

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

**Decision notice**

**Date:** 15 October 2024

**Public Authority:** Northern Gas Networks Limited  
**Address:** 1100 Century Way  
Thorpe Park Business Park  
Colton  
Leeds  
LS15 8TU

**Decision (including any steps ordered)**

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1. The complainant has requested information relating to the Redcar Trial. Northern Gas Networks Limited ("the public authority") disclosed some information, but refused to provide the remainder, citing regulation 12(5)(a) (International relations, defence, national security or public safety), regulation 12(5)(e) (commercial or industrial information) and 12(4)(d) (material in the course of completion).
2. The Commissioner's decision is that only regulation 12(4)(d) applies and the balance of the public interest favours disclosure.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the requested information, subject to redactions under regulation 13 (personal information.)
4. The public authority must take these steps within 30 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

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5. On 30 August 2023 the complainant made the following request for information under the EIR:
  1. "We refer to the above project (the "Redcar Trial").
  2. We submit this Request pursuant to the EIR, to which Northern Gas Networks is subject, pursuant to regulation 3(1) of the EIR.
  3. Accordingly, we request the following environmental information:
    - a. Any information and/or comparative analysis held by Northern Gas Networks relating to the greenhouse gas emissions impact of the Redcar Trial and/or hydrogen gas deployment in repurposed gas networks more generally, pursuant to paragraph (b) of the definition of "environmental information" in regulation 2(1) EIR;
    - b. All documents, including but not limited to, leaflets, brochures, publications or information provided in surveys, that were provided to residents in the Redcar Trial area by Northern Gas Networks, including without limitation information as to the financial spend attributable to the provision of such information campaigns, including but not limited to financial spend derived from the NZASP Funding Request, pursuant to paragraph (c) of the definition of "environmental information" in regulation 2(1) EIR;
    - c. Any analysis carried out by or on behalf of Northern Gas Networks relating to the safety aspects of hydrogen gas, hydrogen gas blends, and repurposing existing gas networks prior to or during the Redcar Trial and/or hydrogen gas deployment in repurposed gas networks more generally, pursuant to paragraphs (c) and (f) of the definition of "environmental information" in regulation 2(1) EIR; and
    - d. Any cost-benefit analysis, other economic or financial analysis or assumptions made or carried out by or on behalf of Northern Gas Networks, for the purposes of the Redcar Trial or more generally, relating to the repurposing of existing gas networks, the replacement of existing gas boilers, the long-term cost implications for individual households or communities, or the comparative cost of electric home heating alternatives, prior to or during the Redcar Trial, pursuant to paragraph (e) of the definition of "environmental information" in regulation 2(1) EIR.
  4. For the purposes of this Request, we limit the scope of the Request to all information created, received, modified, utilised, accessed or published on or after 1 January 2021."

6. The public authority responded on 27 September 2023. It disclosed information, both in response to the request and about the trial in general, but also withheld information under regulation 12(5)(e) (commercial or industrial information).
7. The complainant requested an internal review, stating that information on emissions couldn't be withheld under regulation 12(5)(e).
8. On 10 January 2024, the public authority explained it was maintaining its position in relation to regulation 12(5)(e). It also introduced a reliance on regulation 12(5)(a) (International relations, defence, national security or public safety), and 12(4)(d) (material in the course of completion).
9. The public authority provided its final internal review outcome on 30 April 2024. Its final position was that the information requested at part c) of the request was exempt under regulation 12(5)(a), 12(5)(e) and 12(4)(d).

### Scope of the case

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10. The complainant contacted the Commissioner on 11 June 2024 to complain about the way that part c of their request had been handled. Part c of the request relates to 'safety cases and risk assessments undertaken as part of the Redcar Trial.'
11. At the outset of this investigation, the Commissioner wrote to the public authority and asked it to set out fully its final position in respect of the request. He also asked specific questions about the application of regulation 12(5)(a), 12(5)(e) and 12(4)(d). He also reminded the public authority that regulation 12(9) of the EIR states:

"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 (5)(d) to (g)."
12. In its final submission, the public authority explained to the Commissioner that:

"After detailed consideration, we take the view that whilst the exceptions stated in EIR 12(5)(a) and 12(5)(e) would apply and **may** (emphasis added by Commissioner) justify non-disclosure of the Documents, we would consider that the principal justification for non-disclosure relates to the exception under EIR 12(4)(d)... For these reasons and in the interests of brevity and ease of review, this

Response focusses entirely on the EIR 12(4)(d) exception and the related public interest arguments.”

13. The Commissioner considers that he made clear to the public authority that it was to provide its final submission to him. It was for the public authority to decide what evidence it wished to provide. He doesn't consider it would be fair in the circumstances to allow the public authority to have another opportunity to justify its stance – particularly given that it has already had four opportunities to do so. He therefore intends to look at all the exceptions the public authority has cited and all the evidence it has provided in support of each one.

## **Reasons for decision**

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### **Is the requested information environmental?**

14. 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);

15. The 'Redcar Trial' was a proposed pilot to replace home gas supplies with hydrogen. Northern Gas Networks had planned to heat around 2,000 homes and businesses in Redcar with hydrogen, but the pilot was cancelled due to insufficient local hydrogen production. A similar pilot was cancelled in Whitby due to local opposition.<sup>1</sup>
16. The public authority has explained to the complainant:

"the requested documents relate to general and operational health and safety, feasibility and best practice, they do not really concern "environmental information."
17. Despite this, the public authority has complied with the request under the EIR and applied several exceptions under the EIR in order to withhold information.
18. Looking at the withheld information, which is the safety cases and risk assessments undertaken as part of the Redcar Trial, and considering the context of the request more widely, the Commissioner is satisfied all of the withheld information is environmental.
19. The Redcar Trial, were it to have gone ahead, would have required new hydrogen production sites, new high pressure interconnecting pipelines, storage sites and new medium pressure pipelines. The Redcar Trial is clearly a plan or programme likely to affect the land and therefore falls under environmental information under regulation 2(1)(c).

### **Regulation 12(9) – Information on emissions**

#### **Regulation 12(5)(e) – commercial information**

20. 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.
21. Regulation 12(9) states that certain exceptions, including regulation 12(5)(e), cannot be used to withhold information on emissions. The Commissioner brought this to the public authority's attention when he asked further information about its application of regulation

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<sup>1</sup> [Government rejects plans for Whitby 'hydrogen village' trial due to local opposition - News - The Chemical Engineer](#)

12(5)(e). The complainant's position is that the withheld information relates to emissions. The public authority's position is that it doesn't because:

'The requested documents relate to the safety of hydrogen gas/blends and the repurposing of gas networks for the use of hydrogen...hydrogen being used as a resource would not be regarded as an emission...the safety cases and risk assessments undertaken as part of the Redcar Hydrogen Trial do not contain information about emissions.'

22. Emissions, for the purpose of 12(9), isn't defined within the EIR, but it's meant to be interpreted in the exact same way as the definition under regulation 2(1)(b).
23. It's also important to note that, as in the Court of Justice of the European Union (CJEU) in case C-442/14,<sup>2</sup> the use of the expression 'other releases' in regulation 2(1)(b) shows that the concepts of emissions, discharges and releases broadly coincide.
24. According to the Commissioner's guidance, 'emissions' is meant to be interpreted broadly and will include:
  - the by-product of an activity or process;
  - that is added (or potentially added) to and affects the elements of the environment;
  - over which any control is relinquished.
25. The Commissioner has, again, considered the nature of the request and the context in which it was made. When it comes to the Redcar Trial, the safety cases and risk assessments focus on the risks that the use of hydrogen poses, particularly to human safety. A large part of assessing this safety is assessing the likelihood of gas leaks and gas ingress through the soil, into buildings and into the air and atmosphere.
26. This gas would be a by-product of the Redcar Trial, which would be controlled by the new network, and has the potential to leak into the air and atmosphere, water, soil, land or landscape. Looking at some of the withheld information, which directly deals with the potential of such scenarios, the Commissioner is satisfied this information 'on emissions'.

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<https://curia.europa.eu/juris/document/document.jsf?text=&docid=185542&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1825951>

It follows that it can't be withheld under regulation 12(5)(e), in accordance with regulation 12(9).

27. Not all of the information is 'on emissions'. Some of it is generic health and safety information, schedules to the risk assessments, or relates to the safety of the Redcar Trial but doesn't deal with the potential gas leaks, so this information isn't covered by regulation 12(9).

28. In relation to regulation 12(5)(e), on 10 January 2024 the public authority explained to the complainant that:

"...there is a duty of confidence between the parties involved (including but not being limited to NGN and the UK Government Department for Energy Security and Net Zero (DESNZ) which is also agreed in contract (sic) protecting trade secrets/information and would have a detrimental impact should it be disclosed. The disclosure of the requested documents would adversely affect confidentiality by law to protect a legitimate economic interest. The requested information contain information about NGN's tender to DESNZ which is confidential and commercial in nature, as well as the parties contractual and legal obligations."

29. The above is insufficient to demonstrate a causal link between the exception and the withheld information, especially when to engage an exception in regulation 12(5), a public authority must show that disclosure "would" have an adverse effect; i.e. that the adverse effect is more probable than not. The above doesn't explain how disclosure would result in the prejudice that regulation 12(5)(e) is designed to protect from and why this prejudice is more than likely to occur.

30. This is why the Commissioner asked the public authority specific questions about its application of regulation 12(5)(e), which it declined to answer at submission stage. Since the Commissioner isn't in possession of any further or sufficient arguments, he finds the exception not engaged.

### **Regulation 12(5)(a) – International relations, defence, national security or public safety**

31. Regulation 12(5)(a) states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety.

32. On 30 April 2024, the public authority explained to the complainant:

"Notwithstanding the other reasons we set out in our previous letter to you dated 27th September 2023 (namely grounds 12 (5) (a) and (e))."



33. The Commissioner has studied the public authority's letter of 27 September 2023 and it doesn't provide the details of any causal link between regulation 12(5)(a) and the withheld information, so much so that the complainant, in their internal review request, asked the public authority to explain why the exception applied. They raised valid points that, if the trial was no longer going ahead, such concerns were no longer valid.
34. In the public authority's correspondence to the complainant of 10 January 2024, it explained:

"Information within the requested documents contains potentially relevant material to safeguard public security. The requested documents contain information, which, if disclosed, would adversely affect the ability to protect the public, public buildings and the industrial sites pertaining to the Redcar Hydrogen Trial from accident or acts of sabotage. It is therefore critical that such documents are not disclosed."
35. Again, the above is insufficient to demonstrate a causal link between the exception and the withheld information, especially when to engage an exception in regulation 12(5), a public authority must show that disclosure "would" have an adverse effect; i.e. that the adverse effect is more probable than not.
36. Furthermore, at the time that the above response was given to the complainant, it had been announced the Redcar Trial would not go ahead.<sup>3</sup> There is, and will no longer be, a Redcar trial to sabotage or target.
37. This is why the Commissioner asked the public authority specific questions about its application of regulation 12(5)(a), which it declined to answer at submission stage. Since the Commissioner isn't in possession of any further or sufficient arguments, he finds the exception not engaged.

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<sup>3</sup> [Redcar hydrogen trial scrapped by government - BBC News](#)



## **Regulation 12(4)(d) – material in the course of completion**

38. Regulation 12(4)(d) states that a public authority may refuse to disclose information which is, or which relates to:
- material which is still in the course of completion;
  - unfinished documents; or
  - incomplete data.
39. The public authority doesn't have to demonstrate that disclosure would have an adverse effect for the exception to be engaged. However, the withheld information does have to fall into one of the categories above.
40. The Commissioner is satisfied that all of the withheld information engages the exception. Two of the individual safety cases or risk assessments are either labelled "draft" and are clearly the first version of a piece of work that is meant to have several iterations.
41. The public authority has explained that, had the Redcar Trial progressed, the documents would have required 'review, input and sign-off from various parties' including the Health and Safety Executive and the Department for Energy Security and Net Zero.
42. The Redcar Trial was never progressed, or completed, and by virtue of this the withheld information can't be 'in the process of completion' because it's no longer being worked on and this work won't resume. However, it remains an unfinished document in perpetuity.
43. The Commissioner is satisfied the exception is engaged and now he'll go onto consider the balance of the public interest test.

## **The public interest test**

### **Factors in favour of disclosure**

44. There is always a presumption in favour of disclosure under the EIR. 'Hydrogen Villages' such as Redcar and Whitby were key plans under the government's goal to reach net zero by 2050.<sup>4</sup>

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<sup>4</sup> [Energy Security Bill factsheet: Enabling the Hydrogen Village trial - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/factsheets/energy-security-bill-factsheet-enabling-the-hydrogen-village-trial)

45. The public authority has explained:

"The presumption in favour of disclosure is significantly diminished given that the project was ultimately aborted in the form to which to Documents relate."

46. The Commissioner disagrees. Like the residents of Whitby, the Redcar Trial would have affected a significant number of individuals. There was real public concern in both instances about the safety of 'Hydrogen Villages'<sup>5</sup> and disclosure would address these concerns.

47. The Commissioner notes that, just because the Redcar Trial has been scrapped, doesn't mean that other trials won't go ahead.

### **Factors in favour of maintaining the exception**

48. The public authority has explained:

"Had this project gone ahead in final form NGN (Northern Gas Networks) and others would have been under an obligation to disclose specific information relating to the matter. There is therefore significantly less public interest in these Documents."

49. The Commissioner disagrees. If anything, he think this increases the argument in favour of disclosure, since the public authority is basically confirming the safety cases and risk assessments won't be made public if a trial is aborted. As the Commissioner has previously noted, just because the Redcar Trial has been scrapped, doesn't mean that the withheld information won't be of significant interest to the residents of future Hydrogen Villages, or future proposed Hydrogen Villages.

50. The public authority has also explained:

"Moreover, hydrogen projects and the feasibility and safety / operational related matters have moved on significantly (from this relatively embryonic stage) and therefore the unfinished incomplete documents would have little value...Even had they been disclosed the scientific and technical information would be of little to no utility to the unaccustomed and/or uninitiated non-technical reader."

51. Again, the Commissioner disagrees. Disclosure would demonstrate the evolution of hydrogen projects and specifically the safety concerns surrounding them. It's also not for the public authority to assume the

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<sup>5</sup> [Redcar hydrogen trial scrapped by government - BBC News](#)

public's level, or lack thereof, of understanding of important safety information.

### **Balance of the public interest test**

52. 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.
53. The Commissioner is persuaded that there is a significant public interest in the information. There is a wide public interest in helping the public understand the possibilities of Hydrogen Villages and the work the government is doing to move towards its net-zero target. There is also a narrower, though arguably more significant, interest in how participants in such trials are to be kept safe, and for the residents of any town or village who are, or might be in the future, part of said trial.
54. The public authority has explained that:

“Releasing incomplete or unfinished material into the public domain would distract public debate away from the substantive environmental issues that the information relates to. Instead, debate could focus on secondary issues such as any deficiencies in the information or the differences between a draft and a final version. Given the nature of the project and technical nature of the information, it would not be possible to provide substantive explanation to mitigate any potential distraction or confusion.”
55. The Commissioner disagrees; safety of the residents of any Hydrogen Villages is a 'substantive environmental issue in itself'. Furthermore, the public authority can easily provide a contextual statement alongside disclosure of the information which explains that it is an unfinished document and relates to a trial which was never completed.
56. Coupled with the lack of arguments from the public authority, the Commissioner considers that the presumption in favour of disclosure should prevail and therefore the information must be disclosed, subject only to redactions of personal information under regulation 13.

## Right of appeal

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57. 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)

58. 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.
59. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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