

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

Decision notice

Date: 5 May 2016

Public Authority: National Crime Agency
Address: PO Box 58340
London
NW1W 9JD

Decision (including any steps ordered)

1. The complainant requested from the National Crime Agency (NCA) information about the numbers of construction sites subject to confiscation or freezing orders.
2. While the NCA is not subject to FOIA, it is subject to the EIRs. The Commissioner decided however that the relevant information held by NCA is not environmental.
3. The Commissioner does not require NCA to take any steps to comply with the legislation.

Request and response

4. On 24 November 2015, the complainant wrote to NCA and requested information in the following terms:

"I should like to request the following information under the Environmental Information Regulations 2004.

1. How many construction sites are subject to confiscation or freezing orders under the Proceeds of Crime Act 2002 (POCA)?

Please search the Joint Asset Recovery Database (JARD) for the following key terms:

'construction'; 'building'; 'builders'; 'site'; 'development'; 'works; and any other relevant key terms and disclose:

a) the overall number of confiscation orders

11. In *Fish Legal v Information Commissioner & Others (GIA/0979/2011 & GIA/0980/2011)*, the Upper Tribunal Administrative Appeals Chamber (the "UT") ruled that the Commissioner has jurisdiction to both investigate and decide whether a body is a public authority. With respect to functions of public administration, the UT in the Fish Legal case explained that persons 'performing public administrative functions' are:

"entities, be they legal persons governed by public law or by private law, which are entrusted, under the legal regime which is applicable to them, with the performance of services of public interest, inter alia in the environmental field, and which are, for this purpose, vested with special powers beyond those which result from the normal rules applicable in relations between persons governed by private law".

12. Following the UT decision in that case, the Commissioner considered whether NCA is entrusted with the performance of services of public interest and vested with special powers beyond those which result from the normal rules applicable in relations between persons governed by private law. He decided that it was and that NCA is therefore subject to the EIRs.
13. The Commissioner decided therefore that, while the NCA is not a public authority for the purposes of FOIA, it is subject to the EIRs.

Is the information requested environmental information?

14. Under EIR Regulation 5(1), public authorities have a duty to provide non-exempt environmental information on request. The Commissioner considered whether the information requested by the complainant is environmental information as defined by the EIR.
15. Environmental information is defined in regulation 2(1) of the EIR as:

"any information in written, visual, aural, electronic or any other material form 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) and (b) 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 elements of the environment referred to in (b) and (c);..."

16. The Commissioner's general approach is to interpret "any information... on..." fairly widely. The relevant Oxford English Dictionary definition of "on" is "In reference to, with respect to, as to, concerning, about." The ICO view is that "any information ...on..." will usually include information concerning, about or relating to the measure, activity, factor, etc in question. In other words information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.
17. Regulation 2(1)(a) defines environmental information as information on the state of the elements of the environment such as land and landscape. Regulation 2(1)(b) gives examples of factors affecting, or likely to affect, the elements in the environment listed in (a) such as releases of substances into the environment.
18. Regulation 2(1)(c) of the EIR states that 'environmental information' constitutes any information on measures such as policies, plans and activities which are likely to affect the environmental elements and factors which are listed in subsections (a) and (b).
19. The complainant is concerned that the NCA may have erred in saying that the requested information is not environmental. He said that, in his view, the requested information fell within the definition of environmental information, in particular Regulation 2(1)(c). This was because confiscation and restraint orders may be issued over construction sites, and environmental information (such as blue prints, plans, designs, floor-plans, measurements, planning documents, etc.) may have been created and/or seized. He said that where a Proceeds of Crime Act 2002 (POCA) restraint or confiscation order had been obtained over a construction site, the likely effect of that order on the environment would be to stall development. This was because an order would be seen as a 'black mark' against the construction site, with the effect of deterring investors, and thus having a consequent effect for the

state of the elements of the environment and the state of human health and safety.

20. The NCA provided the Commissioner, for the purposes of his investigation and in confidence, with background information specific to the complainant's information request. NCA outlined the types of information that it held that would be within the scope of the request. The Commissioner agreed that this was not environmental information.
21. The Commissioner considers that information about the ownership of land does not in itself have any effect on the elements or factors in Regulation 2(1)(a) or (b) unless it is in the context of, or linked to, other information which could affect them.
22. The Commissioner has considered detailed representations from NCA and also the representations made by the complainant. In the light of the evidence and assurances he has received from NCA, from information that has been shown to his staff, and from what he has been told in confidence about the nature of the information held, he is satisfied that NCA's relevant information is not environmental. He therefore decided that NCA had responded correctly to the request.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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

Jon Manners
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