

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 31 October 2013

**Public Authority:** The Environment Agency  
**Address:** Horizon House  
Deanery Road  
Bristol  
BS1 5AH

#### **Decision (including any steps ordered)**

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1. The complainant has requested from the Environment Agency copies of correspondence and internal communications related to *[information redacted]* and *[information redacted]* for the period 1 January 2012 until 12 March 2013. The Environment Agency refused to comply with the request on the basis that it was manifestly unreasonable for the purposes of regulation 12(4)(b) of the EIR. The Commissioner's decision is that the exception is engaged and that, in all the circumstances, the public interest favours maintaining the exception. As such the Commissioner does not require the Environment Agency to take any steps as a result of this notice.

#### **Request and response**

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2. On 11 March 2013, the complainant wrote to the Environment Agency and requested information in the following terms:  
*"Full disclosure of all communications including transcripts of telephone conversations, all emails, meeting minutes, correspondence and related information and all internal communications other than the legally excludable "thinking documents" related to both [information redacted]. This request is for the period from 1<sup>st</sup> January 2012 until the 12<sup>th</sup> March 2013."*
3. The Environment Agency responded on 5 April 2013. It stated that it considered the request to be substantially similar to a request made on 14 September 2012 which it had considered to be manifestly

unreasonable. As such the Environment Agency also considered this request to be manifestly unreasonable as it covered a longer period of time.

4. Following an internal review the Environment Agency wrote to the complainant on 24 April 2013. It stated that it had reconsidered the request and carried out another exercise to estimate the time it would take to respond and upheld its decision to consider the request to be manifestly unreasonable and therefore exempt on the basis of Regulation 12(4)(b). The Environment Agency also explained it has considered the public interest test in relation to this exception and concluded the public interest in maintaining the exception outweighed the public interest in disclosure in this case.

### **Scope of the case**

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5. The complainant contacted the Commissioner on 5 April 2013 before the Environment Agency had provided the outcome of its internal review. Following the internal review the complainant contacted the Commissioner again on 24 April 2013 to complain about the way his request for information had been handled.
6. The Commissioner considers the scope of his investigation to be to determine if the Environment Agency has correctly applied the regulation 12(4)(b) exception to the request.

### **Reasons for decision**

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7. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
8. At paragraph 32 of his decision on FS50440146 (Luton Borough Council)<sup>1</sup>, the Commissioner made it clear that the inclusion of "manifestly" in regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under this exception, the information request must meet a more stringent test than simply being "unreasonable". "Manifestly" means that there must be an obvious or tangible quality to the unreasonableness.
9. The Commissioner continued at paragraph 33 by saying that the regulation will typically apply in two sets of circumstances: firstly, where

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<sup>1</sup> [http://www.ico.org.uk/~media/documents/decisionnotices/2013/fs\\_50440146.ashx](http://www.ico.org.uk/~media/documents/decisionnotices/2013/fs_50440146.ashx)

a request is vexatious; or secondly, where compliance meant a public authority would incur an unreasonable level of costs, or an unreasonable diversion of resources. In this case, the Environment Agency has argued that meeting the terms of the request would incur unreasonable costs and place an unreasonable burden on resources. The Environment Agency also argues the request is vexatious.

10. Unlike the FOIA and specifically section 12, the EIR does not contain a provision that exclusively covers the time and cost implications of compliance. The considerations associated with the application of regulation 12(4)(b) of the EIR are, instead, broader than with section 12 of the FOIA. In particular the Commissioner recognises that there may be other important factors that should be taken into account before a judgement can be made that environmental information can be withheld under the exception:
  - Under the EIR, there is no statutory equivalent to the “appropriate limit” – the cost limit beyond which a public authority is not obliged to comply with a request – described at section 12 of the FOIA;
  - The proportionality of the burden on the public authority’s workload, taking into consideration the size of the public authority;
  - The requirement, under regulation 12(1) of the EIR, to consider the public interest test;
  - The EIR’s express presumption in favour of disclosure; and
  - The individual circumstances of the case.
11. In this case the Commissioner has considered the cost of complying with the request and the burden this would impose on the Environment Agency, whether the request can be considered vexatious and whether there are any other circumstances which mean that the request should be seen as manifestly unreasonable.
12. In arguing that the request was vexatious, the Environment Agency referred to a decision of the Upper Tribunal in *Information Commissioner v Devon CC and Dransfield*<sup>2</sup>, where Judge Wikeley discussed factors that may be considered when deciding if a request can be characterised as vexatious:

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<sup>2</sup> Court reference GIA/3037/2011

*"It may be helpful to consider the question of whether a request is truly vexatious by considering four broad issues or themes –(1) the burden (on the public authority and its staff); (2) the motive (of the requester); (3) the value or serious purpose (of the request) and (4) any harassment or distress (of and to staff)."*

13. The Commissioner has used these headings below and has set out the Environment Agency's arguments together with his own comments. However, before discussing this specific request the Commissioner considers it is important to briefly set out the background to the issues raised by the complainant and his history of dealing with the Environment Agency.
14. It is apparent from the Environment Agency's responses to these requests that the context and history of the matter is important. The Environment Agency made it clear that in determining this request was manifestly unreasonable it had taken account of the fact that it had considered an earlier request for the same information over a shorter period of time to also be manifestly unreasonable.
15. The Commissioner therefore considers it is important to be aware of the history and background to this request. The Environment Agency has explained that its relationship with the complainant started in 2009 and related to the decision to grant a licence to one of two parties competing for a licence to carry out hydropower activity at the same location. Following the decision Judicial Review proceedings commenced and the licencing decision was quashed by Consent Order in April 2012. Since then the Environment Agency has been re-determining the licence applications.
16. As a result the Environment Agency has received a number of requests for information under the EIR and the FOIA relating to North Mill specifically and to decisions made by the Environment Agency in relation to hydropower schemes. The Environment Agency is of the opinion that these requests have all been sent in conjunction with one another by various individuals involved in the licencing application due to the overlapping nature of the requests. The Commissioner has seen evidence that the requests submitted by the complainant were also copied in to the other individuals whom the Environment Agency believe are all acting in concert.
17. When determining if the complainants can be seen as acting in concert for the purposes of determining if the request is vexatious, the

Commissioner defers to his guidance on this<sup>3</sup>. His guidance suggests that there must be some tangible evidence to substantiate the claim of a link between requests, for example that the requests are similar, the requesters copy each other into requests, the pattern of requests is unusual or frequent, or the group has a website which references a campaign against the public authority.

18. The Commissioner has considered this point very carefully as he is conscious of the fact that accepting that requesters are acting in concert will add much greater validity to the claims that the request in this case is vexatious. The Commissioner has seen that the requests from the complainant are copied in to the other individuals the Environment Agency believes are acting in concert and that there is overlap between the requests made by the individuals and the requests are often very frequent, sometimes sent on the same day or a few days apart. The subject matter of these requests is always the same – the licencing decision and redetermination.
19. However, the most significant factor is that the requesters operate a website<sup>4</sup> and blog<sup>5</sup> in which the complainant in this case is mentioned and linked to the group running the website and blog. The blogs main focus is on the Environment Agency and the alleged "*misdeeds and miserable antics*" of the Environment Agency.
20. Taking this into account the Commissioner has determined that there is sufficient evidence to link the requesters together and to accept they are acting in concert. The Commissioner has gone on to consider whether the requesters are acting in concert to obtain information about a genuine underlying issue or to engage in a campaign of disruption under the headings below. He has focused on whether the aggregated impact of dealing with the requests would cause a disproportionate and unjustified level of disruption, irritation or distress.

### **Is the request vexatious?**

#### Burden

21. The Environment Agency has provided details of all the requests for information it has received since May 2012 and having looked at these the Commissioner notes that there have been 20 requests made by the

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<sup>3</sup> Paragraphs 86-92

[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

<sup>4</sup> [information redacted]

<sup>5</sup> [information redacted]

complainant to the Environment Agency (including this request) since May 2012, some of which have been the subject of complaints to the Commissioner. He also notes that there have been 5 further requests made since this request was submitted on 11 March 2013. In total from all the requesters the Environment Agency had received 44 requests for information between May 2012 and the date of the request which is the subject of this notice.

22. The Environment Agency argues that the requests from the complainant are often detailed and complex, requiring specialist understanding and input to respond to. The Environment Agency has stated that the requests can be in the form of questions and are often mixed in with comments and embedded in long narratives. The Environment Agency also argues that the volume of requests is "extreme" and its dealings with the complainant and the other requesters have imposed a significant burden which they anticipate will continue in the future.
23. The Commissioner accepts that when considered in the context of the Environment Agency's previous contact with the complainant and the other requesters, the request could impose a burden in terms of time and resources, distracting the Environment Agency from its main functions. The Environment Agency has been able to clearly demonstrate the number of requests that have been made, some of which were made before the previous requests had been answered. As such the Commissioner is of the view that complying with this request is likely to lead to the complainant making future requests for information.

#### Motive

24. The Environment Agency considers that the complainant is partly attempting to find out information he believes he is entitled to but also that the requests are now partly intended to pursue a campaign of harassment. The Environment Agency is clear that the complainant disagrees with the licencing decisions, a fact which the Commissioner does not dispute, and does not consider the Environment Agency is taking his representations (or those of his fellow campaigners) into account.
25. The Environment Agency has stated that it appears the complainant wants to obtain evidence of wrong-doing or deceitfulness on the part of its officers. This is evidenced by the fact that serious allegations have been made about Environment Agency officers. The Commissioner notes from the table of requests provided by the Environment Agency there are examples of requests being made to illicit information about specific members of staff of the Environment Agency.

26. The Commissioner accepts that the purpose of the requests may have gone beyond the point of simply obtaining information to understand the licencing decision and may now be intended to uncover wrong-doing with the requests being used to further the complainant's dispute.

Value or serious purpose

27. The Environment Agency accepts that the complainant considers there is a serious purpose to his requests but the Environment Agency argues that it has provided all the information it can reasonably be required to through various disclosure regimes including the FOIA, the sharing of information on a discretionary basis and the information provided through consultations on the licencing procedure.
28. The Commissioner accepts that the complainant's requests cover similar ground to previous requests and all relate to the licencing decision made by the Environment Agency. He is also aware that the complainant had requested the same information for a shorter time period prior to making this request. However, despite this he has not seen any evidence that the complainant had made this specific request before so it is difficult to say there would be nothing to gain from disclosure of this information.

Harassment or distress

29. The Environment Agency argues that it is reasonable to view the requests as part of an obsessive campaign of harassment against it and its officers. In support of this the Environment Agency has pointed to the website and blog set up by the complainant's associates which includes comments and allegations about the Environment Agency and its officers. The Environment Agency considers this to be indicative of obsessive and harassing behaviour. As well as the website and blog, a Twitter account is also active in which a specific member of staff has been targeted and subjected to offensive statements.
30. The Commissioner is aware that there is a lot of strong feeling from the complainant on the issues raised in his request, as there is from the other requesters, but the disparaging remarks and language used in the blog and through the Twitter account, along with the naming of junior official cannot be overlooked and does demonstrate a campaign of harassment against the Environment Agency and its staff.
31. Having taken all the circumstances into account the Commissioner is minded to accept the request is vexatious when seen in the context of all of the previous correspondence with the public authority. The Commissioner recognises there is strong evidence to suggest the complainant is making requests in conjunction with other individuals and

that taken together the pattern, frequency and nature of the correspondence would be likely to be categorised as vexatious.

32. As such he accepts that the request is 'manifestly unreasonable' under the provisions of regulation 12(4)(b).

#### Public interest test

33. All exceptions in the EIR are subject to the public interest test. Therefore, in deciding whether the information should be withheld the Commissioner has had to balance the public interest in maintaining the exception against the public interest in disclosure.
34. As regards the public interest in disclosure the Commissioner has taken into account the general public interest in transparency and accountability. He is also mindful of the presumption in favour of disclosure and the need to read exceptions restrictively. However, balanced against this is the burden that would be imposed on the Environment Agency. There is also the wider public interest in protecting the integrity of the Environmental Information Regulations and ensuring that they are used responsibly.
35. The Environment Agency is strongly of the opinion that responding to continued requests would impose an unreasonable burden and that disclosure of the specific information would not contribute to the effective running of the public sector or to sustainable development but would in fact create a burden which would distract and remove officers from carrying out their core duties, as responding to earlier requests had done.
36. In addition to this the Environment Agency has argued that it has a limited resource available due to financial restrictions and it is in the public interest for that resource to be used to fulfil its functions not to be used disproportionately to respond to one complainant's requests and scrutiny about a licencing decision at one location.
37. On balance the Commissioner finds that the public interest strongly favours maintaining the exception as there is little wider value in the complainant's request. The Commissioner's view is that the complainant's request is simply another means of pursuing his dispute with the Environment Agency and will only be likely to encourage further requests and a continuation of the harassment of the Environment Agency and its staff via the blog and Twitter account.
38. In all the circumstances of the case the Commissioner finds that the public interest in maintaining the exception in regulation 12(4)(b) outweighs the public interest in disclosure.



## Right of appeal

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39. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

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)

40. 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.
41. 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 .....**

**Pamela Clements**  
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