

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2017

Public Authority: Natural England
Address: Spetchley Road
Worcester
WR5 2NP

Decision (including any steps ordered)

1. The complainant has requested from Natural England information relating to one of its wildlife specialists and information in regards to its chairman.
2. The Commissioner's decision is that the requests are vexatious and Natural England has correctly applied section 14(1) of the FOIA to refuse the requests. Therefore, the Commissioner does not require Natural England to take any further steps.

Background

3. Natural England reported that the complainant has a particular interest in the current badger cull and that Natural England is the regulator responsible for granting licences allowing for the culling of badgers.
4. The complainant had for some time been in discussions with a particular officer within the badger control team. Natural England said that this resulted in an email from the complainant to the named individual which the named individual had found distressing and prompted Natural England to disengage with the complainant.
5. Natural England argued that it had previously advised the complainant that it was disengaging with him and for the next 12 months it would not be responding to any future correspondence from him relating to wildlife crime. Natural England explained its reason for its decision which

was because of the complainant's comments made in emails to the named individual that it considered to be personal and offensive. It advised the complainant that it would not allow abuse of its staff and wrote to the complainant explaining its reasons.

6. However, five days after Natural England had sent its letter about the disengagement, the complainant submitted a request asking the six questions as listed below.

Request and response

Request 1 – RFI 3515

7. On 23 July 2016 the complainant wrote to Natural England and requested information in the following terms:

"1) How many complaints have been made regarding the work carried out by [named individual] and the nature of those complaints and the outcome?

2) What police prosecutions (or non-police or civil) has [named individual] given expert witness evidence on in the last five years? Please supply details and copies of reports.

3) What outside bodies does [named individual] have any professional association with?

4) Does [named individual] have any association with organisations involved in blood sports such as BASC, Countryside Alliance or any shooting or hunting interests?

5) I would like copies of any communication by [named individual] to anybody representing "field sports interests" carried out while in the capacity of a Natural England official.

6) I would like copies of all correspondence [named individual] has had relating to myself, [named individual] when communicating to other Natural England or DEFRA officials, or police.

I particular I would like any correspondence between [named individual] and [named individual] (NI legal advisor) sent either by electronic means or paper."

8. On 8 August 2016 Natural England provided its response. It refused the request under section 40 and section 14(1) of the FOIA.

9. On the same day the complainant contacted the Commissioner to complain about Natural England's refusal under section 14(1) of the FOIA to comply with his request.

Request 2 – RFI 3542

10. On 8 August 2016 the complainant made to Natural England a further request for information under the FOIA of the following description:

"1) Does Andrew Sells have any membership or association with groups or organisations lobbying for bloods sports/ field-sports interests? i.e. BASC, Countryside Alliance, Game and Wildlife Conservation Trust, or any group or body promoting blood-sports/ field sports?

2) Does Andrew Sells have any membership or professional association, paid or otherwise which involves exploiting the environment, such as house building, or any other form of land development?

3) Does Andrew Sells receive any finance outside his role as Natural England chairman from any organisation exploiting the environment such as house building or farming or anybody promoting blood sports/fields ports?

4) I would like correspondence, electronically or hard copy, that Andrew Sells has had with organisations representing blood-sports/ field sports interests while chairman of Natural England i.e. BASC, Countryside Alliance, Game and Wildlife Conservation Trust, or any group or body promoting blood-sports/ field-sports.

5) I would like any correspondence electronically or paper between Julie Lunt (NE head of legal services) and Andrew Sells made in relation to myself [named individual]. And any correspondence from any Natural England officer and [named individual] made in relation to myself: [named individual]."

11. On 9 August 2016 Natural England acknowledged this request and said that it would provide its response by 6 September 2016.
12. On 31 August 2016 Natural England provided its response. It refused all parts of this request for the reasons which had been explained to the complainant in its response to his previous information request (RFI 3515).
13. On 3 September 2016 the complainant contacted the Commissioner about Natural England's handling of his second information request (RFI 3542).

Scope of the case

14. The complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically, Natural England's refusal to disclose information to him.
15. The Commissioner considers the scope of the case is to determine whether the two requests (RF1 3515 and RFI 3542) are vexatious and if Natural England is entitled to rely on its application of section 14(1) of the FOIA. The Commissioner may then if necessary determine whether both requests contain personal data and if Natural England had correctly applied section 40 to these requests.
16. During the investigation, it had been identified that two parts of the requests for information are for the complainant's own personal data (part 6 of request 1 and part 5 of request 2). These therefore constitute subject access requests for the purpose of section 7 of the Data Protection Act 1998 (DPA). Accordingly, the Commissioner has contacted Natural England separately about the requests and does not consider them further in this decision notice

Reasons for decision

Section 14 – vexatious requests

17. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test. The term "vexatious" is not defined in the FOIA. The Upper Tribunal (Information Rights) though considered in some detail the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*.^[1]
18. The Tribunal commented that 'vexatiousness' could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
19. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester;

(3) the value or serious purpose of the request; and (4) harassment or distress of and to staff.

20. The Upper Tribunal did however also caution that these considerations were not meant to be exhaustive. Rather, it stressed the:

"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

21. In the Commissioner's view the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
22. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests. ^[2] The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
23. In this case the Upper Tribunal defined a vexatious request as one that is *"manifestly unjustified, inappropriate or improper use of a formal procedure."* The Tribunal made it clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.

^[1] GIA/3037/2011

^[2] <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

24. In order to reach a decision on whether the request is vexatious, the Commissioner has obtained submissions from both the complainant and Natural England to understand the circumstances surrounding the request.

Natural England's position

25. Natural England considers that both of the requests to be vexatious in all parts. It referred the complainant to a section of the ICO guidance on vexatious requests and it explained:

"Although the legislation states that requests for information should be 'motive and applicant blind' the ICO is clear that an authority may take the requester's identity and motivation for making a request into account when determining whether a request is vexatious. It is advised that a requester's identity and motives may be relevant when considering the context in which the request is made, the burden which it might impose, and the value of the request."

Natural England quoted from the Upper Tribunal in Dransfield:

*'...the motive of the requester may well be a relevant and indeed significant factor in assessing whether the request in itself is vexatious...the proper application of section 14 cannot side-step the question of the underlying rationale or justification for the request...'
(Para 34)'*

26. Taking this into account, Natural England said that in reaching its decision to treat the requests as being vexatious it had considered the complainant's previous communications between him, the named individuals and Natural England.

Abusive or aggressive language

27. Natural England argued that the complainant's emails which led to its decision to disengage with him were abusive and contained unfounded accusations aimed at the named individual. Although Natural England did not consider the complainant's request of 23 July 2016 to be of this nature, it found the subsequent request as vexatious. It considered the complainant's further correspondence to be both aggressive and abusive and said that it goes way beyond what Natural England reasonably expects to receive.

Personal grudge

28. Natural England reported that the complainant had submitted FOIA requests that were specifically about two members of staff. It explained that these two officers were those that had either led directly to Natural England's disengagement with the complainant or they had refused to overturn that decision.
29. Natural England stated that the complainant's requests had been received shortly after its disengagement and that it was for information specifically about the named individual and a staff member. It argued that the requests forms part of a 'personal grudge' and therefore they serve no other purpose than to seek personal information about the named individuals. Natural England said that it found it difficult not to believe that these requests were motivated due to a personal grudge against both people involved.

Unfounded accusations

30. Natural England reported that the complainant had made unsubstantiated accusations against the named individual and of Natural England's Chairman and its CEO.
31. Natural England considered the complainant's communications to the named individual and its subsequent disengagement with him is of relevance. It argued that there is no reason to believe that the information the complainant was seeking would be of any value to the public. Natural England is of the view that the reason for requesting the information is that the complainant is seeking to pursue his campaign against the named individuals. It added that the nature of the information requested and the timing of the request supports this view.
32. Natural England believes that these requests have limited value to the complainant other than to obtain personal information about individuals which it believes he has a grudge against. In regards to a wider public interest in the information requested, Natural England said it would question this, as an internal investigation had been conducted which revealed the complainant's allegations were untrue.

Intransigence

33. Natural England said that the complainant had refused to follow the process which had been offered to him in regards to appealing against the disengagement. It added that it had tried to assist the complainant with the steps he could take and that these were made clear to him on different occasions.

Deliberate intention to cause annoyance

34. From the content within the emails to the named individual, Natural England is aware of the complainant's dissatisfaction with the badger cull and its decision to disengage with him. It considers the requests are directed at obtaining mostly personal information about the two individuals towards which the complainant had targeted the abusive emails.

35. Natural England is of the view that the complainant is abusing his rights of access to information by using the legislation as a means to vent his anger at these decisions. It also considers the complainant is intent to harass and annoy the individuals which Natural England believes he has a personal grudge against, by requesting personal information about them. Natural England believes the complainant's correspondence was sent to cause annoyance and distress to these two people.

36. Natural England believe that due to the history of the complainant's correspondence and his failure to accept that his language and behaviour were unacceptable, it considers him to be obsessed with proving his unsubstantiated allegations of misconduct and/or dishonesty. Natural England added that this form of what it considered to be harassment could be damaging to both the individuals and their family.

37. In conclusion, Natural England said that the effect of the requests are demonstrably obsessive, harassing of the authority and of the staff. It considers the requests to be of a vexatious nature. Natural England contends that to release the information requested would be reversing its disengagement stance and it believes it would cause additional distress to staff members who have already suffered unwarranted and unacceptable abuse from the complainant.

The Complainant's view

38. The complainant is of the view that there were no threats within his correspondence to Natural England. He said that he was expressing a personal opinion in accordance with Article 10 of the Human Rights Act (Freedom of Expression).
39. The complainant considers there to be "*some sort of corrupt practices going on.*" He said that he suspects a number of people at Natural England to have links with organisations involved with blood sports and he believes that these people are doing little to help wildlife in the UK. The complainant also said that he had subsequently found that Natural England had formed a partnership deal with what he considers is an extremist blood-sports organisation – BASC (British Association for Shooting and Conservation) - which he says promotes unfettered snaring and trapping.
40. The complainant argued that his questions and submissions had been treated with contempt. The complainant said that he had found evidence to support his view that there is corrupt practice taking place. He reported that there is a sense of "*criminal infiltration by extremist elements with a serious potential pecuniary interest.*" The complainant believes it is in the public interest to expose this and to prove his suspicions.

The Commissioner's position

41. The Commissioner accepts Natural England's representations in regards to the history and the nature of the complainant's requests.
42. The Commissioner recognises the unreasonable persistence and the unfounded accusations made by the complainant. In particular, she recognises the requests which had been directed towards two particular employees. The complainant had made three requests between July and August 2016 to Natural England broadly relating to the same issue. (The third request is not mentioned in this DN as it had been investigated separately from these two information requests).
43. The Commissioner notes the burden of the requests on Natural England and she has done so in terms of the disruption, irritation and level of stress which the requests would generate.
44. The Commissioner has however also considered whether the requests have a serious purpose and raise matters of a significant public interest. If this is the case, then it may be more difficult for Natural England to claim that the requests are vexatious.

45. As set out previously, the complainant suspects that a number of people have 'links with organisations involved with blood sports and are keen to maintain the status quo of doing little to help wildlife.' In the complainant's view, it follows from this that there are corrupt practices which will invariably affect Natural England's decision-making.
46. The Commissioner considers that the nature of the allegations made by the complainant is very serious. In normal circumstances, it may well be in the public interest for an individual to seek reassurance that there are not any conflicts of interest which could call into question the impartiality of the officials working for a public body. The Commission notes however that the complainant has not provided evidence which would support his allegations in any significant sense.
47. The Commissioner further accepts that the tone of some of the complainant's correspondence to Natural England is not very constructive, even allowing for the complainant's loss of confidence in the authority. It goes beyond the level of criticism that a public authority and its employees should reasonably expect to receive.
48. The Commissioner agrees with Natural England that the complainant is effectively seeking to pursue grievances which he has against the named individuals.
49. Taking into account the history and background of the complainant's relationship with Natural England, the Commissioner considers that if Natural England was to comply with the request, it would be unlikely to satisfy the complainant.
50. The Commissioner considers the requests are obsessive and persistent. She is satisfied that the requests are a means by which the complainant is trying to reopen a matter that had already been addressed. She is of the view that the complainant is using the FOIA to sustain dialogue with Natural England about this matter and that this is a clear misuse of the FOIA and its purpose.
51. The FOIA provides fundamental rights to the public to request access to recorded information held by public authorities. It should not be used to vent dissatisfaction with issues which have already been dealt with, independently scrutinised and are considered as closed. In this situation it is significant that, according to Natural England, the complainant has refused to enter into the appeals process for its disengagement but has instead opted to make information requests about individuals following Natural England's decision.

52. Therefore, the Commissioner's decision is that the requests are vexatious and Natural England is correct to rely on section 14 of the FOIA.

Section 40 – personal data

53. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the DPA.
54. Natural England determined section 40(2) applies to those parts of the two requests which were considered to be personal information about the named individuals. However, as the Commissioner's decision is that the requests are vexatious and Natural England correctly applied section 14 to refuse disclosure of the information, she will not go on to consider whether section 40(2) is engaged in relation to the requests.

Right of appeal

55. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

56. 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.

57. 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

Alun Johnson
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