

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

Date: 14 November 2023

Public Authority: Forestry Commission
Address: 620 Bristol Business Park
Coldharbour Lane
Bristol BS16 1EJ

Decision (including any steps ordered)

1. The Commissioner's decision is that the Forestry Commission's handling of a request for correspondence didn't breach regulation 6 of the EIR, which concerns form and format. It's not necessary for the Forestry Commission to take any corrective steps.

Request and response

2. On 21 May 2023, the complainant submitted the following request to the Forestry Commission (FC) through the WhatDoTheyKnow (WDTK) website (request 1):

"Could you please provide copies of all emails between [name removed], Area Forrester for East Devon and any representatives of Wych Lodge Bike Club (formerly known as Wych Lodge Bike Park).

I am happy to accept redactions of personal or financial information in order to respect confidentiality. Please could your written response be given in the body of a single email in reply, rather than in a separate document attached to an email (even though any supporting documentation may be provided as attachments)."

3. On 20 June 2023, the FC advised the complainant that, on 16 June 2023, it had sent a response to a separate request the complainant had submitted to it through WDTK on 11 June 2023 (request 2). The FC confirmed that that response covered both requests and provided a link to the response.
4. In their request for an internal review, the complainant expressed dissatisfaction with the FC's handling of their request; that it had sent its response to this request to their separate request.

Scope of the case

5. The complainant considers that the FC breached regulation 6 of the EIR. This is because, they say, they had asked the FC to respond to the separate email addresses WDTK generated for their individual requests.
6. The Commissioner advised the complainant that his initial assessment was that the FC hadn't breached regulation 6. The complainant didn't accept this and preferred to conclude their complaint formally through a decision notice.

Reasons for decision

7. Under regulation 6(1) of the EIR, if an applicant requests that the information they've requested be made available in a particular form or format, a public authority shall make it so available, unless (a) it's reasonable for it to make the information available in another form or format; or (b) the information is already publicly available and easily accessible to the applicant in another form or format.
8. In their request for an internal review, in addition to the statements below, the complainant argued that it was unreasonable for the FC to send responses to email addresses that weren't "correct". They considered that doing so stopped WDTK from automatically publishing the FC's response alongside their original request. This therefore made environmental information less ^[1]available to the public and was the opposite of what would have been reasonable, in their view.
9. In their complaint to the Commissioner, the complainant repeated other points they'd raised in their request for an internal review, namely:

"as my email containing my original request clearly specified "Please use this email address for all replies to this request" I was explicitly requesting that the format of the response was a reply to each individual request to their own individual email address.

- 2). Even ignoring the clear request above, I would also argue that just by sending individual requests from different WhatDoTheyKnow.com email addresses, I was explicitly requesting that the format of the response was a reply to each individual request to their own individual email address. Otherwise why would each request have its own email address?"
10. In subsequent correspondence to the Commissioner, the complainant noted that regulation 6(1)(b) referred to information that "is already" publicly available. They argued that for the FC not to be in breach, it would have needed to link to something that was already published somewhere else, not to link to something it created in response to their request and then published.
 11. As noted, regulation 6 concerns instances where an applicant has requested information be made available in a specific form or format.
 12. In the Commissioner's published guidance on regulation 6, he advises that "form or format" concerns:
 - the physical form of the information (eg, electronic or hard copy)
 - how the information is organised within that form (eg, a particular electronic format); and
 - how the information is made available (eg, providing a copy or allowing inspection).
 13. The third of these bullets has some relevance here, at a stretch.
 14. The Commissioner hasn't been able to identify the instruction the complainant says they included in their request ie "Please use this email address for all replies to this request". He hasn't been able to identify this instruction in the current request or request 2. It therefore doesn't appear to the Commissioner that the complainant requested that the information be made available to them in any specific form and format.
 15. The complainant does appear to have assumed, however, that because WDTK generates individual email addresses for individual requests, they would receive two, individual responses. That's not an unreasonable expectation. But it was at internal review that it became an issue for the complainant that the FC had sent to request 2 a combined response to both requests.
 16. The two requests were near identical, both concerning correspondence between FC representatives and Wych Lodge Bike Club representatives. The FC therefore took the decision to send a joint response to request 2. The Commissioner considers that this was a reasonable approach.

17. It's key to regulation 6 that a request for the information in a particular form or format is included in the original request. But, as noted, the Commissioner has been unable to identify in request 1 (or request 2) an instruction to the FC to send its response to the request to the request's associated WDTK email account.
18. The Commissioner also considers it was reasonable in the circumstances for the FC to send one, joint response to the second request rather than individual responses to each – given the similarity of the requests. Doing so didn't make the information the FC disclosed less available to any great extent, particularly since in the correspondence it sent to request 1, the FC provided a link to its substantive response on request 2.
19. As such, the Commissioner finds that there was no breach of regulation 6(1) of the EIR.

Right of appeal

20. 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

21. 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.
22. 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

Cressida Woodall
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