



Homes &  
Communities  
Agency

Mrs Newsom

By e-mail: [request-426185-6d3d3695@whatdotheyknow.com](mailto:request-426185-6d3d3695@whatdotheyknow.com)

13 December 2017

Dear Mrs Newsom

**Internal review - FOI000898 – DAEDALUS: Asbestos Certificates and other associated documentation**

I write further to your request for an internal review dated 15 November 2017 and HCA's subsequent acknowledgement of your request dated 20 November 2017.

I have carried out an internal review and I have set out my findings below. In doing so, I have conducted a full review of how your original request was considered at the time, and how the colleagues in our Information Access team dealt with the original request.

Your original request (dated 19 August 2017) was for

1. Asbestos survey(s) for demolition purposes
2. Licensed asbestos contractor clearance certificates (including air tests)
3. Related plan of work and waste disposal records (waste transfer notes, etc.)

**1. Choice of applicable regime – Freedom of Information Act 2000 (FOI) or Environmental Information Regulations 2004 (EIR)**

Your request was considered under the Freedom of Information Act 2000. Given the nature of the information requested, I have concluded that it is "environmental information" as defined in the Environmental Information Regulations 2004.

I have set out in the Appendix a definition of “environmental information”. The Information Commissioner has provided [guidance](#) on the two regimes, which may be of interest to you.

I therefore conclude that it would have been more appropriate for your request to have been dealt with under the EIR regime rather than the FOI regime.

## **2. Service standards**

Your request was received on 19 August 2017 and acknowledged by HCA on 28 August 2017. You should have received a full response within 20 working days of your request (19 September 2017) but you did not receive a response until 11 October 2017. It is therefore clear that our service standards have not been met.

I note that the e-mail attaching the response sent on 11 October 2017 by our Legal and Information Officer contained an apology for the delay in responding to your request. I can only echo this and apologise on behalf of HCA for this delay.

## **3. Searches**

I have ascertained that the colleagues dealing with your request contacted various HCA colleagues including the Senior Development Manager responsible for the project. I am satisfied that these were the appropriate information owners to contact. I have concluded that HCA’s Information Access staff took necessary steps to obtain the information that was the subject of your request.

## **4. Applicability or otherwise of exceptions to disclosure**

The information you requested was disclosed in full, save for personal data. The Information Access team relied on section 40(2) of the Freedom of Information Act, which permits a public authority to withhold information where disclosure would be in breach of any of the Principles of the Data Protection. They concluded that disclosure of the redacted information within the documents provided would be likely to breach the First Data Protection Principle. This exemption is absolute and where it applies, no public interest test needs to be carried out to apply the exemption.

However, given my finding in paragraph 1 above that your request should have been dealt with under the EIR, not the FOI, the section 40(2) exemption is not applicable, and therefore I must consider whether any exceptions in the EIR apply to the redacted material. Regulation 12(3) of EIR requires a public authority not to disclose personal data of a third party, except in accordance with Regulation 13. Regulation 13 prohibits disclosure of third party personal data where this would breach the Data Protection Act 1998. Regulation 12(3) is not subject to the public interest test.

I have reviewed the redacted materials and consider that the only information that has been redacted is personal data that HCA is required to redact under the EIR in order to comply with data protection legislation. I therefore conclude that Regulation 12(3) authorises all the redactions

that have been made and I uphold my colleagues' decision not to disclose the information.

## **5. General handling of the response**

I have reviewed the documents that were disclosed to you. They comprise a very large number of documents, some of considerable length and file size.

I note that our response to you dated 11 October 2017 included a link to a file sharing provider, Egress Software from which you should have been able to download the documents. Unfortunately, as you have subsequently pointed out, the link that we provided did not work. I note that Legal and Information Officer's letter to you included the sentence "Please let me know if you are unable to access this link", indicating that he foresaw that there might be difficulties and that he would be prepared to assist you to resolve them in order to access the information.

I note that a further e-mail was sent to you by HCA's IT Service Support Officer on 18 October 2017 at 10:53, including a new link and giving you details of how to sign up to Egress Switch and download the files. I have tested this link and it appears to work satisfactorily.

There is further correspondence on file between the Information Access team and the IT Service Support Officer regarding the link and how it can be accessed: *"I had a call from Mrs Newsom earlier this week. I advised the files are currently only available to the e-mail address you supplied (request-426185-6d3d3695@whatdotheyknow.com). An account is required but should only take a minute or so to set up. I can give another e-mail address access to the files if it will make it easier"*.

Our Legal and Information Officer wrote to you on 20 November and explained why HCA had decided to use the Egress software. His e-mail stated that "An alternative option would be to print the documents and send them to you in hard copy. However, as advised in our acknowledgement letter, it is possible a fee may be charged for this. If you would like to receive this information via post, please let me know and I will advise if a fee is applicable and details of that amount. Please note we will not incur any cost before you have confirmed you are willing to meet this fee and payment has been made".

The format of information that is provided in response to a request is governed by Regulation 6 of the EIR. That regulation provides that "where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless (a) it is reasonable for it to make the information available in another form or format; or (b) the information is already publicly available and easily accessible to the applicant in another form or format".

Your original request dated 19 August 2017 did not specify that you required the information to be made available in a particular format, and so I conclude that in its initial response, HCA complied with the requirements of Regulation 6 of the EIR regarding the format of the response.

Subsequently, however, your e-mail of 16 October 2017 stated: "either please download the documents in an easily ready accessible format such as Word, a pdf, or supply a functioning link in open form i.e. not within an attachment". Your request for an internal review asked HCA to "ensure that the overdue information is promptly supplied in open word or pdf form via the site link given in the final sentence below" (ie via the "What do they know" web site).

As part of my internal review, I ascertained from our IT Service Desk that the documents in question comprise around 138 MB. I also ascertained that the "What do they know" web site does allow large files to be uploaded, but that there is a restriction of 50MB: "Instead of email, you can respond to a request directly from your web browser, including uploading a file. To do this, choose "respond to request" at the bottom of the request's page. Contact us if it is too big for even that (more than, say, 50Mb)".

Therefore, as part of my internal review, I arranged for a member of my staff to contact the "What do they know" web site about whether the documents being disclosed could be uploaded to the web site. An e-mail response was received, advising on the possibility of creating a number of zip files, but when this was investigated further, it proved not to be practical for technical reasons, because of the size of the files.

I therefore sought other alternatives, including publishing the information on HCA's own website GOV.UK, and sending you the link. HCA publishes FOI response letters on its website (although it does not usually publish the information that has been disclosed, particularly where this is bulky). If we published the information in this way, then you could have accessed it much more easily without having to use Egress. However, I was advised by our Communications team, who are responsible for uploading material to the GOV.UK web site, that this was not practical for technical reasons, because of the size of the files, which exceeds the limits for the GOV.UK web site.

Having considered all of the above, I consider that HCA, by providing the information to you in electronic format via Egress, and providing guidance and assistance about how to access it via Egress when the original link did not work, and offering to provide the information in hard copy as an alternative, complied with the requirements of Regulation 6 of EIR notwithstanding it did not send the information to "What do they know" as you had requested. The documents are downloadable from Egress in PDF format, which you can then save to your own PC or e-mail to others. This is "open" PDF format.

I therefore consider that HCA's response and the assistance with which it provided you, was reasonable in all the circumstances.

However, I consider that HCA could have done more to assist you by actively considering how many e-mails would have been required to email the information to the e-mail address that you had provided, even though this was not strictly required by law to comply with Regulation 6. Organisations usually have restrictions on the size of attachments that can be e-mailed, and this is often set at 2MB per e-mail. It appears that colleagues may have assumed that this would be the applicable limit for HCA. However, I have ascertained that HCA can send e-mails with

attachments of up to 20MB, so if the recipient's e-mail provider is similarly configured to permit attachments of this size, then it may be the case that only 10 or fewer e-mails would need to be sent, in order to e-mail the information requested. In the event that file size constraints per e-mail would require a much greater number of e-mails to be sent, then I do not consider that it would be reasonable for HCA to do this, particularly given that the information has already been made available by Egress in electronic format and we have also offered a paper-based alternative

I have therefore instructed Information Access staff to attempt to e-mail the documents to you in the week commencing 11 December 2017, provided this can be done with a reasonable number of e-mails.

## **6. Outcome**

- a. I uphold your complaint about the delay in responding. Please accept my apologies for this.
- b. I also apologise for that fact that your request was dealt with under FOI rather than EIR. However, you have not suffered any detriment as a result of this, as the information that was redacted under FOI would also have been redacted under EIR.
- c. I have concluded that HCA has complied with the EIR regarding the format in which the information was provided, and had good reasons for providing the information in the way it did. However, I can also understand your frustration that the information was not provided in the way you had requested, and that you may feel that we could have done more to assist you to find a speedy and satisfactory solution.

This concludes the internal review. If you are dissatisfied with the outcome of the review, you may submit your case to the Information Commissioner for consideration at the following address: Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely

*Christine Wilson*

Christine Wilson  
Deputy General Counsel  
**Homes & Communities Agency**

### **Appendix – definition of Environmental Information**

“Environmental information” has the same meaning as in Article 2(1) of the Directive, namely 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 the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).