

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

**Decision notice**

**Date:** 28 August 2019

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

**Decision (including any steps ordered)**

---

1. The complainant has requested information about the identities of those who contributed to a specific report and about future research projects. Public Health England ("PHE") refused both requests as vexatious.
2. The Commissioner's decision is that PHE should have dealt with both requests under the EIR and that, as the requests were not vexatious, it was not entitled to rely on regulation 12(4)(b) (manifestly unreasonable) to refuse either request. She also finds that PHE failed to respond to either request within 20 working days and failed to provide the complainant with the opportunity to have an internal review of either response. PHE thus breached regulations 5(2) and 11 of the EIR in the way it responded to both requests.
3. The Commissioner requires PHE to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response, under the EIR, to both requests, which does not rely on regulation 12(4)(b).
4. PHE 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.

## Request and response

---

### Request 1

5. On 28 November 2018, the complainant wrote to PHE and requested information in the following terms:

*"Please can you confirm if the following PHE employees contributed to the AGNIR 2016 report*

*[names redacted]*

*"If so, can you please provide the consultation fees paid to each which I presume is declared and is a matter of public record?"*

### Request 2

6. On 30 November 2018, the complainant wrote to PHE and made a further request for information in the following terms:

*"Is it the intention of the EMF team to carry out independent research to investigate the radiofrequency exposures of bone marrow in children? With reference to bones in the rest of their body and not just their skulls? I am referring to children's use of ipads and laptops in close proximity to their body for extended periods when watching films, gaming and using the internet. Children tend to favour these activities nowadays rather than use walkie talkies."*

7. PHE responded to both requests on 24 January 2019. It refused them as vexatious, relying on section 14 of the FOIA to do so. It did not offer the option of an internal review.

## Scope of the case

---

8. The complainant contacted the Commissioner on 28 March 2019 to complain about the way her request for information had been handled.
9. The Commissioner considers that the scope of her investigation is to:
- Determine which information access regime is applicable.
  - Determine whether either or both requests were vexatious.
  - Examine the procedural aspects of the way the requests were handled.

## Reasons for decision

---

### Was the requested information environmental?

10. 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);*
11. In the case of Request 2, the Commissioner considers that any information within the scope of the request would be information on the state of human health as affected by environmental elements including air and atmosphere as these elements have in turn been affected by radiation. Under Regulation 2(1)(f) this information would therefore be environmental.

12. In the case of Request 1, the Commissioner notes that AGNIR in this context refers to the Advisory Group on Non-Ionising Radiation<sup>1</sup>. As the name suggests, AGNIR produced reports on radiation with the aim of providing a scientific basis for public health advice. The Commissioner considers that such reports would be information both on "factors" affecting the elements of the environment and on "measures" designed to affect those factors and so would be environmental information under Regulations 2(1)(b) and (c).
13. At the outset of her investigation, the Commissioner suggested to PHE that the EIR was the more appropriate access regime. PHE agreed with the Commissioner whilst noting that it did not consider that the outcome would have been affected.
14. The Commissioner considers that the EIR was the most appropriate access regime for both. She has therefore considered whether PHE was entitled to rely on Regulation 12(4)(b) of the EIR to refuse the requests – although she notes that her analysis in relation to vexatiousness would have been the same under either access regime.

Were the requests manifestly unreasonable?

15. Regulation 5(1) of the EIR states that:

*a public authority that holds environmental information shall make it available on request.*

16. Regulation 12 of the EIR states that:

*(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if—*

*(a) an exception to disclosure applies under paragraphs (4) or (5); and*

*(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.*

*(2) A public authority shall apply a presumption in favour of disclosure.*

---

<sup>1</sup> AGNIR was set up in 1990 and reported to PHE and its predecessor bodies before being disbanded in 2017. Several of its members were employees of or were nominated by PHE.

(4) *For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—*

*(b) the request for information is manifestly unreasonable;*

17. Following the lead of the Upper Tribunal in *Craven v Information Commissioner & DECC* [2012] UKUT 442 (AAC), the Commissioner considers that there is, in practice, no difference between a request that is vexatious under the FOIA and one which is manifestly unreasonable under the EIR – save that the public authority must also consider the balance of public interest when refusing a request under the EIR. The analysis that follows looks at vexatiousness as, if the request is found to be vexatious, then it will also be manifestly unreasonable and hence Regulation 12(4)(b) will be engaged.
18. The term “vexatious” is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “*manifestly unjustified, inappropriate or improper use of a formal procedure*”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal.
19. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
20. *Dransfield* also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: “*...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.*” (paragraph 45).
21. The Commissioner has published guidance on dealing with vexatious requests, which includes a number of indicators that may apply in the case of a vexatious request.<sup>2</sup> However, even if a request contains one or

---

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatiousrequests.pdf>

more of these indicators it will not necessarily mean that it must be vexatious.

22. When considering the question of vexatiousness, a public authority can consider the context of the request and the history of its relationship with the requestor, as the guidance explains: *"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request."*

*The complainant's position*

23. In correspondence with the Commissioner, the complainant stated that:

*"I have been attempting to obtain information on a very important issue, which is very much in the public interest. My requests have been reasonable and concise and have not required volumes of information."*

*"I have been researching the dangers of EMF's including wireless communications for quite some time. It is a broad and complex subject matter. My children have been exposed at school from a young age, this exposure is invisible, constant and involuntary. There are many leading scientific experts who have raised deep concerns following the publication of many studies demonstrating adverse health effects."*

*"This increasing body of evidence suggests significant health risks to vulnerable children and foetuses due to cellular function disruption by wireless technology. I want to know why PHE only warn about non essential use of mobile phones under 16 years. Children are using laptops and tablets from a young age and for long periods within close proximity to their developing bodies. In a classroom 30 ipads are used at the same time, children and unborn babies have a greater specific absorption rate (SAR) and higher water body content, making them even more vulnerable. Public Health England are not warning or educating parents or schools even though they have obligations to protect the public from non-ionising radiation. People cannot make informed and educated choices about reducing their cumulative exposures to wireless radiation from their devices, if they are not made aware of the dangers and given precautionary advice. There are safer ways to use technology- hard wired access via ethernet cables or fiber optics not Wifi in schools, Universities and workplaces."*

*PHE's position*

24. At the outset of her investigation, the Commissioner wrote to PHE asking it to explain why it considered the requests to be vexatious and to support its argument with appropriate evidence such as schedules and samples of correspondence.
25. PHE provided the Commissioner with a schedule of information requests submitted between June 2018 and June 2019. This schedule indicated that, in the five months prior to Request 1 being submitted, the complainant had made seven requests under either the FOIA or the EIR and two SARs (although the wording in the schedule appears to indicate that the second SAR was a refined version of the first).
26. PHE also stated that:

*"PHE received a high volume of correspondence from [the complainant] on the same matter. PHE advised that having reviewed the correspondence files we considered this volume of correspondence exceeded the acceptable threshold of correspondence. PHE noted the factors it took into consideration in reaching its decision as outlined below:*

- *submission of new requests before we have had the opportunity to address your earlier enquiries*
- *submission of repeated questions on the same matter*
- *constant submission of further clarifications following receipt of each response*
- *failure to actively cooperate with PHE requirements for processing correspondence*
- *sending the same request to multiple recipients within PHE*

*"[The complainant] was advised that all of the above behaviours have caused disproportionate or unjustified level of disruption to the teams involved in important public health work. Addressing repeated correspondence on this matter places an unnecessary burden on already stretched resources and deviates from PHE's ability to address legitimate correspondence."*

27. PHE did not provide any other evidence to support its conclusion.

*The Commissioner's view*

28. The Commissioner considers that PHE has failed to demonstrate that either request was manifestly unreasonable.

29. Regulation 12(4)(b) (and its FOIA equivalent: section 14) is an exception which relieves a public authority of both its duty to identify information within the scope of a request and to communicate any of that information to a requestor. The Commissioner, backed up by several Tribunal decisions, therefore considers that a public authority wishing to rely on this exception must meet a high bar if it is to prevail.
30. The evidence provided by PHE falls well short of demonstrating that the requests in question meet that high bar. Whilst submitting seven information requests and two SARs within a five month period would place a burden on PHE in responding, PHE has failed to indicate the extent of the burden that was imposed – indeed the schedule of correspondence suggests to the Commissioner that several of the requests could have been answered fairly swiftly.
31. Whilst PHE has pointed to various other factors including overlapping requests, repeated requests and a failure to abide by PHE's reasonable guidelines for submitting correspondence, PHE has simply not provided any evidence which would demonstrate that this is the complainant's pattern of behaviour.
32. Set against these arguments is a clear public interest in establishing the scientific facts around this particular type of radiation. Any burden imposed by such requests must be balanced against this interest.
33. PHE has made public statements on the safety of the type of radiation the request refers to. The Commissioner's view is that there is a clear public interest value in making sure that the evidence on which PHE's advice is based is publicly available and able to be scrutinised. Given that the Government is currently in the process of establishing a 5G network, the Commissioner considers that there is likely to be a renewed interest in this body of research.
34. The Commissioner therefore finds that neither request was manifestly unreasonable and so regulation 12(4)(b) is not engaged in relation to either request.
35. Procedural Matters
36. Regulation 5(2) states that requested information shall be made available "*as soon as possible and no later than 20 working days after the date of receipt of the request.*"
37. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to either request within 20 working days, PHE has breached Regulation 5(2) of the EIR in relation to both requests.



38. Regulation 11 of the EIR states that:

- (1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.*
- (2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.*
- (3) The public authority shall on receipt of the representations and free of charge—*
  - (a) consider them and any supporting evidence produced by the applicant; and*
  - (b) decide if it has complied with the requirement.*
- (4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.*
- (5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of—*
  - (a) the failure to comply;*
  - (b) the action the authority has decided to take to comply with the requirement; and*
  - (c) the period within which that action is to be taken.*

39. The Commissioner notes that PHE did not offer the complainant the opportunity to have an internal review. Whilst this may have been because PHE was handling the request under the FOIA (where the offer of an internal review is not a statutory requirement), because it should have dealt with the request under the EIR instead, it should also have offered an internal review. She therefore finds that PHE breached regulation 11 of the EIR.

## Right of appeal

---

40. 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)

41. 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.
42. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**