



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 21 August 2006

Public Authority: The Environment Agency

**Address: Riversmeet House
Newtown Industrial Estate
Northway Lane
Tewkesbury
Gloucestershire
GL20 8JG**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the public authority has dealt with the Complainant's request in accordance with Part I of the Act.

In the light of this decision, the Notice specifies no remedial steps to be taken by the public authority.

- 1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner**
- 1.1 The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Act are imported into the EIR.



1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

2.1 The complainant has advised that on 30 March 2005 the following information was requested from the public authority in accordance with section 1 of the Act:

"We should like to give notice under the Freedom of Information Act that we wish to look at any files you may have at any of your offices relating to the area of Mercia Way in Warwick or Emscote Gardens in Warwick, specifically in connection with our flood bank".

This request was expanded in correspondence dated 13 April 2005 to include:

"I am told by Severn Trent Water that the old files that they had were passed on to the National Rivers Authority in 1989 when the water industry was privatized. These were then passed on to yourselves when the National Rivers Authority ceased operating and so should be amongst the files which you are in the process of collating."

2.2 In response, the public authority arranged to accommodate the complainant and other parties at its offices, as was the complainant's preference, on the morning of 23 May 2005. At this meeting the public authority supplied the complainant with "access to the information you requested, this information has been gathered together into a single package.....Access to information will not include allowing you to view all the contents of all of our files." Under Regulation 5 of the EIR. However, the complainant considered that additional information has been withheld without good explanation and on 2 October 2005 made a complaint to the Commissioner. The complainant argued:



- That the EA did not conduct a thorough search of the recorded information that it holds and as a result has not given you access to all the information on the flood bank.
- That the EA destroyed information that should have been retained.
- That the EA wrongly applied the personal data exemption contained in both the FOIA and the Environmental Information Regulations 2004 SI no 3391 section 40 and section 13 respectively.

3. Relevant Statutory Obligations under the Act

3.1 Regulation 5(1) –

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these regulations, a public authority that holds environmental information shall make it available on request.

3.2 Regulation 13(1) provides that –

“To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data”.

(2) The first condition is -

- (a) “...in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene —
 - (i) any of the data protection principles...”.

4. Review of the case

- 4.1 The Commissioner put the arguments advanced by the complainant to the public authority and asked additional questions designed to give the Commissioner a more complete picture of the public authorities policies, processes and records management.
- 4.2 The Commissioner also asked the authority for a description of the personal data in the files, how it could be redacted, the size of the files and how the files were kept and maintained.
- 4.3 These questions were put to the public authority by e-mail on 26 April 2006. The public authority responded as follows:



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- “We continue to hold information in planning, development control and flood defence files for Mercia Way/Emscote Gardens.”
- “The records we hold date from the 1960's up to the present. The files are in microfiche and paper files. Some records were destroyed during reorganisations of our predecessor bodies, for example the move from Water Authority to National Rivers Authority (note that the National Rivers Authority was not covered by the Public Records Act). We may have deleted some records but we have not kept the date of deletion.”
- “The Environment Agency does have a records management procedure which was issued in 2001. Under this our retention schedule, which was extended and revised in 2002/2003, explains what information we should keep and for how long. We have not deleted any files regarding this site, following the complainants request dated 30th March.”
- “Files were kept if we had any legal requirements to keep them and if they were of operational value. Otherwise files would have been reviewed to check for any potential value, and disposed of.”
- “Legal requirements are built into our retention schedule. There are no specific ‘extra’ requirements for this type of information...”
- “Operational files were the main business purpose for which information is held. This is in order for us to make comments on planning applications and works to be undertaken. It also helps with consistency and gives staff necessary history to the area, especially valuable when we have staff changes.”
- “Apart from some personal data, we have provided the complainant with all the information that we hold regarding the files and have explained this to her. We have also arranged for Officers to meet her and her resident group at our offices, to answer any further questions they have regarding the site.”
- “There are letters from private individuals with names and addresses, along with letters from and to Officers and the Council including the planning department. There was a large amount of information, consisting of several hundred documents.”
- “We did redact names and addresses from the files and then provided copies of the paperwork.”
- “The files contain several hundred pages. The documents are letters, plans and internal memos. A lot of the files are stored as microfiche whilst others are hard paper copy files. “



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- “Different teams hold their own files in accordance with their operational requirements. Some files are held by reference to the National Grid Reference.... Planning files are assigned a number on receipt of the application. Any subsequent correspondence relating to that site is then filed with the original correspondence.”

4.4 The Commissioner asked further questions of the public authority to gain clarification of the answers by e-mail on the 8 June 2006. These questions concerned what archived information the complainant had been given access to, the records management pre 2001 and the public authorities reasoning for applying the exception contained in regulation 13.

4.5 The public authority responded on the 21 June 2006 as follows:

- “Yes. All relevant information was printed from microfiche on to paper copies. The paper copies were redacted to remove names and addresses of private individuals.”
- “No, the 2001 Records Management procedure provided to you was our first version.”
- The Environment Agency believe that the names and addresses of the private individuals that we withheld are ‘personal data’ under the Data Protection Act 1998 and are exempt due to Regulation 13(1) and 13(2) of the EIR.
 - a) “It is our view that the information that was withheld relates to another person, and therefore that its disclosure would have contravened the First Data Protection Principle of the Data Protection Act 1998.
 - b) In deciding this we considered the context in which the letters were received regarding this issue. Whereas in some circumstances, such as formal consultations, we have the opportunity to notify respondees of the potential for disclosure, in this case there is little we could have done of this nature.
 - c) We therefore believe that there was no expectation that comments made to us would be attributable and that disclosure would therefore breach the Fair processing requirements of the First Principle. In reaching our decision we also considered the impact that could have resulted from such disclosure in that it would deter people from making representations to us and therefore their ability to engage in local environmental issues.”
- “I can clarify that only names and addresses of private individuals were redacted. Names of officers were left unaltered.”



5. The Commissioner's Decision

- 5.1 The public authority continues to maintain that the information in question is not held. The Commissioner has considered the response given to the questions put to it.
- 5.2 Although the Commissioner has sympathy with the complainant's predicament he is satisfied that the requested information is not held by the public authority. The public authority has provided the complainant with a great deal of information in relation to the flood bank, in over 70 communications and meetings with the Complainant. Although further information has been discovered since the initial request in a personal enforcement file, the public authority has asserted to the Commissioner that it does not hold any further information. The public authority has stated that it is under no legal duty to retain the information requested and some of the information requested would have been destroyed after being checked for operational value before the public authority had a records management policy which was initiated in 2001 or lost in the transition from the National Rivers Authority. The public authority has explained that for logistical reasons it has a need to destroy information that is "out of date or redundant". In light of the absence of evidence that further information is held the Commissioner is satisfied that the public authority has complied with the requirement of section 1.
- 5.3 In relation to Regulation 13 the Commissioner is satisfied that the information redacted would fall under the first Data Protection principle of the Data Protection Act 1998. The public authority has explained that in some circumstances such as formal consultations it can notify respondents of the potential for disclosure. However in this particular case this is not possible. Therefore, the public authority believes that there was no expectation that comments made to it would be attributable and so would breach the fair processing requirements of the First Principle. The public authority also considered the detrimental affect such disclosure would have on future consultations which would reduce, it believes, the public authority's ability to engage in local environmental issues.

6. Action Required

- 6.1 In the light of the matters set out above, the Commissioner requires no remedial steps to be taken by the public authority.



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7. Right of Appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 21st day of August 2006

Signed

Phil Boyd
Assistant Commissioner

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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF