

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

Decision notice

Date: 14 June 2021

Public Authority: Western Power Distribution
Address: Pegasus Business Park
Castle Donington
Derbyshire
DE74 2TU

Decision (including any steps ordered)

1. The complainant has requested Western Power Distribution (WPD) to disclose information relating to any Wayleave Agreement in place concerning a piece of land. Some information was disclosed but other information was withheld under regulations 12(5)(b) and 13 of the EIR. When the complainant challenged WPD over the extent of the information held, WPD also confirmed that nothing further was held.
2. The Commissioner is satisfied that WPD is entitled to rely on regulation 12(5)(b) and 13 of the EIR for the non disclosure of the remaining withheld information. She is also satisfied that some information is not held and therefore falls under the exception at regulation 12(4)(a) and that WPD has, on the balance of probabilities, identified and addressed all the recorded information it holds falling within the scope of the complainant's requests.
3. In terms of procedural matters, the Commissioner has identified breaches of regulations 5(2), 7(1), 7(3) and 11(4).
4. The Commissioner does not require any further action to be taken.

Request and response

5. Between 23 July 2018 and 12 March 2019 the complainant made various requests for information to WPD. The requests of 3 and 4 January 2019 appear to contain and consolidate each and every request and it is from this and other correspondence that it was agreed with the complainant that the Commissioner would address the following specific requests in this investigation:
 - A full copy of the Wayleave Agreement dated 1941 including any back sheet and any associated correspondence.
 - A copy of any Wayleave Agreement allegedly signed by the complainant relating to the underground works in the land in question in April 2015 or for WPD to deny any such agreement exists.
 - Whether WPD entered into a Wayleave or other Agreement for an underground cable in the land in question with a third party after 26 January 2015. (Please refer to paragraph 10). The complainant requires a copy of any such agreement, the back sheet and any associated correspondence.
6. It is difficult to detail each and every response due to the volume of correspondence between the complainant and WPD. But the Commissioner is satisfied that WPD issued refusal notices and internal review responses to the valid requests it believes it received (the complainant has raised a number of procedural matters in relation to the various responses which, to the extent that the Commissioner considers it is proportionate and resourceful to do so, will be addressed later in this notice). To the two main requests of 3 and 4 January 2019 a response was issued by WPD on 5 February 2019. Much correspondence took place following that response which could easily be taken as the complainant's request for an internal review and WPD's internal review response.
7. In terms of a specific response to the above bullet points, the Commissioner understands that WPD withheld the Wayleave Agreement in 1941 and any Wayleave Agreement entered into with a third party after 26 January 2015 under regulations 12(5)(b) and 13 the EIR (it also initially cited 12(5)(f) but later withdrew its reliance on this exception). With regards to a back sheet to each agreement, it argued that this information is not held. In relation to all associated correspondence, WPD's position is that it has disclosed all the recorded information it holds (whether in response to the complainant's EIR requests or subject access request under the Data Protection Act (DPA)) except four emails,

which it has withheld in accordance with regulation 12(5)(b) of the EIR and one email (identified towards the end of the Commissioner's investigation) under regulation 13 of the EIR which is associated with the Wayleave Agreement it holds with a third party after 26 January 2015. It has confirmed that it holds no further associated correspondence to that already identified.

Scope of the case

8. The complainant wrote to the Commissioner on 24 May 2019 (correspondence was received by the Commissioner on 29 May 2019) to complain about the way his requests for information had been handled. Various matters were raised but as detailed in paragraph 5 above it was agreed by letter on 8 January 2020 that the Commissioner would focus her investigation on these specific elements of his requests.
9. Numerous procedural matters were also raised. The Commissioner has reviewed these to the extent that she considers it is proportionate and resourceful to do so. She does not consider it is useful or an appropriate use of her limited resources to address each and every minor breach alleged by the complainant that may or may not have occurred during the protracted correspondence between the complainant and WPD. Some have already been debated at some length within the correspondence between the complainant and the Commissioner as the scope of this investigation was set and finally agreed.
10. During the Commissioner's investigation WPD decided to disclose the Wayleave Agreement dated 1941 to the complainant in full. It provided the complainant with a full copy by post on 11 February 2020. The complainant however continues to dispute there is no back sheet to this agreement.
11. Dealing with the second bullet point, as the complainant is asking to know if there is any Wayleave Agreement he signed or has been signed on his behalf, it constitutes a request for the complainant's own personal data, which must be considered under the DPA. The complainant was advised accordingly by letter on 22 October 2020. But to assist the complainant WPD said that it only hold two agreements (P002881 and A220140). These do not relate to the land in question but are the only two agreements it holds and it does not possess any other Wayleave Agreement to which the complainant is counterparty. If the complainant has any remaining concerns about this element of his request, he will need to pursue these directly with WPD under the terms of the DPA.
12. The complainant has made new requests for information along the way or referred to requests he has made previously using slightly different

wording or terms, for example bullet point three of paragraph 5 above. Here the complainant's original request was made using the term 'third party' (and has to be what the Commissioner will consider) but in later correspondence with the Commissioner the complainant named a specific person. As the Commissioner has already pointed out to the complainant, any new requests for information cannot be considered in this investigation. Instead they must be directed to WPD in the first instance and follow due process. The Commissioner is also limited to considering the specific wording of the requests as they were made to WPD and what recorded information falls within the scope of that. She cannot consider any later variation or indeed any additional information that may or may not fall within that variation.

13. She would also like to make it clear that the identity of the third party is exempt from disclosure under regulation 13 of the EIR (see the Commissioner's full analysis below) and any reference to the third party should not in anyway be taken by the complainant to mean the named person he specified. The Commissioner is not confirming or denying the third party is the named person specified by the complainant.
14. The Commissioner will now consider bullet points one and three of paragraph 5 above, what she understands to be outstanding, WPD's position in respect to that and then outline her final decision.

Reasons for decision

Back sheet to Wayleave Agreement 1941

15. Regulation 5(2) states that a public authority should make recorded information available on request and within 20 working days of the receipt of the request unless an exception detailed in regulation 12 applies.
16. Regulation 12(4)(a) of the EIR is the appropriate exception to use/cite if a public authority does not hold the requested information. Although this has not been formally cited by WPD it is the appropriate exception to use in these circumstances and it is what the Commissioner will now consider.
17. The complainant disputes there is no back sheet to the Wayleave Agreement. The Commissioner put the complainant's concerns to WPD and it carried out appropriate and detailed searches of all associated records and respective areas. WPD has confirmed that no back sheet is held.

18. WPD explained that its template agreement is available on line and has also been provided to the complainant in response to his requests. This contains no section that could obviously be identified as being a back sheet. It pointed out the Wayleave Agreement dated 1941, given its age, follows a different format but again nothing it could obviously identify as being a back sheet to this document.
19. The Commissioner has no reason to doubt WPD's position, the extent of its searches or the explanation it has provided. Without any evidence to the contrary, the Commissioner is satisfied that on the balance of probabilities a back sheet is not held. Regulation 12(4)(a) of the EIR therefore applies to this element of the complainant's outstanding complaint.

Associated correspondence and regulation 12(5)(b)

20. WPD confirmed that it released all correspondence relating to the complainant's request (except the four emails the complainant is already aware of and an email it more recently identified associated with the agreement with a third party, which she will address in more detail below) either in response to his EIR requests or his subject access request under the DPA. It advised the items that were released in accordance with his EIR requests were itemised in its response of 1 November 2018 (responding to his request dated 3 September 2018) and 5 February 2019 (responding to his separate requests dated 3 and 4 January 2019).
21. It stated that thorough searches were carried out to identify all relevant recorded information held, and all except the five emails above were provided to him. It holds no additional information falling within the scope of his various requests.
22. The Commissioner is again satisfied that all recorded information falling within the scope of the complainant's requests has, on the balance of probabilities, been identified and either disclosed to him or withheld under regulation 12(5)(b) and 13 of the EIR which she will address in a moment. The Commissioner has received no evidence to the contrary.

Regulation 12(5)(b) – course of justice

23. As previously explained four of the five emails are communications between WPD and a firm of solicitors which have been withheld under this exception.
24. Regulation 12(5)(b) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or

disciplinary nature. The Commissioner accepts that the exception is designed to encompass information that would be covered by Legal Professional Privilege (LPP).

25. There are two types of privilege - litigation privilege and legal advice privilege. Litigation privilege applies to confidential communications made for the purpose of providing or obtaining legal advice about proposed or contemplated litigation. There must be a real prospect or likelihood of litigation, rather than just a fear or possibility. Legal advice privilege is attached to confidential communications between a client and its legal advisers, and any part of a document which evidences the substance of such a communication, where there is no pending or contemplated litigation.
26. WPD advised that the emails relate to and comprise of legal advice provided by a firm of solicitors to WPD. It is therefore subject to LPP and disclosure of this information would adversely affect the course of justice. It explained further that the advice relates to the land the subject of the complainant's requests and other property law related aspects of this matter. It attracts legal advice privilege because it was provided by a professional legal adviser to WPD, it was made for the sole purpose of WPD obtaining legal advice in this matter and was communicated in a professional capacity.
27. It referred to the Information Tribunal hearing of *Woodford v IC* (EA/2009/0098) which confirmed that the test for an adverse effect in relation to LPP is met by the general harm which would be caused to the principle of LPP by releasing the legal advice in question. WPD said the tribunal commented:

"There can be no doubt that disclosure of information otherwise subject to legal professional privilege would have an adverse effect on the course of justice".
28. The Commissioner has reviewed the four emails and she is satisfied that they are communications between lawyer and client for the sole purpose of requesting and receiving of legal advice. She is therefore satisfied that they are subject to advice privilege and therefore LPP.
29. Turning now to whether disclosure would adversely affect the course of justice, the Commissioner notes that there appears to be an ongoing dispute between the complainant and WPD in relation to the land in question and this was still very much a live and ongoing dispute at the time of the request. Legal advice was obtained by WPD in relation to the land the subject of the complainant's request and other property law matters. The Commissioner is of the view that disclosure of information subject to LPP will have an adverse effect on the course of justice. This

is because the principle of LPP would be weakened if information subject to privilege were to be disclosed under the EIR.

30. For the above reasons, the Commissioner is satisfied that regulation 12(5)(b) is engaged in respect of this information. She will therefore now go on to consider the public interest test.

Public interest test

31. WPD advised that it balanced the public interest in withholding the information against the public interest in disclosure. It believes that there is a strong public interest in a public authority withholding information which relates to the administration of the course of justice. This is particularly the case for information which is covered by legal professional privilege, due to the importance of the principle which underlies it: to safeguard openness in all communications between client and lawyer in order to ensure access to full and frank legal advice. WPD commented that previous decision notices issued by the Commissioner support the view that the public interest will ordinarily be in favour of withholding information subject to legal professional privilege, in the interests of the course of justice.
32. The Commissioner has carefully considered the arguments for and against disclosure and, in doing so, she has taken account of the presumption in favour of disclosure as set out in regulation 12(2).
33. She accepts there is a public interest in disclosing information that allows scrutiny of a public authority's role and enhances transparency in its decision making process by allowing the public to understand and challenge those decisions. The Commissioner also accepts that disclosure promotes public debate, accountability and transparency of public authorities in general. Disclosure of the withheld information in this case would provide a degree of transparency and allow the complainant to understand more closely what advice WPD received in relation to the land and other property related matters.
34. However, the Commissioner acknowledges that the public interest in maintaining the exception is a particularly strong one given the important, long standing principle which underlies LPP. LPP safeguards openness in all communications between client and lawyer in order to ensure access to full and frank legal advice. The Commissioner considers there would need to be special or unusual factors involved (for example where substantial amounts of public money is involved, maladministration or unlawful activity or where a decision will affect a large amount of people) to push the balance of the public interest in this case in favour of disclosure.

35. In the Tribunal hearing of *Bellamy v Information Commissioner & Secretary of State for Trade and Industry* (EA/2005/0023, 4 April 2006) it was noted that:

“there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest”.

36. The Commissioner has reviewed the withheld information and she cannot identify any special or unusual factors in this case or any equally strong countervailing public interest arguments in favour of disclosure that would warrant disclosing the legal advice WPD requested and received which is subject to LPP. If disclosure were ordered it would undermine WPD's ability to obtain legal advice in a timely fashion in the future and have the confidence that advice given is done so freely without the consideration of public disclosure. This would lead to advice that is not formed by all relevant facts and could result in poorer decisions being made because WPD would not have the benefit of thorough, candid, free and frank legal advice. Such consequences are not in the interests of the wider public.
37. For the above reasons, the Commissioner has concluded that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exception in this case.

Wayleave or other Agreement with a third party after 26 January 2015, back sheet and associated correspondence.

38. WPD confirmed that it holds a Wayleave Agreement with a third party and one email relating to it, but considers this information is exempt from disclosure under regulation 13 of the EIR.
39. It is worthy to note that the original request was made using the term 'third party' and this has always been how WPD has responded, never confirming or referring to the identity of the third party as this is subject to regulation 13. The complainant has since referred to this element of his request but then naming who he believes to be the third party. The Commissioner is bound by the original wording of the complainant's request and so will proceed on that basis. Reference will therefore only be made to the 'third party', making no reference to their identity or indeed any suggestion as to whether the complainant is correct or not in his understanding of who this 'third party' is.
40. Before the Commissioner goes on to addressing regulation 13 of the EIR and its application in this case, she will outline her decision in respect of the complainant's request to receive a back sheet. Again, WPD has confirmed that there is no back sheet to this agreement and therefore

this information is not held. WPD's reasoning for this is the same as outlined above in paragraphs 17 and 18 above.

41. For the exact same reasons as outlined in paragraphs 19 above, the Commissioner is satisfied, therefore, that the information is not held and the appropriate exception to cite here is 12(4)(a) of the EIR.
42. Turning now to regulation 13 of the EIR and WPD's decision to withhold the agreement with a third party and one email under this exception.

Regulation 13 – third party personal data

43. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
44. In this case the relevant condition is contained in regulation 13(2A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
45. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then regulation 13 of the EIR cannot apply.
46. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

47. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

48. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
49. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an

¹ As amended by Schedule 19 Paragraph 307(3) DPA 2018.

identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

50. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
51. WPD has said that the withheld information relates to a living individual and from the contents it is possible to identify that individual. It includes their name and address, together with descriptions of the relevant land such that it would be possible to identify that individual from the withheld data.
52. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to a third party. She is satisfied that this information both relates to and identifies the third party concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
53. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
54. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

55. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

56. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
57. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

58. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:
59. *"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of*

the data subject which require protection of personal data, in particular where the data subject is a child”².

60. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test:-

- **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

61. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

62. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.

63. Further, a wide range of interests may be legitimate interests. They can be the requester’s own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

² Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

64. GPD has not addressed what legitimate interests there may be, whether personal or wider in much detail. It has only said that there is negligible interest in the public at large having access to this agreement seeing as it relates to a small parcel of land. However, the Commissioner understands that the complainant has his own personal interests in the disclosure of this information. It would help him understand what agreements are in place in respect of the land in question and potentially assist with his dispute in relation to this land and WPD. As stated above, the requester's own interests constitute legitimate interests for the purposes of regulation 13.

65. *Is disclosure necessary?*

66. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.

67. The Commissioner considers disclosure is necessary to meet the legitimate interests identified. She is not aware of any other less intrusive means by which they could be achieved. Again, WPD has not addressed this specific point or raised any arguments to say that disclosure is not necessary.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

68. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the EIR in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

69. In considering this balancing test, the Commissioner has taken into account the following factors:

- the potential harm or distress that disclosure may cause;
- whether the information is already in the public domain;
- whether the information is already known to some individuals;
- whether the individual expressed concern to the disclosure; and

- the reasonable expectations of the individual.
70. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
 71. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
 72. WPD advised that the withheld information is a private law agreement entered into between WPD and the relevant data subject. The email that has been withheld relates to the arrangements for the entry into the Wayleave Agreement. It argued that when it enters into agreements of this nature it has regard for the reasonable expectations of the data subject(s) that such agreements (and personal data) will be kept private.
 73. WPD confirmed in this particular case it asked the data subject whether they would be willing for the agreement to be disclosed and they confirmed that they do not consent to its disclosure. They confirmed that they require the agreement to remain private.
 74. The Commissioner notes that the withheld information is a private agreement between WPD and the data subject. Therefore the expectations of the data subject will be that it will remain private and confidential and not be disclosed to the world at large in response to an EIR request. She is satisfied that, given the circumstances in which the agreement was entered and it being a private agreement, these expectations are reasonable and proportionate. She also notes that the data subject has specifically objected to disclosure of this information. It would be unfair and inappropriate to disregard the data subject's specific objections in light of the information itself and it being a private agreement.
 75. As disclosure would be against the reasonable expectations of the data subject and the data subject has specifically objected to disclosure, the Commissioner is satisfied that disclosure would cause the data subject some element of distress and upset.
 76. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.

77. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.

The Commissioner's view

78. The Commissioner has therefore decided that WPD was entitled to withhold the information under regulation 13(1), by way of regulation 13(2A)(a).
79. Since the end of the transition period following the UK's departure from the EU, the GDPR were replaced by the UK GDPR. As this request was received before the end of that transition period, the application of regulation 13(1) has been decided by reference to the GDPR. However the Commissioner is also satisfied that the disclosure of the personal data to which that exception was applied would not contravene the UK GDPR for exactly the same reasons.

Procedural matters

80. The complainant said that in relation to his request of 3 September 2018 WPD did not notify him of the time extension it required until 3 October 2018, so WPD breached the EIR by failing to notify him within 20 working days of the receipt of his request. He also felt that there was no reasonable justification for the extension, as WPD already had the information to hand as a result of his previous requests and correspondence. Additionally, WPD failed to respond to the request until 1 November 2018, which was a day late.
81. WPD confirmed to the Commissioner that it received the complainant's request of 3 September 2018 on 4 September 2018. This therefore means that the time limit by which it should have notified the complainant of the time extension was 2 October 2018. It sent the notification on this date.
82. With regards to the need for an extension, WPD explained that this was the first extensive EIR request it had dealt with since the EIR legislation became applicable to it. It stated that the complainant's requests were themselves difficult to understand in places and involved WPD reviewing a large amount of complex information (often to even establish whether it even related to his requests). Although it accepts it could have sought the extension sooner, the need for an extension was reasonable and appropriate in the circumstances.
83. Regulation 7(3) of the EIR requires a public authority to notify the applicant that it requires an extension as soon as possible and no later than 20 working days from receipt of the request. WPD did not breach regulation 7(3) in the sense that it issued notification after the 20

working days expired (as it confirmed that it issued its response on 2 October 2018) but it acknowledges it could have notified the complainant of the extension sooner. As regulation 7(3) of the EIR also stipulates that notification should be issued 'as soon as possible', the Commissioner is satisfied that WPD breached regulation 7(3) in this regard.

84. The Commissioner agrees with both the complainant and WPD the actual response was a day late. This does constitute a breach of regulation 7(1) of the EIR.
85. In terms of whether the extension was reasonable in the circumstances, the Commissioner notes that the legislation permits a public authority to extend the time for compliance by an extra 20 working days if it considers the request is particular complex or voluminous. The Commissioner has had sight of a considerable amount of correspondence between WPD and the complainant and she acknowledges that the complainant does have a tendency to send lengthy correspondence, which at times is difficult to navigate and contains a number of requests for information. She is therefore satisfied that the matter was sufficiently complex and extensive to warrant the additional time the legislation permits. She therefore has no criticism here.
86. With regards to his requests of 3 and 4 January 2019, the complainant submits that WPD's response was dated 5 February 2019 but not franked until the day after. Therefore the response was not actually issued or served until 6 February 2019 and WPD breached the EIR.
87. WPD has said that it does not have a record of the date the response letter left WPD as Royal Mail no longer keeps the tracking code details for when it was sent. It however accepts that the response is likely to have been sent late given what the complainant has said.
88. The Commissioner accepts on the evidence to hand that WPD's response was late and therefore it breached regulation 5(2) of the EIR on this occasion.
89. With regards to the complainant's internal review request dated 21 January 2019, he alleges that Royal Mail confirmed that this was received by WPD on 22 January 2019. However, WPD's internal review response was not issued until 29 March 2019.
90. WPD has said that its records confirm that the complainant's request for an internal review was received on 23 January 2019. A response was then sent on 29 March 2019. As Royal Mail no longer keeps the tracking

code details of when its response was sent, it is unable to confirm this for definite.

91. As the complainant has advised the Commissioner that he has proof from Royal Mail which confirms his request for an internal review was received on 22 January 2019, the Commissioner is willing to accept that WPD's response was late and therefore in breach of regulation 11(4) of the EIR.
92. Please note, as previously explained in paragraph 9 above, the Commissioner has not reviewed and considered every possible breach of the legislation throughout the complainant's correspondence with WPD. She does not consider this would be an appropriate use of her limited resources. She has however documented those outlined above, which came to her attention fairly easily as she investigated the complaint and on which WPD provided its position.

Other matters

93. The complainant raised concerns over who carried out the internal review of 29 March 2019. The Commissioner has reviewed how it was carried out and she is satisfied that it was as fair and as impartial as practicably possible in the circumstances.

Right of appeal

94. 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

95. 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.
96. 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

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