

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

Date: 17 February 2023

Public Authority: Natural England
Address: Foss House
Kings Pool
1-2 Peasholme Green
York
YO1 7PX

Decision (including any steps ordered)

1. The complainant has requested information relating to a specific piece of land.
2. Natural England disclosed information in response to the request and withheld the rest, citing regulation 12(3) (personal information), regulation 12(4)(e) (internal communications) and regulation 12(5)(b) (legal professional privilege).
3. The Commissioner's decision is that the requested information is the complainant's personal data and therefore has proactively applied regulation 5(3). This means Natural England was not obliged to comply with the request.
4. The Commissioner does not require the public authority to take any steps.

Request and response

5. On 17 July 2022, the complainant wrote to Natural England and requested the following information:

“Request for copies of any and all correspondence and information that NE holds under any (sic) of [REDACTED]” search criteria from the date 08/3/2019 until the present date of 17/7/2022.”
6. Natural England (‘NE’) responded on 12 September 2022. It disclosed information to the complainant and confirmed that further information was held, but was exempt, under regulation 12(3), regulation 12(4)(e) and regulation 12(5)(b).
7. The complainant requested an internal review on 15 September 2022. They raised concerns about the timeliness of NE’s response and its decision to withhold information.
8. NE provided the outcome to its internal review on 3 November 2022. It upheld its original position.
9. This decision notice will consider NE’s handling of the request, including its timeliness.

Reasons for decision

10. Having reviewed the complainant’s request and a sample of the withheld information, the Commissioner is satisfied that it relates to legal action being taken against the complainant.
11. The Commissioner is satisfied that the requested information represents environmental information. Specifically it relates to information as described in regulation 2(1)(a) (the state of the elements, (b) (factors affecting or likely to affect the elements of the environment referred to in (a)) and (c) (measures...such as legislation, likely to affect the elements and factors referred to in (a)...as well as measures designed to protect those elements) of the EIR. Therefore, NE was correct to deal with the request under the EIR.

Regulation 5(3) (personal data of the requester)

12. If the requested information is the requester's personal data, it is exempt under regulation 5(3) of the EIR and there is no obligation on the public authority to make the information available.
13. Part 1, Section 3(2) of the DPA18¹ defines personal data as:

"any information relating to an identified or identifiable living individual."
14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable from that information.
15. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
16. An identifiable living individual is one who can be identified, either directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
17. In this case, the Commissioner has considered the request and the matter to which it relates – legal action taken against the complainant. Details of this legal action are in the public domain and so the Commissioner is satisfied that the complainant is identifiable from the withheld information, either directly or indirectly.
18. When deciding whether a request relates to an individual, it is important to consider the circumstances in which the relevant information is held. In this case, the information is held for the purposes of pursuing legal action against the complainant. Clearly, this legal action will directly affect the individual and have a significant impact upon them.
19. Having considered the complainant's request and the purposes for which it has been made, the Commissioner is satisfied that the request directly relates to the complainant. It is a request for information that is connected to and reveals something about them; it has them as its main focus, concerns matters that directly affect them, and would be processed for purposes with a view to directly affect them.

¹ [Data Protection Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

20. As part of this investigation the Commissioner has seen a sample of the withheld information which confirms his analysis that the request is for the complainant's own personal data and so NE was not obliged to disclose any information in response to the request and should have refused the whole request under regulation 5(3) of the EIR.
21. Therefore, the Commissioner doesn't deem it necessary to consider NE's application of regulations 12(3), 12(4)(e) and 12(5)(b) of the EIR.

Regulation 7 (complex or voluminous requests)

22. Regulation 5(2) of the EIR states that a public authority should respond to a request for information as soon as possible and within twenty working days of receipt.
23. Regulation 7 of the EIR allows a public authority to extend this timeframe by a further twenty working days, to a total of forty working days, if the request is complex or voluminous.
24. As the Commissioner has already discussed, it's likely that regulations 12(3), 12(4)(e) and 12(5)(b) of the EIR will apply to the withheld information. Whilst Natural England was not incorrect to rely upon the extension provided by regulation 7, it was not necessary to do so in this instance, since regulation 5(3) applies to the request in its entirety.

Other matters

25. In this case, NE failed to recognise that the request was for the complainant's own personal data and did not consider the request under the UK GDPR. Whilst the Commissioner cannot require a public authority to take action under the UK GDPR via a FOIA decision notice, in view of his decision above, he would recommend that NE now reconsiders the request as a subject access request for the complainant's own personal data, and respond accordingly.

Right of appeal

26. 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

27. 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.
28. 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