Environmental Information Regulations 2004 (EIR)

Decision notice

Date: **8 April 2013**

Public Authority: **Department for Business, Innovation and Skills**
Address: **1 Victoria Street**
London
SW1H 0ET

Decision (including any steps ordered)

1. The complainant requested various information relating to drainage and lightning protection at the Met Office headquarters building. The Met Office refused to disclose most of this information under exemptions from the Freedom of Information Act 2000. The Commissioner has found that this information is environmental and so should be considered under the EIR.

2. The Commissioner's decision is that some of the information is excepted from disclosure under regulation 12(5)(a). However, in relation to the remainder of the information, this is not covered by any of the exceptions to disclosure contained in the EIR and so should have been disclosed.

3. The Commissioner requires the Met Office to take the following steps to ensure compliance with the legislation.

    - Disclose the information that the Commissioner has found is not covered by regulation 12(5)(a), that is, the written description of the petrol / oil interceptors and the content redacted from the *"Test and Inspection Report of Lightning Protection System"*.

4. The public authority 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 Act and may be dealt with as a contempt of court.

Background

5. The Met Office is a Trading Fund within the Department for Business, Innovation and Skills (BIS) and is not a public authority in its own right for the purposes of the Freedom of Information Act (FOIA). For this reason, this notice has been served on BIS, although for the sake of clarity the remainder of this DN refers to the Met Office rather than to BIS.

Request and response

6. On 29 July 2012, the complainant wrote to the Met Office and requested information in the following terms:

   "Please provide me with copies of the following documents:

   (1) Lightning Protection System Test Results since 2004.
   (2) Lightning Risk Assessment Reports since 2004.
   (3) As Built Drainage Drawings for the Met Office.
   (4) Specific details of the Sustainable Urban Drainage System.
   (5) Details of the Petrol/Oil Interceptors installed at the Met Office."

7. After sending a holding response on 9 August 2012, the Met Office responded substantively on 24 September 2012. In relation to request (1) some information was disclosed and in relation to request (2) the complainant was advised that no information was held. In relation to the remainder of the information falling within the scope of request (1) and in relation to requests (3) to (5), the Met Office refused to disclose the information, with the exemptions provided by the following sections of the FOIA cited:

   24(1) (national security)
   26(1) (prejudice to defence)
   31(1)(a) (prejudice to the prevention or detection of crime)
   38(1) (endangerment to health and/or safety)

8. The complainant requested an internal review on 19 October 2012 and the Met Office responded with the outcome of the review on 3 December 2012. The outcome of the review was that the refusal under the exemptions from the FOIA cited previously was upheld.

Scope of the case

9. The complainant contacted the Commissioner initially on 21 November 2012 and again on 4 December 2012 following the completion of the internal review to complain about the refusal to disclose the majority of the information. The complainant indicated at this stage that he did not agree with the argument from the Met Office that disclosure of the information he had requested could be counter to national security.

10. Although this request was handled by the Met Office under the FOIA, as covered below the view of the Commissioner is that this information is environmental and so the request should have been handled under the EIR. As the exception provided by regulation 12(5)(a) provides an equivalent in the EIR to FOIA sections 24(1), 26(1) and 38(1), all of which were cited by the Met Office, the Commissioner has considered that exception here. In doing so he has taken into account the arguments advanced by the Met Office in support of the FOIA exemptions it cited.

Reasons for decision

Regulation 2

11. The first question for the Commissioner to address here is whether the information is environmental in accordance with the definition given in regulation 2(1). Environmental information is defined within regulation 2(1) of the EIR as follows:

> *"any information in written, visual, aural, electronic or any other material form on –*
>
> *(a) the state of the environment, such as air and atmosphere, water, soil, land and landscape and natural sites including wetlands…*
>
> *(b) factors, such as substances, energy, noise, radiation or waste, emissions…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…and activities affecting or likely to affect the elements and factors referred to in (a) and (b)…*

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human health and safety, 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 information falling within the scope of request (1) is redactions from a document titled *"Test and Inspection Report of Lightning Protection System"*. The view of the Commissioner is that this information is environmental under regulation 2(1)(f); it is "on" how a built structure may be affected by air and atmosphere, which are elements of the environment referred to in 2(1)(a).

13. The information falling within the scope of requests (3) to (5) consists of diagrams and descriptions relating to the drainage system at the Met Office HQ. The view of the Commissioner on this information is that it falls under regulation 2(1)(c); it is information "on" the drainage system of the Met Office HQ. This system is a measure likely to result in factors referred to in 2(1)(b) such as waste, emissions and discharge, which in turn would be likely to affect water, which is an element of the environment referred to in 2(1)(a).

14. The Commissioner therefore finds that all of the information in question is environmental and thus was exempt from the FOIA under section 39 of that Act. This request should instead have been considered under the EIR. The remainder of this analysis concerns whether the EIR required the disclosure of this information.

Regulation 12(5)(a)

15. This regulation provides an exception from disclosure in relation to information the disclosure of which would adversely affect international relations, defence, national security or public safety. Consideration of this exception is a two-stage process; first it must be engaged as disclosure would result in any of the effects mentioned in this regulation. Secondly, this exception is qualified by the public interest, which means that the information must be disclosed unless the public interest in the maintenance of the exception outweighs the public interest in disclosure.

16. The Met Office has argued that three of the impacts described in this exception could result through disclosure; an adverse effect upon defence, national security and public safety. The focus of the arguments of the Met Office is that disclosure would be likely to prejudice the security of its headquarters building. It argues that its headquarters building is a potential terrorist target. The view of the Commissioner is

that it is clear that a terrorist attack would adversely affect national security and public safety.

17. As to how the security of the Met Office HQ is relevant to defence, the Met Office has referred to the services that it provides to the armed forces. A terrorist attack upon its premises could harm the ability of the Met Office to carry out this work, with a consequent adverse effect upon defence.

18. The Commissioner accepts that the Met Office, as a high profile government organisation, is a potential terrorist target and, therefore, that the basis of its reasoning for citing this exception is sound. The next step is to consider whether the content of the information suggests that this could realistically be of use in the planning of an attack upon the Met Office.

19. The withheld information consists of the following four categories.

    - A drawing of the drainage system for the Met Office HQ.
    - Written description of the *"Sustainable Urban Drainage System"*.
    - Written description of the petrol / oil interceptors.
    - A minority of the content of the *"Test & Inspection Report of Lightning Protection System"*, which was redacted when the remainder of the content was disclosed.

20. Covering the drainage drawing and the written description of the drainage system first, the argument of the Met Office here was that the detail that this information provided about the structure of the building could be used in the planning of a terrorist attack. The Commissioner agrees that this information does provide considerably more detail about the structure of the Met Office HQ than is currently available in the public domain. Having already found that there is a likelihood of the Met Office HQ being targeted for attack, he also accepts that this information could be used in the planning of such an attack. The exception provided by regulation 12(5)(a) is, therefore, engaged in relation to this information.

21. Turning to the written descriptions of the petrol / oil interceptors, it is less clear how the knowledge gained through the disclosure of this information could be useful in the planning of a terrorist attack upon the Met Office. When asked to specifically identify the adverse effect from disclosure of this information, the Met Office referred to this information including photos showing a particular component of these and suggested that this would enable the location of the interceptors to be established.

It also stated that this knowledge could be used to target the interceptors for attack.

22. The Commissioner has accepted above that the Met Office may be a target for terrorist attack and that information consisting of details of the drainage system could assist with the planning of an attack. He does not, however, accept that this argument extends to the description of the petrol / oil interceptors. Having taken the content of this information into account, the Commissioner does not believe that the argument of the Met Office about this information has been properly made out. His conclusion in relation to this information is, therefore, that the exception provided by regulation 12(5)(a) is not engaged.

23. As to the Lightning Protection System report, as referred to above a large majority of the content of this was previously disclosed to the complainant. The small minority of the content of this that was withheld named the location within the Met Office HQ which each part of the report concerned. When asked to explain how disclosure of this redacted content could result in harm relevant to regulation 12(5)(a), the Met Office stated that it believed damage could result through the combination of the location information with other information.

24. The Met Office did not, however, specify what other information the redacted content in question here could be combined with, or how this would result in damage. In the absence of such an explanation, it is not clear to the Commissioner how disclosure of the redacted content could result in harm and his conclusion is, therefore, that the exception provided by regulation 12(5)(a) is not engaged in relation to this information.

25. Having found that regulation 12(5)(a) is not engaged in relation to the written description of the petrol / oil interceptors, or in relation to the redacted content from the lightning report, the Met Office is required at paragraph 3 above to disclose this information. In relation to the drawings and written descriptions of the drainage system, for which regulation 12(5)(a) has been found to be engaged, it is necessary to go on to consider the balance of the public interest.

26. In reaching a conclusion on the balance of the public interest, the Commissioner has taken into account the general public interest in the openness and transparency of the Met Office, as well as factors that relate to the specific information in question here. Arguments that the Met Office advanced in relation to the exemptions from the FOIA that it cited are also taken into account here, to the extent that they are relevant to regulation 12(5)(a).

27. Turning first to those factors that favour disclosure, as stated in the preceding paragraph, the general public interest in the openness of the Met Office is relevant here. As to factors that relate more specifically to the information in question, the Commissioner is of the view that there is no particular public interest in disclosure of details of the Met Office drainage system.

28. If it had been the case that there was a known issue with the drainage system, such as if it was malfunctioning to the detriment of the ability of the Met Office to carry out its role, or if it was resulting in harm to the environment, than there may be a legitimate public interest in the disclosure of this information. The Commissioner is, however, unaware of any evidence suggesting the existence of such an issue. Also, whilst the complainant may argue that he has a specific interest in this information, this would be the private interest of the complainant, rather than a legitimate public interest.

29. Turning to the public interest in the maintenance of the exception, in any situation where the Commissioner finds that regulation 12(5)(a) is engaged on the basis of harm to national security, the strong public interest in avoiding such an outcome must be taken into account. In this case the Commissioner has found that regulation 12(5)(a) applies on the basis that this information could be used in the planning of a terrorist attack on the Met Office HQ. Clearly there is a very strong public interest in avoiding such an outcome and this weighs heavily in favour of maintenance of the exception here.

30. The Commissioner recognises in particular that there is a strong public interest in the Met Office being able to carry out its role in support of the national infrastructure and defence. As the Met Office has stated, this information is current and the impact of disclosure could harm its ability to carry out its role. This emphasises the public interest in avoiding harm relevant to regulation 12(5)(a) as a result of disclosure.

31. In conclusion, the view of the Commissioner is that there is little public interest in the disclosure of the information in question and he would stress again that any interest the complainant has in the Met Office HQ drainage system would not necessarily translate into a legitimate public interest. This means that the public interest in avoiding an adverse effect relevant to regulation 12(5)(a) tips the balance of the public interest in favour of withholding the information. The Met Office is not, therefore, required to disclose this information.

Right of appeal

32. 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: 0116 249 4253
    Email: informationtribunal@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

33. 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.

34. 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 .....

Graham Smith
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