

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 March 2024

Public Authority: Hertfordshire County Council
Address: County Hall
Pegs Lane
Hertford
Hertfordshire
SG13 8DE

Decision (including any steps ordered)

1. The complainant requested information from Hertfordshire County Council ("the Council") relating to recycling of Tesco's products and packaging. The Council's position is that it does not hold any information within the scope of the request.
2. The Commissioner's decision is that the Council failed to comply with regulation 5(1) of the EIR as it did not interpret the request in line with the objective reading of the request.
3. The Commissioner requires the Council to take the following step to ensure compliance with the legislation.
 - Either disclose the correspondence it holds relating to the deposit return scheme or, if the information is exempt from disclosure under the EIR, issue a valid refusal notice.
4. The Council 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

5. On 15 September 2023, the complainant wrote to the Council and requested information in the following terms:

"This is a request under the Environmental Information Regulations.

I believe your authority is the primary authority for Tesco for trading standards purposes.

If this is not correct, please let me know.

If it is correct, please send me the following:

a) Copies of all communications since 1 Jan 2022 between your trading standards department and Tesco which relate to the recycling of products or packaging

b) Copies of all communications since 1 Jan 2022 between your trading standards department and other councils which relate to recycling and products or packaging from Tesco"

6. The Council responded on 13 October 2023. It refused to provide the requested information, citing regulation 12(5)(b) of the EIR (adversely affect the course of justice) as its basis for doing so.
7. Following an internal review the Council wrote to the complainant on 27 October 2023. It revised its position to withhold the requested information under regulation 12(5)(f) of the EIR (adversely affect the interests of the information provider).

Scope of the case

8. During the course of the Commissioner's investigation the Council contacted the complainant to clarify their request. It asked the complainant to clarify what information they were seeking when they used the terms "recycling of products or packaging".
9. The complainant confirmed that, "the term "recycling of" governs both "products" and "packaging". In other words, my request concerns information which relates to the recycling of products, and it also concerns information which relates to the recycling of packaging. However it does not involve communications about packaging which have nothing to do with recycling".

10. The Council subsequently changed its position to state that it does not hold any information within the scope of the request. It wrote to the complainant on 9 February 2024 to inform them of its change in position. However, within this letter it stated: "I am in a position to inform you that Hertfordshire County Councils Trading Standards Department did correspond with Tesco, in relation to a matter that concerned the deposit return scheme and price labelling."
11. The complainant wrote to the Council again on 9 February 2024 and stated that they consider that information about the deposit return scheme would be in scope of the request as it is an aspect of recycling. They therefore do not accept that the Council does not hold any information within the scope of the request.
12. The scope of this case will therefore be to determine, whether the Council's interpretation of the request is the objective reading.

Reasons for decision

Regulation 5(1) - duty to make environmental information available on request

13. Under regulation 5(1) of the EIR, a public authority must make environmental information available on request if it holds the information and it is not subject to an exception.
14. The Commissioner's guidance on interpreting requests¹ states that public authorities should respond to a request based on the particular wording of the request itself. Public authorities must interpret information requests objectively. They must avoid reading into the request any meanings that are not clear from the wording. If the request clearly specifies exactly what information or documents the requester wants, then there will only be one objective reading to the request.
15. During the course of his investigation, the Commissioner asked the Council to provide a copy of the information held regarding the Council's Trading Standards Department correspondence with Tesco about the deposit return scheme and for it to explain why it does not consider this information to be within the scope of the request.

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/interpreting-and-clarifying-requests/>

16. The Council provided the following information regarding why it does not consider the correspondence it holds relating to the deposit return scheme to be in scope of the request:

"The on-line Oxford Reference tool, determines recycling to be "The reprocessing of discarded waste materials for reuse, which involves collection, sorting, processing, and conversion into raw materials which can be used in the production of new products."

It references a product to be "Anything that can be offered to a market for attention, acquisition, use, or consumption that might satisfy a need. It includes physical objects and services." While Oxford Languages on Google defines packaging as "materials used to wrap or protect goods."

Using the definitions located, it was determined that the request concerned the reprocessing of materials used to wrap or protect goods for reuse, which involves collection, sorting, processing, and conversion into raw materials which can be used in the production of new products."

17. However, as the complainant highlighted when they wrote to the Council on 9 February 2024, the deposit return scheme is a form of recycling and is referred to as such in both the relevant policy document² and press release³.
18. The Commissioner considers that the objective reading of the request is that its scope includes information about the deposit return scheme, as this is a form of recycling. He notes that the information held relates to a specific aspect of the scheme, specifically, price labelling. However, this information is nevertheless in scope of the request for communications which relate to the recycling of products or packaging.
19. He therefore requires the Council to either disclose the information it holds about the deposit return scheme, or, if the information is exempt from disclosure under the EIR, issue a valid refusal notice.

² [Introducing a Deposit Return Scheme for drinks containers in England, Wales and Northern Ireland - government response \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/consultations/deposit-return-scheme-for-drinks-containers-in-england-wales-and-northern-ireland)

³ [Deposit Return Scheme for drinks containers moves a step closer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/deposit-return-scheme-for-drinks-containers-moves-a-step-closer)

Right of appeal

20. 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

21. 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.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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