

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 21 August 2019

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information concerning plans, discussions, and related documents made by the National Security Council in respect of climate change and climate emergencies. The Cabinet Office did not respond to this request.
2. The Commissioner's decision is that the Cabinet Office has failed to respond to the request within 20 working days and has therefore breached Regulation 5(2) of the Environmental Information Regulations ("the EIR").
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the EIR, to the request.
4. The Cabinet Office 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 Freedom of Information Act and may be dealt with as a contempt of court.

Request and response

5. On 3 June 2019, the complainant wrote to the Cabinet Office and requested information in the following terms:

"I am writing to request under the Environmental Information Regulations:

1) Has the National Resilience Capabilities Programme or the National Security Council: Ministerial Sub-Committee on Resilience developed contingency plans for a climate emergency of any kind? This may include plans relating to extreme flooding or a wider climate disaster, for example rising temperatures causing instability or other threats to human life or society?

2) Has climate change been discussed at the National Security Council: Ministerial Sub-Committee on Resilience or any of its sub groups?

3) What records relating to climate change have been created by the National Security Council: Ministerial Sub-Committee on Resilience? Please include details of any memos, minutes or other relevant documents."

6. The Cabinet Office acknowledged the request on 4 June 2019, but had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 12 July 2019 to complain about the way their request for information had been handled.
8. In line with her usual practice, the Commissioner contacted the Cabinet Office on 31 July 2019 to highlight the outstanding response. She requested that the Cabinet Office respond to the request within 10 working days. Her correspondence was neither acknowledged nor responded to.
9. The Complainant contacted the Commissioner on 16 August 2019, stating that the Cabinet Office had still not issued a substantive response to their request.
10. The Commissioner considers that the scope of her investigation is to determine whether the Cabinet Office has complied with Regulation 5(2) of the EIR.

Reasons for decision

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. The Commissioner has not seen the requested information, but notes that the requested information concerns climate change, and climate emergencies. Therefore, she believes that it is likely to be information about the state of the elements of the environment, measures likely to affect the elements of the environment, reports on the implementation of environmental legislation, and information about the state of human health and safety, inasmuch as they are affected by these states, measures, and reports. For procedural reasons, she has therefore assessed this case under the EIR.

13. Regulation 5(1) states that: "*a public authority that holds environmental information shall make it available on request.*"

14. Regulation 5(2) states that such information shall be made available "*as soon as possible and no later than 20 working days after the date of receipt of the request.*"
15. The Commissioner considers that the request in question constituted a valid request for information under the EIR.
16. Regulation 7 provides that an authority may extend the time for compliance to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request or to make a decision to refuse to do so. However regulation 7(3) states that the authority is obliged to notify the applicant as soon as possible and no later than 20 working days after the request is received. The Commissioner has seen no evidence that the Council advised the complainant that it was relying on regulation 7.
17. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Cabinet Office has breached Regulation 5(2) of the EIR.

Right of appeal

18. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.
20. 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

Ben Tomes
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