

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 26 August 2022

Public Authority: National Grid
Address: National Grid House
Warwick Technology Park
Gallows Hill
Warwick
CV34 6DA

Decision (including any steps ordered)

1. The complainant has requested information relating to the gas meter at his property.
2. National Grid Metering Limited (NGM) responded and refused to comply with the request, stating that it was not a public authority for the purposes of the EIR.
3. The Commissioner's decision is that NGM is not a public authority for the purposes of the EIR and therefore is not obligated to respond to the request.
4. Since NGM is not a public authority for the purposes of the EIR, the Commissioner cannot order any steps to be taken in response to the request.

Background information

5. The Commissioner understands that National Grid PLC is a private company. It is the overall parent company to a number of separate and distinct National Grid entities, both regulated and unregulated, within the wider National Grid group.
6. In order to avoid confusion, the Commissioner will refer to National Grid PLC, the overall parent company, as 'NG.' If he needs to refer to a specific NG entity, he will make this clear.
7. NG maintains that 'not all National Grid entities constitute a "public authority" under the EIR.'

8. NG has explained that it doesn't expect members of the public to have a detailed knowledge of its business or group structure and generally, requests under the EIR are made to NG rather than a specific entity. Therefore, when NG receives a request, it forwards it over to the entity which is most likely to hold the information and which is the most appropriate to respond.
9. In this case the complainant made their request to NG directly and, since the request relates to a gas meter issue, it was passed onto National Grid Metering Limited ('NGM').

Request and response

10. On 9 October 2021, the complainant wrote to National Grid PLC and requested the following information:

"Gas Meter Number: [Redacted]

Network Plus have written to me to say this gas meter has "reached the end of it's life cycle" and must be replaced for safety reasons.

Network Plus have told me: "We get all our information from National grid metering and it is them who own the gas meter, We work on National Grid metering's behalf and they sent us your address to exchange the meter"

I have been in contact with the governments Office for Product Safety and Standards who have told me that "there is no defined life for gas meters and they may remain in-service for as long as they meet the legal requirements.

Please can you tell me:

1. Please can you tell me why the National Grid asked Network Plus to replace this meter?
2. When did the National Grid become aware that the meter needed to be replaced?
3. Are the National Grid aware of any common faults with this type/age /make & model of gas meter?
4. Are the National Grid aware or have any reason to suspect that this gas meter does not meet the legal requirements? if so, when did the National Grid become aware of this?
5. When did the National Grid first ask Network Plus to exchange the gas meter?"

11. NGM responded on 15 October 2021. It explained to the complainant that 'National Grid Metering are not considered to be a designated public authority under the Environmental Information Regulations and therefore are not required to consider requests made under this legislation.'
12. On 19 October 2021 the complainant requested an internal review. NGM responded on 22 October 2021 and upheld its original position.

Scope of the case

13. The complainant contacted the Commissioner on 23 October 2021 to complain about the way that their request for information had been handled.
14. On 5 July 2022 the Commissioner wrote to NG and asked it to reconsider the way that it had handled the request. Upon doing so, National Grid Gas PLC (NGG) issued a response to the complainant under the EIR. NG explained that NGG is a public authority for the purposes of the EIR. NG maintained that NGM is not.
15. NGG's response explained that the requested information was not held by NGG and may be held by NGM. It also explained that NGG did not have access to any information that may be held by NGM.
16. The Commissioner contacted the complainant to reiterate NG's position and ask if they were happy that they had now received a response under the EIR, albeit a confirmation that no information was held by NGG. The complainant was not satisfied and confirmed that they wished to receive a response, under the EIR, from NGM.
17. Therefore, the Commissioner considers the scope of this investigation to be to determine whether NG is a public authority for the purposes of the EIR. If it is, the Commissioner will order NGM to issue a response to the request under the EIR. If it isn't, the Commissioner won't have any power to instruct NGM to take any steps.

Reasons for decision

Would the requested information be environmental?

18. Regulation 2(1) of the EIR defines environmental information as information relating to:

'(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;'

19. Regulation 2(1)(b) covers 'factors' that have an impact or influence on the elements of the environment and the Commissioner's guidance 'What is environmental information?'¹ specifies that 'factors', for the purposes of the EIR, includes gases.

20. The Commissioner's guidance also touches upon The Department for Business, Energy And Industrial Strategy v The Information Commissioner & Alex Henney [2017] in which the Court of Appeal determined that, when deciding whether the requested information represents environmental information, it is necessary to look at the 'bigger picture' and consider the requested information in context.

21. Since the requested information relates to gas meters, which measure the flow of gases, the Commissioner is satisfied that this information represents both 'factors' and 'measures' affecting or likely to affect the elements and factors referred to in (a) – namely the air and

¹ [Regulation 2\(1\) - What is environmental information? | ICO](#)

atmosphere. The Commissioner has therefore assessed this case under the EIR.

Is the National Grid a public authority for the purposes of the EIR?

22. The definition of a public authority, for the purposes of the EIR, is broader in comparison to the definition under the Freedom of Information Act (FOIA). The definition focuses more on the functions that the public authority performs, rather than providing a prescriptive list as in Schedule 1 of FOIA.
23. Regulation 2(2) defines a public authority for the purposes of the EIR as:
- “a) government departments;
 - (b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding—
 - (i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or
 - (ii) any person designated by Order under section 5 of the Act;
 - (c) any other body or other person, that carries out functions of public administration; or
 - (d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and—
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment.”
24. NGM is not a government department so it doesn't fall under Regulation 2(2)(a). NGM is not listed in Schedule 1 of FOIA and therefore it also doesn't fall under Regulation 2(2)(b).
25. So, it is left to the Commissioner to decide if NGM falls under the definition of a public authority according to the Regulations that remain, that is Regulation 2(2)(c) or 2(2)(d).

Regulation 2(2)(c) – carrying out functions of public administration

26. The Commissioner will now consider if NGM falls under Regulation 2(2)(c), that is, whether it carries out functions of public administration.

27. Article 2(2)(b) of Directive 2003/4/EC² defines one category of public authority as:

“Any natural or legal person performing public administrative functions under national law, including specific duties or services in relation to the environment.”

Regulation 2(2)(c) of the EIR basically transposes Article 2(2)(b) of Directive 2003/4/EC into UK law.

28. Through caselaw, most recently in *Information Commissioner v Poplar Housing and Community Regeneration Association* [2020] UKUT 182 (AAC), the definition of Regulation 2(2)(c) of the EIR has been developed to include a dual test which will determine if an organisation falls within the definition of Regulation 2(2)(c):

- The organisation must be entrusted, in law, to carry out services within the public interest in relation to the environment.
- The organisation must also have been granted ‘special powers’ in order to carry out those services.

29. To be ‘entrusted’, an organisation must have received an express delegation of statutory functions under the legislation applicable to the organisation. For example, in *Fish Legal & Shirley v Information Commissioner and others* [2015] UKUT 0052, it was agreed that the water companies in question had been entrusted to undertake public services, regarding water and sewage, under the Water Industry Act 1991.

30. The water companies had also been granted ‘special powers’, created in law, that gave these organisations practical benefits. In other words, if an organisation possesses ‘special powers’ it is not bound by the normal rules of private law. Private law allows an individual or organisation to

² Directive 2003/4/EC is an EU Directive, the purpose of which is to ensure environmental information is available to the public, through a state’s own relevant legislation, in this case, the EIR.

enter a relationship willingly, to freely negotiate and agree terms or, alternatively, to refuse to engage in negotiations.

31. However, if an organisation possesses a 'special power' it will instead be bound by public law which governs public bodies and gives the organisation the power to compel a specific action.
32. Special powers include but are not limited to:
 - Compulsory purchase, i.e. an organisation can apply to the Secretary of State for the forced sale of land;
 - Requiring access to and use of private property, i.e. in order to carry out the service that has been entrusted to it, the organisation has the power to access and use private land without the owner's permission. Even if this power includes some legal oversight (such as the approval of a judge), it can still go beyond the very limited circumstances that can otherwise require someone to allow access to their property.
 - Creating new laws and criminal sanctions, i.e. the ability to apply directly to government to request the creation of new pieces of legislation or the introduction of new sanctions, in order to protect the organisation's ability to perform the public service that it has been entrusted with;
 - Special levels of influence or advisory roles, i.e. the statutory ability to formally advise other public authorities or influence policy. The key here is that the ability to advise is written in statute, separating the organisation apart from lobbying groups or campaigners.
33. In its submission to the Commissioner, NG has argued that NGM 'is NOT a licensed gas undertaker under the Gas Act 1986 and therefore does not benefit from 'special legal powers' entrusted to it by the state.'
34. To reiterate, the complainant wishes to know if NGM is a public authority for the purposes of the EIR. NG has explained that 'Under paragraph 3(3) of Schedule 2B of the Gas Act 1986, meters are required to be kept in proper order...National Grid Gas PLC as a licensed gas transporter is one such party required to meet this 'proper order' obligation and ensure the quantity of gas supplied is correctly registered.'
35. This confirms NG's position; that NGG has been entrusted a public service, in relation to the environment, and possesses special powers in order to carry out such a service. It is therefore, a public authority under the EIR. However, it is for the Commissioner to determine whether NGM is also a public authority, for the purposes of the EIR, in the same way.

36. NG has explained that 'National Grid Metering Limited currently operates (and operated at the time of the request) under a service provider contract with National Grid Gas PLC...Importantly, although performing services for National Grid Gas PLC, National Grid Metering Limited does not have any delegated use of statutory powers.'
37. NG has elaborated 'National Grid Metering does not necessarily need access to end consumer premises to validate that meters (sic) working properly but in any event has no statutory or contractual authority to enter domestic property to fulfil the statutory function of National Grid Gas PLC and ensure meters are in "proper order" – access to properties is instead on a consent basis.'
38. It's clear to the Commissioner that NGG has been entrusted by law to carry out services in the public interest, in relation to environmental matters. It also has 'special powers' under the Gas Act 1986 to do so. However, whilst NGM performs services for NGG it does not appear, in everyday circumstances, to have been entrusted such services, or have special powers to carry such services out.
39. However, NG has also explained 'In the limited scenarios where access to a property may be required for safety or other reasons and consent for entry has been refused, then National Grid Metering are required to follow the warrant process under the Rights of Entry (Gas & Electricity) Act 1984 and make an application to the Magistrates Court.'
40. So, clearly NGM can gain entry to private property without the consent of the owner if it is absolutely necessary.
41. Returning to paragraph 32 and, specifically, the second bullet point which discusses access to and use of private property, it clearly states that even if access to and use of private property requires legal intervention, it may still represent a special power.
42. Furthermore, the Commissioner's guidance³ clearly states that 'Special powers do not have to be used frequently in order to be relevant.' If therefore, NGM can occasionally use special powers, even though it requires judicial approval to do so, to force access to a private property, it will be a public authority for the purposes of the EIR.
43. However, NG has explained 'Even in those limited circumstances, National Grid Metering alone cannot secure entry and requires National

³ [PAs under the EIR \(ico.org.uk\)](https://ico.org.uk)

Grid Gas PLC (or the relevant energy supplier as a licensed entity) to support the application.'

44. NG has elaborated that 'This is a subtle but important distinction. National Grid Metering Limited do not have "special legal powers" by statute in its own right and does not have contractual delegation of National Grid Gas PLC's powers. It performs services that fulfil National Grid Gas PLC's function (as agent) but has no powers.'

The Commissioner's view

45. It appears to the Commissioner that, when forcing entry to a property, NGM will actually be doing so under the authority of, and using the special powers of, NGG. It could be argued that, in exercising the special powers bestowed upon NGG, NGM itself has, by association, met the second part of the dual test referred to within paragraph 28.
46. However, the Commissioner agrees that it is an important distinction that, whilst it may utilise this special power in limited circumstances, this special power was not entrusted to NGM itself but rather NGG.
47. Therefore, NGM does not pass the dual test as outlined in paragraph 28 and is not a public authority for the purposes of the EIR under Regulation 2(2)(c) in its own right.
48. However, keeping in mind that NGM carries out work under the authority of NGG, the Commissioner will now go onto consider whether NGM is a public authority, for the purposes of the EIR, in accordance with Regulation 2(2)(d), that is, whether it is under the control of another body which is a public authority for the purposes of the EIR.

Regulation 2(2)(d) – bodies under the control of other public authorities

49. The Commissioner's guidance states 'Bodies will be public authorities for the purposes of the EIR if they are under the control of another public authority and have public responsibilities, exercise functions of a public nature, or provide a public service, relating to the environment.'
50. As we have already established, NGG is a public authority for the purposes of the EIR. NGM also has public responsibilities, exercises functions and provides a public service in relation to the environment. Therefore, if NGM is under the control of NGG, it will also be a public authority.
51. If an organisation is under the 'control' of a public authority, it will have no genuine autonomy in deciding how it performs its functions; instead its performance will be determined by the public authority.

52. NG has explained that 'Although an affiliated company with National Grid Gas PLC in a corporate structure sense, in terms of its control it (NGM) is an entirely separate and distinct legal entity with full business separation between it and National Grid PLC. That business separation is not just practical or operational, it is a regulatory requirement relating to National Grid Gas PLC's license.'
53. In its submission to the Commissioner, NG has outlined the relationship between NGG and NGM in more detail. NGG has a statutory obligation to keep meters in 'proper order', under the Gas Act 1986. NGM is the meter asset provider and makes physical gas meters available for rent (by the relevant energy supplier for that property) and provides gas meter asset maintenance services.
54. As outlined previously in this notice, NGM currently operates under a service provider contract with NGG. NG has elaborated 'the contract contains a number of requirements relating to the general provision of services to support National Grid Gas PLC in fulfilling its statutory obligation of 'proper order' but National Grid Gas PLC does not exercise any direct control over how National Grid Metering Limited operates or performs the services.'
55. The Commissioner's guidance states 'The definition of control requires a body to have no genuine autonomy in deciding how to perform its functions, and that the performance is determined by a public authority.' This means a public authority has to do more than influence or regulate a body.
56. Basically, in order to be under the control of a public authority, an organisation must lack independence in its own decision-making, specifically in relation to how it carries out its own functions or public services.
57. NG has elaborated 'National Grid Gas PLC do not dictate or prioritise the particular order in which individual meters, certain types of meters or certain age meters are in fact replaced by National Grid Metering Limited. National Grid Metering Limited determines its replacement and exchange programmes – National Grid Gas PLC is not involved in setting that programme or how it is then delivered.' As NG has explained, whilst NGM may be affiliated with NGG, and operates under a service provider contract with NGG, NGM determines how its own functions are carried out and does not receive instructions from NGG.
58. The test of control under the EIR is not based on what an organisation's functions are, but on how it goes about performing these functions and the extent to which they are performed without interference.
59. NG has explained that it is a legal and regulatory requirement for NGG and NGM to be kept separate.

60. The Commissioner understands that The Gas Act 1986 provides that certain activities can only be carried out by an entity that is licensed under the act. As a gas transporter, NGG is subject to the requirements of the Transporter License and the Standard Special Conditions,⁴ the details of which are outlined on Ofgem's website.
61. The Commissioner understands that the relevant licence conditions that require NGG to operate independently of NGM are all contained in Special Standard Conditions Part A, specifically A33-A36 which is found on page 143 onwards.⁵
62. NG has explained that the combined effect of the Transporter license and the Special Standard Conditions listed above is that 'NGG and NGM must operate as completely independent businesses and cannot share information, premises, data storage systems, equipment, property or certain services.'

The Commissioner's view

63. NG has explained that 'NGG and NGM have been operating in compliance with these requirements since they first came into effect in 2004/5.'
64. The Commissioner is satisfied that NGG has no direct control over **how** NGM conducts its business or chooses to manage physical assets (gas meters). Ultimately, NGG does not control the everyday actions of NGM and therefore NGM cannot be under the control of NGG.
65. It appears that, not only is NGM not under the control of NGG, for the purposes of the EIR, but the two entities must be kept legally separate in accordance with NGG's license requirements under the Gas Act 1986.
66. Since the two entities must be kept separate for legal and regulatory purposes, one cannot be under the control of another – there is legislation that purposefully keeps them separate and distinct. Therefore, the Commissioner is satisfied that NGM is not a public authority for the purposes of the EIR under Regulation 2(2)(d).
67. As NGM is not a public authority, it was under no obligation to respond to the complainant's request and the Commissioner has no authority to instruct it to do so.

⁴ [Licences and licence conditions | Ofgem](#)

⁵ [Standard Special Condition - PART A Consolidated - Current Version.pdf \(ofgem.gov.uk\)](#)

Right of appeal

68. 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

69. 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.

70. 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

Alice Gradwell
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