaries of the findings on ignition probability of natural gas and hydrogen

I'd like to receive this information in an electronic format.”

7. SGN responded on 16 January 2023 under the Environmental Information (Scotland) Regulations 2004 (EISR). It provided the information it held in respect of points 1), 2) and 5) of the request. It refused to provide the information requested in parts 3), 4), and 6) of the request, citing regulation 10(5)(e) of the EISR (confidentiality of commercial or industrial information).
8. On 24 January 2023, the complainant wrote to SGN requesting an internal review of its decision to withhold the information requested in parts 3), 4), and 6) of the request under regulation 10(5)(e) of the EISR.
9. SGN responded to the complainant on 3 February 2023, asking them to clarify some parts of their internal review request, specifically:

“You state in your email that information in relation to requests 3,4 and 6 has already been made publicly available and that you are seeking the evidence base detail. The H100 Hydrogen Characterisation Final Report dated 14 May 2019 issued to the public by SGN included information on experiments for the HyHouse project undertaken by Kiwa Gastec (page 53), the report for which is available here. Please confirm whether it is in fact this project that you are seeking additional information on.”
10. On 7 February 2023, the complainant provided SGN with the following clarification:

“I am seeking information on the H100 Hydrogen Consequence Testing project (H100 HCT), undertaken by SGN in partnership with Kiwa Gastec (<https://www.sgn.co.uk/about-us/future-of-gas/hydrogen/h100-nia/hydrogen-consequence-testing>).

It was my understanding that the H100 Hydrogen Characterisation Final Report dated 14 May 2019 was the final report of this project. You have now clarified that is not true.

My argument that the H100 HCT is not an ongoing project and therefore that the premature release of information in an ongoing project should not be included in the public interest test stands nonetheless. It is my understanding that the report of the H100 HCT has already been shared with participants in a related, and recently concluded, Hy4Heat project. Some of the findings of the H100 HCT and some of its evidence base have been made public in the final report for one of the Hy4Heat work packages.”
11. SGN provided the outcome of its internal review on 7 March 2023, maintaining its original position.

Scope of the case

12. The complainant contacted the Commissioner on 22 May 2023 to complain about the way their request for information had been handled. In particular, the complainant is dissatisfied with the response given by SGN to parts 3), 4) and 6) of their request.
13. The Commissioner notes that SGN has considered this request under the EISR. However, the Commissioner is considering the request under the Environmental Information Regulations 2004 (EIR). The equivalent regulation in the EIR to regulation 10(5)(e) of the EISR is regulation 12(5)(e) (commercial confidentiality).
14. During the Commissioner's investigation, SGN has relied on an additional exception in respect of two reports falling within the scope of part 6) of the request, specifically regulation 6(1)(b) of the EIR.
15. The Commissioner therefore considers the scope of his investigation to be whether SGN is entitled to rely on regulation 6(1)(b) for two reports falling within the scope of part 6) of the request, and regulation 12(5)(e) for the remaining information withheld in response to parts 3), 4) and 6) of the request.

Reasons for decision

Is the requested information environmental?

16. Regulation 2(1) of the EIR defines environmental information as 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);
17. The Commissioner is satisfied that the information requested comprises environmental information falling within regulation 2(1)(c) as it concerns factors affecting or likely to affect the air and atmosphere, and measures or activities designed to protect those elements.

Regulation 6(1)(b) - form and format

18. Regulation 6(1) provides that where an applicant requests that information be made available in a particular form or format, a public authority shall make it available, unless it is reasonable for it to make the information available in another form or format, or the information is already publicly available and easily accessible to the applicant in another form or format.
19. Additionally, Regulation 6(1)(b) exists in part to protect public authorities from having to re-provide the same information continually. It also acts as an extra incentive for public authorities to make the environmental information available proactively.
20. In this case, the complainant requested any documents containing conclusions of the study or executive summaries of the findings on ignition probability of natural gas and hydrogen.
21. In its submissions to the Commissioner, SGN confirmed that the two documents (titled 'Gas Dispersion Data Analysis Report' and 'Gas Ignition and Explosion Data Analysis') can be found on the Hy4Heat website.
22. From the information provided, the Commissioner is satisfied that the documents falling within the scope of part 6) of the request are readily accessible, and that SGN was entitled to rely on regulation 6(1)(b) of the EIR to refuse to provide this information.

23. However, the Commissioner finds that SGN breached regulation 5(2) of EIR as it failed to inform the complainant that the documents falling within the scope of part 6) of the request are readily accessible and direct them to where the information is available.

Regulation 12(5)(e) - confidentiality of commercial or industrial information

24. Regulation 12(5)(e) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
25. Regulation 12(9) states that, "to the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs 12(5)(d) to (g)".
26. This means that where the information relates specifically to emissions, the exemption in regulation 12(5)(e) cannot be applied.
27. Before considering regulation 12(5)(e), the Commissioner must firstly address whether the withheld information is directly linked to emissions.
28. Regulation 2(1)(b) refers to factors affecting the state of the environment and lists these 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 (2)(1)(a).
29. The Commissioner understands that the information being withheld under regulation 12(5)(e) is a final report of the investigation into the impact of ignition of hydrogen and natural gas which has escaped into a domestic kitchen.
30. SGN engaged a third party company to carry out the investigation that involved the use of Fire Investigation Boxes (FIBs) to simulate a kitchen, which included arrangements of cabinets, appliances and tables and chairs. FIBs also contained an ignition source, being a source spark located at a height equivalent to a light switch. Hydrogen gas and natural gas (methane) were separately leaked into FIBs at different release rates and the results of the subsequent explosions were measured.

31. The Commissioner's guidance on emissions¹ states that they will generally be:
- the by-product of an activity or process;
 - that is added (or potentially added) to and affects the elements of the environment;
 - over which control is relinquished.
32. The Commissioner considers that the withheld information relates directly to emissions which are the by-product of an activity (the deliberate release of hydrogen and natural gas) and will affect elements of the environments (the air) and are outside the control of the investigator as they will occur regardless of any mitigating steps taken to control levels.
33. For this reason, the Commissioner finds that regulation 12(9) is relevant to the withheld information and therefore the exception at regulation 12(5)(e) cannot be applied to withhold this information. As no other exception has been put forward by SGN, the Commissioner requires that this information is disclosed.

Other matters

34. Whilst the Commissioner has not made any determination on the exception as Regulation 12(9) was engaged, he notes that the public authority had not provided compelling arguments for the use of Regulation 12(5)(e) and the Commissioner may have found the information should be disclosed in any event.

¹ [Information on emissions \(regulation 12\(9\)\) \(Environmental Information Regulations\) | ICO](#)

Right of appeal

35. 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

36. 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.
37. 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

Pamela Clements
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