

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

Decision notice

Date: 20 May 2025

Public Authority: North Sea Transition Authority
Address: Sanctuary Buildings, 20 Great Smith Street,
London, SW1P 3BT

Decision (including any steps ordered)

1. The complainant has requested North Sea Transition Authority (NSTA) to disclose the name of the operator(s) it has started to investigate in relation to alleged failures to complete timely plugging and abandonment in line with approved plans. NSTA refused to disclose the requested information citing regulation 12(5)(b) of the EIR.
2. The Commissioner's decision is that NSTA is entitled rely on regulation 12(5)(b) of the EIR. NSTA breached regulation 14(2) by failing to issue its refusal notice within 20 working days of receipt.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 17 July 2024, the complainant wrote to NSTA and requested information in the following terms:

"The licensee/operator or licensees/operators (parties) the NSTA has commenced an investigation into relating to alleged failures to complete timely plugging and abandonment in line with approved plans.

According to the NSTA Case Register, "The NSTA may publish the names of relevant parties to a dispute or sanctions case if it considers that such disclosure would be in the public interest". As outlined by the NSTA, ensuring licensee/operator adherence to well decommissioning timelines and deadlines is in the public interest "to support the UK's supply chain, clean up their oil and gas legacy and stop costs spiralling". As a result, I believe it is in the public interest for the names of any licensees/operators not adhering to these deadlines to be public knowledge."

5. NSTA responded on 10 September 2024. It refused to disclose the requested information under regulation 12(5)(b) of the EIR.
6. The complainant requested an internal review on 10 September 2024.
7. NSTA carried out an internal review and notified the complainant of its findings on 17 December 2024. It upheld its application of regulation 12(5)(b) of the EIR.

Scope of the case

8. The complainant contacted the Commissioner on 27 November 2024 to complain about the way their request for information had been handled. They dispute the exception applies and even if it does, they consider the value of the information being disclosed should outweigh the public interest in maintaining the exception.
9. The Commissioner considers that the scope of his investigation is to determine whether or not NSTA is entitled to rely on regulation 12(5)(b) of the EIR.

Reasons for decision

Regulation 12(5)(b) - the course of justice

10. Regulation 12(5)(b) of the EIR states that a public authority can 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.
11. The exception is subject to the public interest test and in accordance with regulation 12(2), a public authority is required to apply a presumption in favour of disclosure.

12. NSTA explained that, between the information request being received and its refusal notice of 10 September 2024, it published an 8 week consultation seeking the views on its proposed approach to the publication of company specific information relating to investigations and operator decommissioning obligations. A key proposal in the consultation was publishing the name of a company under investigation (the requested information in this case). NSTA confirmed that this represented a proposed change in the way NSTA currently publishes company specific information.
13. The closing date for the consultation was 31 October 2024 and NSTA outlined how it was still in the process of considering the responses received and how it intends to alter its current procedures at the time it responded to the complainant's internal review on 17 December 2024.
14. Initially, NSTA argued that disclosure of the requested information would adversely affect the consultation exercise; taking the view that the consultation exercise itself fell within the definition of the exception.
15. During the Commissioner's investigation it altered its approach slightly. It provided detailed submissions on how disclosure would adversely affect the 'course of justice' on the basis that it would prejudice NSTA's ability to conduct its investigatory process in terms of the current investigation and others.
16. NSTA argued that its published case register currently identifies when it has opened a case and the focus of that investigation. It does not currently publish additional information about investigations that it has opened and their progress and it does not identify which company is the subject of an investigation, unless and until that investigation results in the imposition of a sanction notice.
17. It stated that much of its ability to properly monitor and investigate those it regulates is reliant upon cooperation from them, particularly in relation to obtaining relevant information and documents. NSTA commented that although it has statutory powers that enable it to require those it regulates to submit specified information, this process is far more efficient and effective when operators work in cooperation with NSTA.
18. NSTA went on to explain how information relating to its investigations, in most cases, is sensitive information. If those its regulates become concerned that NSTA will depart from its current published policy and disclose their name and other information to the public, then they would be less likely to cooperate and possibly withhold information/documents that are relevant to monitoring and investigations. It stated that this would in turn adversely affect its functions with regard to enforcement

action and ascertaining whether justification for regulatory action exists/may arise in relation to an operator.

19. NSTA confirmed that its investigations are ongoing and require NSTA to examine and understand the system of ownership and decision making across a complex company structure. It stated that its ability to do this is far more efficient and effective if the operator cooperates with NSTA. It argued that the company concerned here would understandably be concerned if NSTA were to release its name so early in the investigatory process, where the current policy presumption, as set out in [NSTA's published guidance](#), is that it will not do so. The guidance does state that NSTA could, if it felt it was in the public interest to do so. But NSTA does not consider that to be the case here and the general, established expectation of all operators is that their identity will not be published at such an early stage.
20. NSTA advised that the impact of publishing the company's identity at such a stage (considering the current processes and procedures in place) would likely be that the company will become far more guarded with the information it shares with NSTA because of such a disclosure and it being against its own current guidance. It argued that this would in turn adversely affect NSTA's ability to conduct the investigation (and future investigations) in an efficient and effective manner.
21. It referred to the consultation and stated that it is important to note that the proposal to publish the name of a company under investigation is framed as being subject to the consideration of various proposed public interest factors for and against publication (it referred to Annex A and B of its consultation where this is discussed in more detail). NSTA stated that it would therefore not be the case that, where this proposal was implemented, NSTA would always publish the name of company under investigation. Instead it would be considered on a case-by-case basis depending on the relevant circumstances for that particular investigation.
22. It ended by saying that its decision to not disclose the withheld information was and continues to be consistent with its current policy approach to disclosing the name of a company under investigation.
23. The Commissioner accepts that NSTA's regulatory investigation into the company, and others, is a function which falls within the definition of 12(5)(b) of the EIR. He considers it falls within the element of the exception where it states:

"...the ability of a public authority to conduct an inquiry or investigation of a criminal or disciplinary nature."

24. In terms of the adverse effect of disclosure, the Commissioner agrees with NSTA that disclosure of the withheld information would adversely affect its ability to carry out its investigation into the relevant company (and others) in an efficient and effective manner. He is therefore satisfied that 12(5)(b) of the EIR is engaged and he will now explain why.
25. The Commissioner accepts that disclosure at the time of the request (and now) would go against NTSA's published guidance and established position on what information is released and when. The companies it regulates have a firm expectation as a result of that published guidance that their identity will (except in exceptional circumstances) not be published until the end of an investigation and only when a sanction is required. If NTSA were to go against its own established processes, it would adversely affect its ability to investigate the company concerned and carry out future investigations into those it regulates when required.
26. The companies NTSA regulate would be less willing to share freely and openly information with it and would be less cooperative. As NTSA has outlined, it relies heavily on the companies it regulates to engage with it voluntarily and cooperate freely and openly so it is able to carry out its functions efficiently and effectively. If the companies it regulates became less cooperative and less willing to share information with NTSA, it would make NTSA's work much harder to carry out and involve NTSA having to use more costly and time consuming formal measures in order to investigate any concerns or issues it has.
27. The Commissioner notes that NSTA has recently consulted on a proposed change to its current policy approach on the publication of company specific information and being more open and transparent earlier on in its investigations. Some may think this suggests that disclosure of the information could not therefore cause the effects argued or at least to the extent claimed.
28. Whilst the Commissioner would accept this is a valid argument, he does not consider the ongoing consultation is sufficient to warrant the disclosure of the withheld information at this stage. This is because NSTA is still considering what if anything it will alter and how this will play out in terms of its investigations going forward. Disclosure now would pre-empt that consultation exercise and it would still go against the established approach that it currently in place and what the companies NSTA regulate expect at this point, if an investigation was to commence. It would damage the trust and working relationships NTSA has with those it regulates and adversely affect its ability to carry out timely and effective regulatory investigations.

29. It may be the case that in a few months NSTA will start to make the requested available, but that it not the situation now and it still may be the case that it stays with its current practices on disclosure.

Public interest test

30. NSTA stated that it recognised the public interest in regulators being transparent about regulatory decisions that they have taken in respect of those they regulate. It commented that it is undertaking a significant amount of work to increase transparency around NSTA's regulator decision making.
31. However, it considers there is a very strong public interest in ensuring that statutory regulators (like NSTA) are fully equipped to properly regulate their sector, as intended by Parliament. In this case, it argues that there is a strong public interest in ensuring that NSTA is able to properly carry out its regulatory functions under the Energy Act 2016 in relation to the named operator and other operators. It stated that disclosure would adversely affect its ability to do that.
32. NSTA confirmed that there is no suggestion that it is not performing its statutory functions properly, and consequently there is no specific public interest arguments in favour of disclosure in this case. It also considers that, in relation to NSTA's activities, general transparency and accountability are already served by the fact that NSTA regularly publishes information about its work when it is in the public interest to do so.
33. The Commissioner acknowledges the public interest in openness and transparency and in the disclosure of information relating to the companies it investigates. NSTA has recognised itself that there is a drive for more accountability and transparency earlier on in its investigation and this is why it is doing the consultation exercise. The fact that it is undertaking this exercise suggests that what it currently publishes and when it not enough to meet the public interest.
34. That being said however, at the time of the request and now that consultation exercise was/is still under consideration and no final decision had/has been made on what if anything additional will be published and when. So despite this drive and recognition for more transparency, the established approach and expectation of companies at the time of the request was the identity of a company(ies) under investigation would not be published until the end of the investigation and if there is a sanction. There was and still remains the prospect that nothing will change to NSTA's current approach.

35. The Commissioner has accepted that disclosure of the withheld information at the time of the request would go against NSTA's own current and operational guidance/its established approach. It would also pre-empt the consideration of its consultation. It would therefore adversely affect NSTA's ability to investigate the company that falls within the scope of this request and others going forward.
36. Disclosure would damage NSTA's working relationships with those it regulates and discourage those it regulates from sharing information freely and openly during an investigation. This would hinder NSTA's ability to investigate efficiently and effectively and such consequences are not in the public interest. If companies became reluctant to engage with NSTA as a result of it going against its own procedures (and therefore their expectations of what happens in an investigation) NSTA's ability to carry out its functions will be more time consuming. It may also have to result to more formal powers as a result which would also be more costly to the public. Again, this is not in the public interest.
37. For the above reasons, based on the specific circumstances at the time of the request, the Commissioner considers the public interest in disclosure is outweighed by the public interest in maintaining the exception.

Procedural matters

38. Regulation 14(2) of the EIR requires a public authority to issue a refusal notice no later than 20 working days from receipt of the request. NSTA's refusal notice was late. The Commissioner has therefore recorded a breach of regulation 14(2) in this case.

Right of appeal

39. 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

40. 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.
41. 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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