

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 23 June 2021

Public Authority: The Forestry Commission England
Address: 620 Bristol Business Park
Coldharbour Lane
Bristol
BS16 1EJ
United Kingdom

Decision (including any steps ordered)

1. The complainant has requested information relating to four hunts, including internal correspondence, license information and copies of correspondence between the public authority and representatives of the aforementioned hunts.
2. The Forestry Commission refused to provide the information, citing regulation 12(4)(b) of the EIR (manifestly unreasonable request).
3. The Commissioner's decision is that the Forestry Commission has failed to demonstrate on what grounds regulation 12(4)(b) is engaged and therefore is not entitled to rely on the exception.
4. The Commissioner requires the Forestry Commission to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the requests in question which do not rely upon 12(4)(b) of the EIR.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply 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.

Request and response

6. The complainant wrote to the Forestry Commission on 22 November 2019, 27 November 2019, 10 December 2019 and 7 January 2020 and made four separate requests for information. These requests are provided in the appendix to this notice.
7. The Forestry Commission responded to all four requests on 24 January 2020. It stated that it was refusing all of the requests, alongside six other requests for information that the complainant had made, citing 12(4)(b) as its basis for doing so.
8. Following an internal review the Forestry Commission wrote to the complainant on 6 March 2020. It upheld its original position and confirmed it was applying 12(4)(b) in relation to the ten requests for information that the complainant had made.

Scope of the case

9. The complainant contacted the Commissioner on 29 July 2020 to complain about the way that their requests for information had been handled. The complainant confirmed to the Commissioner that they were only raising a complaint about the handling of the requests listed in the appendix.
10. The Commissioner therefore considers the scope of her investigation to be to determine if the Forestry Commission is entitled to rely upon 12(4)(b) in relation to these requests.

Reasons for decision

Would the requested information be environmental?

11. Regulation 2(1) of the EIR defines environmental information as information relating to:

`(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)...as well as measures or activities designed to protect those elements;'

12. The Commissioner has not seen a copy of the requested information but, as it relates to hunting, the Commissioner is satisfied that this information represents 'a measure likely to affect the elements and factors referred to in (a)' – namely biological diversity. The Commissioner has therefore assessed this case under the EIR.
13. The EIR contains exceptions from the duty to disclose information but there is a presumption in favour of disclosure. This presumption of disclosure stems from the Aarhus Convention on access to environmental information. The principle behind the Aarhus Convention was to enable citizens to participate in decision making about environmental matters by giving them powerful rights of access to the information used to inform such decision-making.
14. Since the EIR is based upon, and guided by the Aarhus Convention, the Commissioner considers that there is a high burden on all public authorities to demonstrate to the Commissioner why an exception under the EIR has been properly engaged.

Regulation 12(4)(b) – Manifestly Unreasonable

15. Regulation 12(4)(b) of the EIR states:

'A public authority may refuse to disclose information to the extent that –

(b) the request for information is manifestly unreasonable;'

16. The Commissioner considers that a request can be manifestly unreasonable for two reasons: firstly, if the request is vexatious and secondly where compliance with the request would incur an unreasonable burden on the public authority both in terms of costs and the diversion of resources.
17. The Forestry Commission has relied on both themes of 12(4)(b) and the Commissioner has therefore considered the Forestry Commission's arguments accordingly.
18. Following the lead of the Upper Tribunal in *Craven v Information Commissioner & DECC* [2012] UKUT 442 (AAC), the Commissioner considers that there is no difference between a request that is vexatious under section 14(1) of the Freedom of Information Act (FOIA) and one which is manifestly unreasonable under the EIR. If a request would be

found to be vexatious under section 14, then it will also be manifestly unreasonable and hence 12(4)(b) of the EIR will be engaged.

19. The singular practicable difference is that a public authority must consider the balance of public interest when refusing a request under the EIR whereas it does not have to do so under the FOIA.

Vexatious

20. The term 'vexatious' is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that 'vexatious' could be defined as the 'manifestly unjustified, inappropriate or improper use of a formal procedure'. The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.
21. The Dransfield case also considered four broad issues: the burden imposed by the request (on the public authority and its staff), the motive of the requester, the value or serious purpose of the request and harassment or distress of and to staff. A public authority may take these factors into account when considering if a request for information is excessive.
22. The Dransfield definition confirms that it is important to consider proportionality and justification of any request before deciding it is vexatious.
23. The Commissioner has published guidance on the factors that may typify a vexatious request¹. However, it is important to note that even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious and the request must be considered against the issues outlined above.
24. When considering the question of vexatiousness, a public authority can consider the context of the request and the history of its relationship with the requestor, as the guidance explains: 'The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request.'
25. In its submission to the Commissioner, the Forestry Commission outlined the extent of their correspondence with the complainant who

¹ [dealing-with-vexatious-requests.pdf \(ico.org.uk\)](#)

has made 32 requests for information to the Forestry Commission between August 2019 and September 2020.

26. The Forestry Commission also explained to the Commissioner that it believes that the complainant is using requests for information as a means by which to influence the public authority's actions. For example, the Forestry Commission has explained that at any stage at which a hunting license is revoked so is the complainant's request for information relating to that license.
27. The Forestry Commission has explained to the Commissioner that it considers the complainant's requests to represent a personal campaign which it claims is evidenced by the lack of requests that it has received from other individuals for the same or similar information. The Forestry Commission notes that the complainant's campaign against hunting has been well documented within the public domain.
28. The Forestry Commission, in its internal review outcome of 6 March 2020, explained to the complainant that it considered the requests in question have been solely designed for the purposes of 'fishing' for information without any indication as to what might be revealed.

Unreasonable burden

29. Given the high burden referred to within paragraph 14, the Commissioner expects a public authority to provide both a detailed explanation and quantifiable evidence to justify the cost of complying with a request both in monetary terms and resourcing.
30. The EIR do not provide a definition of what constitutes an unreasonable cost. This is in contrast to the FOIA under which a public authority can refuse to comply with a request if it estimates that doing so would exceed the 'appropriate limit'. This appropriate limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations') as £600 for central government departments and £450 for all other public authorities.
31. Although the Regulations are not directly applicable to the EIR, in the Commissioner's view² they can provide a useful point of reference for a public authority that is considering the application of 12(4)(b) of the EIR.

² [Manifestly unreasonable requests - regulation 12\(4\)\(b\) \(ico.org.uk\)](https://ico.org.uk/manifestly-unreasonable-requests-regulation-12(4)(b))

32. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
- Determining whether the information is held;
 - Locating the information, or a document which may contain the information;
 - Retrieving the information, or a document which may contain the information; and
 - Extracting the information from a document containing it.
33. The Forestry Commission has informed the Commissioner that the complainant has previously made requests for information held as part of the trail hunt permission process. The Forestry Commission has explained to the Commissioner that it classes this type of information as 'standard information' as it is easily disclosed and compliance takes a few hours work. The Forestry Commission has explained to the Commissioner that it considers compliance with requests for standard information do not pose a particularly significant disruption.
34. The Forestry Commission has also explained to the Commissioner that when requests relate to specific actions and incidents relating to trail hunting, it is likely that compliance with this request will take a considerably greater amount of time. The Commissioner notes that the requests which are the subject of this notice are of this nature and what the Forestry Commission refers to as 'non-standard information.'
35. The Forestry Commission has explained to the Commissioner that it considers it a conservative estimate that compliance with each request for non-standard information would take five hours. It has therefore calculated that compliance with all 32 requests referred to within paragraph 26 would take 160 hours.
36. The Forestry Commission has reiterated its stance that it considers this to be a truly minimal estimate and a more realistic estimate would be eight to ten hours per request.

The Commissioner's view

37. As previously discussed, there is a high burden on public authorities to demonstrate that a request is manifestly unreasonable and, in this case, the Commissioner does not consider that the Forestry Commission has suitably justified its use of regulation 12(4)(b).
38. Whilst the Commissioner accepts the Forestry Commission's assertions that the requestor's campaign against hunting is well documented, she does not consider that the Forestry Commission has demonstrated that

the requests are manifestly unreasonable on the grounds of vexatiousness.

39. The Forestry Commission has made the Commissioner aware that the requestor has made 32 requests for information between August 2019 and September 2020. However, the Commissioner can only consider matters as they stood at the point the requests in question were refused. The Commissioner notes that the Forestry Commission issued its refusal notice on 24 January 2020 and therefore the total number of requests made at the date of refusal is likely to have been considerably less than 32.
40. The Commissioner is of the opinion that the Forestry Commission has failed to give suitable consideration to the wider public interest that the complainant's requests for information represent.
41. The Commissioner notes that hunting is a controversial issue which arouses strong emotions on both sides. Whilst the deliberate hunting of live animals is illegal in the UK, this activity can be simulated through activities known as drag or trail hunts. In such activities a hound might pick up on the scent of a live fox, which is subsequently hunted, rather than the artificial trail laid with the purpose of mimicking the fox's scent. Individuals who oppose hunting are keen to observe that drag and trail hunts remain legal and one way of doing so is to ensure that, where hunting is taking place under licence, the hunt strictly adheres to the licensing terms. The Commissioner notes from the appendix that licensing information makes up the majority of the complainant's requests.
42. Equally there are individuals who remain morally opposed to legal hunting such as drag or trail hunts and particularly those which take place on land managed or owned by the Forestry Commission and therefore funded by the taxpayer. The Commissioner also notes that the Hunting Act³ makes a landowner (including a corporate landowner such as the Forestry Commission) criminally liable for allowing illegal hunting activity to take place on land that they own.
43. Whilst it is not the role of the Commissioner to have an opinion on hunting, she recognises that the more controversial and emotive an issue, the more likely any request for information made will hold value or serious purpose and that the public interest may favour disclosure.

³ [Hunting Act 2004 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2004/27)

44. Furthermore, at the time of raising their complaint with the Commissioner, the complainant outlined their motives behind each of the requests made; including concerns regarding the conviction of hunt members and hunting groups breaching terms of its hunting license. Whilst the Commissioner acknowledges that the FOIA is purpose-blind, she believes that the media interest in these events and concerns of the complainant are likely to mirror the concerns and interest of specific groups including animal rights activists and anti-hunting protestors. The Commissioner would expect the Forestry Commission to tolerate a greater burden when considering requests for information relating to hunting.
45. The Commissioner also notes that several of the complainant's requests for standard information have resulted in disclosure. She does not therefore consider it appropriate that the Forestry Commission appear to have included compliance with these requests as part of the 160 hour estimated total referred to within paragraph 35.
46. Furthermore, the Commissioner notes that the scope of this investigation only encompasses the requests referred to within the appendix. Therefore the conservative estimate of complying with these four requests, according to the Forestry Commission itself, would be 20 hours which falls within the appropriate limits and fees referred to within paragraph 30.
47. As previously discussed, given the high burden referred to within paragraph 14, the Commissioner expects a public authority to provide a detailed explanation and quantifiable evidence to justify the cost of complying with a request. The Forestry Commission has failed to do so in this instance.
48. When demonstrating that a request would be burdensome, the Commissioner does not expect a public authority to essentially comply with the request in order to provide this quantifiable estimate as doing so would defeat the purpose of the exception. However, a public authority may wish to conduct a sampling exercise to determine how long it would take to provide a section of the requested information. The results of this sampling exercise can then be used as a reference point from which to provide a more robust estimate - both in terms of the cost of complying with the request in its entirety or the burden that complying with the request in its entirety would create. The Forestry Commission has failed to outline the details of any such sampling exercise that it has conducted to the Commissioner.
49. Furthermore, the Commissioner notes that the longest timeframe referred to within the requests outlined in the appendix is five months and there is no indication that the Forestry Commission has undertaken

any analysis, such as a key word search, to determine how often it has corresponded with the hunt in question during this timeframe.

50. The Forestry Commission has explained to the Commissioner that it would take a considerably greater amount of time to comply with a request for non-standard information in comparison to a request for standard information. The Forestry Commission has clarified that this is because compliance would involve liaising with staff on the front line, including Beat Foresters and Wildlife Rangers, before being referred back to the staff leading the response. However, the Commissioner notes that the Forestry Commission has failed to provide quantifiable evidence of the burden that this process would impose.
51. As previously discussed in paragraph 28, the Forestry Commission has explained to both the complainant and the Commissioner that it considers the requests outlined in the appendix as 'fishing' requests. However, the Forestry Commission has itself identified that this is a request for non-standard information and, with this in mind, the complainant may have had to broaden the scope of their request to receive the information with which they are concerned.
52. In instances such as these, it may be more appropriate for a public authority to offer the requestor advice and assistance in line with its obligations according to regulation 9 of the EIR.
53. At the point at which the refusal notice and internal review outcome were provided, the Forestry Commission has failed to demonstrate that the requests in question were manifestly unreasonable. The Commissioner therefore finds that the Forestry Commission was not entitled to rely on regulation 12(4)(b) to refuse the requests and requires the public authority to take the steps outlined in paragraph 4.
54. As the exception is not engaged, the Commissioner has not gone on to consider the balance of the public interest or the presumption in favour of disclosure though she has considered the public interest in the information requested has helped to inform the purpose and value of the requests.

Other matters

55. Whilst the Commissioner considers that the Forestry Commission has failed to sufficiently demonstrate why these particular requests are manifestly unreasonable, this does not mean that any future requests the complainant submits will also not be manifestly unreasonable. The complainant must be mindful to continue to exercise their rights under the EIR responsibly.

Right of appeal

56. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

57. 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.
58. 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

**Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Appendix

22 November 2019

'To the Forestry Commission's Information Rights Team,

Under the Environmental Information Regulations 2004 I'm requesting the following information:

Copies of all correspondence between Forestry England and representatives of the Isle of Wight Hunt between 01/06/2019 to the present date.'

27 November 2019

'To the Forestry Commission's Information Rights Team,

I'm writing to request the following information:

- Internal correspondence relating to the Isle of Wight Hunt's license from 20/07/2019 to the present date.*
- The final decision of the review and justification for granting the license.'*

10 December 2019

'To the Forestry Commission's Information Rights Team,

I'm writing to request the following information:

- Copies of the internal correspondence between representatives of the Kimblewick Hunt and Forestry Commission from 01/11/2019 to the present date.*
- Copies of the internal correspondence relating to the suspension/review of the Kimblewick Hunt's hunting license as stated by the Board of Commissioner's by email on Friday 8th November and the withdrawal of the license as announced by Forestry England on its website on Monday 9th December.'*

7 January 2020

'To the Forestry Commission's Information Rights Team,

I'm writing to request the following information:

Following on from this request, can you please provide a copy of the full lease for Owston Woods?'