

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

Decision notice

Date: 9 December 2019

Public Authority: Natural England (NE)
Address: County Hall
Spetchley Road
Worcester
WR5 2NP

Decision (including any steps ordered)

1. The complainant made a request for all information held between 01/03/2015 and 08/03/2019 relating to four particular search terms. NE refused to comply with the request under regulation 12(4)(c) EIR as it considered the request was formulated in too general a manner.
2. The Commissioner considers that NE incorrectly applied regulation 12(4)(c) EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to the complainant not relying upon the regulation 12(4)(c) exception.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 8 April 2019 the complainant requested information of the following description:

I am formally requesting this day 8/3/2019 any /all documentation and email records you hold from 1/3/2015 to the current date of 8/3/2019 relating to [redacted].

and

I am requesting copies of any and all correspondence NE holds between the dates of 1/3/2015 and the present date of 8/3/2019 relating to the search terms of [redacted]

6. On 7 June 2019 Natural England responded. It refused to comply with the requests under regulation 12(4)(c) EIR as it considers the requests are formulated in too general a manner. It had previously contacted the complainant on four occasions providing advice and assistance as to how he may be able to refine and focus the request.
7. The complainant requested an internal review on 11 June 2019. Natural England sent the outcome of its internal review on 9 July 2019. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 3 July 2019 to complain about the way his request for information had been handled. He does not accept that his request is formulated in too general a manner.
9. The Commissioner has considered whether NE has correctly applied the exception at regulation 12(4)(c) EIR in this case.

Reasons for decision

Regulation 12(4)(c) – requests formulated in too general a manner

10. In this case NE has explained to the Commissioner that the requested material could be located in a number of locations:
 - The material could be saved in a number of locations:
 - Corporate electronic filing system
 - Shared drives
 - Email accounts of at least 4 staff
 - Personal Drives of at least 4 staff

- Natural England's legal advisers
11. NE also explained that it conducted searches using the four search terms indicated in the request of its corporate electronic filing system and that this returned a significant volume of information. Many of the results were duplicates and so it estimated a total of 630 relevant files.
 12. This search did not capture all information held as there are other potential areas to search using the search terms, however this demonstrated the volume of information the request would cover.
 13. NE's view is that whilst the request is not ambiguous, the search terms are not specific enough and 'too general' to allow it to perform a targeted search which it argued is demonstrated by the search results set out above.
 14. NE confirmed that it asked the requester for clarification on five occasions:
 - 15 April 2019 at 15:33 via the requester's legal advisers.
 - 02 May 2019 at 08:45 via the requester's legal advisers.
 - 9 May 2019 at 10:24 via email
 - 14 May 2019 at 16:19 via email
 - 15 May at 2019 08:41 via email
 15. The requester has not provided any further clarification regarding his request. The requester considers that his request is not formulated in too general a manner. He considers he has clearly specified the information he requires and the search terms NE should employ to satisfy his request.
 16. The complainant also explained that:

"NE provided the requested information relating to the very same request but with a 2012/2015 timeframe. It appears that ico was not required at that time I apologise for believing you were. The NE file reference was RFI 2956 which provided the requested info.

Please can you ascertain why the same request with a time window of 2015/2019 is now being declined when the previous request was eventually reluctantly complied with."
 17. The Commissioner therefore contacted NE to ask it to clarify why it had been able to respond to the same request (albeit for a different time frame) but considered that this request was formulated in too general a manner.

18. NE confirmed that it had responded to such a request in 2015 but that the complainant had quoted an incorrect reference number.
19. It explained that NE deals with requests on a case by case basis. How it dealt with a request, particularly one a number of years ago, will have little bearing on how it deals with a request now. It said that there are so many factors that will affect how NE responds including:
 - The previous request was over 4 years ago.
 - In that period NE staff resources have reduced. So to protect those resources it has tightened its assessment of what constitutes a request drafted in a general manner.
 - There has been significantly more activity concerning the complainant's actions (outside of the information access process).
 - There is currently an ongoing legal process relating to the subject matter of the request and NE has shared with the complainant and his legal advisers the information pertinent to the case through a Statement of Case. Furthermore NE is sharing through disclosure rules to the requester as part of the court proceedings.
 - The material in scope of this request is an increase of 170% on the previous request referred to above.
 - For the previous request NE required the full 40 working days allowed to it under the EIRs to respond. This was due to the volume of material in scope and the complexity
20. The Commissioner does not consider in this case that the complainant's request was formulated in too a general manner. She considers that this is demonstrated by the fact that there are four clear search terms which NE used to conduct the electronic search referred to at paragraph 11 above which produced 630 pieces of information.
21. The Commissioner accepts that requests must be dealt with on a case by case basis, however given that in this case the request made previously back in 2015 was for the same information as being requested in the more recent request (despite the requests covering different time frames), it is not clear why it is deemed the more recent request is formulated in too general a manner.
22. NE staff resourcing is not a relevant consideration to determine whether a request has been formulated too generally. Any actions regarding the wider matters to which the request relates and the sharing of information via current legal proceedings is also not relevant to the application of regulation 12(4)(c) EIR.
23. Much of NE's arguments centre around the volume of the information requested including the increase of information covered by the more

recent request (given the different time frame it covers) and the length of time it took to respond to the previous request given its voluminous nature.

24. Under regulation 7 EIR a public authority is able to extend the time for responding to particularly complex or voluminous requests, and NE choose to rely upon such an extension when responding to the 2015 request. Where the volume of information requested goes beyond this and becomes a manifestly unreasonable burden, there is an appropriate exception written into the EIRs which can be relied upon in such circumstances. The fact that a request is particularly voluminous does not however mean it has been formulated in too general a manner. The Commissioner's Guidance¹ on regulation 12(4)(c) EIR confirms that:

"As can be seen from the example above, we consider that the term "too general a manner" only relates to requests for information that are too vague, unclear or non-specific. We distinguish this from requests that might be considered 'too big', relating to too extensive an amount of information, which may be covered by regulation 12(4)(b) ("manifestly unreasonable")."

25. In this case NE has been able to indicate the volume of material falling within scope (it has confirmed it is a 170% increase on the information covered by the 2015 request) which suggests it is able to identify the information being requested. The Commissioner considers the four clear search terms used in the request are a further indication that the complainant has clearly specified the information required and therefore it cannot be said that the request has been formulated in too general a manner.
26. For the reasons set out above, the Commissioner does not consider the request is ambiguous or unclear. The Commissioner therefore does not consider that section 12(4)(c) of the EIR was correctly applied in this case.

¹ https://ico.org.uk/media/for-organisations/documents/1619/requests_formulated_in_too_general_a_manner_eir_guidance.pdf

Right of appeal

27. 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

28. 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.
29. 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.....

Gemma Garvey
Senior Case Officer

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