

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

Decision notice

Date: 1 August 2019

Public Authority: Department of Agriculture, Environment and Rural Affairs

Address: Dundonald House
Upper Newtownards Road
Ballymiscaw
Belfast
BT4 3SB

Decision (including any steps ordered)

1. The complainant submitted a number of requests to Department of Agriculture, Environment and Rural Affairs (DAERA) for information concerning journey logs for live animal transport from within Northern Ireland. The public authority refused to comply with some of the requests on the basis of section 14(1) of FOIA as they considered them to be vexatious. The Commissioner has concluded that the requests are vexatious and therefore DAERA are not obliged to respond to the requests by virtue of section 14(1) of FOIA.

Requests and responses

2. The complainant made a number of information requests to DAERA and the Commissioner has set out below the relevant correspondence for completeness and understanding.
3. On 3 April 2017, the complainant wrote to DAERA and requested information in the following terms:

'I am compiling and analysing statistics relating to the long distance transportation on journeys exceeding eight hours of live sheep and cattle of all age groups from and between England, Wales, Scotland,

Northern Ireland, and the Republic of Ireland and all other EU states combined.

The timeline to which I will refer my enquiries to you is the period from 1st January 2016 to 31st October 2016. I would be most grateful if you would answer the following questions.

1. How many live sheep in total were transported from Northern Ireland on journeys of any duration to:

- a. The Republic of Ireland*
- b. Great Britain*
- c. All other EU states combined.*

2. From these totals, how many to each destination were transported on journeys of 8 hours or more duration?

3. Please supply the same data as Question 1 and Question 2 relating to live cattle.

4. Of those animals, both sheep and cattle, which have been transported on journeys exceeding 8 hours, how many were destined for slaughter, how many for further fattening and how many for breeding?

5. Were any animals transported from Northern Ireland, transported by any other means other than by road transport and roll-on-roll-off ferries?

6. If other means of transportation has taken place, please give a breakdown as detailed in Questions 1-4.

7. Have any live sheep or cattle been transported to any countries outside the EU?

8. How many of the sheep and cattle being transported from Northern Ireland on journeys passing through the Irish Republic, were being transported as part of a journey to:

- a. Great Britain*
- b. All other EU States combined*
- c. Countries outside of the EU*

In each case, please state the numbers destined for slaughter, fattening and breeding.

9. The statistics you provide in answer to questions 1 to 3 will show a discrepancy between animals sent on journeys of 8 hours or more and

journeys of any duration. Is it correct to assume that this factor is attributable to many animals being transported on journeys less than 8 hours, or are there any other factors involved which might go towards explaining the discrepancy?'

4. DAERA responded on 4 May 2017. They provided the complainant with all the relevant information held in tabular and summary format. Some information requested was not held but no information was withheld.
5. On 11 May 2017, the complainant submitted a further FOI request to DAERA, with a number of questions seeking clarification and further information on the information provided in the original response of 4 May 2017.
6. DAERA responded to the second request on 26 May 2017. In responding to the complainant's questions and queries, DAERA informed him that, *'it may be that in all cases of long distance transport, the transporters involved are not fully complying with EC Regulation 1/2005¹, i.e. the requirement that they seek and obtain an approved JL (Journey Log) for their intended journey long before the journey takes place. In other words, they are obtaining a health certificate BUT not a JL. The transporters involved in this non-compliance are most likely to be non-DAERA authorised transporters'*.
7. The complainant wrote to DAERA on 1 June 2017 and thanked them for their *'honest and candid responses'*. He explained that he had *'endeavoured to obtain the necessary statistics in order to be able to make authoritative comment based on irrefutable statistical evidence'*. He stated that *'I am interested only in making accurate and truthful statements so that the way in which DAERA has conducted its responsibilities can be truthfully assessed. Criticism, if it is due, and suggestions for improvements, I shall leave to others'*. As well as providing commentary and observations on the information provided, the complainant posed a number of further questions to DAERA about importer notification.
8. On 14 June 2017, DAERA emailed the complainant and provided him with the further information/clarification sought.
9. On 25 September 2017, DAERA wrote to the complainant and informed him that some of the information which they had provided in their original response of 4 May 2017 was incorrect. Having previously stated

¹ Which governs the protection and welfare of animals during transport

that there had been 21 journeys and 1526 individual sheep, DAERA advised that they had now established that there were in fact 27 journey logs for sheep with a total of 3396 individual sheep. They advised that they were still calculating the correct figure for cattle and would provide this as soon as it became available. DAERA advised the complainant that *'the process is time-consuming as the data is not stored in a form that is easily searchable'*. DAERA apologised to the complainant for the error, and stated that the information supplied on 4 May 2017 had been thought to be correct at the time. They explained that the error occurred because journey logs are processed and approved at 2 of their offices and due to an administrative error the information supplied had only covered the journey logs processed and approved at one of them.

10. The complainant wrote to DAERA on 2 October 2017 and stated that he was *'truly shocked'* by their error. He stated that the requests which he had made *'were for simple straightforward statistical evidence'* which if DAERA had *'any competence at all, should have been an accurate, easily accomplished exercise'*. The complainant questioned why DAERA had not communicated this information to him earlier, and advised DAERA that he was suspicious that *'the new evidence you claim to have uncovered'* had been brought out to divert attention from the BBC's Countryfile team, who had contacted the complainant in August 2017 to raise the subject of live exports in their programme.
11. The complainant advised DAERA that *'your incompetence causes me much distress in that statements I have publicly made concerning DAERA record keeping and regulatory control may now be called into question. For me, this is an appalling situation. As a citizen without any official status of any kind, challenging the performance of a Department of State is not an undertaking to be approached lightly. I have always ensured that any statements I make are verifiable, with hard factual evidence from reliable sources. Your errors are likely to cause me reputational damage in that others will not trust me if they think that the integrity of the information I impart is suspect'*. The complainant advised that he had drawn up a series of further FOI requests which he would send by separate list and advised that his letter would form the basis of a formal complaint and request to DAERA to review the handling of his FOI requests up to that time.
12. On 5 October 2017 the complainant submitted a complaint to DAERA, asking them to formally investigate all aspects of the way in which his FOI requests had been handled and to provide answers to his questions and comments (mainly about why and when the correct information came to light).
13. Further to the response of 25 September 2017, the complainant submitted an FOI request to DAERA on 10 October 2017 for information

concerning sheep and cattle transportation between 1 January 2016 and 31 October 2016. The complainant also noted that he had sent DAERA details of an interim review which he had produced on FOI evidence regarding the transportation of sheep and cattle. In his review, the complainant stated that:

'The almost total absence of proper regulation of the Welfare in Transport legislation in NI must be addressed without delay. The journey log required for all long distance transportation between EU States is the primary means by which the welfare of transported animals can be regulated and recorded. With DAERA not imposing the legally enforceable necessity of Journey Logs when they are needed, it has been "open season" for the livestock transporters and dealers'.

14. On 1 November 2017 DAERA provided the complainant with a response to his complaint under Level 1 of their Customer Service Complaints Procedures. They apologised for the fact that the statistics provided in their response of 4 May 2017 were *'incomplete'* and emphasised that it was not DAERA's intention to mislead or misinform him. The response also wished to advise and reassure the complainant that DAERA have *'a very detailed regulatory regimen in regard to the transport legislation EU 1/2005 and this is published on our internet site'*.
15. On the same date, DAERA wrote to the complainant and confirmed that they had identified questions 8-10 of his letter of 10 October 2017 as new requests for information under the FOIA. These questions concerned the number of complaints received by DAERA in the previous three years about the way in which they process FOI requests. DAERA provided some of the information requested and relied on section 12 (costs limit) of FOIA (although they did not actually cite the exemption) to refuse some of the information requested.
16. On 21 November 2017, DAERA provided the complainant with a response to his information request of 10 October 2017. They provided him with some of the voluminous information held but withheld some of the information under section 40(2)(third party personal data) of FOIA.
17. The complainant acknowledged receipt of the response on 23 November 2017. He noted that there was a lot to look at and stated *'I am sure that doing so will likely generate further questions and comments so I ask for your forbearance and patience'*. The complainant proceeded to make a number of queries about what action DAERA had taken based on the information provided (e.g. *'What action did DAERA take against the organiser or organisers if the seven non-compliance issues encompassed more than one organiser? Have there been any other instances of non-compliance by the same organisers since 1st November 2016 up to date?'*).

18. DAERA wrote to the complainant on 23 November 2017 and confirmed that they had treated his questions as a new FOI request.
19. On 27 November 2017, the complainant wrote to DAERA with two further requests for information. Providing commentary on one particular journey, the complainant asked *'given the circumstances I have outlined and the requirements of EU 1/2005, why has DAERA approved this proposed journey?'* The complainant also asked for a *'copy of the annual report on the inspections provided for in Article 27 of EU 1/2005 for the year 2016, which would have been submitted to the European Commission by 30th June this year'*.
20. On 12 December 2017, DAERA wrote to the complainant and confirmed that they held the information requested on 23 November 2017. They advised that in regard to the seven journey logs not returned by the organiser and the action that DAERA took to the non-compliance issues, DAERA did not detect the non-compliance regarding the return of journey logs, and therefore no action was taken.
21. On the same date, DAERA wrote separately to the complainant and advised that they did not hold the information requested on 27 November 2017. DAERA explained that the FOIA covers recorded information and they did not have to answer a question if that would mean creating new information or giving an opinion or judgement that is not already recorded. DAERA advised that the annual report requested was not held by DAERA but was held by the Department for Environment, Food and Rural Affairs (DEFRA) and had not yet been published.
22. The complainant emailed DAERA on 12 December 2017 and asked them to reconsider their answer regarding their acceptance and approval of the journey log in question. He stated that, *'I am not asking you to give an opinion or judgement that is not already recorded. The judgement to approve the proposed journey on the journey log would have had to have been made at the time when approval for the journey was sought by the organizer. A member of DAERA staff would have made this judgement decision and the stamp of approval on the document verifies and records this fact'*. The complainant asked DAERA to respond with *'an honest answer to my question, which is in essence, why have DAERA approved a proposed journey which appears to breach the time limits imposed by EU 1/2005?'*
23. On 18 December 2017, the complainant wrote to DAERA and requested internal reviews of the responses of 12 December 2017 to his requests. He contended that *'the flawed reasoning given for not answering my question is a deliberate attempt to avoid providing me with evidence of possible maladministration. All public authorities are required to give, if*

asked, their reasons for making decisions and that is what I am asking for here. What was the reason for DAERA approving this journey log when by doing so it was apparently complicit in the breaching of a regulation which it is charged with upholding?'

24. On 20 December 2017, the complainant wrote to DAERA and advised them that he had taken the step of formulating a complaint about *'your refusal to provide me with the information I asked for, and about the systemic failure in not immediately following up the non-return of journey logs, or carrying out any form of dissuasive prosecution of the operator concerned in breaching the Regulations on seven occasions'*. The complainant asked, on the subject of journey log approval, *'can you please tell me the statistics for the PIQ in respect of the number of journey log applications which were made to DAERA but which were refused approval or had to be amended because the proposed journey log did not comply with the Regulations?'*
25. DAERA responded to the complainant's above question on 16 January 2018 and confirmed that having completed their search for the information requested, they could confirm that they did not hold the same. On the same date DAERA wrote to the complainant separately in response to his complaint made on 20 December 2017. DAERA stated that they wished to advise and reassure the complainant that they have *'a very detailed regulatory regimen in regard to the transport legislation EC 1/2005 and that consideration is given to EC 1 /2005, Article 36, Amendments to Regulation (EC) No 1255/97, points (1) and (2) and also Chapter V, Watering and Feeding Interval, Journey Times and Resting Periods as outlined in your letter'*.
26. DAERA noted that their response to the complainant's information request of 23 November 2017 explained that they did not detect the non-compliance regarding the non-return of seven journey logs, owing to the work area experiencing staffing issues at the time in question. Steps had been taken to rectify and address those staffing issues and follow-up action was on-going in respect of the non-compliance of the seven journey logs. DAERA advised that they were currently reviewing their processes with regard to the approval of journey logs following receipt in October 2017 of the EC network document on checks before journeys when live animals are destined for export by road. DAERA noted, in respect of the complainant's request for all journey log details commencing in Northern Ireland on a monthly basis from the outset of 2018, that as this information had not yet been created, it could not be considered under the FOIA. DAERA offered the complainant the option of having his case reviewed, but also advised him that he had the right to complain to the Northern Ireland Public Services Ombudsman (the Ombudsman) about the service he had received from DAERA.

27. On 1 February 2018, the complainant wrote to DAERA with further commentary on their letter of 16 January 2018 and posed further questions/requests for information. He asked *'what was the percentage figure achieved for all journeys combined for sheep and cattle transportation in excess of 8 hours in the period in question?'* The complainant asked, *'on the subject of the incomplete Journey Logs, will you please advise me if DAERA intend to also take action on the six Journey Logs not returned re cattle exports in the period in question? In both cases of non-returned Journey Logs, will you undertake to advise me of the action taken to penalize the operators concerned, without of course, divulging their identity, whenever your enforcement action is concluded?'* The complainant stated that he did not wish DAERA to treat the matter of their *'complicity in the breaching of Regulation EU 1/2005'* as a response under the FOIA, *'as the answer will only mirror the response already given'*, but instead, he asked the Department, *'in the interest of regulatory competence and accountability, to answer directly the following question – taking the enclosed journey log application detail into account, why has DAERA given the operator approval for this intended journey?'* Under the FOIA, the complainant requested copies of all journey logs which had been finalised and recorded within the last month, January 2018 *'and that you set up an arrangement to continue providing me with the same detail for each month in 2018'*.
28. On 12 February 2018, the Permanent Secretary at DAERA wrote to the complainant in response to a letter which the complainant had sent to the Secretary of State for Environment, Food and Rural Affairs, Michael Gove MP on 2 January 2018 with concerns about the alleged complicity of DAERA in the breaching of Regulations *'which they are supposed to observe and maintain'*.
29. The Permanent Secretary explained that as the issues raised by the complainant related to DAERA, he had been asked to respond to the complainant's letter to Mr Gove. The Permanent Secretary advised the complainant that, *'I can assure you that DAERA is strongly committed to ensuring the highest possible welfare standards for all animals, in line with EC Regulation 1/2005. Since its introduction in 2006, DAERA officials have continued to undertake enforcement on an appropriate and proportionate basis. DAERA has not received any significant criticism of its regulatory approach from EU DG Sante directorate E, nor from any EU competent authority'*.
30. At around the same time DAERA responded to the complainant's information request of 1 February 2018. DAERA confirmed that they held some of the information requested. The response stated that DAERA had already provided the complainant with information on the number of journeys and animals and as this had previously been provided they were not required to do so again. DAERA applied section

14(2)(repeat request) to that part of the request. DAERA provided the complainant with the EC Network Document (on checks before journeys when live animals are destined for export by road) but confirmed that they could not provide the complainant with the journey logs for January 2018 as that information had not yet been completed. DAERA advised that they were relying upon regulation 12(4)(d) (material in the course of completion) to withhold that information, but advised that they would provide the same when it was completed, which was expected to be from 1 March 2018.

31. On 15 February 2018 the complainant replied to the Permanent Secretary's letter of 12 February 2018. The complainant stated that:

'Your response answers none of the questions I have raised about the performance of DAERA in discharging their responsibilities surrounding long distance farm animal transportation. Your attempt to assure me that DAERA is strongly committed to ensuring the highest possible welfare standards for all animals, in line with EC Regulation 1/2005, but the evidence I have gathered from DAERA FOI responses shows that your statement is not truthful'.

32. With reference to the statement that DAERA had not received any significant criticism of its regulatory approach from EU DG Sante directorate E², the complainant contended that, *'it is probably because nobody has brought to their attention the manifest systemic failure and collusion which I have discovered'*. He stated that he hoped to *'bring to the attention of DAERA all past, and any future breaches of the Regulations by DAERA in the performance of their duties'*. The complainant asked the Permanent Secretary to provide him with DAERA's *'detailed reasoning'* for its approval of a specific journey log and an explanation why DAERA approved a journey *'when with even the minimum of due diligence, it can be seen that the journey will breach the Regulations'*.

33. On 22 February 2018, DAERA provided the complainant with their response to his complaint. The Department confirmed that having reviewed information held as a result of enquiries from BBC Countryfile, they had discovered that the information previously provided to the complainant had been incomplete. The response advised the complainant that some of the information he had requested was seeking justification of a judgement. DAERA advised that, *'there is clearly a*

² The department of the European Commission responsible for EU policy on food safety and health and for monitoring the implementation of related laws

record that a judgement has been made but as in the case of approving journey logs, not always a record justifying the decision. The basis for accurate judgement comes down to training and experience. The Department has admitted staffing pressures during the period in question'. The response commended the complainant for his dedication and commitment to the welfare of livestock during transport and assured him that DAERA shared that commitment. DAERA reminded the complainant that he had the right to complain to the Ombudsman if he remained unhappy with the service received from DAERA.

34. The complainant wrote back to DAERA on the same date and advised that he disagreed with much of what they said and would respond in detail once he had sufficient time to formulate his reply. He advised DAERA that he was preparing a formal complaint about DAERA to the EU Commission but would be prepared to delay this complaint if DAERA, by 2pm the following day, provided him with *'the justification necessary to prove, without doubt, that I am mistaken in my belief that the two Journey Logs in question were not compliant in all respects to EU 1/2005'*.
35. On 26 February 2018, the Permanent Secretary at DAERA wrote to the complainant and stated that the enforcement of The Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended) is a devolved matter, but officials regularly liaise with DEFRA and the Animal and Plant Health Agency with regard to live animal exports. The Permanent Secretary confirmed that officials agreed that the journey log queried by the complainant *'should not have been approved'* and that this error (and any others made) was attributed to the staffing issues which DAERA had experienced at the time.
36. The complainant wrote back to the Permanent Secretary on 6 March 2018, and asked, *'Given the clear documentary evidence of wrong doing on the part of the Journey Organizer, can you please advise me if you plan to take any steps to punish the Organizer for their duplicity?'* The complainant stated that, *'Having access to the details leads me to conclude that in this period (first 10 months of 2016) ALL Journey Logs, for both sheep and cattle were approved in breach of the Regulations. I strongly suspect that should I study Journey Log Applications for 2015 or for 2017, a similar pattern of non-compliance by both the Journey Organizers and DAERA would emerge'*.
37. The complainant contended that the acceptance and approval of journey log applications which breached the Regulations had been so widespread and for such a long time, *'that it indicates a deliberate policy of non-compliance by DAERA in this regard'*. The complainant advised that it was for these reasons that he had made a formal complaint to the European Commission with a request that they investigate his concerns.

He contended that, *'the fundamental reason why the Journey Log Applications do not comply with the Regulations is very simple. All applications which include a ferry journey from either Dublin or Rosslare to Cherbourg, will always breach the Regulation because the journey on the ferry of 18-20 hours duration is outside the scope of regulatory approval'*. The complainant ended his letter by calling upon DAERA to *'cease and desist, with immediate effect, from approving Journey Logs which propose to use either of these ferry routes, or any other means of transportation from Northern Ireland on long distance travel which will be non-compliant with Regulation EU 1/2005'*.

38. On 20 March 2018, DAERA wrote to the complainant and informed him that they were currently reviewing their processes with regard to the approval of journey logs and would make any necessary improvements. The following day DAERA provided the complainant with the journey logs requested for January 2018, with redactions for section 40(2)(third party personal data).
39. On 27 March 2018, the complainant wrote to DAERA and asked them to confirm that the issues which he had raised were being taken into account in the process review and when they expected the review to be completed. In the meantime, he asked, *'can you please tell me if DAERA have stopped issuing approval for Journey Logs which breach Regulation EU 1/2005?'* The complainant advised that he now had copies of the journey logs which DAERA had approved during January 2018, *'from which it is clear that nothing has changed since 2016, which was the period during which I found significant dereliction of duty on the part of DAERA, and which you have admitted was the case'*.
40. On 12 April 2018, the complainant wrote again to the Permanent Secretary at DAERA. Having now looked in more detail at the journey logs approved by DAERA in January 2018, the complainant stated that all the journeys did not comply with Regulation EU 1/2005 and he provided details of one journey in particular that stood out. The complainant noted that he still awaited answers to the questions he had asked in his letters of 6 and 27 March 2018 and, in addition, he asked the Permanent Secretary what action he would take in regard to the points raised in this (12 April 2018) letter.
41. DAERA responded to the complainant's letter of 27 March 2018 on 16 April 2018. DAERA advised that the review of journey log processing would consider operational, not policy, matters, and they expected to have established a list of recommendations by 30 June 2018. They stated that, *'as previously explained, it is DAERA policy only to approve Journey Logs in compliance with the requirements specified in EU Regulation 1/2005'*. DAERA advised the complainant that *'the other matters that you mention have already been addressed in previous*

correspondence with you and I cannot see any value in entering into further discussion'.

42. On the same date the complainant emailed DAERA and asked them to answer *'the following FOI question. Since the time that DAERA undertook the task of administering Regulation EU 1/2005 on the Welfare of Animals in Transport, have there been any complaints about the way in which DAERA carries out its responsibilities regarding this Regulation? Have any complaints been escalated by having the complaint referred to EU Authorities or perhaps by Judicial Review or similar measures? If the answers are in the affirmative, please provide full details'*. The complainant also asked DAERA to provide him with journey logs relating to sheep and cattle during February 2018, and asked several questions in respect of the 14 journey logs provided for January 2018.
43. On 27 April 2018, the complainant wrote to the Permanent Secretary and noted his disappointment that the Permanent Secretary had not replied to his letters of 6 and 27 March and 12 April 2018. He stated that, *'it is my belief that my correspondence with DAERA over the last 12 months indicates serious breaches of the Regulation by journey organizers which have not been detected by your staff, and when they have been found, are not followed with any truly dissuasive action'*. The complainant contended that he had shown evidence of the deliberate underestimating of journey times on a journey carrying sheep which *'you have admitted should not have received Journey Log approval'*. The complainant asserted that all the other journeys carrying sheep in that period followed similar routes and timings and so all were non-compliant. The complainant stated that, *'the checking of these Journey Logs by DAERA was at best grossly incompetent, at worst an illegal collusion with the organizers to flout the Regulation'*.
44. The complainant was highly critical of DAERA and the Permanent Secretary. He stated that, *'the near complete abrogation of its responsibility by DAERA to properly administer Regulation EU 1/2005, results in a shameful situation of nothing less than institutional cruelty to animals. Sheep and cattle are forced to endure unnecessary suffering because of your inability to carry out your responsibilities without fear or favour'*. The complainant concluded by warning the Permanent Secretary that, *'if you are not prepared to answer my letters and my criticism, and if you are not prepared to make the changes I have called for immediately, I shall be calling for your resignation and replacement by someone who will'*.
45. On 4 May 2018, the complainant wrote to DAERA with another series of questions and queries for a journey log which took place on 6 January 2018.

46. On 10 May 2018 DAERA issued the complainant with a section 14(1) (vexatious request) refusal notice. The notice referred to the complainant's email of 4 May 2018 and noted that he had submitted a total of six FOI requests to the Department on the topic of the movement of live animals, most recently on 12 February and 16 April 2018. The response also noted that the complainant had *'also been in regular communication with the Department on related matters and have sent us a total of 9 letters or emails, most recently on 6th March, 27th March, 12th April and 4th May 2018'*.
47. DAERA advised the complainant that they considered that continuing to provide responses to his requests would place an unwarranted burden on staff time and resources. DAERA stated that:
- 'The frequency and volume of your correspondence contributes to the difficulty in providing responses. Your requests and communications are often submitted before we have had the chance to provide responses to previous enquiries. In addition, DAERA has provided you with responses in respect of the issues you have raised and is of the opinion that your continued requests, combined with an unwillingness to accept the validity of the responses made, particularly in respect of the legality of live animal transport by sea, and your attempts to engage in debate, demonstrate an unreasonable level of persistence'*.
48. DAERA confirmed that they had *'reluctantly'* concluded that they must refuse to comply with the complainant's request of 4 May 2018 *'and associated requests'*, which they considered to be vexatious under section 14(1) FOIA. In addition, DAERA advised the complainant that *'we do not intend to respond to further correspondence on issues already addressed'*.
49. On 15 May 2018, the complainant wrote to the Permanent Secretary at DAERA with criticisms of their approach to the regulation of live animal exports. Asserting that it was DAERA which had misinterpreted the Regulation and not him, the complainant stated that, *'your gross and grotesque, deliberate misinterpretation of this part of the Regulation is shameful and your continued approval of journey logs which breach the provision of protection for animals that the Regulation permits, is illegal, and I again call on you to cease and desist with immediate effect, from issuing approval for Journey Logs which breach the Regulation EU 1/2005'*.
50. The complainant subsequently wrote to the Head of the Civil Service, Mr David Sterling, on 31 May 2018, concerning DAERA's section 14(1) refusal notice. He advised that he objected, in the strongest way

possible, to the assertion that his requests for information were vexatious in nature. Noting that his correspondence with DAERA had been spread over 14 months, the complainant stated that he considered the volume of the same to be *'entirely reasonable'*, particularly in view of *'the fact that DAERA caused me considerable inconvenience during 2017 by providing me with untruthful FOI details which caused me to spend time dealing with the outcome – more letters and questions'*. The complainant also stated that he was asking a number of questions *'which were sometimes answered only on the second or third time of asking, and sometimes never adequately addressed at all'*.

51. The complainant contended that to be vexatious, he would be needing *'to be pursuing a course of action that was futile, never to be resolved and pursued solely to aggravate, annoy and irritate the recipient of my communications'*. He submitted that if his case was investigated thoroughly, including the evidence which he had collated about DAERA, then it would show that his *'pursuit of the truth'* about DAERA would not have been futile or frivolous. The complainant contended that the reason DAERA had issued him with the section 14(1) refusal notice only five days after the transmission of BBC Countryfile in which the complainant had been interviewed about live animal exports, *'has more to do with the fact that I have uncovered wrongdoing by DAERA and am beginning to receive media interest, rather than any genuine belief that my concerns are vexatious'*.
52. The complainant asked Mr Sterling to instruct DAERA to answer his backlog of questions that they had failed to answer, and that they continue to *'engage in debate with me'* and answer further comment honestly and promptly. The complainant advised that he had written to Mr Gove with his evidence, requesting that the Secretary of State order that an inquiry take place into DAERA's *'interpretation'* of the relevant Regulations. The complainant concluded by stating that he was asking that DAERA obey the law, and questioned what was vexatious about that.
53. On 7 June 2018, the complainant wrote to his Member of Parliament, Sir Roger Gale MP, and contended that it was his view that DAERA *'are incompetent in the way in which they administer the Regulation, and I strongly suspect, deliberately complicit in breaching parts of the Regulation which do not suit the promoters of the live export trade in sheep and calves especially'*. Attaching a copy of his letter to Mr Sterling, the complainant stated that he had no intention of asking DAERA to carry out an internal review or taking the matter to the ICO as *'it can take months, if not years, to reach resolution – meanwhile sheep and calves continue to suffer'*. The complainant advised that he had complained to the EU (and attached their response) and stated that *'they clearly do not want to be involved'*, suggesting that he direct his

complaint to the UK Government. The complainant advised Sir Roger that he had sent a number of requests to Mr Gove, asking that he make a formal inquiry into the performance of DAERA, but had received no reply. The complainant asked whether the Secretary of State for Northern Ireland had any jurisdiction over what happens in Northern Ireland without the Northern Ireland Assembly sitting and whether she (Karen Bradley MP) could intervene. The complainant stated that *'there has to be some way in which DAERA can be held to account for its maladministration'*.

54. On 18 June 2018, Mr Sterling responded to the complainant's letter of 31 May 2018. He expressed his disappointment that the complainant was unhappy with the service provided by DAERA and emphasised that DAERA's obligation to provide information under the FOIA was a high priority. Mr Sterling stated that he was satisfied that where DAERA identified that information provided to the complainant was incomplete, steps had been taken to ensure transparency and to provide him with the complete information as soon as possible.
55. Mr Sterling noted that section 14 of the FOIA allows public authorities to refuse requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. He advised the complainant that:

'It is the case that DAERA has deployed a significant amount of time and resources to address your requests to them and provide you with detailed information. Government Departments cannot reasonably be expected to comply over a prolonged period with requests which require reiteration of responses that have been comprehensively addressed in previous communications. It is also impracticable for responses to be easily provided to overlapping requests which are shortly followed by strings of supplementary correspondence before the Department has responded to the initial query received'.
56. Mr Sterling advised that his understanding from DAERA was that the timing of the Countryfile programme was coincidental and had no bearing on the decision in the matter. The complainant was advised to contact the ICO if he was unhappy with the response.
57. On 3 July 2018, Lord Gardiner, Parliamentary Under Secretary of State for Rural Affairs and Biosecurity, wrote to Sir Roger Gale (copied to the complainant) as the Minister responsible for this policy area. Lord Gardiner reiterated that as stated in previous responses, animal welfare is a devolved issue and DAERA are the responsible body for issuing journey logs for those journeys which start in Northern Ireland. Lord Gardiner advised that, *'whilst there is currently no Government in Northern Ireland, DAERA are still carrying out the functions as required*

by their legislation. As DAERA has no responsibility for implementing the legislation in Northern Ireland, it would be inappropriate for me to comment or intervene on this issue'.

Scope of the case

58. The complainant contacted the Commissioner on 2 August 2018 to complain about the section 14(1) refusal notice of 10 May 2018.
59. The complainant contended that, *'my investigation has revealed that DAERA are grossly mismanaging their responsibilities in this field, and that animals being transported from Northern Ireland are not being afforded the welfare protection that the relevant Regulations are supposed to provide'*. The complainant stated that it was his view that the vexatious claim was *'false and unwarranted and is simply being used as a gambit to frustrate my further uncovering of maladministration on the Department's account'*.
60. On 3 August 2018 the complainant wrote to DAERA and requested a copy of *'all Journey Logs involving sheep and cattle for the latest month, probably May or June, for which you have a complete record, so that I may compare the Journey Logs with any changes in administration brought about by your review'*. The complainant also requested details of the review.
61. On 22 August 2018, DAERA responded to the complainant's request. They enclosed the details to date of the review and confirmed that an audit had been carried out by their Internal Audit team. DAERA advised the complainant that they would provide him with a copy of their report when it was agreed. In regard to the request for journey logs, DAERA noted that they had previously written to the complainant and informed him that such requests had been deemed vexatious under section 14(1). DAERA confirmed that they would not engage in further correspondence on this issue and provided a copy of their refusal notice of 10 May 2018. DAERA advised the complainant that if he was unhappy with their response then he could request an internal review from their Review Section.
62. In view of the unlikelihood of DAERA's position in this case being amended at internal review, the Commissioner exercised her discretion to accept the complaint without an internal review. Due to temporary administrative problems with the ICO's Northern Ireland case queue, there was an unfortunate period of delay before the complainant's case was allocated for investigation, with the Commissioner apologising to the complainant for this delay on 26 February 2019.

63. On March 21 2019, the complainant wrote to the Commissioner and explained the background to his complaint and what he is seeking to achieve. The complainant explained that the journey log required for all transport of live animals being transported for more than 8 hours is the primary documentation which records all relevant information for the intended journey and the actual journey undertaken. The Competent Authority has to approve the planned journey details in advance and then compare the actual journey with the planned journey to determine whether the actual journey has been compliant with the Regulations. The complainant stated that obtaining copies of sample journey logs is vital to the task of assessing whether journeys undertaken comply and whether prior approval by DAERA has been given with proper regard for the Regulations.
64. The complainant advised that, *'by claiming that my requests for information were vexatious and therefore refusing to provide further information, DAERA have cut me off from obtaining the documentary evidence which fuelled my supplementary questions and my severe criticism of the ways in which DAERA were failing in their duty'*. The complainant expressed his opinion that *'what I have discovered about DAERA is that the management of the Authority has not only been incompetent but that there has been a deliberate and sustained subversion of the Regulations by DAERA staff in order to protect export organizers from having to comply strictly with the Regulation'*.
65. The complainant submitted that, *'if DAERA can be required to answer those questions in my correspondence which remain unanswered, and to continue providing me with Journey Logs, I am sure that I can uncover further evidence of maladministration'*.
66. On 9 May 2019 the Commissioner spoke with the complainant and explained that it was not her role or remit to investigate alleged maladministration and she could not compel DAERA to respond to the complainant's questions and provide the justifications and explanations demanded of DAERA by him. The complainant acknowledged this advice but confirmed that he wished the Commissioner to issue a formal decision notice on the matter.
67. The scope of the Commissioner's investigation has been to determine whether DAERA were correct to refuse the complainant's information request of 4 May 2018 and his associated requests, as vexatious under section 14(1) FOIA.

Reasons for decision

Section 14: vexatious request(s)

68. Section 14(1) of the FOIA states that a public authority is not obliged to comply with a request if the request is vexatious. The term vexatious is not itself defined in the legislation, but in *Information Commissioner v Devon County Council & Dransfield*³, the Upper Tribunal commented that:

'The purpose of section 14 must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA'.

69. The Upper Tribunal concluded that 'vexatious' could be defined as the:

'Manifestly unjustified, inappropriate or improper use of a formal procedure'.

DAERA's position

70. In submissions to the Commissioner, DAERA noted that as they advised the complainant in their refusal notice of 10 May 2018, he had submitted a total of 6 FOI requests on the topic of movement of live animals, most recently on 12 February and 16 April 2018, and had also been in regular communication with DAERA on related matters, sending a total of 9 further letters or emails, most recently on 6 and 27 March, 12 April and 4 May 2018.
71. The Department advised that they considered that continuing to provide responses to the complainant's requests would place an unwarranted burden on staff time and resources. The frequency and volume of the correspondence from the complainant contributed to the difficulty in providing responses as requests and communications were often submitted before DAERA had a chance to provide responses to previous enquiries.
72. DAERA advised that their Animal Welfare Team is not large (three staff in total), and the amount of work involved in responding to the complainant's requests placed a significant administrative burden upon them, particularly as they also had to provide briefing material for the complainant's correspondence with the Permanent Secretary and the Head of the NICS. This was complicated by the nature of the correspondence, where information requests were accompanied by attempts to engage in debate and make points which, if not responded to, would be interpreted as tacit acknowledgement of their correctness

³ UKUT 440 (AAC), 28 January 2013

by the complainant. DAERA explained that this meant that a disproportionate amount of the team's time was taken up with responding to the complainant and *'given the nature of many of his assertions and allegations of unlawfulness which were beyond the capacity of junior administrative staff to meaningfully respond to or contradict, a considerable amount of senior management time as well'*. DAERA stated that as the complainant was unwilling to accept the validity of the responses provided, particularly in respect of the legality of live animal transport by sea, a level of reiteration was consistently necessary.

73. DAERA emphasised to the Commissioner that every effort was made to deal with the complainant's FOI requests over a period of 13 months and it was only after considerable dialogue with him and a considerable amount of information having been provided to him that a decision was arrived at that there was *'realistically no end to his demands as he refused to accept that live animal transport from within Northern Ireland was lawful and that the level of engagement provided could not be sustained indefinitely'*.
74. Moreover, in practical terms, DAERA explained that between the uncertainties of Brexit and the lack of either Direct Rule or Devolved Administration in Northern Ireland, *'there would be no present means of changing the law even if we accepted [the complainant's] analysis of the undesirability of live animal transport (if not his interpretation of EU law) as valid'*. DAERA contended that the expense to the taxpayer of dealing with the complainant's requests and correspondence was considerable and was at times deflecting staff attention from the actual role of monitoring animal welfare during transport.
75. DAERA acknowledged that they had no evidence to suggest that the complainant's requests were deliberately designed to cause disruption or annoyance but they were aware from his correspondence with Mr Gove, that the requests were being made with *'the explicit political motivation of preventing live animal exports from Northern Ireland and preventing "the institutionalised animal cruelty of the Northern Ireland Authority"'*. DAERA advised the Commissioner that the complainant's failure to wait for answers to his initial questions before asking more on the same topic *'were certainly disruptive to the administrative management of the process but we were inclined to view that as overenthusiasm on his part rather than a deliberate attempt to introduce error or confusion into the process'*.
76. In respect of harassing DAERA or its staff, DAERA noted that the complainant had not used threatening or abusive language, but his correspondence *'was taking on an increasingly aggressive and hectoring tone, particularly in his letters to the DAERA Permanent Secretaries and*

included allegations of untruthfulness in our responses and allegations of unlawful activity'.

77. As stated in their refusal notice of 10 May 2018, DAERA confirmed to the Commissioner that they considered the complainant's correspondence demonstrated an unreasonable level of persistence. Whilst acknowledging that the complainant had requested additional new information, DAERA explained that his requests *'increasingly necessitated reiteration of responses that have been comprehensively addressed in previous communications'*. DAERA advised that they found it impracticable for responses to be easily provided to overlapping requests which were shortly followed by strings of supplementary correspondence before they had responded to the initial query received. DAERA therefore contended to the Commissioner that the complainant's approach displayed elements of both obsessiveness (persistence) and unreasonableness (attempts to engage in debate, unwillingness to accept the legal positions stated and excessive supplementary correspondence).
78. DAERA stated that they had no doubt that the complainant's requests were motivated by genuine concern for animal welfare and his view that DAERA is not complying with the relevant Regulation in this area. As such, they recognised that there is an objective serious purpose behind the complainant's requests and they made no suggestion that his requests were either frivolous or designed to impede the proper workings of government. However, DAERA advised that the question of whether the complainant's requests had value, in the sense that he is likely to achieve his desired end result, *'was more problematical in that (a) he does not accept the legal position as outlined by the Department, and (b) that the prohibition of live animal transport would either require an EU level decision to replace the Regulation or, following any departure of the UK from the EU, some solution to the present political impasse in Northern Ireland regarding the devolved administration'*. DAERA stated that even following a UK departure from the EU and such a solution being arrived at in Northern Ireland, they were not aware of any political appetite in any of the major political parties in Northern Ireland to curtail live animal transport, and the complainant would only then have arrived at a position where he could start lobbying for such change.
79. DAERA confirmed that in keeping with ICO guidance, they considered that the value of the complainant's requests was limited, where he was arguing points rather than asking for new information, or was raising repeat issues which had already been fully considered by DAERA.

80. DAERA fully acknowledged that their 4 May 2017 response to the complainant's original FOI request of 3 April 2017 had been incomplete and therefore inaccurate, but noted that they had later detected this inaccuracy and had contacted the complainant and provided him with the correct information and an apology for the error. DAERA also pointed out that this error had occurred in the response to the complainant's original information request and five further requests were answered without inaccurate information being provided.
81. DAERA confirmed to the Commissioner that no one particular request had prompted them to arrive at the section 14(1) refusal notice of 10 May 2018. Rather, the volume and increasingly frequency of the complainant's correspondence, coupled with an increasingly accusatory tone, and the fact that DAERA was not in a position to deliver the complainant's stated objective, had led DAERA to the realisation that the complainant's correspondence was likely to continue indefinitely and that no useful purpose was to be served in prolonging the same.
82. DAERA confirmed that the complainant was not specifically warned, prior to the refusal notice, that his requests risked being refused as vexatious, but they had repeatedly advised the complainant that aspects of his requests were outside the scope of the FOIA and the general tone of his correspondence was becoming more aggressive.
83. DAERA advised the Commissioner that they were aware that the complainant had also written more widely to other parties, such as the Head of the Northern Ireland Civil Service, the Secretary of State for DEFRA and the European Commission. This conformed to DAERA's previous experience of the behaviour pattern of obsessive correspondents and *'made it clear that we would have to explain our previous interaction with the correspondent to external parties'*.

The complainant's position

84. In submissions to the Commissioner, the complainant stated his belief that anyone reading his correspondence with DAERA *'would have to conclude that DAERA can be seen to be chaotic in their recording of information and to be seriously flawed in the practice of their responsibility to administer Regulation EU 1/2005 on the Transport of Animals'*. The complainant stated that his belief was based upon his examination of recorded information, mostly journey logs, provided to him by DAERA.
85. The complainant contended that, *'when I began to challenge DAERA, pointing out numerous failings in their administration of the Regulations, they cut me off from obtaining further evidence by claiming that my questioning was vexatious'*. He stated that it was not coincidental that

the Department's refusal notice was issued a few days after his appearance on the BBC Countryfile programme, *'where I exhibited a letter from DAERA admitting their absence of due diligence on a specific test case'*.

86. The complainant contended to the Commissioner that DAERA were using the claim of vexatiousness *'because they want to stop me from continuing my investigation into their activities, and have failed to answer a number of outstanding questions in order to hide their incompetence'*. The complainant asserted that, *'should the Information Commissioner find in favour of DAERA, it would be tantamount to complicity between the Commissioner and DAERA in the obfuscation of the failings of DAERA in this matter, and a denial of true accountability'*.

Commissioner's decision

87. Although the correspondence between the complainant and DAERA in this matter is complex and voluminous, as detailed above, the position is relatively straightforward. It may be that the complainant wishes to see an end to live animal exports from Northern Ireland as advised by DAERA but the complainant's specific issue/complaint with DAERA is that he does not believe that it is adhering to Regulation EU 1/2005 (i.e. DAERA is not complying with the law) and that *'there has been a deliberate and sustained subversion of the Regulations by DAERA staff in order to protect export organizers from having to comply with the Regulation'*.
88. The central issue underlying the complainant's information requests and associated correspondence to DAERA is that he does not agree with or accept DAERA's interpretation and management of the above Regulation. Specifically, the complainant contends that the journey logs provided to him by DAERA are evidence of maladministration. This contention is the central continuing theme of the complainant's correspondence with DAERA and at the time of the section 14(1) refusal notice of 10 May 2018, had been ongoing for more than 12 months.
89. The Commissioner has no doubt (nor have DAERA) that the complainant's requests and associated correspondence are motivated by an entirely genuine and laudable concern for the welfare of animals, specifically cattle and sheep. There is clearly an important and legitimate public interest in ensuring that livestock are not subjected to undue distress and cruelty when being transported for fattening, breeding or slaughter and that the rules and regulations which govern their welfare are followed and applied.
90. The complainant has been very clear that he considers that DAERA's approach towards Regulation EU 1/2005 is one of deliberately

misinterpreting the same and approving journey logs which breach the protection for animals provided by the Regulation. That is to say, the complainant believes that DAERA has acted (and continues to act) unlawfully. The complainant has contended that the checking of the journey logs by DAERA is at best incompetent and at worst illegal collusion with organizers to breach/evade the Regulation. He is of the view that the information he has obtained from DAERA thus far, specifically the journey logs, is evidence of maladministration and he wishes to obtain further such evidence by making ongoing requests for journey logs.

91. As support for his contention of maladministration on the part of DAERA, the complainant has cited the letter sent to him on 26 February 2018 by the Permanent Secretary, which agreed that one such journey log queried by the complainant, *'should not have been approved'*. The Permanent Secretary attributed this journey log error (and any others made) to the staffing issues which DAERA was experiencing at the time, an explanation which the complainant, in his later letter to DAERA of 27 March 2018, claimed to be an *'admitted'* significant dereliction of duty on the part of DAERA. As is clear from the correspondence history detailed earlier in this notice, it is the complainant's contention that such dereliction of duty by DAERA remains ongoing as nothing has changed as regards the approving of journey logs.
92. In his letter to his Member of Parliament on 7 June 2018, the complainant asked *'there has to be some way in which DAERA can be held to account for its maladministration'*. The Commissioner would note that on at least two occasions (their letters of 16 January and 22 February 2018) DAERA have advised the complainant that he had the right to complain to the Ombudsman if he remained unhappy (as he clearly is) with the service received from DAERA. At the outset of her investigation, the Commissioner explained to the complainant that it was not her role or remit to consider or investigate maladministration and that the complainant should refer his concerns/allegations to the Ombudsman. The complainant explained that he instead wanted the Commissioner to compel DAERA to continue to correspond with him and answer his requests and questions, in order that he might obtain further evidence of the asserted maladministration.
93. Whilst the Commissioner recognises the genuine purpose and motivation behind the complainant's information requests and associated correspondence to DAERA, it is clear that his expectations of DAERA (and indeed the Commissioner) are unreasonable and misconceived, as far as the FOIA is concerned.
94. As can be seen from the complainant's correspondence history with DAERA, he displays a consistent and sustained pattern of demanding

explanations and justifications from DAERA for its actions or inactions and demanding that DAERA accept his interpretation of the Regulation and cease issuing approval for journey logs which, in the complainant's view, breach the Regulation. The correct legal interpretation of the Regulation is not a matter for the Commissioner to give judgement or opinion on, but DAERA have been very clear to the complainant as to their position in the matter.

95. The complainant's persistence in continuing to correspond with DAERA on the issue for over 12 months despite DAERA having made their position (rightly or wrongly) clear in multiple correspondence up to and including the Permanent Secretary, is, in the Commissioner's view, manifestly unreasonable and irrational. Put simply, if the complainant is correct in his assertion that he has evidence (i.e. the journey logs) of maladministration on the part of DAERA in this area, then the most obvious and sensible course of action would be to provide this evidence to the body/organisation responsible for investigating the same; the Ombudsman. The Commissioner is not aware that the complainant has done so.
96. The FOIA (and indeed the EIR) provide a right of access to recorded information held by public authorities, but the legislation does not impose any requirement or duty upon a public authority to explain, justify or defend its actions (or inactions) and decisions. It is clear from the complainant's correspondence with both DAERA and the Commissioner that he wrongly believes that he is entitled to have his questions and criticisms answered by DAERA. This expectation may have been fostered to some extent by the fact that over the 12 month period preceding the section 14(1) refusal notice, DAERA have demonstrated an unusual and commendable level of engagement with the complainant, answering his questions and responding to points which he has made.
97. In fairness to the complainant, the Commissioner considers that there are two significant factors which go some way to mitigating the burden which his requests and associated correspondence were placing upon DAERA prior to the refusal notice.
98. Firstly, DAERA provided the complainant with incorrect (because it was incomplete) information in their response of 4 May 2017 to his original request. This was a clumsy and unfortunate error, and was bound to generate a certain degree of reasonable correspondence from the complainant, who was understandably unhappy to be subsequently informed (on 25 September 2017) that the figures previously provided were incorrect. That said, the Commissioner notes that DAERA informed the complainant of their error as soon as they became aware of it, and

provided him with an explanation and apology for the same, along with the correct figures.

99. Secondly, in his letter to the complainant of 26 February 2018, the Permanent Secretary at DAERA informed the complainant that officials agreed that a specific journey log which he had queried, *'should not have been approved'*. This confirmation was understandably taken by the complainant as support and evidence for his central contention and concern that sheep and cattle journeys were (and in his view, still are) taking place which breached the Regulation. Although the Permanent Secretary had attributed the journey log error to staffing issues which DAERA had been experiencing at the time, a certain level of reasonable correspondence could be expected to be received from the complainant in response to the information.
100. However, even after making the above allowances, the Commissioner considers that given the small size of DAERA's Animal Welfare Team and the involvement of the most senior officials (including the Permanent Secretary), the Commissioner considers that the complainant's relentless and ceaseless correspondence and requests clearly placed an unreasonable and oppressive burden on DAERA's time and resources. As can be seen from the correspondence history detailed earlier in this notice, the complainant's letters and requests to DAERA were lengthy and detailed, often being made only days apart from each other (e.g. 12, 18 and 20 December 2017 and 1, 15 and 22 February 2018). Though not required under the FOIA to answer many of the complainant's questions and allegations, DAERA's attempts to engage with the complainant in that area were clearly hampered by the volume and frequency of his correspondence.
101. The Commissioner also considers that the complainant has demonstrated no insight or awareness into the burdens which his requests and correspondence are placing upon DAERA and the unreasonableness of his approach. Only a day after submitting his complaint to the ICO, the complainant submitted another FOI request to DAERA, asking for the latest journey logs, having previously requested (1 February 2018) and expected DAERA to arrange to proactively provide him with journey logs for each month in 2018. The complainant's main purpose and objective in complaining to the ICO, has been to compel DAERA to answer his questions and arguments, and to continue debating with him, none of which, as the Commissioner has explained, she can assist him with.
102. The complainant has clearly mounted a campaign against DAERA, and has been highly critical, accusing DAERA of not only incompetence but *'deliberate and sustained subversion of the Regulations'*. This, despite the complainant having originally told DAERA, in his letter of 1 June

2017, that '*Criticism, if it is due, and suggestions for improvements, I shall leave to others*'. Whatever the validity or otherwise of the complainant's contentions as to the legal position, and without in any way deprecating the complainant's clearly genuine motivation and serious purpose in trying to protect animal welfare, the Commissioner is satisfied that the evidence clearly shows that the complainant has been, and continues to be, unreasonably persistent in his requests and associated correspondence to DAERA.

103. In his letter to the Head of the Civil Service of 31 May 2018, the complainant contended that in order for his requests to be vexatious, he would need '*to be pursuing a course of action that was futile, never to be resolved and pursued solely to aggravate, annoy and irritate the recipient of my communications*'. Whilst the Commissioner would not suggest that the complainant's course of action is being pursued with the above purposes in mind, she is satisfied that it is a course of action that can nevertheless be accurately described as futile, given that it is clear that it will not produce the outcomes sought by the complainant.
104. The complainant is adamant that DAERA are complicit in the breaching of the Regulation and that he has evidence of their maladministration. DAERA dispute this and have made their position on the matter repeatedly clear. It is obvious that DAERA are not going to change their position or accept the complainant's criticisms and allegations, no matter how many letters or requests for journey logs he makes. An impasse was reached between the parties some time before DAERA reluctantly decided to refuse the complainant's requests as vexatious under section 14(1). That impasse cannot be broken by any further engagement within the FOIA process and DAERA are in any event under no obligation under the FOIA to provide explanations or justifications for their actions, inactions or decisions.
105. The reasonable and appropriate next step for the complainant would be to raise his concerns about DAERA's alleged maladministration with the Ombudsman, and provide them with the evidence which he believes he has of the same. In choosing to try and force DAERA to engage with him in a voluminous and infinite chain of correspondence and requests, the complainant has demonstrated a clearly unreasonable persistence. This unreasonable persistence, coupled with the attendant excessive and disproportionate burdens caused to DAERA, means that the Commissioner is entirely satisfied that DAERA's reliance on section 14(1) was both appropriate and reasonable, with there being strong and necessary grounds for their doing so.

Other Matters

106. The Commissioner would note that arguably the complainant's information requests could be considered to be requests for environmental information and should therefore have been processed by DAERA under the EIR rather than the FOIA. However, the Commissioner is satisfied that had DAERA applied regulation 12(4)(b)(manifestly unreasonable) to refuse the complainant's information requests, the outcome would not have been different in that the Commissioner would have upheld that exception.

Right of appeal

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

108. 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.

109. 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

**Gerrard Tracey
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