

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

**Decision notice**

**Date:** 04 January 2018

**Public Authority:** Natural England  
Foss House  
Kings Pool  
1-2 Peasholme Green  
York  
YO1 7PX

**Decision (including any steps ordered)**

---

1. The complainant has requested communications about a specific piece of land from Natural England to any external and internal parties. Natural England confirmed it held information but considered it excepted from disclosure by virtue of the provisions set out in regulation 12(4)(e), 12(5)(b) and 12(3) of the EIR.
2. The Commissioner's decision is that the correspondence held by Natural England all falls within the definition of internal correspondence and therefore engages regulation 12(4)(e) and that the balance of the public interest lies in maintaining the exception. She requires no steps to be taken.

**Request and response**

---

3. On 13 September 2016 the complainant wrote to Natural England and requested information in the following terms:

*"I am one of the landowners of the land at Chapel-en-le-Frith, Derbyshire known to Natural England as Brookside Pastures and locally known as The Target Wall fields, Grid ref. SK061799.*

*My name is [redacted] and I reside at [redacted]. On the 4<sup>th</sup> of August 2016 I submitted a freedom of information request about the above*

*subject via email to above email address, which I obtained from Natural England's own website. I did not receive an acknowledgement for my email, never mind an actual reply, which I think is most regrettable.*

*To repeat my original request, I would like you to forward to myself using my email address, any and all communications and correspondence written and electronic concerning my above land, both internal within Natural England departments and external, between the dates of 1<sup>st</sup> August 2015 and present date 13<sup>th</sup> September 2016.*

*External bodies include:*

*High Peak Borough Council officers and councillors, all department  
Derbyshire Wildlife Trust officials  
[redacted], farmers of [redacted], Derbyshire  
[redacted] of the [redacted], Chapel-en-le-Frith, Derbyshire*

*Internal Natural England officials include mainly, but not solely,  
[redacted] and her department supervisors."*

4. Natural England initially responded on 7 October 2016 to advise an extension was required to consider the request. Its full response was then sent on 7 November 2016 and disclosed some of the information that was held that fell within the scope of the request. Natural England explained it continued to withhold the remaining information it held by virtue of the exceptions from disclosure set out in regulations 12(4)(e), 12(5)(b) and 12(3) of the EIR.
5. Following an internal review Natural England wrote to the complainant on 10 January 2017. It stated that it upheld its position that any further information it held should be withheld.

## **Scope of the case**

---

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of her investigation is to determine what information is being withheld by Natural England and whether it has correctly applied the regulation 12(4)(e), 12(5)(b) or 12(3) exceptions to withhold this information.

## **Background**

---

8. Brookside Pastures is a site that forms part of a Local Wildlife Site in Derbyshire that was designated as such in 2001 for upland vegetation characteristic of M23 mire communities and semi-natural grassland. Surveys supporting the designation recorded the presence of unimproved neutral wet grassland, semi improved neutral grassland and upland mire which combined to form Semi-Natural Areas of habitat.
9. Natural England has explained that the land that is the subject of this request is referred to in the Land Registry records as being within three separate registered land titles and Natural England's position is that the complainant is not a landowner of Brookside Pastures based on this information, a position which the complainant contests.
10. Natural England has further explained that The Environmental Impact Assessment (Agriculture)(England)(No 2) Regulations 2006 ("EIA Regulations") protect rural land in England that is uncultivated or semi-natural from changes in agricultural activities that might cause damage by increasing productivity or physically changing field boundaries. Uncultivated land is land that has not been cultivated in the last fifteen years by physical or chemical means. Semi-natural land includes priority habitats, heritage features or protected landscapes and is land that usually has not been intensively farmed such as unimproved grassland.
11. If a landowner wants to change rural land they need to apply for permission from Natural England who will then decide if the proposal to change the use of rural land is likely to have a significant effect on the environment. Landowners must apply for this decision (known as the EIA screening decision) before they change rural land.
12. A screening decision is needed if the proposal to affect uncultivated or semi-natural land is: by disrupting the soil surface by ploughing or rotovating; increasing the use of fertiliser; sowing seed that will increase grassland productivity; draining land; clearing existing vegetation equal to or above 2 hectares either physically or by herbicides; or increasing stock density that will result in improved vegetation from grazing.
13. Natural England has the right conduct investigations, in this case into whether Regulation 4 or 9 of the EIA Regulations had been breached under Part 4 Section 30(a). In November 2015 Natural England was informed that the area that is the subject of this request had been subject to various potentially damaging activities including tree and scrub removal and drainage works that could have an adverse effect on the wetland habitats of the site.
14. Natural England conducted an investigation into the alleged breach of the EIA Regulations. After a number of site visits it concluded that the site contained an area of Semi-Natural habitat exceeding 2 hectares and

that the drainage works had a significant environmental effect on this habitat. The work therefore fell within the protection of the EIA Regulations.

15. In September 2016 Natural England served a Remediation Notice on the owners of the land requiring works to restore the water table that supported the sites Semi-Natural Areas. In October 2016 further issues came to light which needed investigating leading to Natural England serving a Modified Remediation Notice on 9 February 2017.
16. The landowners appealed against the Remediation Notice in October 2016 and the modified Remediation Notice in March 2017. Natural England explained that appeals under the EIA Regulations are made to the Secretary of State for Environment, Food and Rural Affairs in accordance with regulation 31. Natural England are therefore a respondent in the Appeal and the current position is that parties to the Appeal have to respond to the Appellants submissions, after which a Panel will be convened to hear the evidence and make a recommendation to the Minister.

## **Reasons for decision**

---

17. Natural England has explained that it disclosed a substantial amount of information in full, amounting to 389 files, as well as providing information in redacted form from 19 files in response to the request. However it continues to withhold the information from a further 393 files on the basis of one or more of the following exceptions:
  - Regulation 12(5)(b) – course of justice
  - Regulation 12(4)(e) – internal communications
  - Regulation 12(3) – personal information
18. The Commissioner will firstly consider the application of the regulation 12(4)(e) exception. This has been applied to withhold emails and other internal correspondence, including remediation notices and proposed plans shared internally, that Natural England would otherwise consider excepted from disclosure under regulation 12(5)(b) or redact information from under regulation 12(3).

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

19. Regulation 12(4)(e) states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications.

20. The Commissioner has published guidance<sup>1</sup> on regulation 12(4)(e), which includes a description of the types of information that may be classified as 'internal communications.'
21. The first factor that must be considered is whether the information in question can reasonably be described as a 'communication'.
22. In the guidance on the exception, the Commissioner acknowledges that the concept of a 'communication' is broad and will encompass any information someone intends to communicate to others, or places on file where others may consult it. In this case the Commissioner has reviewed the information identified by Natural England as internal communications and confirms that this consists of internal emails between Natural England staff, including various draft documents passed around for comment and consultation within Natural England.
23. The Commissioner is satisfied that the withheld information properly constitutes a 'communication' for the purpose of the exception. She has therefore next considered whether the withheld information constitutes 'internal' communications.
24. There is no definition contained in the EIR of what is meant by 'internal'. Consequently, in the absence of one, a judgment on what is 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. Typically, however, an internal communication is one that stays within one public authority.
25. In this case the communications have stayed within Natural England and the Commissioner considers they are internal communications and the exception is engaged.
26. As the Commissioner considers that the exception is engaged, she has gone on to consider the relevant public interest arguments in this case.

*Public interest in favour of disclosing the requested information*

27. The complainant considers that information relating to the land should be disclosed to demonstrate transparency in the process and to show the evidence base for issuing remediation notices.

---

1

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

28. The complainant also argues that as remediation notices have already been issued the evidence should already have been assembled and there should be no issues with releasing the withheld information into the public domain.
29. Natural England also recognises there is a public interest in the transparency and accountability of its decision making processes.

*Public interest arguments in favour of maintaining the exception*

30. In essence, the public interest considerations relating to Regulation 12(4)(e) relate to the protection of thinking space and the ability to have full and frank discussions without fear that the information will be disclosed.
31. As stated in her aforementioned guidance on the subject, there is no automatic or inherent public interest in withholding an internal communication. Arguments should relate to the particular circumstances of the case and the content and sensitivity of the specific information in question.
32. Natural England specifically referred to the provision of a 'safe space' that is needed to develop ideas, debate live issues and reach decisions away from external interference and distraction, where premature public or media involvement would prevent or hinder the free and frank exchange of views for the purposes of deliberation.
33. Natural England argued that it needed the safe space to enter discussions and ask for advice regarding the decision. Natural England acknowledges the investigation had been completed at the time of the request but points out that it was going through an appeal process. It therefore argues that releasing the information at the time of the request may have adversely affected any further action that might be decided upon based on the advice that is discussed in the internal communications.

*The balance of the public interest test*

34. The Commissioner accepts that a public authority needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction.
35. However, she does not consider that safe space arguments automatically carry much weight in principle. The weight accorded to such arguments depends on the circumstances of the specific case, including the timing of the request, whether the issue is still live, and the content and sensitivity of the information in question.

36. The Commissioner considers that, in general, once a decision has been taken the private thinking space which is required is diminished and the sensitivity of the information is reduced. Therefore, as stated above, the timing of the request will be an important factor.
37. The Commissioner acknowledges that at the time of the request the investigation had been completed but it is clear the process was still in progress as an appeal was ongoing. Therefore the overall issue was still live at the time of the request.
38. In the specific circumstances of this case, and having considered the particular information in question, the Commissioner considers that disclosure of the withheld information could reduce Natural England's thinking space and the ability to have full and frank discussions without fear that the information will be disclosed. This could detrimentally affect the decision making process. She has therefore given the safe space argument significant weight.
39. In relation to the complainant's submissions that disclosure would show the decision-making process and the evidence base used by Natural England; the Commissioner considers that disclosure of the internal correspondence and deliberations on the decision would demonstrate transparency. Therefore this argument does carry some weight.
40. The Commissioner considers that there is always a general public interest in disclosing environmental information, derived from the purpose of the EIR. She considers that some weight must always be attached to the general principles of achieving accountability and transparency which in turn can help to increase public understanding, trust and participation in the decisions taken by public authorities.
41. The Commissioner acknowledges the presumption in favour of disclosure inherent in regulation 12(2) of the EIR. She also accepts that there is an inherent public interest in the openness and transparency of public authorities and their decision making processes.
42. In this case, however, the Commissioner does not consider there is any significant wider public interest in the disclosure of the information as it does not appear to be an issue affecting large numbers of people or generating interest beyond the individuals directly affected by the decision. Conversely, the appeal process is still ongoing and the Commissioner therefore places significant weight on the inherent value of protecting a safe space. She finds that the public interest in maintaining the exception is not outweighed by the public interest in disclosure.

43. As the Commissioner has found that regulation 12(5)(b) can be relied upon to withhold all of the information she has not gone on to consider the use of the other exceptions.



## Right of appeal

---

44. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

45. 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.
46. 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 .....**

**Jill Hulley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**