

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

**Date:** 20 December 2023

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

**Decision (including any steps ordered)**

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1. The complainant has requested information about mountain bike ('MTB') trails. Forestry England ('FE') disclosed some information with redactions made under regulation 13 (personal data).
2. The Commissioner's decision is that, on the balance of probabilities, FE has identified all of the information within scope of the request. Furthermore, it's entitled to withhold the information it has done under regulation 13. The Commissioner has recorded a breach of regulation 5(2).
3. The Commissioner does not require further steps.

**Request and response**

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4. On 20 June 2023 the complainant wrote to the FC and requested:  
"A member of your staff in your West District recently completed a "MTB community led sites review" and presented his/her findings on a Microsoft Teams call on the 9th November 2022. You provided the

email invite for said call in response to another FOI request, which you can see here:

MTB community led sites review REDACTED.pdf  
(whatdotheyknow.com)

Could you please provide all documentation that was created as part of this review, including any internal and/or external emails, including attachments. Could you also provide any audio or video recordings of any calls relating to the review, including the one mentioned above, and any transcripts thereof..”

5. FE responded and disclosed information relevant to Wych Lodge, with redactions made under regulation 12(5)(e) (commercial or industrial information) and section 40(2) of FOIA (regulation 13 of the EIR).
6. The complainant raised concerns on 18 and 19 July 2023. They queried the number of redactions made under regulation 12(5)(e). They also disputed whether personal data should have been redacted. They formally requested an internal review on 27 July 2023, reiterating their previous points and also querying why specific information hadn't been provided to them in response to the request.
7. FE provided the outcome to its internal review on 15 August 2023. It explained that:

‘your initial request clearly identified that your area of interest was for information about Wych Lodge, as you referred to it by pointing to another request for information where relevant information had previously been disclosed relating to the management of this specific site.’
8. It upheld its previous position in relation to regulation 13 and introduced a reliance on regulation 6(1)(b) (form and format) because further information is publicly available to the complainant. It didn't address the complainant's concerns relating to the redactions made under regulation 12(5)(e).
9. On 15 August 2023 the complainant confirmed that ‘My request was clearly concerned with the MTB community led sites review in its totality.’ Again, they raised concerns about the redaction of personal data and commercially sensitive information from the information disclosed.
10. On 15 August 2023 FE confirmed they would treat the complainant's concerns as a new request for information, which the complainant disputed.

11. On 25 August 2023 FE disclosed an unredacted version of the information it had previously disclosed. This information covers all MTB trails, not just Wych lodge. Again, FE pointed the complainant to previous requests available on What Do They Know and explained that information relevant to the request had already been disclosed.

## Scope of the case

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12. During this investigation, the Commissioner advised FE that it was incorrect to handle the complainant's correspondence as two, distinct requests. Whilst the complainant referenced a previous request (about Wych Lodge) when they made their request on 20 June 2023, they also made it clear that they wished to receive 'all documentation that was created as part of this review' and referring to the 'MTB community led sites review.'
13. During this investigation, FE clarified to the Commissioner:

"the document Community led MTB sites review 2022\_Redacted.pdf has been disclosed unredacted, despite its name and so exception 12(5)(e) has not been engaged by Forestry England. We are content that as the document has been disclosed without any clear negative impact on other community-led mountain bike sites that renegeing this exception was correct. This was not explained to the complainant in the subsequent correspondence and I am sorry that this was missed."
14. Therefore, the Commissioner doesn't need to consider FE's application of regulation 12(5)(e) any further.
15. The complainant has, at no point, disputed that information that falls within the scope of their request is publicly available, as it was disclosed via What Do They Know in response to previous requests for information. However, they dispute the redactions made under regulation 13 in relation to their request.
16. The complainant also queried whether further information was held in response to their request.
17. The Commissioner therefore considers the scope of his investigation is to consider FE's application of regulation 13 and whether all relevant information has been identified.

## Reasons for decision

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### Regulation 13 – personal data

18. Regulation 13 of the EIR states that information is exempt from disclosure if it's the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) of the Data Protection Act (DPA) is satisfied.
19. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>, where the disclosure would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
20. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it isn't, then regulation 13 can't apply.

### Is the information personal data?

21. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".
22. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
23. The Commissioner has considered the information that's been redacted (from both this and previous requests for information). It's the names and contact details of FE staff.
24. An individual's name and contact details are clearly their own personal data. So the Commissioner will move onto consider whether disclosure would contravene any of the DP principles. The most relevant DP principle in this case is principle (a).

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<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

### **Would disclosure contravene principle (a)?**

25. Personal data is processed when it is disclosed in response to the request. This means that a public authority can only disclose personal data in response to an EIR request if to do so would be lawful, fair and transparent.
26. In order to be lawful, one of the lawful bases listed in Article 6(1)<sup>2</sup> of the UK General Data Protection Regulation (UK GDPR) must apply to the processing.

### **Lawful processing: Article 6(1)(f) of the UK GDPR**

27. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data.”
28. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made under the EIR, it is necessary to consider the following three-part test:

**i) Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

**ii) Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;

**iii) Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

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<sup>2</sup> [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](https://legislation.gov.uk/eur/2016/679)

### **Legitimate interest test**

29. The Commissioner must first consider the legitimate interest in disclosing the personal data to the public and what purpose this serves. In considering any legitimate interest(s) in the disclosure of the requested information under EIR, the Commissioner recognises that a wide range of interests may represent legitimate interests; they can be the requester's own interests as well as wider societal benefits. These interests can include the broad principles of accountability and transparency that underpin the EIR, or may represent the private concerns of the requester.
30. It's important to remember that disclosure under the EIR is effectively disclosure to the world at large. The Commissioner is of the opinion that, if the requester is pursuing a purely private concern which is unrelated to any broader public interest, then disclosure is unlikely to be proportionate. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).
31. At the time of raising their complaint, the complainant explained:

"Given that the decisions made in the MTB Community Led Sites Review affect the lives of potentially 100,000s, surely it's in the public interest that the names of the people making these decisions are known, and surely it is reasonable to assume that those people should have an expectation that their names would be disclosed in circumstances such as this."
32. The Commissioner is satisfied that there is a legitimate interest in disclosure of this information.

### **Necessity test**

33. The Commissioner must also consider if disclosure is necessary for the purpose that this legitimate interest represents or if there is an alternative method of doing so.
34. 'Necessary' means more than desirable but less than indispensable or absolute necessity. The necessity test is a means of considering whether disclosure under the EIR is necessary to meet the legitimate interest identified, or whether there is another way to do so that would interfere less with the privacy of individuals.

35. The MTB review, which is the subject of this request, was drafted by a junior member of staff and FE has explained:

“The complainant has stated that they wish to know the person ‘responsible’ for making decisions but this member of staff has not made any decisions, they have merely carried out a desk-based information gathering exercise to help staff understand how to follow guidance on unauthorised mountain biking trails.”

36. Furthermore, FE has argued that none of the staff named in the request are senior, with an expectation that their personal data would be disclosed. They are junior and not public facing. FE has pointed out that the information relevant to the MTB review has now been disclosed in full as requested. Identifying individuals wouldn't change how MTB trails are managed and it wouldn't add further transparency or accountability. That's because it's Forestry England (the organisation) rather than individuals within the organisation, which is responsible and accountable for the management of individual sites.
37. As the Commissioner has decided in this case that disclosure isn't necessary to meet the legitimate interest in disclosure, he hasn't gone on to conduct the balancing test. As disclosure isn't necessary, there's no lawful basis for this processing and it's unlawful. It therefore doesn't meet the requirements of principle (a). This is in line with the Commissioner's previous decision.<sup>3</sup>
38. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he doesn't need to go on to separately consider whether disclosure would be fair or transparent.

**Regulation 5(1) – duty to make environmental information available upon request**

39. In cases where a dispute arises over the recorded information held by a public authority at the time of a request, the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This means that the Commissioner will determine whether it is likely, or unlikely, that FE has identified all relevant information in response to the request.
40. In order to make his determination, the Commissioner asked FE to explain the searches it had undertaken to locate any information that

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<sup>3</sup> [ic-260837-b4z5.pdf \(ico.org.uk\)](#)

would fall within the scope of this request and to explain why these searches would have been likely to locate all of the information in scope.

41. FE has explained that:

"A search was conducted by the West district, recreation and communications teams for MTB community led sites 'review'. SharePoint folders and documents were searched, as well as inboxes, OneDrive, local and national servers. On top of this the Beat Forester also carried out paper record search in Haldon and Forest of Dean offices, where there was possibility of finding hard copy records.

Given the close relation to the other requests for information that were received at that time, all of these searches were done together and there is a bank of information related to community-led mountain bike sites. The majority of this information is relevant to the management of Wych Lodge.

However for the purpose of this request, only two documents are distinctly in scope of the request. These two documents were produced as a desk-based exercise which prompted a sequence of site visits to further assess the situation on the ground: the documents have been disclosed – and are - Community led MTB site review 2022 as the presentation and MTB Community Led Sites A3 as the report."

42. It's also confirmed that:

"Other records in scope of this request have already been published as part of the suite of information created in managing the Wych Lodge mountain bike unauthorised trails. Internal communications regarding management of Wych Lodge, including the meeting/presentation of the 'review' has been disclosed on WhatDoTheyKnow at Internal emails relating to the mountain bike trails at Wych Lodge - a Freedom of Information request to Forestry England – WhatDoTheyKnow.<sup>4</sup>"

43. In relation to the above emails, the complainant has argued:

"At the very least I would have expected to see the other meeting invites to go alongside the "Day 2 of Option 2" one above (i.e. Day 1 of Option 1, Day 2 of Option 1 and Day 1 of Option 2)."

44. This information appears to have been disclosed in response to another request. FE put forward two lots of dates for a two day meeting regarding MTB partnerships and agreements. Whilst the second of the

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dates was labelled 'option 2' the first dates weren't labelled option 1, which is where the complainant's confusion has come from.

45. It would have been helpful if FE had clarified this to the complainant. The Commissioner urges the complainant to study all of the What Do They Know links FE has provided.

46. FE has explained that:

"The member of staff who did the presentation has since left Forestry England and so any information stored in their OneDrive or inboxes will not be held. It is standard practice to delete information of staff who leave the organisation, ensuring that business critical information is retained and knowledge passed on."

47. FE has pointed the Commissioner to the relevant leavers IT policy which confirms this should be done. FE acknowledges this means that drafts of the presentation may have been deleted but this would have occurred in line with its own policies and prior to the request being received.

48. FE has also clarified to the Commissioner:

"In spring 2023 Forestry England put in place a policy to help districts understand how to manage unauthorised mountain bike trails in the nation's forests. This 'review' was an internal piece of work to show district teams how they could go about implementing the new guidance and ensuring that mountain bike trails on Forestry England managed land were appropriate.

The 'review' was a desk based exercise by a junior member of staff, using information from Strava on Forestry England managed sites in the West District to identify sites that clearly have mountain bike activity but are not sites that are managed by Forestry England as a mountain bike trail. This desk-based review has been disclosed as the report.

Supplementary information relevant to this request, such as meeting invites, internal communications about travel and attendance have already been disclosed for the other requests for information about Wych Lodge, so this information is easily accessible to any member of the public on the WhatDoTheyKnow site.

As this was a relatively small piece of work where the recreation team were providing support to the district team in understanding how to apply guidance, I am content that all relevant documentation has been found, considered and disclosed for this request."

49. To reiterate, when considering regulation 5(1), the Commissioner only needs to consider the balance of probabilities. Looking at the volume of information that's been disclosed (that FE has applied regulation 6(1)(b) to), and in the absence of any further steer from the complainant, the Commissioner is satisfied that all of the information within scope has been identified.

### **Procedural matters**

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50. Regulation 5(2) states that information must be disclosed no later than 20 working days after the receipt of the request. In disclosing non-exempt information during this investigation, FE breached regulation 5(2).

## **Right of appeal**

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51. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

52. 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.
53. 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**