

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 31 July 2013

**Public Authority:** The Environment Agency  
**Address:** Horizon House  
Deanery Road  
Bristol  
BS1 5AH

#### **Decision (including any steps ordered)**

The complainant has requested information from the Environment Agency relating to coastal erosion. This was in the form of 2 separate requests. The Environment Agency refused to disclose information in relation to the complainant's second request, applying regulation 12(4)(b) (manifestly unreasonable) of the EIR as a basis for non-disclosure. The Environment Agency provided information in relation to the complainant's first request, however this was provided outside the statutory 20 working day time limit as set out in regulation 5(2) of the EIR. The Commissioner considers that the Environment Agency has correctly applied regulation 12(4)(b) to the complainant's second request, however it has breached regulation 5(2) in relation to the first request by providing the requested information outside the statutory time limit. The Commissioner requires no steps to be taken.

#### **Request and response**

---

1. On 8 April 2012, the complainant wrote to the Environment Agency and requested information in the following terms:
  - "1. By whom and when was DEFRA and EA given the authority to fully accept IPCC projections?
  2. By whom and when were you given the authority to issue guidance and choose the frequency that you did so?" (Request 1)
2. On 16 July 2012, the complainant again wrote to the public authority and requested information in the following terms:-

"I make a FOI/EIR request for all sites listed for managed realignment in Essex and South Suffolk SMP for each site please either:

a) confirm you have evidence that sites chosen were vulnerable to erosion/coastal processes

AND SUPPLY A COPY OF THE EVIDENCE YOU HOLD WHICH LEAD YOU TO MAKE THIS CLAIM

b) deny you hold evidence that sites chosen were vulnerable to erosion/coastal processes

In which case will you explain why you made this claim."  
(Request 2).

3. The Environment Agency responded to Request 1 on 10 July 2012, providing the complainant with the information he had requested. It responded to Request 2 on 3 September 2012 indicating that it would be in touch to arrange a meeting with the complainant in order to discuss his request. A letter offering such a meeting was sent to the complainant on 19 September 2012. The complainant did not wish to take up the offer of the meeting.
4. On 19 October 2012 the complainant complained to the Commissioner. Following the Commissioner's intervention, the Environment Agency wrote to the complainant on 20 February 2013. It apologised for having taken longer than the statutory 20 working day time limit to respond to Request 1, and stated that the information requested in Request 2 could not be disclosed to the complainant. It applied regulation 12(4)(b) of the EIR (manifestly unreasonable) as a basis for non-disclosure.

### **Scope of the case**

---

5. The complainant contacted the Commissioner on 28 February 2013 to complain about the way his requests for information had been handled.
6. The Commissioner has considered the Environment Agency's handling of the complainant's requests.

## Reasons for decision

---

### Regulation 12(4)(b) – manifestly unreasonable

7. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
8. At paragraph 32 of his decision on FS50440146 (Luton Borough Council)<sup>1</sup>, the Commissioner made it clear that the inclusion of “manifestly” in regulation 12(4)(b) indicates Parliament’s intention that, for information to be withheld under this exception, the information request must meet a more stringent test than simply being “unreasonable”. “Manifestly” means that there must be an obvious or tangible quality to the unreasonableness.

<sup>1</sup> [http://www.ico.org.uk/~media/documents/decisionnotices/2013/fs\\_50440146.ashx](http://www.ico.org.uk/~media/documents/decisionnotices/2013/fs_50440146.ashx)

9. The Commissioner continued at paragraph 33 by saying that the regulation will typically apply in two sets of circumstances: firstly, where a request is vexatious; or secondly, where compliance meant a public authority would incur an unreasonable level of costs, or an unreasonable diversion of resources. In this case, the Environment Agency has argued that meeting the full terms of the request would place an unjustifiable demand on its resources.
10. Unlike FOIA and specifically section 12, the EIR does not contain a provision that exclusively covers the time and cost implications of compliance. The considerations associated with the application of regulation 12(4)(b) of the EIR are, instead, broader than with section 12 of FOIA. In particular, the Commissioner recognises that there may be other important factors that should be taken into account before a judgement can be made that environmental information can be withheld under the exception:
  - Under the EIR, there is no statutory equivalent to the “appropriate limit” – the cost limit beyond which a public authority is not obliged to comply with a request – described at section 12 of FOIA.
  - The proportionality of the burden on the public authority’s workload, taking into consideration the size of the public authority.
  - The requirement, under regulation 12(1) of the EIR, to consider the

- public interest test.
- The EIR's express presumption in favour of disclosure.
  - The requirement to interpret restrictively the exceptions in the EIR.
  - The individual circumstances of the case.
11. To guide him on the respective merits of the application of regulation 12(4)(b), the Commissioner has asked the Environment Agency for clarification in the following areas: the location of the information and the extent of the information that the Environment Agency considers would be covered by the request; the role and size of the business area(s) that would need to be employed to recover and extract information; the activities that the Environment Agency would need to undertake to comply with the request and an estimate of the time needed to provide the information.
  12. The Environment Agency has firstly explained that information subject to the request is not held in a readily accessible format. It would need to be extracted from a variety of sources, including aerial photographs, mapping software and coastal trend analysis survey data. The Environment Agency therefore considers that locating the information would not be a straightforward matter. It would have to consider over 30 sites, and estimates that it would take one staff member 14 hours to consider 1 site, therefore it would take 420 hours to consider 30 sites.
  13. As the Environment Agency has derived this estimate from the practical knowledge obtained from dealing with an internal request relating to one site, the Commissioner is prepared to accept that the Environment Agency's estimate is reasonable. The Commissioner has therefore gone on to consider the activities needed to be completed for the Environment Agency to comply with the request and the time flowing from these. According to the Environment Agency, these activities would comprise the following:
    - Determining which members of staff held the information (this would involve speaking to colleagues in the Ipswich coastal team and other regions).
    - Locating the information. This would involve: large-scale searching of information held on regional/national electronic drives and speaking to colleagues who may hold some useful local information. The search would be for both aerial photographs and coastal trend analysis survey data.
      - Completing the information. This would involve a skilled employee using specialist mapping software to depict changes in

coastline for areas for which there is not a complete photographic record.

14. The Commissioner, having taken into account the estimated time taken to comply with the request, considers that, given the hours taken and resources which would be required to fulfil the request, not only is it unreasonable to expect the Environment Agency to comply with the request, it is manifestly unreasonable. Consequently, it is left for the Commissioner to assess whether the strength of the public interest arguments in disclosure are sufficient to outweigh the concerns raised in this case about the diversion of resources.

### **The public interesting in disclosing the information**

15. The Environment Agency has explained that it considers that in general the disclosure of environmental information furthers the understanding of and participation in the public debate of issues of the day; promotes accountability and transparency by public authorities for decisions taken by them; allows individuals to understand decisions made by authorities which affect their lives, and in some cases assisting individuals in challenging those decisions. The Commissioner agrees that these are strong arguments in favour of disclosing the information.
16. The Environment Agency also considers that release of environmental information can promote accountability and transparency in the spending of public money, and bring to light issues affecting public health and safety. The Commissioner agrees that these are also strong arguments in favour of disclosure.

### **The public interest in maintaining the exception**

17. However, the Environment Agency also considers that, due to the huge volume of data regarding this issue, the time and effort involved in finding, collating and giving necessary explanations would be disproportionate to any benefit in providing the information. It would be necessary for staff from specialist technical teams to locate, retrieve and assess the documents concerned prior to any release. It believes that to fulfill the complainant's request would take up valuable technical resource that is needed to protect the environment, which would not be in the public interest. The Commissioner accepts that these are strong public interest factors in favour of non-disclosure.

### **Balance of public interest arguments**

18. The Commissioner recognises the importance of accountability and transparency in decision-making by public authorities. He further recognises that there is an express presumption of disclosure within

the EIR and that public authorities should aim to provide requested environmental information where possible and practicable.

19. The Commissioner further recognises that a public authority will always be expected to bear some costs when complying with a request. For the sake of the public interest test, however, the key issue is whether in all the circumstances this cost is disproportionate to the importance of the requested information. In the Commissioner's view, in this case, it is.
20. The Commissioner accepts that the request has serious purpose and value, and that the requested information may be of benefit to the wider public. However, he also recognises the public interest in not bringing information rights legislation into disrepute by requiring public authorities to respond to manifestly unreasonable requests. This will particularly be the case where, as here, the burden on a public authority is considerable – well-exceeding, for example, the appropriate limit stated in the fees regulations associated with section 12 of FOIA.
21. The Commissioner has decided that, despite the fact that the requested information may be of benefit to the wider public, it would be unfair to expect the Environment Agency to comply with the request because of the substantial demands it would place on the Environment Agency's resources and the likelihood that it would significantly distract officials from their key responsibilities within the organisation. Therefore, in all the circumstances, the Commissioner has found that the weight of the public interest arguments favours maintaining the exception.

### **Regulation 9 of the EIR**

22. Regulation 9 of the EIR states the following:

*"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".*

23. In this case, the Environment Agency has, on several occasions, offered the complainant an opportunity to meet with official so that the relevant information he is seeking could be explained to him. The Commissioner considers that, by offering such a meeting, the Environment Agency has fulfilled its obligations under the above regulation to advise and assist the complainant.

**Regulation 5(2) of the EIR**

24. The above regulation states that:-

“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.”

The complainant's first request was made on 8 April 2012, and the Environment Agency did not provide a response to this until 10 July 2012. Therefore, it did not comply with the provisions of regulation 5(2) of the EIR.

## Right of appeal

---

25. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

26. 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.
27. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**