

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

**Date:** 2 October 2024

**Public Authority:** Office of Gas and Electricity Markets (Ofgem)  
**Address:** 10 South Colonnade  
Canary Wharf  
London  
E14 4PU

**Decision (including any steps ordered)**

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1. The complainant has requested copies of design proposal submissions for the Redcar Hydrogen Village Trial, any revisions to design proposals and a summary of proposals to offer electric alternatives to residents. Ofgem relied on regulation 12(4)(b) of the EIR (manifestly unreasonable) to refuse the request.
2. The Commissioner's decision is that Ofgem was entitled to rely on regulation 12(4)(b) of the EIR to refuse the request. He also finds that Ofgem complied with regulation 9(1) of the EIR.
3. The Commissioner does not require further steps.

**Request and response**

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4. On 22 December 2023, the complainant wrote to Ofgem and requested information in the following terms:  
  
"Accordingly, we request the following environmental information:  
  
a. The final Redcar Trial design proposal submitted by Northern Gas Networks.

- b. Any previous Redcar Trial design submissions (or at least the three previous versions) made by Northern Gas Networks.
  - c. Any revisions or related correspondence to revisions that the public authority requested Northern Gas Networks to make in response to any iteration of the Redcar Trial design submissions.
  - d. A summary of Northern Gas Networks' proposal regarding the offer to residents of electric alternatives, including and in particular heat pumps, in all Redcar Trial design submissions, including Northern Gas Networks' assessment of heat pump suitability in the trial area properties and amendments made to the design submissions in this regard."
5. Ofgem responded on 22 January 2024. It stated that it held the requested submission documents and relevant correspondence but, due to the volume of information within scope, it was relying on regulation 12(4)(b) of the EIR to refuse the request. It also advised that it did not hold the information requested about the offer of an electric alternative and heat pumps and signposted the complainant to the Department for Energy Security and Net Zero ('DENSZ') as it was more likely to hold this information. By way of providing advice and assistance, Ofgem signposted the complainant to publicly available information on the hydrogen village proposals that had been published by Northern Gas Networks.
6. On 14 March 2024, the complainant submitted challenged Ofgem's reliance on regulation 12(4)(b) of the EIR and maintained that their request was not manifestly unreasonable. They did however also state:

"However should our request be deemed too broad, we ask that the following is disclosed instead:

  - a. the final Redcar Trial design proposal submitted by Northern Gas Networks.
  - b. Northern Gas Networks' assessment of heat pump suitability in the trial area properties and amendments made to the design submissions in this regard"
7. Following an internal review Ofgem wrote to the complainant on 11 April 2024. It upheld its position and did not mention the refined request.
8. Ofgem later confirmed to the Commissioner that in its internal review cover email to the complainant it had asked if the complainant would like it to process the refined request and received no response.

## Scope of the case

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9. The complainant contacted the Commissioner on 23 May 2024 to complain about the way their request for information had been handled.
10. The Commissioner considers the scope of his investigation is to determine whether Ofgem was entitled to rely on regulation 12(4)(b) to refuse the complainant's original request. He'll also consider Ofgem's obligation under regulation 9 of the EIR, which concerns advice and assistance.

## Reasons for decision

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### Is the requested information environmental?

11. 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;
  - (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);

12. As the request is for information relating to proposals for a hydrogen village trial and offers of electric energy alternatives, the Commissioner agrees that the requested information is likely to be environmental as per regulation 2(1)(c) and 2(1)(e) and therefore, Ofgem was correct to handle the request under the EIR.

### **Regulation 12(4)(b)- Manifestly unreasonable requests**

13. Regulation 12(4)(b)<sup>1</sup> of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
14. There is no definition of “manifestly unreasonable” under the EIR, but in the Commissioner’s opinion, manifestly unreasonable implies that a request should be obviously or clearly unreasonable. One such way a request could be manifestly unreasonable is if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable.
15. Regulation 12(4)(b) of the EIR exists to protect public authorities from exposure to a disproportionate burden in terms of the amount of time and resources that they have to expend in responding to a request.
16. Under section 12 of FOIA, Ofgem would be entitled to refuse any request that would involve more than 24 hours of staff time to comply.
17. There is no set limit beyond which a request becomes manifestly unreasonable. Whilst the FOIA cost limit provides a useful benchmark, the Commissioner would normally expect a public authority to incur a higher burden when dealing with a request for environmental information. The public authority should also take into account the resources at its disposal and the public value of the request before relying on this exception.
18. Ofgem has explained that the requested information relates to funding application documents submitted to Ofgem and DESNZ by Northern Gas Networks for stages three to five of the Redcar Hydrogen Village Trial. Ofgem explained that following submission of the application there was ongoing correspondence about the proposals and the funding

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<sup>1</sup> [Manifestly unreasonable requests - Regulation 12\(4\)\(b\) \(Environmental Information Regulations\) | ICO](#)

requirements. It explained that the project is no longer going ahead but conversations have continued and the requested documents still contain information that is being reviewed, challenged and subject to further development.

19. Ofgem explained that it had previously received requests for the same information and had tried to locate the information using an eDiscovery search. The eDiscovery tool searches all of Ofgem's digital records using a key word search. The results of this search returned 2.5 million results initially. Although Ofgem was able to refine the result filtering the search or editing the key words, the number of records was still too large to search through for the requested information.
20. Ofgem has explained that, at the time of the request, it had one dedicated policy manager working on this particular project and they were able to confirm that the requested information was held by Ofgem as they had received it directly. Given the difficulty of using the eDiscovery tool, Ofgem focused its searches on the electronic files and email account held on the electronic device of its policy manager.
21. Ofgem explained that the policy manager searched all of their folders and identified 2826 documents which could contain the requested information. Due to the size of some of the files, they were shared with Ofgem via a data sharing platform in zip folders, which were then downloaded on to the policy manager's work device. Some of the information sent to Ofgem was not required for Ofgem's involvement in the project, and therefore only the relevant information was extracted from the zip folders and subsequently uploaded on to Ofgem's Sharepoint system.
22. Ofgem noted that Part (c) of the original request asked for "Any revisions or related correspondence to revisions that the public authority requested Northern Gas Networks to make in response to any iteration of the Redcar Trial design submissions." Ofgem considered that there may be some information within scope of this part of the request that was not held solely on the policy manager's device as there may have been correspondence that didn't include the policy manager. Ofgem advised that it therefore revised its estimate of documents which could potentially be in scope of the request to be 3000 and used this figure in its calculations.
23. Ofgem explained that it has a limited number of staff with hydrogen expertise therefore the policy manager working on this project, and their senior manager, were the only people within the organisation who would be able to review the information potentially in scope of the request and determine whether it was in scope. It added that they would also be the only people who were able to assess whether the information could be disclosed or whether any exceptions applied under the EIR, due to the technical nature of many of the documents.

24. Ofgem explained that, although the Redcar Hydrogen Village Trial had been cancelled at the time the request was made, there was still ongoing project work and significant other specialised work which was already stretching resources within this two person policy team. It considers that complying with the EIR would therefore have created a significant diversion of scarce resources at a crucial time in the conclusion of the project and other important work.
25. Ofgem carried out a sampling exercise and estimated that it would take an average of five minutes per document to retrieve, review and extract the relevant information. Using the estimate of 3000 documents, this would equate to 250 hours or £6250 of staff time. Even with its more conservative estimate of 2826 files, its time and cost estimate was 245.5 hours and £5587.50.
26. Ofgem therefore concluded that with an estimate of 250 hours and at a staff cost of £6250, it was significantly over the reasonable cost guidelines provided by the ICO for FOIA, which are used as a benchmark for EIR.
27. Through its sampling exercise Ofgem found that some emails were fairly quick to review, but other documents were large, technical and would take much longer to consider. Based upon this exercise, it estimated that it could take on average an additional 10 minutes per document.
28. Ofgem added that many of the documents in scope of the request are likely to have elements which are exempt. For example, some of the documents are commercially confidential as they relate to tenders and consultancy work and others relate to third party personal data as there is information on individual's properties and circumstances.
29. The Commissioner is satisfied that the estimated time required to fulfil the request clearly exceeds the equivalent FOIA time limit. His decision is therefore that Regulation 12(4)(b) is engaged. He will now carry out the public interest test required by Regulation 12(1) of the EIR.

### **Public interest test**

30. Ofgem has acknowledged that there has been some public concern about the Hydrogen Village Trials so it considers there is public interest in increasing public understanding of the projects and providing confidence in the work undertaken to assess the projects.
31. Ofgem has stated that it takes an open and transparent approach to its regulatory work whenever possible and seeks to demonstrate to the public that it spends public money responsibly and makes robust and well considered decisions.
32. However, Ofgem has explained that, although it is a large organisation, the area of hydrogen for heat is a specialist area and has very limited

Ofgem resource, currently around 0.2FTE. It considers that it is not in the public interest to direct this limited resource to provide the requested information as it would stop critical activity in other important work in a number of other hydrogen network funding requests worth up to £500m. Ofgem explained that these other hydrogen work areas are already being hindered by Ofgem resource constraints and this is a matter of discussion at a senior level in Ofgem.

33. Ofgem added that the Redcar Hydrogen Village Trial is no longer going ahead, and all of the project submission information and correspondence relates to plans that were subject to further change as new information arose. It explained that the requested documents contain information that was still being reviewed, challenged and subject to further development. Sharing information that was still in development rather than final outcomes could lead to wrong interpretations and be misleading. Therefore, it considers that there is little value to the wider public in this information being made publicly available.
34. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.
35. Whilst the Commissioner has been informed by the presumption in favour of disclosure, he is satisfied that, for the reasons given above, the public interest favours maintaining the regulation 12(4)(b) exception.

## **Procedural matters**

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### **Regulation 9 – advice and assistance**

36. Regulation 9(1) requires a public authority to consider what advice and assistance it can reasonably provide to an applicant in cases where it relies on regulation 12(4)(b) of the EIR on the basis of burden. Even if this is simply to confirm to the complainant in a given case that no reasonable or practicable advice and assistance can be provided.
37. The Commissioner notes that Ofgem did not provide advice about how the scope of the request could be narrowed or refined, but in its response to the complainant it did signpost the complainant to information on the Redcar Hydrogen Village submission that was already publicly available.
38. In its submission to the Commissioner Ofgem advised that it was aware of a similar request for information that had been made to Northern Gas Networks. In response to this request, Northern Gas Networks had published a copy of its final submission on its website

(<https://www.northerngasnetworks.co.uk/document-library/>) (the file, can be found in 'The Future' section of this page and is called Redcar Hydrogen Community Stage Two submission March 2023").

39. The Commissioner finds that in the circumstances of this case, advising the complainant to reduce the scope of their request sufficiently to reduce the number of hours needed to comply with it, would also make the information a lot less meaningful. By instead signposting to other sources where some of the requested information was available, the Commissioner finds Ofgem complied with its regulation 9 obligations.



## Right of appeal

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40. 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)

41. 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.
42. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Keeley Christine**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**