

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

**Date:** 22 January 2013

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

**Decision (including any steps ordered)**

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1. The complainant made two requests for information relating to archaeological sites in the New Forest National Park which had been affected, or could in future be affected, by actual or planned projects of mire or stream restoration. The Forestry Commission England (FCE) refused the requests under regulations 12(4)(d) (unfinished records) and 12(4)(e) (internal communications) of the EIR respectively. During the course of the Commissioner's investigation the complainant agreed that he did not wish to pursue his complaint about the first request. The Commissioner has therefore considered whether the remaining information had been correctly withheld under regulation 12(4)(e) and, in respect of two emails, regulation 12(5)(f) (voluntary supply) which was only introduced by the FCE after the involvement of the Commissioner.
2. The Commissioner's decision is that FCE was entitled to rely on regulation 12(4)(e) in order to withhold some, but not all, of the information to which the exception has been applied. In addition, the Commissioner has found that the FCE correctly cited regulation 12(5)(f) to refuse the disclosure of two emails.
3. The Commissioner requires the public authority to disclose the following information to ensure compliance with the legislation.
  - Copies of all the emails and attachments which fall under categories c – d below.

- Copies of the administrative emails specified in Annex A.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 20 March 2012 the complainant wrote to the FCE and requested information in the following terms:

*"[...] papers relating to or referring to the protection of, surveying, recording or damaging of archaeological sites in the New Forest National Park resulting from or related to actual or planned projects of mire or stream restoration. The papers should cover the period 1<sup>st</sup> January 2011 onwards:*

*1. **Archaeological reports**, whether prepared by or for the Forestry Commission or for others. You need not supply copies of any **reports** on Latchmore Brook, Ditchend Brook, Roe Wood, Fletchers Thorns, which you have already supplied to the group, but any subsequent amendments of those reports should be included.*

*2. **Any correspondence, emails, file notes or minutes** or other papers on the above subjects, whether with individuals or authorities or organisations. You need not supply copies of correspondence etc with [the group that the request was made on behalf of], which we already have."*

6. The FCE responded on 18 April 2012 and confirmed that the requests would be dealt with under the provisions of the EIR. In respect of request 1 (archaeological reports), the FCE advised that two reports were being prepared but refused to disclose these under regulation 12(4)(d) of the EIR. Turning to request 2, the FCE again confirmed that it held relevant information but decided in this case that the information was subject to the exception provided by regulation 12(4)(e) of the EIR. As required by the EIR, the public interest test was considered by the FCE but it was found that it favoured maintaining the exceptions.
7. The complainant wrote to the FCE again on 19 April 2012 challenging its refusal to disclose the requested information. The FCE subsequently carried out an internal review, the outcome of which was provided on 17 May 2012. This upheld the FCE's original position taken in response to the requests.

## Scope of the case

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8. The complainant contacted the Commissioner to complain about the FCE's refusal to release the information he had requested.
9. During the course of the Commissioner's investigation, it came to light in relation to request 1 that the FCE had provided the complainant with all the archaeological reports it held at the time the request was made; with any drafts that existed only relating to those reports that were now in the complainant's possession. On this basis, the complainant agreed that he did not wish to pursue his complaint about request 1.
10. The Commissioner has therefore only looked at whether the decision of the FCE to withhold the information covered by request 2 was in accordance with the legislation. The FCE has subsequently reaffirmed its reliance on regulation 12(4)(e) with the exception of two emails that, on reflection, it decided were covered by regulation 12(5)(f) instead.
11. It should also be pointed out that a limited number of emails which had originally been withheld under regulation 12(4)(e) were subsequently decided by the FCE to be outside the scope of the request. The Commissioner has had sight of these emails and is satisfied with the FCE's claim that these do not require further consideration because they are not within the scope of the request.

## Reasons for decision

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12. The Council has decided that the disputed information requested by the complainant represents environmental information and therefore the appropriate access-regime is the EIR rather than FOIA.
13. The complainant has not expressed an objection to the Council's decision to treat the requests under the EIR. Equally, the Commissioner is satisfied that the EIR applies; considering that the requested information is ultimately on a measure, namely the management of land in the New Forest, which will affect the state of the elements of the environment. It therefore follows that the information falls within the definition of environmental information set out at regulation 2(1)(c) of the EIR.
14. In coming to this view, the Commissioner has reminded himself of the purpose stated in the first recital of Council Directive 2003/4/EC, from which the EIR is derived. This has led to him to interpret widely the definition of environmental information contained at regulation 2 of the EIR; particularly its wording that environmental information is "any

information...on" the factors described at paragraphs (a) – (f) of the regulation.

15. Accepting that the EIR applies, the Commissioner has therefore gone on to consider whether the FCE's decision to withhold the requested information was in accordance with the provisions of the legislation. To do so, he has addressed in turn the FCE's reliance on regulation 12(4)(e) and regulation 12(5)(f) of the EIR.
16. In approaching these exceptions, the Commissioner has observed the EIR's express presumption in favour of disclosure.
17. All exceptions set out at regulation 12 of the EIR are subject to the public interest test. Therefore, where an exception is found to be engaged, the Commissioner must go to weigh up the public interest arguments attendant to the disclosure of the information

### **Regulation 12(4)(e) – internal communications**

18. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information to the extent that –  
  
*(e) the request involves the disclosure of internal communications"*
19. The Commissioner has recently published guidance on regulation 12(4)(e)<sup>1</sup>, which includes a description of the types of information that may be classified as 'internal communications'.
20. The Commissioner has firstly considered the question of whether the information in question can reasonably be described as a 'communication'. As the Commissioner's guidance indicates, the concept of a 'communication' is broad and will encompass any information someone intends to communicate to others, or places on file so that others may read it. Documents attached to a communication are also considered to have been communicated to others.
21. In this case the disputed information comprises a series of emails, with in some instances attachments, which were sent between various parties. Based on the description outlined above, the Commissioner has no doubt that the disputed records are communications for the purposes

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<sup>1</sup>[http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~media/documents/library/Environmental\\_info\\_reg/Detailed\\_specialist\\_guides/eir\\_internal\\_communications.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Detailed_specialist_guides/eir_internal_communications.ashx)

of the exception. He has therefore gone on to explore whether the records are 'internal' communications.

22. There is no definition of 'internal' communications within the EIR. Consequently, in its absence, a judgement on what constitutes an internal communication must be made by considering the relationship between a sender and recipient, the particular circumstances of the case and the nature of the information in question.
23. Typically, an internal communication is one that stays within one public authority. A communication sent (directly or by cc) to a third party, as well as being circulated internally, is generally not an internal communication.
24. The information to which regulation 12(4)(e) has been applied can broadly be separated into the following categories –
  - a) Communications between officials at the FCE.
  - b) Communications between officials at the partners of the New Forest Higher level Stewardship Scheme (HLS).
  - c) Communications with other external parties.
  - d) Communications with officials at Natural England
25. The Commissioner's findings on each of these categories are outlined below.
  - a) *Communications between officials at the FCE*
26. Communications sent between officials within a single organisation are the clearest example of records that will be covered by the exception. Apart from a number of emails that have been sent to officials at the FCE but have also been sent, or copied in, to third parties outside the FCE, the Commissioner finds that the exception is engaged. The emails that have also been sent externally are considered in more detail under categories c) and d).
  - b) *Communications between officials at the partners of the HLS*
27. The requested information includes communications between officials at the organisations that make up the New Forest HLS.
28. Natural England's website explains that –

*"HLS aims to deliver significant environmental benefits in priority areas. It involves more complex environmental management requiring support and advice from our local advisers, to develop a comprehensive*

*agreement that achieves a wide range of environmental benefits over a longer period of time. HLS agreements last for 10 years.*"<sup>2</sup>

29. The HLS for the New Forest came about on 1 March 2010 as a result of a successful bid to Natural England and Defra by a partnership of the Verderers, the FCE and the New Forest National Park Authority (NPA)<sup>3</sup>. Each of these organisations represents a separate public authority for the purposes of the EIR. The partnership itself is designed to restore and enhance important habitats of the New Forest. This includes the cultural and built heritage of the Crown lands lying within the boundaries of the Park.
30. The Commissioner considers that in most situations communications between different public authorities will not qualify as internal communications. The FCE, however, has argued that to adopt such a position in this case would be to ignore the particular character of the partnership between the authorities which was created to implement the HLS.
31. The FCE has explained that the HLS board comprises a senior member of each partner organisation and people working on the project who are spread amongst the partner organisations. It is on this basis that the FCE has claimed that any communications between the partners should properly be construed as 'internal'. In advancing this argument, the FCE has clarified that the HLS is just one small part of the overall management of the New Forest; thus any communications between the partners that did not concern the implementation of the HLS would not be considered internal communications.
32. The Commissioner has accepted that the existence of the HLS does raise the possibility that communications which might not otherwise be thought as internal, could be subject to the exception in this case.
33. In the view of the Commissioner the key consideration in this case is the existence of the formal partnership agreement between the members of the HLS. This sets out shared, but focused, objectives and is intended to bind the partners together to work together in delivering these objectives. The Commissioner considers that the level of formality of the

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<sup>2</sup> <http://www.naturalengland.org.uk/ourwork/farming/funding/es/hls/default.aspx>

<sup>3</sup> <http://www.hlsnewforest.org.uk/index>

partnership agreement distinguishes this case from others where separate public authorities merely work together, co-operate or assist each other. Significantly, as referred to by the FCE, the agreement only has force in relation to the HLS and is not meant to endorse a wider partnership between the partners.

34. In light of this agreement, the Commissioner has decided that communications between officials at the Verderers, the FCE and the NPA who are acting in their capacity as HLS partners are internal communications. This applies where, and only where, they concern the application of the HLS and have not been shared with anyone who is not acting as a partner of the HLS. In effect the communications must be 'internal' to the HLS partnership for the exception to apply in the circumstances of this case.

*c) Communications with external contractors*

35. A significant part of the withheld information includes records of where an external party – namely, not a member of one of the partners of the HLS – has sent, received or has been copied into a communication. These parties include –
- An environmental contractor
  - An archaeological contractor
  - An NPA archaeological and heritage structures contractor
36. The FCE has argued that any correspondence featuring these parties should be considered internal communications. The Commissioner notes that the FCE has primarily focused its submissions on its relationship with the particular archaeological contractor. However he has applied the same principles in relation to the other contractors.
37. The decision to consult with a contractor is made where needed expertise is not available within the HLS partnership itself. The employment of a contractor will be carried out under a service contract.
38. The FCE has acknowledged that as a rule communications between a public authority and a third party (eg an external adviser, a contractor or a lobbyist) will not generally constitute internal communications. The FCE considers though that the relationship the HLS has with the contractors is sufficient to find that an exception to the rule exists in this situation.
39. To support this position, the FCE has highlighted to the Commissioner the level of engagement that the contractors have with the HLS and the activities they have carried out on its behalf. These have included

attending meetings and site visits. The culture is therefore one of day to day exchanges as the work progressed, which is reflected in the communications themselves.

40. In its submissions, the FCE has referred to the decision of the Information Tribunal in the *Department for Transport v Information Commissioner* (EA/2008/0052)<sup>4</sup>. An outline of the case and the Tribunal's findings can be found at page 7 of the Commissioner's guidance. In summary, however, the Tribunal considered that the draft of a transport study produced by Sir Rod Eddington, an independent expert, was an internal communication for the purposes of regulation 12(4)(e) in view of the fact that his role meant he was 'embedded' within the civil service.
41. The Commissioner accepts that, following Eddington, there will be occasions when communications with a third party should be considered as internal communications. However, he believes these occurrences to be rare and does not consider that the principles of Eddington apply here. This is because there is no evidence to indicate that any one of the contractors was 'embedded' within the HLS in a fashion corresponding with the Eddington example.
42. Instead, it is the Commissioner's opinion that a more apt comparison is with the Tribunal's findings in *South Gloucestershire Council v Information Commissioner and Bovis Homes Ltd* (EA/2009/0032)<sup>5</sup>. In this case the Tribunal found against the council's claim that reports prepared by external consultants were internal communications; rejecting its arguments that the consultants were 'embedded' in the council in an analogous way to the Eddington case.
43. The Commissioner has been mindful of the Tribunal's comments at paragraph 33 of its South Gloucestershire decision, at which it stated –  
  
*"[...] In the final analysis it is not the relationship but the communications themselves on which we must make a judgement. Paying attention both to form and to substance, and to the particular circumstances and nature of the circumstances in question, we are not*

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<sup>4</sup>[http://www.informationtribunal.gov.uk/DBFiles/Decision/i307/Sec%20of%20State%20for%20Transport%20v%20IC%20\(EA-2008-0052\)%20-%20Decision%2005-05-09.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i307/Sec%20of%20State%20for%20Transport%20v%20IC%20(EA-2008-0052)%20-%20Decision%2005-05-09.pdf)

<sup>5</sup><http://www.informationtribunal.gov.uk/DBFiles/Decision/i347/South%20Gloucestershire%20decision%20final%20without%20signature%2020.10.09.pdf>



*convinced that the consultants' reports can properly be characterised as internal communications of the Council."*

44. It has therefore been equally incumbent on the Commissioner to consider the form and substance of the communications. This inspection has taken place with the knowledge that, unlike the South Gloucestershire case, the FCE is not deciding on the release of draft or final reports from a contractor but information which testifies to, as stated, the day to day exchanges as work progressed.
45. From his analysis, the Commissioner has seen evidence to support the FCE's assertion that the contractors contribution to, and participation with, the work of the HLS was significant. Moreover, this participation by the contractors was not a one-off, or carried out only at isolated intervals, but represented the contractors' rolling advisory function. It follows therefore that the communications between officials at the HLS partners and contractors do in certain ways mirror those communications between the partners of the HLS, in that they represent responses to the regular challenges raised by the project.
46. Yet, notwithstanding the above, the Commissioner has been unable to find any evidence in the communications that suggests that the relationship between the contractor and the HLS is anything beyond that; namely, that of a consultant employed by a client to advise on a specific project. The Commissioner therefore does not accept the view that the dialogue should be caught by the exception. He considers that to do so would ignore the distinction which exists between a public authority and an external paid adviser.
47. For these reasons, the Commissioner has decided that regulation 12(4)(e) is not engaged where the communications are sent from or to the external contractors. This also has the effect that communications, including any attachments, that are copied in to an external contractor do not qualify as internal communications and are not subject to the exception.

*d) Communications with officials at Natural England (NE)*

48. The Commissioner has observed that in two instances an official at NE has been one of the recipients of an email. The first of these was sent by an official at the FCE to other staff within the FCE, a board member of the HLS, officials at the New Forest NPA and a NE employee. The second, with an attachment, was sent by an official at the New Forest NPA, to employees at FCE and two members of the NE.
49. NE is not a party to the HLS, therefore the arguments at paragraphs 27 to 34 of this notice do not apply to these emails. The Commissioner has

therefore considered whether the emails can be said to be internal communications on some other basis.

50. Both NE and the organisations from which the emails were sent, namely the FCE and the New Forest NPA, form part of Defra's umbrella network of arms length bodies. This is confirmed in Defra's delivery landscape map<sup>6</sup>, which was designed to give a clear indication of its key delivery bodies and the closeness of their relationship to Defra.
51. The delivery landscape map splits Defra's arms length bodies network into three, with a relevant organisation falling into one of the following categories: 'executive agencies', 'non-departmental public bodies' (NDPBs) and 'Others'. NE is classified as an NDPB, while the Forestry Commission (as a non-ministerial department) and all national park authorities fall under the 'Others' category.
52. Regulation 12(8) of the EIR states that internal communications include communications between government departments. In his guidance, the Commissioner further explains that –
53. *"Internal communications include communications between an executive agency and its parent department, as an executive agency is part of the parent department for the purposes of the EIR. Communications between executive agencies, or between an executive agency and another central government department, will therefore also be internal communications."*
54. The FCE has not made any arguments to convince the Commissioner that, regardless of any membership of the HLS, all the parties to these emails are either executive agencies of government departments or government departments in their own right. Indeed, the description of HE as a *Non Departmental* Government Body (emphasis added) suggests that HE is not a government department.
55. In the absence of any convincing submissions on this point, the Commissioner has no option but to conclude that the two emails and the one attachment fall outside of the scope of the internal communications exception.

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<sup>6</sup> <http://archive.defra.gov.uk/corporate/about/with/delivery/landscape/documents/defra-network-landscape.pdf>

## **The public interest test**

56. The Commissioner has found that regulation 12(4)(e) of the EIR is engaged in relation to information covered by the headings a) and b) above. He must therefore consider the public interest arguments that exist around the disclosure of the requested information. In doing so, the Commissioner has been mindful that the EIR applies an express presumption in favour of the release of environmental information.

### *Public interest arguments in favour of disclosure*

57. The starting point for the consideration of the public interest test inevitably involves the acknowledgement that there will always be some public interest in disclosure. Ultimately, transparency should equate to accountability and this principle holds true even where information may appear at first glance to be trivial in nature. This is because of the insight that the release of any documents, even apparently trivial ones, will give a member of the public into the way that a public authority functions and operates. The complainant has also argued in this case, however, that the public interest in disclosure extends beyond these general arguments for openness.

58. The request itself was made against a backdrop of environmental engineering work being carried out in the New Forest on the instructions of the FCE and the HLS. That engineering potentially puts at risk the archaeological and historical sites of the New Forest. In order to minimise this risk, the FCE has stated that archaeological surveys would be undertaken so that recorded archaeological sites may be identified and any unrecorded sites found, with the aim of protecting these areas during the engineering.

59. The complainant has informed the Commissioner that concerns have been raised about the quality of the assessments of the archaeological and historical sites in relation to the expenditure of HLS money. It therefore follows that disclosure could potentially allay these concerns or otherwise stimulate further debate on the value of the actual work being carried out at the New Forest and the steps being taken to protect areas of particular significance.

### *Public interest arguments in favour of maintaining the exception*

60. The FCE's arguments for finding that the public interest weighs in favour of withholding the requested information are three-fold. First, the FSE has advanced that disclosure would impinge on the safe space in which the officials of the FCE and the HLS generally can explore issues and make decisions. Second, and seemingly arising from first, the FCE has pointed the Commissioner to the possibility that the content of the

information, when disclosed in this context, has the potential to be misleading with the result that additional work would be needed in order to correct any misrepresentation of the information. Third, it has pointed to the 'chilling effect' that would be caused because of disclosure.

61. In terms of the safe space argument, there will frequently be a need for a public authority to debate live issues and reach decisions without being hindered by external comment or media involvement. This need, as the FCE has recognised, will normally be required where a policy of a public body is being formulated; a situation which it admits is not obviously the case here.
62. However, it argues that the dialogue or 'chatter' between the organisations is representative of the everyday task of managing the New Forest. It is claimed that this interaction was by necessity unconstrained, with any delivery issues fully aired. As such, the FCE considers that each party had a reasonable expectation that the discourse would be kept confidential. To breach the safe space would, in the view of the FCE, remove the protection that it and its partners need in order to deliver the aims of the project efficiently.
63. The FCE has also pointed out that the requested information is not a neat package of information but a jumble of email exchanges. The nature of the exchanges means they only convey part of the total conversation. These extracts then, according to the FCE, could quite easily be misunderstood and taken out of context and it would take a considerable effort to provide clarification. The need to explain the information, much of which in the view of the FCE is meaningless or misleading on its own, would place a significant burden on the resources of the HLS, if indeed clarification was always possible.
64. The idea that disclosure could have a detrimental effect on the effective management and delivery of the project also carries through to the FCE's claims in relation to the chilling effect that would lead out of disclosure. Generally speaking, a chilling effect argument plays on the impact that disclosure will have on the frankness and candour of officials as a result of external speculation and criticism. In this instance, the FCE has pointed to the possibility of poor decision making in the future if individuals felt they were unable to contribute to the project in an entirely frank and candid way.

*The balance of the public interest arguments*

65. The Commissioner has considered the public interest arguments following an inspection of the withheld information itself.

66. From his observations, the Commissioner believes that a number of emails can immediately be distinguished from the rest. This is where they are purely of an administrative nature and do not contain any significant information relating to the work of the FCE or the HLS. For example, the individual emails of this nature will include those that simply acknowledge receipt of earlier communications.
67. It therefore follows that these administrative records will be by definition bland. The Commissioner accepts that there will not be significant, if indeed any, public interest in the release of this information. Equally, however, the Commissioner can see no compelling reason for withholding the information. This is because the issue of sensitivity and detriment referred to in the FCE's public interest arguments is ultimately not relevant to this information.
68. The EIR provide that in order for information to be withheld the public interest in maintaining an exception must outweigh the public interest in disclosure. It also provides a presumption in favour of disclosure when public interest arguments are equal. The Commissioner has applied the presumption in favour of disclosure in this case and has decided that the emails described at Annex A should be disclosed.
69. The Commissioner's decision therefore now turns to the remaining emails, which he considers are more representative of the HLS' work at the New Forest. In doing so, it has been necessary to view each of the emails in the context of the extended stream of correspondence to which the email belongs.
70. When considering this information, the Commissioner has first had regard of the timing of the request and its relationship with the requested information. Often the sensitivity of information may diminish with the passage of time. In addition, the safe space required by a public authority in order to consider an issue will normally be thought to cease once that particular issue has been concluded. This is a reflection of the fact that the time for decision making has effectively passed.
71. The requested information covers the approximately 14 month period extending from January 2011 and the date of the request. This covers issues relating to a number of different areas at the New Forest. Prior to the request, the HLS had produced archaeological reports for some but not all of the areas which were under discussion.
72. The Commissioner is satisfied from his analysis that all of the information forms part of the flow of communications relating to a particular aspect of the project carried out by the HLS. Moreover, the management project was still in full swing at the time of the request

was made. The Commissioner therefore considers that not only is the information current, it also relates to ongoing and therefore 'live' issues.

73. These factors will, in the view of the Commissioner, significantly strengthen the FCE's case for withholding the information. Inherent in the inclusion of the exception itself in the EIR is the recognition that public authorities need time and space in which to debate matters relating to an issue. This corresponds with the understanding that there will be instances when external speculation on the internal thinking processes of an organisation could delay, or otherwise deflect, an organisation from achieving its aims in an effective way. In this case the Commissioner accepts that the loss of 'safe space' is a real possibility should the requested information be disclosed.
74. It is the Commissioner's view that the importance of the concept of 'safe space' in this situation has the effect that the public interest will favour the maintaining of the exception. This, it should be stressed, is not to say that the arguments in favour of disclosure are not significant. The Commissioner is keenly aware that the project being carried out by the HLS, and the archaeological aspects which it encompasses, is designed to protect not only the natural environment itself but also features of our cultural heritage. It therefore follows that there is a clear public interest in monitoring the way that the project is being handled, with a view to establishing whether this has been implemented with sufficient care and rigour.
75. The flip-side of this, however, is that disclosure at this stage of the process could impede the effective management of the project. To the Commissioner's mind then, the benefit of disclosure would be offset by the detriment that could arise. Therefore, in all the circumstances, the Commissioner has found that the public interest in maintaining the exception outweighs the weight in favour of disclosure.

### **Regulation 12(5)(f) – voluntary supply**

76. Regulation 12(5)(f) states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

*(f) the interests of the person who provided the information where that person –*

*(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;*

*(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and*

*(iii) has not consented to its disclosure*

77. The FCE has applied the exception to two emails contained within the bundle of withheld information. Both of these were provided to the FCE by a third party, specifically the same individual acting in a private capacity.
78. The engagement of the exception is dependent on each of the three conditions, (i) – (iii), being met. Even if this is found to be the case, however, it is then necessary to consider whether there would be an adverse effect on the interests described in the exception as a result of disclosure. The threshold of the adverse effect is a high one and it is necessary to demonstrate that disclosure would have an adverse effect, not that it could or might have such an effect.
79. Having had sight of the information, and considering the circumstances in which it was provided, the Commissioner is content that the information was supplied voluntarily and that the person supplying it could not have been put under any legal obligation to supply it. Further, the Commissioner is not aware of any evidence which suggests that the information was supplied in circumstances such that FCE or any other public authority would be entitled to disclose it. Finally, there is no indication that the individual in question has consented to disclosure.
80. Allowing that conditions (i) – (iii) are satisfied, the Commissioner has next gone on to consider whether the release of the information would have an adverse effect. Again, he is satisfied that this test is met.
81. In this case the Commissioner has no doubt that the supplier of the information would not expect it to be shared with the wider world. He considers that if the information were to be made public there would be an adverse effect on the supplier of the information as it would be detrimental to his relationships with other parties about whom he had supplied information.
82. It therefore follows in the Commissioner's view that there would be an adverse effect and thus the exception provided by regulation 12(5)(f) is engaged.

### **The public interest test**

83. As regulation 12(5)(f) has been found to be engaged, the Commissioner must go on to consider the public interest test. Again, he has reminded himself of the EIR's express presumption in favour of disclosure.

#### *Public interest arguments in favour of disclosure*

84. Neither the complainant nor the FCE have advanced specific arguments in favour of disclosure that relate to this particular exception. In their absence, the Commissioner considers that the central arguments rest on

greater transparency and the accountability that arises from this this. This includes public scrutiny of the nature of the information received by the FCE from a third party in case this has a bearing on its actions and decisions.

*Public interest arguments in favour of maintaining the exception*

85. The FCE considers that the information in question is representative of the contributions of external parties, particularly members of the public, which were provided with the best of intentions. It has therefore argued that disclosure could discourage parties from corresponding with the FCE on a voluntary basis and, as such, the flow of information would be seriously compromised.

*The balance of the public interest arguments*

86. There will, as the Commissioner understands, always be a public interest in all the information relating to an issue being made available so that the public has the fullest possible picture. However, the Commissioner is also mindful in this case of the damage that could be caused by disclosure. This will not only have an impact on the person who supplied the information but also on the FCE itself.
87. In relation to the interests of the person who sent the emails, the Commissioner considers that any comments made were expressed under a tacit assumption of confidence. On this basis, the third party has felt able to share his views in a free and frank fashion. Furthermore, the Commissioner has reminded himself that the information itself was provided by a concerned citizen and not by another public body or organisation. Consequently, it is the opinion of the Commissioner that it would be palpably unfair to disclose information which was shared on a privileged basis, with no expectation on behalf of the individual that it would be made available. He therefore considers that this argument holds significant weight in terms of the public interest test.
88. Equally, the Commissioner has placed considerable weight on the argument of the FCE which referred to the likelihood that disclosure would put off third parties from providing information in the future. The Commissioner is prepared to accept that arguments relating to the 'flow of information' are relevant to, and can be considered under, the exception. This is because the exception is designed to protect the voluntary provision of information to public bodies.
89. The FCE's website states that it is responsible for the protection and expansion of British forests and woodlands. The Commissioner recognises that, given the large areas of forest and woodland in Britain, it is not viable for the FCE to meet this responsibility solely through the



use of forest wardens or rangers. He accepts that the FCE must to some extent rely upon members of the public or other interested parties to let it know about problems or issues that rise.

90. Therefore, the Commissioner considers that there is a weighty public interest in protecting the flow of information to the FCE by maintaining the public's confidence in the FCE as a custodian of potentially sensitive information. Having considered the arguments alongside the information itself, the Commissioner finds that the public interest in maintain the exception outweighs the public interest in disclosure in this case.
91. For these reasons, the Commissioner has found that the public interest lies with the maintaining of the exception.

## Right of appeal

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92. 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

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Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

93. 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.
94. 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 .....**

**Lisa Adshead**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Annex A

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Reference	Description of information – date and time
8	<ul style="list-style-type: none"> <li>• 17 February 2011 (08:44)</li> <li>• 04 March 2011 (09:40)</li> </ul>
9	<ul style="list-style-type: none"> <li>• 7 March 2011 (10:51)</li> </ul>
13	<ul style="list-style-type: none"> <li>• 15 April 2011 (15:36)</li> </ul>
15	<ul style="list-style-type: none"> <li>• 21 April 2011 (11:05)</li> </ul>
17	<ul style="list-style-type: none"> <li>• 04 May 2011 (17:36)</li> <li>• 05 May 2011 (14:09) – forwarded cover email</li> </ul>
26	<ul style="list-style-type: none"> <li>• 23 May 2011 (11:24)</li> </ul>
27	<ul style="list-style-type: none"> <li>• 06 June 2011 (11:28)</li> </ul>
45	<ul style="list-style-type: none"> <li>• 20 June 2011 (15:28)</li> </ul>
46	<ul style="list-style-type: none"> <li>• 20 June 2011 (15:36)</li> </ul>
51	<ul style="list-style-type: none"> <li>• 28 June 2011 (17:19)</li> </ul>
64	<ul style="list-style-type: none"> <li>• 25 July 2011 (15:10)</li> </ul>
70	<ul style="list-style-type: none"> <li>• 29 July 2011 (15:53)</li> <li>• 02 September 2011 (17:56)</li> </ul>
81	<ul style="list-style-type: none"> <li>• 16 January 2012 (16:49)</li> </ul>
86	<ul style="list-style-type: none"> <li>• 14 March 2012 (13:59)</li> </ul>

