

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

Date: 21 June 2023

Public Authority: North Sunderland Harbour Commissioners
Address: Harbour Office
Harbour Road
Seahouses
Northumberland
NE68 7RN

Decision (including any steps ordered)

1. The complainant has requested various items of information from North Sunderland Harbour Commissioners ('NSHC'). NSHC accepted that it was subject to the EIR but stated that the majority of the requested information wasn't environmental.
2. The Commissioner's decision is that the information NSHC hasn't provided to the complainant isn't environmental information and therefore NSHC isn't obliged by the EIR to provide it.
3. As the information isn't environmental and NSHC isn't covered by FOIA, the Commissioner is unable to instruct NSHC to take any corrective steps.

Background

4. The Commissioner has considered a separate complaint from the complainant under reference IC-201511-G1F4¹. That complaint also concerned whether information that the complainant had requested was environmental information. The Commissioner found that it was not.

Request and response

5. On 8 November 2022, the complainant wrote to NSHC and requested information in the following terms:

"...I refer to the request made in paragraph 9.5 of my letter of 21 July for confirmation as to whether NSHC has any of the following procedures, policies and plans in place:

- concerning leadership, effectiveness, accountability and remuneration, as recommended by the Governance Guidance;
- concerning stakeholder engagement, as recommended by the Governance Guidance;
- a formal complaints handling procedure, as recommended by the Governance Guidance;
- a safety plan for marine operations, as recommend by the Safety Code.

...Accordingly, my client requests that (a) list of NSHC's published procedures, policies and plans and (b) the procedures, policies and plans themselves are emailed to him...

...NSHC are asked to provide copies of the following documents:

- the six most recent annual accounts and statements of capital expenditure produced by NSHC pursuant to articles 59(2) and (4) of the 1931 Order;

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4024154/ic-201511-g1f4.pdf>

- the current register of interests for each of the current Commissioners...”
6. NSHC responded to the request on 28 November 2022. It advised that it didn't consider that some of the information requested was environmental information – namely NSHC's procedures, policies and plans on leadership, effectiveness, accountability and remuneration; stakeholder engagement; and formal complaints handling.
 7. NSHC accepted that a Marine Safety Management System, a Port Operations Manual, a Port Waste Management Plan and an Oil Spill Contingency Plan could amount to “environmental information”. NSHC confirmed it doesn't have an approved Marine Safety Management System but provided the complainant with versions of the remaining three documents that it does hold.
 8. NSHC advised that it didn't consider annual accounts or the Register of Commissioners' Interests to be environmental information. Regarding the latter, NSHC advised that if the Register **was** to be categorised as environmental information, it would be excepted from disclosure under regulation 13 of the EIR (personal data).
 9. Following an internal review NSHC wrote to the complainant on 7 February 2023. It upheld its position.

Scope of the case

10. It's accepted by all parties that NSHC is subject to the EIR, but not FOIA. Therefore NSHC is only obliged to disclose information to the extent that it's environmental information.
11. The complainant has highlighted numerous issues he has with NSHC. The Commissioner cannot consider issues relating to the way in which NSHC is governed. Such matters fall outside his jurisdiction.
12. The Commissioner's role is to determine whether a public authority is required to deal with a request under the EIR and, if so, whether it has dealt with that request in accordance with the legislation.

Reasons for decision

Is the remaining requested information environmental?

13. The information in dispute is certain procedures, policies and plans about NSHC governance matters, annual accounts and the Register of Commissioners' Interests.
14. 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)
15. The complainant argues that the information in question falls under parts (a), (c) and (f) of the definition.
16. The Commissioner can dismiss parts (a) and (f) easily. Procedures, policies and plans about NSHC governance matters, annual accounts and the Register of Commissioners' Interests are self-evidently not

information "on" any of the elements of the environment. Nor is it information on the state of human health and safety as affected by (or through) the state of the elements of the environment.

17. With regard to (c), in *Department for Business, Energy and Industrial Strategy v Information Commissioner and Henney* [2017] EWCA 844, the Court of Appeal stressed the importance of identifying whether information, which was not obviously related to the elements of the environment, was nevertheless "on" an environmental measure – that is, a measure likely to affect the elements of the environment. The Court also stressed the importance of taking a purposive approach – that is, to consider the purpose for which the information was created, the purpose for which it was held and whether it had a direct purpose in understanding environmental decision-making.
18. In its correspondence to the complainant, regarding the Register of Commissioners' Interests, NSHC had refuted the complainant's assertion that "the purpose of a register of interests is to provide information to the public". It said that there is no suggestion in the Department for Transport's Ports Good Governance Guidance 2018 that this is the purpose of a register of interests. NSHC confirmed that the primary purpose of a register of interests is to provide information to the Chair, the Chief Executive and to other members of the Board.
19. NSHC had also refuted the complainant's assertion that "registers of interests are typically published". It confirmed that the general obligation to publish registers of interests which applies to local authorities does not apply to non-municipal statutory harbour authorities which do not typically publish registers of board members' interests.
20. The Commissioner has considered the matter. He's satisfied that [1] the policies in question, [2] the annual accounts and [3] the Register of Commissioners' Interests have no environmental purpose. The purpose of [1] is to support NSHC's operational needs; the purpose of [2] is to monitor NSHC's financial condition and the purpose of [3] is to declare any private interests that might conflict with public duties.
21. The Commissioner is therefore satisfied that the information NSHC hasn't provided isn't environmental information and therefore NSHC wasn't obliged to disclose it.
22. The Commissioner also notes that, as NSHC had advised, even if the Register of Commissioners' Interests was environmental information, it's highly likely that disclosing the information to the world at large would breach the first data protection principle and so would be unlawful.

Right of appeal

23. 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

24. 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.
25. 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

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