

Mr. P Silverman

Our ref: Legal/ICC

Your ref:

Date: 2 January 2020

By email:

request-616031-4312a083@whatdotheyknow.com

Dear Mr. Silverman

Review of Freedom of Information/Environmental Information Request

Request dated 11 November 2019 by Peter Silverman in respect of information relating to a request for information on prosecutions by the Environment Agency under Section 33 of the Environmental Protection Act 1990.

I refer to your email dated 11 November 2019, in which you advised us that you are appealing our decision to refuse to disclose some of the information that you requested in your email of 28 October 2019.

The Environment Agency received your initial request on 28 October 2019 and responded on 7 November 2019. We responded under the Environmental Information Regulations 2004 (EIR).

Review

I have conducted an internal review of the points you raised in your email of 11 November 2019.

Points 2 and 3 of your email ask that we identify which prosecutions (from the data we provided) were for 'fly-tipping'. We are unable to comply with this element of your request because we do not hold the information that you have asked for. The term 'fly-tipping' is not a term defined in the law, and we do not use it in the classification of our enforcement actions. You had previously asked that if the only way to identify cases relating to 'fly tipping' was to review our case files on an individual basis, that we carry out that activity. We have not done this as our case files do not refer to 'fly tipping' as it is not a legally defined offence under our governing legislation.

For the reasons above, I have concluded that the information you requested relating to 'fly-tipping' is not held by the Environment Agency. On that basis, I consider that the decision to

refuse your request on the grounds that there is no information that we can provide was correct.

EIR Regulation 3(2) states that information is held if it is in our possession and has been produced or received by us, or it is held by another person on our behalf at the time the request is received. In this case, the information you have requested is not held by the Environment Agency.

We therefore consider that the exception at EIR Regulation 12(4)(a) applies. This exception states that a public authority may refuse to disclose environmental information to the extent that it does not hold that information when an applicant's request is received. Although this exception is subject to a public interest test, guidance from the Information Commissioner (the statutory regulator for freedom of information legislation) states that it is not possible to conduct a public interest balancing test when the reason for non-disclosure is that the information is not held.

Service levels

I also find that we followed our internal Freedom of Information procedures and that we complied with our duty to respond within the statutory timescales.

Right of Appeal

If you are not satisfied with this review of our decision not to supply the requested information you can make an appeal to the Information Commissioner. The address is:
Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Tel: 0303 123 1113 (local rate) or 01625 545 745 (national rate).

Fax: 01625 524 510.

Email: casework@ico.org.uk.

Website: <http://www.ico.org.uk>

Yours sincerely


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