

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 May 2021

**Public Authority:** Public Health England  
**Address:** Wellington House  
133-155 Waterloo Road  
London  
SE1 8UG

#### **Decision (including any steps ordered)**

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1. The complainant has requested information associated with a municipal waste incinerator from Public Health England (PHE). PHE's position is that it does not hold the requested information, which the complainant disputes.
2. The Commissioner's decision is as follows:
  - On the balance of probabilities, PHE does not hold the health report, yearly reviews or patient admittance and referral numbers that the complainant has requested and has complied with section 1(1)(a) of the FOIA.
3. The Commissioner does not require PHE to take any remedial steps.

#### **Request and response**

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4. On 21 January 2020 the complainant's MP wrote to PHE on the complainant's behalf and requested information in the following terms:

"First FOI request :

All PHE internal emails with regards to my enquires and complaints.

Including email Proof that my complaint has be reviewed by Senior Management as many issues within the complaint have not been independently addressed regarding the conflict of interest.

Also to be provided : Statement and explanations

Duncan Selbie to confirm the PHE stance on waste incineration safety within the UK.

Providing a full explanation as to why such limited scope was used for the incinerator studies undertaken by imperial and kings college.

The accuracy of equipment capability was never documented or questioned.

No record of independent readings comparisons from the sampling positions within the stack were noted.

Other failings :

1.They have not taken into consideration stack data manipulation for continuous emissions measurement or tabled the level of measurement uncertainty.

2.They have not taken into consideration the constant recalibration required for those systems.

3.They have not taken into consideration the operable range capability of the equipment fitted.(equipment range settings were not checked or noted within the studies )

4.They have not taken into consideration the hard facts that there is no Mandatory standard public access Data Website record for continuous monitoring of industrial air pollution being conducted to protect life and the Environment.  
(Inside the stacks or offsite )

5.They have not checked that the best available techniques were in operation before accepting the readings produced by CEMS or CAMS equipment for industrial /ambient air pollution.

6.A full and detailed explanation needs to be provided by PHE with

regards to the equipment that was used for the incinerator studies by Kings and Imperial college

An apology needs to be issued regarding the insensitively of the way PHE dealt with the situation.

(Still outstanding from my email dated 31/10/2019)

2nd FOI request :

PHE Now have to prove that there is no significant risk from MVV's Incinerator, the only way of doing that is by providing the relevant Health data for Plymouth and the surrounding areas before the plant was operational to the Present Day.

Insufficient modelling was provided before the plant was built.

That modelling should have been reviewed after the plant became operational.

The site was chosen and built because of the Health study that was conducted.

A copy of that Health study needs to be supplied.

The yearly reviews that have been conducted needs to be supplied :

Annual patient admittance and referrals numbers for 2014 to the present day for the Plymouth region to include :

Miscarriages and still births, cancer, nose, throat, chest and lung infections ,asthma treatments, COPD, circulatory problems, strokes, heart attacks, type 2 diabetes, osteoarthritis ,sciatica, migraines, carpal tunnel."

5. PHE responded on 4 March 2020. It handled the 'First FOI request' under the data protection legislation as it considered it to be a request for the complainant's own personal data.
6. Regarding the '2<sup>nd</sup> FOI request', PHE advised that it had addressed the complainant's statements in the course of previous correspondence with him. It provided the complainant with a link to where information of some relevance is published and provided an explanation of its position regarding municipal waste incinerators.
7. Following the Commissioner's intervention PHE provided an internal review on 26 March 2021. PHE confirmed that it had provided the

complainant with all the information it holds that falls within the scope of his subject access request, which it had handled under the data protection legislation.

8. PHE advised that certain elements of the complainant's request were not requests for recorded information and, as such, it was not obliged to address these under the FOIA. PHE noted that it had previously provided the complainant with links to relevant published information, and it had explained PHE's position to him.
9. PHE confirmed that it does not hold a copy of the 'health study', 'yearly reviews' or 'annual admittance and referrals numbers' the complainant has requested under the FOIA.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 16 June 2020 to complain about the way his request for information had been handled.
11. Having received PHE's submission and considered all the circumstances the Commissioner advised the complainant that she was satisfied, on the balance of probabilities, that PHE does not hold the information he has requested under FOIA. The complainant disagreed and the complaint will therefore conclude formally through this decision notice.
12. The Commissioner is satisfied that the first 'FOI request' is, in fact, a request for the complainant's own personal data, which PHE was correct to handle under the data protection legislation. Any complaint that the complainant brings to the Commissioner about that matter will be handled separately.
13. The Commissioner also agrees with PHE that the complaint's request contains statements and demands for statements and explanations. The FOIA concerns information held in recorded form. As such, PHE is not obliged to respond to these elements under FOIA.
14. In correspondence to the complainant dated 6 April 2021 the Commissioner outlined the scope of the FOI request as concerning the health report, yearly reviews and annual admittance and referral numbers that he had requested. In correspondence dated 7 April 2021, the complainant confirmed the scope of his complaint as outlined and provided arguments to support his position that PHE holds that information.

15. The Commissioner's investigation therefore has focussed on whether PHE holds the above information and has complied with section 1(1) of the FOIA.

## Reasons for decision

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### **Section 1 – general right of access to information held by public authorities**

16. Under section 1(1) of the FOIA anyone who requests recorded information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to them if it is held and is not exempt information.
17. In its submission to the Commissioner, PHE explained why it does not hold the information in question: a health report, yearly reviews and patient admittance and referral numbers. It has explained that its FOI team identifies the relevant contacts within PHE for the subject matter of each request received. For each request, these contacts can target searches within emails, shared drives and databases as appropriate, to identify any relevant information PHE holds.
18. PHE's FOI team contacted its Centre for Radiation, Chemical and Environmental Hazards (CRCE) about the request in this case; this is the specialist team on the topic area in question and therefore was the most likely source of information.
19. CRCE explained PHE's role in the Environmental Permitting process is such that, when consulted, PHE provides an expert and independent opinion to the regulator (in this case the Environment Agency) on the potential human health impacts of emissions arising from existing or proposed regulated facilities at the permit application stage. This assists the regulator in making decisions on whether or not to grant environmental permits, and to detail any permit conditions that would allow the installation to operate without adversely impacting on human health and the environment.
20. PHE confirmed that it is not within its remit to conduct routine "health studies" or to conduct "yearly reviews" for installations that have been granted environmental permits. It says that all installations that are issued an environmental permit are bound to operate within the conditions that are set out. These conditions are protective of human health and the environment and are regulated by the appropriate authority, the Environment Agency in this case.

21. In addition to this, PHE says that its position statement specifically states: "Since any possible health effects are likely to be very small, if detectable, studies of public health around modern, well managed municipal waste incinerators are not recommended". The CRCE team confirmed PHE has not conducted health studies or yearly reviews of the installation that is the focus of the complainant's concerns as this is not within PHE's remit - therefore, PHE does not hold this information: health reports or yearly reviews.
22. PHE advised that in previous correspondence with the complainant, it had highlighted a Small Area Health Statistics Unit at Imperial College London (SAHSU) study. PHE considers it is important to state that this PHE-funded study was undertaken by SAHSU on incinerators, but that it was a study of incinerators operating between 2003 and 2010 and addressed a specific question.
23. PHE notes that it had advised the complainant that he could contact the local authority for specific information that was considered in the planning application process, or the Environment Agency for specific information considered in the environmental permitting process.
24. PHE has told the Commissioner that while it considers its searches and engagement with CRCE at the time of its initial processing of the request met its obligations, it has nevertheless been back in contact with the CRCE to ensure its understanding was correct and to confirm there was no further information to add. This informed its internal review response to the complainant, in which PHE confirmed that it does not hold the information in question.
25. Regarding the request for "annual admittance and referrals numbers", PHE says it again determined this information not to be within its remit. Its FOI team contacted PHE's cancer registry team to confirm what information is held within its databases. The cancer registry team confirmed that although PHE may hold information regarding incidence/diagnosis, it is the responsibility of NHS England to monitor "annual admittance and referrals numbers".
26. PHE notes that it had advised the complainant that he may wish to contact NHS England for this information.
27. The cancer team at PHE highlighted that information regarding cancer rates in the geographic area that is of interest to the complainant is publicly available. However PHE says it had determined that such information was not relevant to the complainant's request about the waste incinerator in question. This is because there is no "inference" between this data and the subject of the requests. PHE confirmed that it does not consider incidence rates/diagnosis of conditions within scope of

the complainant's requests, as he has requested information on "annual admittance and referrals numbers".

28. To support his position that PHE holds information falling within scope of his request, in his correspondence of 7 April 2021 the complainant has drawn the Commissioner's attention to a 2011 report by Public Health Plymouth about the construction of an 'energy from waste' plant. He says it would have been necessary to conduct annual studies to accurately assess and evaluate the health impact on surrounding communities before and after the plant became operational. That is the complainant's view. First, that report was produced by Public Health Plymouth, not PHE and PHE is not referred to in the report. Second, PHE has stated that it is not its remit to carry out health studies or yearly reviews and the Commissioner sees no reason to doubt that that is the case.
29. In correspondence to the Commissioner on 11 May 2021 the complainant argued that PHE had not undertaken adequate searches for relevant information. However the Commissioner is satisfied that PHE approached the appropriate teams to consider the elements of the complainant's request and that those teams would be best placed to understand PHE's remit and to confirm whether PHE holds the requested information.
30. She has considered both parties' arguments and all the circumstances of this case and the Commissioner is satisfied, on the balance of probabilities, that PHE does not hold the information the complainant has requested. The Commissioner has decided that PHE has complied with section 1(1)(a) of the FOIA.
31. PHE has advised the complainant that he has the option of submitting requests for the information he is seeking to the local authority concerned, to the Environment Agency and to NHS England. That appears to the Commissioner to be the appropriate step for the complainant to take now.

## Right of appeal

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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: 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)

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

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**