

Environmental Information Regulations 2004

Decision Notice

Date: 21 December 2009

Public Authority: The Rural Payments Agency
(An executive agency of the Department for
Environment, Food and Rural Affairs - DEFRA)

Address: Area 1B
Ergon House
Horseferry Road
London
SW1P 2AL

Summary

The complainant requested information about the entitlements claimed and by whom on each of the Adjacent Commons and what was awarded. She also asked how the rights of the claimants were verified. The public authority responded that it held the information but that it felt that the information was exempt by virtue of Regulations 12(3) and 13 [third party personal data]. The complainant requested an internal review and the public authority concluded that in actual fact it did not hold the information that was requested, so was applying the exception found in 12(4)(a) instead. The Commissioner has considered the case and is satisfied on the balance of probabilities that no relevant recorded information was held by the public authority. However, he feels that the advice and assistance provided by the public authority was inadequate and that it has contravened Regulation 9. He requires further advice and assistance to be provided to the complainant within thirty five calendar days.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. The New Forest is a former royal hunting area in the south of England. It was created in 1079 by William I (known as William the Conqueror).
3. The entitlements are remnants of historical rights that have been granted to the residents of the New Forest. They are known as Rights of Common and act as authority for the occupier of a plot of land (to which Rights are attached), to take specified material or products from somebody else's land. In the context of the New Forest, the principal product is grazing and the owner of the land is the Crown. Land with Common Rights is not confined to the perambulation of the Forest; many "holdings" are in villages on the periphery of the Forest. The holders of these have to pay a 'marking fee' per head of cattle. This money is used to pay for the services of the 'Agisters' that patrol the New Forest and its Adjacent Commons. They have various roles that include marking stock, helping with checking animals and attending road traffic accidents.
4. In some limited circumstances applicants can provide an affidavit if they have not paid marking fees. This stipulates their right to turn out a particular number of animals on the New Forest.
5. It is important also to define the term 'depasture'. One of the Common Rights is the right of Pasture. 'Depasturing' is the term that represents the grazing of animals in accordance with this right on the common land.
6. There was a problem in 1964 about privately owned areas bordering the perambulation of the Forest, in which stock were also depastured. These areas were the 'Adjacent Commons'. These areas were generally unfenced and were indistinguishable from the open forest (except for some marker stones). This led to difficulties in disease control and disputes over fees for depasturing stock. The New Forest Act 1964 brought the 'Adjacent Commons' into the jurisdiction of the Verderers and their owners now have to comply with relevant Bye-Laws.
7. There are around 3800 acres of 'Adjacent Commons'. Each 'Adjacent Common' covers a specific area and has a specific name.
8. There are also particular historical entitlements for the owners of the 'Adjacent Commons'. They include a right attached to the Commons that enables the owner to have reduced 'marking fees' on a specified quota of bovine animals. These rights are marked on a register of rights that is held by the statutory body, the Verderers of the New Forest. The 'marking fees' are a half of what is normally charged and this agreement ends on 31 December 2025, when there will be a single fee charged throughout the Common lands.
9. Under European Union rules, DEFRA has been selected as a 'competent authority' that is it allocates entitlements relating to common land, by way of 'Right of Use,' and also verifies those entitlements. This constitutes a requirement for the rights holders to be able to claim Single Payment Scheme (SPS) payments from the European Union. The public authority explained that it

administered these rights by receiving a receipt that the marking fee had been paid and once it had, it would be satisfied that the animals were entitled to graze.

The Request

10. Regulation 2(2)(b) of the EIR states that all public authorities covered by the Freedom of Information Act (the Act) are also public authorities for the purposes of the EIR, apart from two exceptions neither of which are relevant in this case. The Commissioner notes that under the Act the Rural Payments Agency is not a public authority itself, but is actually an executive agency of the Department for Environment, Food and Royal Affairs (DEFRA) which is responsible for it and therefore, the public authority in this case is actually the DEFRA not the Rural Payments Agency. However, for the sake of clarity, this Decision Notice refers to the Rural Payments Agency as if it were the public authority.

11. On 5 March 2009 the complainant requested the following information from the public authority in accordance with Regulation 5:

‘...Defra rules are very clear that no one may claim in respect of any common land over which stock can stray but where there is no registered right to graze – and this is one of the points still not addressed by Defra.

The New Forest Act 1964 did not confer on those with Forest Rights the right to graze – and this is the position today.

It is therefore important to know exactly how many eligible hectares have been allocated to those who *do not have a registered right of common or only have a right to stray over adjacent commons [emphasis belongs to the original request]*.

Please provide under the Freedom of Information Act/Environmental Information Regulations the following details of entitlements allocated under ‘New Forest’ to ensure this Appeal can be properly understood by the Panel:

1. Full details of what entitlements were claimed and by whom on each of the various Adjacent Commons – and what entitlements were awarded to whom.
2. How were the rights of the claimants verified?’

12. On 16 March 2009 the public authority issued a response to the complainant. It explained that it held the information but that it fell within the exceptions in Regulation 12(3) and 13, which relates to the protection of third party information under the Data Protection Act 1998. In applying those exceptions it explained it had considered the public interest and concluded that it lies in withholding the information. It provided its details about how to request an internal review and the Commissioner’s details.

13. On 2 April 2009 the complainant requested an internal review. She explained that she was unhappy that she had not received the information about the number of claimants and the entitlements that they were awarded. She explained that Common Agricultural Policy payments were to be published proactively and that this request should be seen as analogous. She explained that her request about verification was distinct from the individuals. She finally asked the public authority to confirm that it actually held the data.
14. On 27 April 2009 the public authority communicated the results of its internal review. It explained that details of entitlements were not being proactively disclosed and that its policy on disclosure was different than that for Common Agricultural Policy payments. It explained that claimants who did not depasture in the relevant reference period did not receive an allocation. It explained that it had reviewed its position and that in fact it did not hold the information that was requested and was applying the exception found in 12(4)(a). This is because it was unable to differentiate its applications in order to determine which of them had claimed initially on an adjacent common that was essential for this request. It then provided the contact details of the Commissioner.

The Investigation

Scope of the case

15. On 10 June 2009 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - That the public authority was incorrect and that it held the information.
 - That the Commissioner should take into account her motive in making this request.
 - That the public authority failed to inform her how the rights were verified throughout the process, yet the public authority had informed the press in May 2007 that it was obliged to verify entitlements.
16. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular, the Commissioner does not have the remit to consider the complainant's substantive complaint about allocations given to 'Adjacent Common' holders. He can only consider whether relevant recorded information is held and, if so, whether it can be provided to the public.

Chronology

17. On 27 June 2009 the complainant provided the Commissioner with further documentation and an explanation about what information was being requested.

18. On 31 June 2009 the Commissioner wrote to the public authority and informed it that he had received a complaint. He enquired about whether there was any information being withheld in this case and asked for it to explain its position to him.
19. On 12 August 2009 the public authority provided a response. It explained that the entitlement data that was asked for was not available for the 'Adjacent Commons' claimants because the public authority was unable to know which of them claimed initially on an 'Adjacent Common'. This was the reason why it believed that it did not hold the requested information.
20. On 30 September 2009 the Commissioner spoke to the public authority on the telephone and asked further questions. He consolidated what he said in an email. On 28 October 2009 the Commissioner chased up a response to his questions. He received answers to them on 3 November 2009.
21. On 26 November 2009 the Commissioner called the public authority. He was called back by the relevant person on 30 November 2009. He asked whether it was possible to differentiate between the Commons and the New Forest from the differences in marking fees and/or using a map of the Commons. He also asked for a typical file that is considered when the public authority conducts its statutory responsibilities.
22. On 2 December 2009 the public authority addressed the Commissioner's enquiries. It explained why it believed that it was unable to differentiate between the Adjacent Commons themselves and that the only way that it would have been possible to acquire this sort of information would be to do so in conjunction with the Verderers of the New Forest and even then it may not be possible.
23. On 8 December 2009 the Commissioner contacted the Verderers of the New Forest. He asked for it to explain how it viewed the distinction between the Commons, the different marking fees charged and asked for a map of the Adjacent Commons.
24. On 10 December 2009 the Commissioner received answers to his enquiries. On 14 December 2009 the Commissioner received the map.

Analysis

Substantive Procedural Matters

Is the information environmental?

25. The Commissioner has first considered whether the request made by the complainant is a request for environmental information as defined by the EIR.
26. The Commissioner considers that the information falls within the regulation 2(1)(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 designed to protect those elements.'

27. In this case the information, if held, would consist of a list of entitlements in respect to livestock, their owners' names and how their entitlements had been verified. The Commissioner believes this amounts to a measure (a programme and activity) that is likely to affect the land and landscape [2(1)(a)] and is designed to protect those elements. The Commissioner is satisfied that the information, if held, would all be environmental information in this instance.

Exceptions

Regulation 12(4)(a)

28. The EIR are worded so that information not being held does not mean that the only thing the public authority is required to do is to say that it is not held. Instead the public authority is required to apply the exception found in Regulation 12(4)(a), which allows a request to be refused where the information is not held.
29. The Commissioner appreciates that the wording of Regulation 12(1)(b) specifies that 12(4)(a) is a qualified exception. It would therefore imply that a public interest test would need to be conducted when information is not held. The Commissioner believes that a public interest test in the event where the information is not held is not possible. This is because even if the public interest test favoured disclosure the public authority would still not hold the information to enable it to be released. He therefore cannot consider a public interest test when he adjudicates the application of Regulation 12(4)(a).
30. An important initial point to make is that the Commissioner is limited to considering whether or not recorded information exists at the time of the request for information. This is the only information that a public authority may be obliged to provide. The time of the request was 5 March 2009 in this case.
31. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal (the 'Tribunal') in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency* (EA/2006/0072). In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities. The Commissioner will apply that standard of proof to this case.
32. He has also been assisted by the Tribunal's explanation of the application of the 'balance of probabilities' test in the same case. It explained that to determine whether information is held requires a consideration of a number of factors including the quality of the public authority's final analysis of the request, scope of the search it made on the basis of that analysis and the rigour and efficiency with which the search was then conducted. It also requires considering, where

- appropriate, any other reasons offered by the public authority to explain why the information is not held.
33. The Commissioner notes that both sections of the request are contingent on the public authority being able to identify the claimants on each of the various Adjacent Commons. This is because the second part of the request is directly connected to the entitlements that were to be identified in the first part.
 34. The public authority explained that it did administer the rights and that in order for the applicant to claim New Forest Rights, they must tick the box CL0999 (labelled the 'New Forest') on their claim form. It explained that the New Forest was dealt with as a single administrative area. It stated that it does not differentiate between the New Forest and the 'Adjacent Commons' because they are both considered to be same for its purposes - part of the New Forest perambulation. It was therefore unable to differentiate between applications made from the 'Adjacent Commons' and all other applications that ticked the box CL0999. This was the reason that it did not hold the information that was requested.
 35. It explained that all applications were processed in the same way. Once they had ticked the box on the claim form then the public authority would expect them to provide a specific piece of evidence to legitimise their claim. This evidence was a photocopy of a valid 'marking fee' receipt. A valid receipt is one that is signed by an Agister, who works on behalf of the Verderers of the New Forest, who protect and administer the commoning practices that take place in the region. The 'marking fee' receipt validates the claim, by confirming the availability of grazing on the New Forest for the year in question, but it does not contain information as to where within the New Forest perambulation the animals will graze. The public authority explained that its only concern was that it was provided with the receipt as this was how it validated claims in order to carry out its statutory obligations.
 36. The Commissioner has considered examples of the Marking Fee receipts. He is satisfied that it is possible to differentiate between New Forest marking fees (marked Forest) and Adjacent Common marking fees (marked Commons). The receipt also contains the correspondence address. It is not possible to distinguish between the different Adjacent Commons.
 37. The public authority also separately considers new applications for different rights to those claimed in previous years:
 1. Form entitled 'Application for fields numbers and areas'. This information contains the full address of an individual and the address of their main holding. This information cannot be used to differentiate between the Adjacent Commons as many individuals have more than one holding. It also contains maps of the areas to which those rights are attached. It is not clear on those maps how one can specifically differentiate the commons without a master map and these maps are only held by the public authority when these rights are claimed for the first time and are not therefore a comprehensive record. In addition the quality of the maps is variable and the areas embraced are not always clear. As explained above many rights

have subsisted for many hundreds of years and there is no such documentation for these historic rights.

2. Single Payment Scheme Application 2305 – Initial checklist – this contains an administrative checklist and does not mention the nature of rights.
 3. SP5a – Application Forms Instructions for Checkers – this form contains no information about entitlements. It is an administrative form.
38. The Commissioner has also looked in the public domain to see if there was information available about all the individuals who held rights on the 'Adjacent Commons' to enable the public authority to look through its applications for those names. He is satisfied that such a list is not in the public domain.
39. He has also acquired a map from the Verderers of the Adjacent Commons to check if it would be possible to differentiate applications through deduction by considering their addresses. He is satisfied that this is not possible. He notes that the Regulations provide no obligation for the public authority to contact other public authorities to assist in determining whether it holds relevant information.
40. The Commissioner is satisfied from the explanation in paragraphs 34 to 38 above that the public authority does not on the balance of probabilities hold any relevant recorded information for the request. This is because it cannot differentiate between the different Adjacent Commons and does not believe it has a business reason to do so.
41. The Commissioner has therefore found that the public authority has applied the exception found in 12(4)(a) correctly.

Procedural Requirements

42. The public authority wrongly confirmed that it held information in this case when it did not. The Commissioner believes that this constitutes a breach of Regulation 14 of the EIR.
43. The Commissioner has considered the advice and assistance provided in this case and whether it corresponds with the public authority's obligation in regulation 9. The Commissioner takes a two step approach to determining whether regulation 9 was complied with in respect to the Regulations:
- (1) Whether the public authority has complied with paragraphs 8 to 23 of his Regulation 16 Code of Practice.
 - (2) Whether the public authority should reasonably have offered further advice and assistance not covered by the Code of Practice.
44. In relation to the Regulation 16 Code of Practice the emphasis is placed on the public authority providing flexible advice and assistance to the applicant. The Commissioner also believes that the public authority should have explained the information that it does hold and provided flexible advice and assistance to assist

the complainant in identifying the information that it held that could partially satisfy her request. He therefore finds that the public authority contravened Regulation 9. He does require remedial steps to be taken in relation to this breach and has chosen to make further comments about this issue in the 'Other Matters' section of this notice.

45. The public authority has also failed to explain its general approach to verifying entitlements to the complainant and the Commissioner believes that this would have been 'reasonable' advice and assistance to offer in the circumstances of this case. He therefore finds that the public authority contravened Regulation 9 in this instance. He does not require any steps due to the detail contained in this notice in relation to this breach.

The Decision

46. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Regulations:
- The public authority correctly relied on the exception found in Regulation 12(4)(a). This was because it was unable to differentiate between applicants on each adjacent common.
47. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The public authority contravened Regulation 9 by failing to provide adequate advice and assistance in this case.
 - The public authority contravened Regulation 14 by incorrectly claiming that it held relevant recorded information at first instance.

Steps Required

48. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- The Commissioner requires that the public authority contacts the complainant and discuss what sort of information it holds and what can be provided, in order for it to comply with its obligations under Regulation 9.
49. The 'Other Matters' section of this Notice will discuss the remedial step further.
50. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

51. Failure to comply with the steps described above 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.

Other matters

52. Although they do not form part of this Decision Notice the Commissioner wishes to make further comments about the scope of the requirement to provide advice and assistance.
53. The Commissioner has considered the information that he has had access to and believes that the personal data within it – the names and addresses of applicants and their entitlement does constitute the personal data of third parties. He feels that it is very probable that the disclosure of this information to the public would be unfair and that its disclosure would contravene the first data protection principle. It is therefore likely that the personalised information would be exempt from disclosure by virtue of Regulation 13. He cannot make any full decision about this issue without considering exactly what has been withheld in full detail.
54. The sort of information the Commissioner envisages that it may be possible to disclose would be anonymised data such as that in the table below:

| Landowner | Animal | New Forest | Adjacent Commons |
|-------------------|-------------|------------|------------------|
| | | | |
| A [anonymised] | Donkey/Pony | 1 | 3 |
| | Horse | - | 2 |
| | Cattle | 2 | 1 |
| | Sheep | 2 | - |

Right of Appeal

55. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 21st day of December 2009

Signed

**David Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

* Environmental Information Regulations 2001

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“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 elements of the environment referred to in (b) and (c);

“historical record” has the same meaning as in section 62(1) of the Act;
“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

“responsible authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“Scottish public authority” means –

- (a) a body referred to in section 80(2) of the Act; and
- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

“transferred public record” has the same meaning as in section 15(4) of the Act; and
“working day” has the same meaning as in section 10(6) of the Act.

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 5(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

Regulation 5(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

Regulation 5(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.

Regulation 5(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

Regulation 9 - Advice and assistance

Regulation 9(1) provides that –

'A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.'

Regulation 9(2) provides that –

'Where a public authority decides that an applicant has formulated a request in too general a manner, it shall -

(a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and

(b) assist the applicant in providing those particulars.'

Regulation 9(3) provides that –

'Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.'

Regulation 9(4) provides that –

'Where paragraph (2) applies, in respect of the provisions in paragraph (5), the date on which the further particulars are received by the public authority shall be treated as the date after which the period of 20 working days referred to in those provisions shall be calculated.'

Regulation 9(5) provides that –

'The provisions referred to in paragraph (4) are -

(a) regulation 5(2);

(b) regulation 6(2)(a); and

(c) regulation 14(2).'

Regulation 12 - Exceptions to the duty to disclose environmental information

Regulation 12(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 circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Regulation 12(2) A public authority shall apply a presumption in favour of disclosure.

Regulation 12(4)(a) provides that –

'For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that -

- (a) it does not hold that information when an applicant's request is received...'*

Regulation 14 - Refusal to disclose information

Regulation 14(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

Regulation 14(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 14(3) The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

Regulation 14(4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

Regulation 14(5) The refusal shall inform the applicant –

- (a) that he may make representations to the public authority under regulation 11; and
- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.

* **Freedom of Information Act 2000**

Section 1 - General right of access to information held by public authorities

- (1) Any person making a request for information to a public authority is entitled—
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.