

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

Decision notice

Date: 21 October 2020

Public Authority: Environment Agency
Address: Horizon House
Bristol
BS1 5AH

Decision (including any steps ordered)

1. The complainant has requested information held on large raised reservoirs across various datasets by the Environment Agency.
2. The Environment Agency withheld information from two of the datasets on the basis of regulation 12(5)(a) of the EIR.
3. The Commissioner's decision is that the EA has correctly applied the exception and the balance of the public interest favours withholding the information in the datasets.

Request and response

4. On 9 August 2019 the complainant made a request to the Environment Agency ("the EA") in the following terms:

"I would like to request access to some information held by the Environment Agency about Large Raised Reservoirs in England, and also permission to re-use that information under the Open Government Licence.

Please provide the latest version of information contained in the following two unpublished EA datasets:

Large Raised Reservoirs (AfA134)

<https://data.gov.uk/dataset/aa916e73-f575-4752-ad4c-590029d3641c/>

Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113)

<https://data.gov.uk/dataset/4d3cc201-01ee-4ad9-a1cb-4777a8c55a00/>

or the equivalent latest information if the above datasets are no longer maintained.

My understanding is that this information should include, at a minimum, for each reservoir:

- *reservoir name*
- *status (e.g. in operation)*
- *a national grid reference*
- *undertaker name*
- *undertaker address*

And for each maximum flood outline:

- *a polygon*
- *an EA unique reference number for the reservoir*
- *reservoir name*

Please provide any data on maximum flood depth and maximum flood speed (for risk of inundation from large raised reservoirs) that the EA holds for areas within the maximum flood outlines. I gather this data may be held as an ASCII grid and/or as part of an additional data product. At minimum I am requesting this data at a level of detail equivalent to the spatial data underlying the "flood depth" and "flood speed" layers described under the "flood risk from reservoirs" on this EA interactive map:

<https://flood-warning-information.service.gov.uk/long-term-flood-risk/map>

Please provide all of the above information to me in re-usable formats.

I am aware that some of the above information is available to view via the EA's long term flood risk information maps and via WMS. However, I do not consider that those services make the data reasonably accessible to me within the meaning of access to information laws."

5. The EA responded on 30 August 2019. The EA explained that it may be able to licence the Large Raised Reservoir dataset to the complainant and provided a link. The EA did not make any reference to the other dataset (AfA113). The EA also stated that information on flood depth and maximum flood speed was being withheld under the regulation 12(5)(a) exception.
6. The complainant requested an internal review of this decision on 30 August 2019. He firstly raised the fact that part of this request for datasets on maximum flood outline polygons had been ignored. Secondly, he questioned the reasoning behind the EA's suggestion that information in the datasets could not be provided. Thirdly, the complainant asked the EA to be more specific about the idea it "may be able" to licence the information to him. The complainant also pointed out the EA had sent him an invalid link.
7. Finally, the complainant wrote about his concerns with the conditions the EA intended to place on the information and how restrictive these were.
8. The EA conducted an internal review and responded on 24 October 2019. The EA considered and addressed each of the complainant's points. With regard to the decision to withhold the flood depth and maximum flood speed information; the EA maintained this should be withheld as it would adversely affect national security and public safety and was therefore excepted from disclosure under regulation 12(5)(a) of the EIR.
9. The EA accepted the link provided was incorrect and explained they were working to fix this. In terms of the conditions for datasets AfA134 and AfA112 the EA explained it could provided these in response to an information request but they are not published on data.gov.uk due to issues around public safety and national security and therefore re-use of the data would be restricted via the Conditional Licence.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. In particular he raised concerns that:
 - the EA's response was unclear on access and re-use of the requested information;

- For the Large Raised Reservoirs dataset (AfA134) and the maximum flood outline polygons dataset (AfA113) the information had not been disclosed on any basis for withholding given; and
 - The Conditional licence terms referred to by the EA include conditions that are not compatible with his intended purpose and there is no reasoning to overcome the requirement in section 12 of the Reuse of Public Sector Information Regulations (RPSI) that the conditions imposed must not unnecessarily restrict the way in which the document can be reused.
12. During the course of the Commissioner's investigation the EA attempted to clarify its position in relation to the datasets referred to in the request. With regard to AfA134 (the dataset relating to Large Raised Reservoirs) the EA stated this was provided to the complainant in August 2019 as it is under a legislative requirement to make this information available. The EA stated that this dataset is a public register and is provided in an excel spreadsheet format but although it is a public register it is not held where it can be accessed freely due to restrictions. The EA stated it provides this dataset under a Conditional Licence.
 13. With regard to dataset AfA113 (Reservoir Flood Map Maximum Flood Outline); the EA confirmed this had been withheld and it withheld information on the maximum flood depth and maximum flood speed that the EA holds within the maximum flood outlines but clarified this is actually held in a separate dataset (AfA180). This information was withheld under regulation 12(5)(a) and the link that was provided to the complainant was to a simplified version of the information available on gov.uk¹.
 14. The Commissioner therefore considers the scope of her investigation to be to determine if the EA has correctly withheld dataset AfA113 and the maximum flood outlines and speed from dataset AfA180 under regulation 12(5)(a) of the EIR
 15. Whether the EA has complied with the requirements of the EIR and RPSI in the restrictions it has imposed on dataset AfA134 is covered under a separate decision notice (IC-64437-V6M6).

¹ <https://flood-warning-information.service.gov.uk/long-term-flood-risk/map?easting=292274.7&northing=90399.44&address=10023117048&map=Reservoirs>

Reasons for decision

Regulation 12(5)(a) – international relations

16. Regulation 12(5)(a) provides that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety.
17. In this case, the EA has applied the exception on the basis of two limbs of this exception; that disclosure would adversely affect national security and public safety.
18. The EA has explained that the information that has been withheld all relates to the area that would be flooded, and the speed at which it would be flooded if a reservoir were to be compromised, whether by a natural event or by either an inadvertent or a deliberate malicious action. The EA argues that if a reservoir were to be compromised, this would have a catastrophic effect and could cause significant loss of life and physical injury to members of the public who live in the area that would be flooded. Even the reference number for each reservoir is seen as sensitive data by Defra as the reservoir location reveals the grid reference of the first breach point modelled.
19. The EA argues that if information were released to the world at large then key details of critical national infrastructure and any potential vulnerabilities would be widely known, prejudicing the protection and safety of the public. This would occur as disclosure would enable potential damage or disruption to the national infrastructure by acts of sabotage.
20. In establishing the likelihood of reservoirs being targeted as a result of disclosure; the EA advises that the information describes the consequences of failure across multiple reservoirs in England. This means that the information, when taken in aggregate, could allow an assessment to be made as to the relative impact of the reservoirs if they were to fail or be attacked.
21. The concept of public safety is readily understood but “national security” is not defined in the EIR. However the term is used in other legislation including the Freedom of Information Act where section 24 of that Act provides an exemption where this is required for the purposes of safeguarding national security. The Commissioner has issued guidance on this exemption which provides examples of where section 24 is likely to apply. In particular, it explains that an exemption for national security would apply to information which could assist a terrorist attack.

22. The Commissioner is also mindful that terrorists can be highly motivated and may go to great lengths to gather intelligence. This means there may be grounds for withholding what seems harmless information on the basis that it may assist terrorists when pieced together with other information they may obtain.
23. The Commissioner has reviewed samples of the information in the dataset and considers it to be detailed and technical. It provides details of failure scenarios and this information could be used by a motivated individual to assist in targeting perceived weaknesses in national infrastructure. The Commissioner's view is that promoting the dissemination of detailed and technical information through a response to an information request would provide significant intelligence to anyone seeking to undermine the UK's national security. This would increase the risk of a terrorist attack.
24. Even if the disclosure would not necessarily result in an attack on a particular site it could be used to build up a bigger picture. Disclosure would allow terrorists to compare any information they had gleaned about similar sites to determine which was most vulnerable or to better understand the potential harm that could be caused by attacks on different sites. This could be used to inform a decision about which site to target.
25. In the Commissioner's view disclosure would give encouragement to those with ill intent or help them plan an attack. The Commissioner also recognises that disclosure would be likely to increase the confidence of any attacker even if that confidence is ultimately misguided or irrational.
26. The Commissioner considers there is a causal link between disclosure of the dataset and threats to national security and public safety. In reaching this decision the Commissioner has taken into account the fact that the UK threat level was severe at the time the request was made, meaning that an attack was 'highly likely'. The Commissioner is also aware that in a number of cases terrorists have made use of 'open source' information to help plan an attack.
27. The disclosure of information which identifies the depth and flow of water from a reservoir, and the area that would be inundated if a reservoir were to fail, would allow public safety to be compromised by a targeted attack. This links closely in to the threat to national security and the resultant harm that would be caused by disclosure of the withheld information. Further, disclosure of a complete list of reservoir references and the modelled breach location would assist in the planning and execution of an attack on critical infrastructure, endangering homes and lives. In the Commissioner's view there is a clear and tangible link

between the requested information and the risk to public safety and national security.

28. Taking all of this into account the Commissioner is satisfied that regulation 12(5)(a) is engaged in relation to the withheld information.

Public interest arguments in favour of disclosure

29. The EA acknowledges it has a duty to be open and transparent and argues that it only withholds information that could cause substantial harm. The EA acknowledges there is an argument that releasing more detailed information about large raised reservoirs would promote awareness and resilience in communities close to reservoirs.
30. The EA also acknowledges public interest in reservoir safety is particularly high following the events at Todbrook reservoir in August 2019 where large numbers of residents had to be evacuated from their homes when a dam threatened to collapse. The EA states that it engages with local communities and residents who live near reservoirs as part of its day to day communications and regulatory activities to provide up to date information that affects them.
31. The complainant argued that the balance in this case is not as simple as that between transparency and public safety. He argued that there is a strong argument for disclosing more detailed information about large raised reservoirs and the risk of inundation would increase, rather than reduce, public safety by promoting awareness and resilience in communities close to reservoirs and, where relevant, encourage these communities to hold reservoir undertakers and regulators to account for risk management measures.

Public interest arguments in favour of withholding the information

32. The EA considers there are weighty arguments for withholding information inherent in the exception as the protection of national infrastructure and of the general public is hugely important.
33. The EA states the information is detailed and covers multiple reservoirs and disclosure could increase the likelihood of reservoirs becoming terrorist targets. In particular, the information describes the consequences of failure across multiple reservoirs in England. This information, when taken in aggregated, allows an assessment to be made as to the relative impact of the reservoirs if they were to fail or be attacked. The information could also assist in assessing how to carry out

an attack. The EA points to one of the Commissioner's previous decision notices² and her comments that 'even if the disclosure would not necessarily result in an attack ... it could be used to build up a bigger picture ... the so called mosaic approach.'

34. The EA further comments that a threat to national security or public safety does not have to be direct or immediate as long as there is a real possibility of an adverse effect. The EA argues there is significant public interest in ensuring the safety of reservoirs is not compromised by disclosure of information.

Balance of the public interest arguments

35. The Commissioner has considered the competing arguments and accepts there is a public interest in disclosure insofar as this would promote transparency and accountability and in particular, would allow the public to be more aware of the work and planning being done with regard to local reservoirs and their safety. However, the Commissioner is also mindful that there is considerable amounts of information in the dataset and whilst some of this may assist in increasing transparency; to release the entire dataset poses a genuine risk of placing information in the public domain that could be used by motivated individuals for purposes that would endanger public safety.
36. The Commissioner also considers the public interest in the subject matter is limited. Whilst there are general arguments about the public interest in public authorities being transparent and accountable and there has been increased interest in reservoir safety following the Todbrook incident; the amount of information in the AfA113 and AfA180 datasets on flood mapping and flood speeds and depths is likely to go far beyond what the average member of the public would need to hold reservoir undertakers to account.
37. Any public interest in this level of detail has to be balanced against the harm that would be caused by disclosure. The Commissioner takes the view that there is a strong public interest in avoiding threats to national security or disclosing information which would put people in danger. Only when there are compelling arguments for disclosure will it justify releasing information which has the potential to put the public in harms way or assist someone in preparing an attack. No such arguments exist in this case and consequently the Commissioner has found that in all the

² FS50853537

circumstances the public interest in maintaining the exception outweighs the public interest in disclosure.

Right of appeal

38. 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: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. 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.
40. 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

Jill Hulley
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