

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

Decision notice

Date: 3 August 2017

Public Authority: Natural England
Address: County Hall
Spetchley Road
Worcester WR5 2NP

Decision (including any steps ordered)

1. In two requests, the complainant has requested information about Colony Bog and Bagshot Heath Site of Special Scientific Interest. Natural England has refused to comply with both requests under regulation 12(4)(b) of the EIR ('manifestly unreasonable' request) and says the public interest favours maintaining this exception.
2. The Commissioner's decision is that the two requests can be categorised as manifestly unreasonable in line with the exception under regulation 12(4)(b), and that the public interest favours maintaining the exception.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Requests and responses

Request 1 - FER0669952

4. On 2 February 2017, the complainant wrote to Natural England (NE) and requested information in the following terms:
 - A. *can you please tell us which Ordnance Survey maps were used by English Nature when they imposed SSSI on area 1, 2 and 3.*
 - B. *What was the survey [illegible] by Ordnance Survey when these maps were published*
 - C. *Natural England have claimed an [illegible] on an old Pig Farm by the "Lightwater Bog", we would like to see your evidence for this please under (FOI)"*
5. On 17 February 2017, NE responded. NE issued the complainant with a refusal notice. It refused to comply with his request under regulation 12(4)(b) of the EIR and said the public interest favoured maintaining this exception.
6. NE invited the complainant to request an internal review of its response within 40 working days if he was not satisfied with the response.
7. The complainant did not request a review but submitted a complaint to the Commissioner. Because 40 working days then expired since NE provided its response, NE was not obliged to carry out an internal review and the case was accepted for investigation.

Request 2 - FER0680627

8. The complainant submitted a second request to NE on 20 April 2017. He requested information of the following description:
 - A. *Can you please tell what Ordnance Survey maps were used by English Nature when they imposed SSSI on Areas 1, 2, and 3*
 - B. *Can you please tell me what date the ordnance survey made full surveys of those maps"*
9. NE responded to this request on 27 April 2017. It also refused to comply with this request, and any future communications from the complainant about Colony Bog and Bagshot Heath Site of Special Scientific Interest (SSSI). It did not refer to the 12(4)(b) exception.

Scope of the case

10. The complainant contacted the Commissioner on 2 May 2017 regarding Request 1, and on 5 May 2017 regarding Request 2, to complain about the way his requests for information had been handled.
11. The Commissioner's investigation has focussed on whether the complainant's two requests can be considered to be manifestly unreasonable under regulation 12(4)(b), and the associated public interest test.

Reasons for decision

12. Regulation 12(4)(b) of the EIR says that a public authority may refuse to disclose information if the request is 'manifestly unreasonable'. This exception can be used when a request is vexatious or when the cost of complying with a request would be too great. In this case, NE appears to consider the complainant's requests to be vexatious requests (the equivalent of section 14(1) of the FOIA).
13. The Commissioner considers that the inclusion of 'manifestly' in regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under the 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 of complying with the request.
14. In line with her published guidance on vexatious requests, the Commissioner considers whether the request itself is manifestly unreasonable rather than the individual submitting it. Sometimes, it will be patently obvious that a request is manifestly unreasonable. In cases where it is not so clear cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request. Public authorities may also take into account the context and history of the request where relevant.
15. Where the exception is engaged it is subject to a public interest test under regulation 12(1)(b) to determine whether the information should be disclosed in spite of the exception applying.
16. The Commissioner has had discussion with NE and considered its detailed refusal notice to the complainant; that is, its response dated 17

February 2017. These have been sufficient to reach a decision in this case.

17. NE has provided the Commissioner with a background to this case and she has also noted the background given in her decision in FER0645056. That case concerned a complaint about Natural England's response to a request from the complainant in May 2016, on broadly the same issue – namely the SSSI in question.
18. Colony Bog and Bagshot Heath was first notified as an SSSI in 1975 and again in 1988 and 1993. NE advised the Commissioner that the complainant has various concerns about this area's notification as an SSSI. These are broadly that the land's use in the past as a pig farm and a repository for spoil from the construction of the M3 mean that it should not qualify as an SSSI; that works that the local authority carry out on the site – such as tree felling – are unlawful and that notifying the land as an SSSI places unfair planning restrictions on local residents. More recently, as in the requests in the current case, NE says that the complainant has written to NE, and other organisations, concerned that the Ordnance Survey maps that were used when the SSSI boundary was drawn up were not correct.
19. NE confirmed that the complainant has been asking Natural England and one of its founder bodies, English Nature, for the same or similar information concerning Colony Bog and Bagshot Heath SSSI since at least 2004.
20. In its refusal notice, NE told the complainant that when it assessed his request (of 2 February 2017) it took into account the context and history of his previous requests to NE. It said that during 2016, the complainant had written to NE on 16 occasions, and gave a table of the dates when this correspondence was received. NE noted that all this correspondence had been on topics that it had dealt with previously and that the last four items of correspondence – of five items sent during November 2016 – had essentially been the same letter written slightly differently. The issues covered by this letter related to:
 - SSSI notification
 - SSSI buffer zones
 - infill of spoil from the building of the M3
 - the accuracy of maps; and
 - land management works.

21. NE referred to a complaint the complainant had submitted to the Parliamentary and Health Service Ombudsman (PHSO) about NE. On 10 May 2016, the PHSO had written to the complainant with the outcome of its investigation – it did not uphold his complaint against NE. That complaint had covered the same topics as those listed above and NE told the complainant that it considered he was trying to use the information legislation to reopen issues for which the PHSO had said NE had no case to answer.
22. NE went on to refer to the indicators of vexatiousness given in the Commissioner's guidance on section 14(1), as follows:
23. **Burden on the authority:** NE said that the historical and confused nature of the complainant's requests means that a review of the historical documentation is very often required. This ties up a significant amount of its resource. With limited resources, NE said that it has to balance the amount of individual advice and assistance that it gives to all its customers.
24. **Unreasonable persistence:** NE said that the issues the complainant had raised in his request (concerning the particular SSSI) had been addressed in the past and that the complainant was attempting to use the legislation to reopen them.
25. **Intransigence:** NE referred to the fact that it had been dealing with the complainant's requests for more than 10 years and that it had been consistent with how it dealt with those requests and with the information it had provided.
26. **Frequent or overlapping requests:** NE confirmed that during 2016 alone, the complainant had sent over 15 emails requesting information, and that these requests covered many of the topics listed above to which it had previously provided responses.
27. **No obvious intent to obtain information:** NE said it believed that it had provided the complainant with responses to his requests for information. It considered he was bringing the information legislation into disrepute by repeatedly asking for responses to questions that NE knew it had already provided responses to.
28. **Futile requests:** NE told the complainant that it had, over 10 years, had regular correspondence with him on the topics listed above. It considered the complainant had failed to accept NE's version of events and insisted on referring back to issues that have been closed.
29. Looking at four factors that the Commissioner's guidance suggests a public authority should take into account when assessing requests as

manifestly unreasonable/vexatious, NE considered that, in this case, all four factors had been met.

1. **Burden:** NE believed that the number of emails, topics, pattern and behaviour of the complainant's requests put an unacceptable burden on NE and that this must stop.
 2. **Motive:** the long history of correspondence and repeated reopening of issues that have been closed lead NE to believe that the intention of the complainant's requests was not to search for information, but to disrupt the functions of NE.
 3. **Value of the request:** NE believed that the requests have limited value to the complainant as it had provided responses to his requests previously. It questioned whether there was any wider public interest in the information he is seeking.
 4. **Harassment:** NE believed, due to the history of the complainant's correspondence and his failure to accept the responses it had provided, that the complainant had become obsessed and would probably refuse to accept any response it gave him.
30. Given the points above, NE confirmed to the complainant that it considered regulation 12(4)(b) was applicable in this case.
 31. The Commissioner has also noted NE's response to Request 2, which is dated 27 April 2017. In this correspondence, NE refers to the fact that the complainant's letters concern issues on Colony Bog and Bagshot Heath SSSI and that the points he had raised had been addressed in previous correspondence from NE and the PHSO.
 32. NE reiterated that it had been corresponding with the complainant for over 10 years on these topics. It referred to the fact that: he had made, and it had responded to, many requests for information including the issues raised in the current request; the complainant had exhausted its complaints process a number of times and that he had made an unsuccessful complaint to the PHSO.
 33. NE concluded by advising the complainant that it was unable to provide further responses to his letters as much of it is historical in nature; NE has already provided detailed information and it had taken up significant amounts of its resource. NE told the complainant that it would be unlikely to acknowledge or respond to any further correspondence from him on these topics.
 34. The Commissioner has considered all the circumstances of this case: the history and context of the requests and the arguments NE put forward in its refusal notice. She has noted the length of time NE has been

corresponding with the complainant about substantially the same issue – Colony Bog and Bagshot Heath SSSI – namely, over ten years. She has noted the number of requests about this issue that the complainant submitted to NE during 2016 and the complaint that the complainant submitted to the PHSO about NE, which the PHSO did not uphold.

35. The Commissioner considers that, combined, the arguments and circumstances provide a strong case for the complainant's requests to be categorised as manifestly unreasonable under regulation 12(4)(b). She is satisfied that this regulation has been correctly applied to both requests. (She considers that the complainant's second request also meets the criteria for being vexatious that NE detailed in its refusal notice of 17 November 2016, because it concerns the same issues as the first request.)
36. It appears to the Commissioner that the complainant is continually going over concerns that have been comprehensively addressed by NE over the last decade. She is persuaded that responding to these two requests would not bring about an end to the matter, but that the complainant would be likely to submit further requests on the same issues. Dealing with the complainant's many requests and items of correspondence over the last ten years will have become a considerable burden to NE. Complying with the two requests that are the subject of this notice would be a continuance of a burden that is now wholly disproportionate to the requests' value.

Public interest test

37. In its refusal notice, NE addressed the public interest test that is a requirement of regulation 12(1)(b). NE said that it strives to be an open and transparent organisation. Whilst it believed that it was entirely right to have spent a reasonable amount of time dealing with the complainant's requests for information, NE said that it had to strike a balance between complying with the EIR and delivering its core public services. NE said it had considered whether it is in the public interest to process the complainant's requests and had determined that the public interest in maintaining the exception outweighed the public interest in processing them. In reaching this conclusion, NE had taken account of the significant burden in terms of time, resources and distraction that the complainant's repeated requests were having on NE and its staff.

38. Whilst the Commissioner appreciates that the complainant may have his own concerns about Colony Bog and Bagshot Heath's notification as an SSSI, she has noted that this site was first notified more than 40 years ago. The complainant has not brought to her any evidence that would suggest concerns that are of such significance and wider public interest that they outweigh the public interest in NE being able to focus on its day to day business and its other customers. The Commissioner therefore agrees that the public interest favours maintaining the exception in this case.

Right of appeal

39. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

40. 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.
41. 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

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