

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

**Decision notice**

**Date:** 14 May 2024

**Public Authority:** Department for Environment, Food and Rural Affairs (Defra)

**Address:** Nobel House  
17 Smith Square  
London SW1P 3JR

**Decision (including any steps ordered)**

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1. The complainant has requested information about reporting on UK Stockholm Convention polychlorinated biphenyls (PCB) compliance, which Defra has advised it doesn't hold.
2. The Commissioner's decision is that Defra doesn't hold the requested information and regulation 12(4)(a) of the EIR is engaged.
3. It's not necessary for Defra to take any corrective steps.

**Request and response**

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4. The complainant made the following information request to Defra on 13 December 2023:

"Noting the words required and mandatory in

"Contracting Parties are required to monitor the seven PCB congeners CB28, CB52, CB101, CB118, CB138, CB153, and CB180 (OSPAR, 1997) on a mandatory basis in biota (fish and mussels) and sediments for temporal trends and spatial distribution. Marine sediments, in particular those with a high organic carbon content, may accumulate

hydrophobic compounds like PCBs to considerably higher concentrations than surrounding waters”

<https://www.gov.im/about-the-government/...>

please would you release:

1. all documentation explaining U.K. or Defra non-compliance in Severn Estuary PCB sediment reporting for any of the area from the former site of the biggest PCB factory in Europe at Newport down to Lundy Island
2. Same for lower Usk estuary, including M4 bridge area where “elevated” PCB levels are reported in planning documentation but without transparency regarding data source
3. emails or discussion record between [name redacted] (or those covering for [redacted]) and OSPAR personnel [name redacted] and [name redacted] regarding PCB reporting compliance or empty data boxes
4. risk register rating of this Stockholm Convention U.K. knowing non-compliance”
5. Defra’s final position was that it doesn’t hold the requested information and therefore regulation 12(4)(a) of the EIR applied.

## Reasons for decision

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6. This reasoning covers whether Defra is entitled to apply regulation 12(4)(a) of the EIR to the complainant’s request.
7. Regulation 12(4)(a) of the EIR states that a public authority may refuse to disclose information to the extent that it doesn’t hold that information when an applicant’s request is received.
8. Defra has confirmed to the Commissioner that it doesn’t undertake the monitoring for PCBs. This is done by the Environment Agency (EA) and the Centre for Environment, Fisheries and Aquaculture Science (Cefas) for English waters. For Welsh waters, monitoring may be required as part of harbour related marine licensing consents issued by Natural Resources Wales (NRW).
9. Cefas reports on behalf of the UK for the purposes of OSPAR, using data collected from across the UK by various government agencies. (OSPAR is the mechanism by which 15 Governments and the EU cooperate to protect the marine environment of the North-East Atlantic.) For UK Marine Strategy (UKMS) purposes, Defra produces an updated ‘state of

environment' report every six years, using summarised information provided by Cefas and the devolved authorities. This Defra report doesn't provide information specifically on PCBs to a level of detail at estuary scale.

10. Defra says it understands that for the purposes of the EIR Defra and Cefas are the same legal entity and for those reasons searches have been made with its Executive Agency to establish if any information is held that falls within the scope of the request.
11. Parts 1 and 2 of the request, Defra notes, specifically ask for 'all documentation' explaining the UK or Defra non-compliance in Severn and the Lower Usk Estuary for PCB reporting in the quoted areas. Defra says it believes it's compliant with the requirements of the relevant regulations and guidance that set conditions on contaminant monitoring. As such, it wouldn't hold any documentation on non-compliance.
12. Defra has explained that there are three main regulatory regimes in operation, the Water Environment (Water Framework) (England and Wales) Regulations (WER), Marine Strategy Regulations 2010, and the OSPAR Convention and associated guidance. None of these set requirements for sediment monitoring for PCBs at specific locations. Defra isn't therefore required to mandate such monitoring stations in either the Severn or Usk estuaries.
13. Under the WER, the EA only monitors using water or biota<sup>1</sup> (it depends on the contaminant being measured which method is used), as there are no requirements for sediment monitoring in these regulations. NRW performs a similar role in Welsh waters and, Defra has advised, should be contacted directly to discuss its monitoring site selection. Water and biota are the focus of EA WER monitoring as they provide indicators of more immediate areas of concern if contaminants are found. Biota are one of the best indicators for persistent chemicals in the environment and enable Defra to gain a better understanding of exposure than sediments levels.
14. There are nine WER monitoring sites throughout the Severn River and upper estuary where monitoring occurs covering physio-chemistry, nutrients, metals, polycyclic aromatic hydrocarbons and per- and polyfluorinated substances, as well as daily flow rates. All sites are upstream of the Monsanto outfall in the Severn Estuary and so wouldn't capture any output from here. No PCBs are monitored by these, as PCBs in water are not a required analysis in water quality monitoring for WER.

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<sup>1</sup> Biota monitoring involves measuring contaminant levels and looking for physiological effects of these in biological organisms, primarily in shellfish and finfish.

All WER sites are set by the EA as part of an England wide riverine monitoring programme. Details on why specific locations were chosen in line with regulatory requirements would need to be sourced from the EA as a separate legal entity to Defra.

15. The OSPAR coordinated environmental monitoring plan guidelines, the Marine Strategy Regulations 2010 and the 2017 EU Commission Decision do not state exactly how contaminant monitoring programmes must be designed with respect to how many stations are needed and where these should explicitly be located. What the guidelines do say is that the UK needs to monitor biota and sediment for specific contaminants (including PCBs in sediment and biota), but it is at Defra's discretion where/how many monitoring sites it has depending on the aims of the programme.
16. The only extant regular sediment monitoring sites are Cefas-managed offshore stations, which have been active since 2012. For the UK UKMS, monitoring data is only required for waters from 0 nautical mile outward (fully marine waters). For an assessment to be carried out there must be at least three monitoring sites in an area providing sufficient PCB concentration data. Due to several factors including the prioritisation of resource and characteristics of sediment in the area, there are not sufficient sediment monitoring sites near the Severn Estuary for an assessment.
17. OSPAR monitoring of contaminants is also at the wider regional seas scale rather than specific estuaries, for the UK this the Celtic Sea and Greater North Sea. The recent OSPAR Quality Status Report 2023 assessment also showed the levels of PCBs in sediment and biota for the Greater North Sea area had decreased since the previous assessment and were at levels not expected to pose a risk to the marine environment. The recent UKMS draft updated assessment results also show that, except for the most toxic congener (CB118), concentrations of PCBs in sediment are below the level at which they could present an unacceptable risk to the environment. Additionally, for biota two of the four sub-regions (Northern North Sea and Irish Sea) assessed showed significant downwards trends in PCBs, including CB118.
18. Defra has next addressed part 3 of the request, which is for records of discussions between three named individuals. It says it has carried out reasonable searches in line with what's expected when administering an information request under the EIR (and/or FOIA). One of the individuals named in the request no longer works in the policy team within Defra that carries out work in this area. They have since moved to a different team in Defra, but contact has been made with them to ask for searches to be carried out of personal work storage facilities, using key terms such as 'OSPAR', '[name redacted]', '[name redacted]' and 'PCB'. That resulted in no information being found.

19. Defra has also confirmed that the same searches have been carried out within the team that currently works in this area, again resulting in no information being found.
20. Further wider searches were carried out within other Defra policy teams where work may cut across, these include our Chemicals, Pesticides and Hazardous Waste team, Resources & Waste- Residual waste team and Defra's Land Contamination team. Again, all teams confirm that there is no information held.
21. Finally, Defra has discussed part 4 of the request, which is for a "risk register rating". Defra has confirmed that the Stockholm Convention doesn't include any specific obligation to monitor PCBs in sediment, though there are some much more general obligations covering monitoring (Article 11) and reporting (Article 15). Defra has confirmed it therefore doesn't have a risk-register on Stockholm Convention non-compliance and doesn't hold the requested information.
22. The Commissioner considers that Defra's explanation of the situation is thorough and clear, and that the searches it's undertaken for relevant information are appropriate and proportionate. He's satisfied, on the balance of probabilities, that Defra doesn't hold the information the complainant has requested and correctly applied regulation 12(4)(a) of the EIR to the request.

## **Right of appeal**

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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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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.

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