

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

Date: 31 October 2022

Public Authority: Department for Environment, Food & Rural Affairs

Address: Nobel House
Area 1E
17 Smith Square
London
SW1P 3JR

Decision (including any steps ordered)

1. The complainant has requested the Department for Environment, Food and Rural Affairs (Defra) to disclose all the information it holds on the Walleys Quarry Landfill Site. Defra refused to disclose the requested information citing regulation 12(4)(b) of the EIR (manifestly unreasonable on the basis of cost).
2. The Commissioner is satisfied that regulation 12(4)(b) applies to the request and that the public interest rests in maintaining this exception. He has also decided that Defra complied with its obligations under regulation 9 and provided appropriate advice and assistance to the complainant.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 16 June 2022, the complainant wrote to Defra and requested information in the following terms:

"The Secretary of State for the Environment, Food and Rural Affairs is requested to provide all information that he has with respect to Walleys Quarry Landfill site, Cemetery Road, Silverdale, Newcastle-under-Lyme, including but not limited to all communications he has had with the Environment Agency relating to this Landfill site."
5. Defra responded on 15 July 2022. It refused to disclose the requested information citing regulation 12(4)(b) of the EIR on the grounds of cost. In accordance with regulation 9, Defra provided the complainant with advice and assistance to enable them to formulate a fresh request, which could be handled at less cost.
6. The complainant requested an internal review on 21 July 2022. The complainant believes the significant public interest in disclosure outweighs any costs or burden compliance will cause.
7. Defra carried out an internal review and notified the complainant of its findings on 10 August 2022. It upheld its application of regulation 12(4)(b) of the EIR.

Scope of the case

8. The complainant contacted the Commissioner on 16 August 2022 to complain about the way their request for information had been handled. The complainant is of the view that the public interest rests in Defra complying with the request and disclosing the requested information. They do not consider Defra's balance of the public interest test has taken into account the extent of the public health consequences of the pollution at the site.
9. The Commissioner considers the scope of his investigation to be to establish whether Defra is entitled, or not, to rely on regulation 12(4)(b) of the EIR.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

10. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
11. The Commissioner considers that a request can be manifestly unreasonable either if the request is vexatious, or where compliance with the request would incur a manifestly unreasonable burden on the public authority both in terms of costs and the diversion of resources.
12. In its submissions to the Commissioner, Defra has relied upon the latter interpretation of regulation 12(4)(b), that it considers the amount of work required to comply with this request in full would bring about a manifestly unreasonable burden.
13. Under FOIA, the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') specify an upper limit for the amount of work required beyond which a public authority is not obliged to comply with a request. This is set at £600 for Defra.
14. The Fees Regulations state that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it;
 - and extracting the information from a document containing it.
15. The EIR differ from FOIA in that under the EIR there is no upper cost limit set for the amount of work required by a public authority to respond to a request.
16. While the Fees Regulations relate specifically to FOIA, the Commissioner considers that they provide a useful point of reference where the reason for citing regulation 12(4)(b) of the EIR is the time and costs that compliance with a request would expend. However, the Fees Regulations are not the determining factor in assessing whether the exception applies.

17. The Commissioner's guidance on regulation 12(4)(b) states that public authorities may be required to accept a greater burden in providing environmental information than other information.
18. Regulation 12(4)(b) sets a robust test for a public authority to pass before it is no longer under a duty to respond. The test set by the EIR is that the request is "manifestly unreasonable", rather than simply being "unreasonable". The Commissioner considers that the term "manifestly" means that there must be an obvious or clear quality to the identified unreasonableness.
19. Given the high burden referred to within paragraph 18, the Commissioner expects a public authority to provide both a detailed explanation and quantifiable evidence to justify why complying with a request would impose such an unreasonable burden on it, and therefore why regulation 12(4)(b) is engaged.
20. Defra confirmed that the complainant's request incorporates a substantial amount of information, which would need identifying, gathering together and a careful review for information which would be exempt under the relevant exceptions of the EIR. It stated that Ministers have been regularly updated, often on a weekly basis, on the Walleys Quarry Landfill site. Some documents would need to be redacted in order to remove exempt information. It estimated that to process the complainant's request as worded would place a significant burden on Defra in terms of cost and time and it felt that it would, disproportionately, divert its resources away from the provision of other public services.
21. The Commissioner asked Defra to justify its position further and to demonstrate how compliance with the complainant's request would be so burdensome.
22. Defra said that it found 50 weekly briefing papers sent to the Private Office of the Minister of Defra since the beginning of July last year and using a minimum of two staff members, it would take an average of 15 minutes to go through and discuss each one. It carried out a sampling exercise and provided one of the briefing papers in question to the Commissioner to highlight its point. One member of staff reviewed the paper to first identify the differences between this paper and the community briefing issued. They highlighted what was in the public domain and what was not. That member of staff then had to discuss the briefing with a member of the Defra policy team, who took an additional five minutes to go through the remaining material and identify any harm that may be applicable on the current Environment Agency (EA) investigation if information were disclosed.

23. Defra argued that it would then have to consult with a third party, the EA and its own Private Office over what information can be disclosed and what information cannot. It confirmed that to gather and prepare the briefing papers alone would comfortably exceed the 24 hours of staff time or £600 limit specified in the Fees Regulations.
24. In addition to the above, Defra conducted further searches of SharePoint; its cloud system using the term 'Walleys Quarry'. This produced 2396 documents with that term identified in it. It said from that it could easily filter out those that are part of the core Department of Defra (as it shares this system with its Executive Agencies and some of its Executive non-departmental public bodies) and this resulted in 1241. Defra advised that even if it took a modest 2 minutes per document to download from SharePoint and identify whether it is within scope or not this would amount to 41 hours of staff time. It commented that this does not include any further documents that maybe on EA's SharePoint site but may be within Defra on local storage facilities.
25. Defra also asked two members of its policy team (one including the Deputy Director) which covers this area of work to conduct a further search of their Outlook account using the same search term. It reported that this resulted in a total of 2400 email hits and taking the same 2 minute per email to identify whether it is within scope or not, and any duplication, would amount to an additional 80 hours.
26. Therefore, up to this point, Defra has calculated that it would take around 146 hours to review the information identified above and this was without searching the Private Office and additional team members within the policy team.
27. The Commissioner notes that the complainant has essentially asked Defra to disclose everything that it holds on Walleys Quarry. The request is not limited in any way by time, specific departments or members of staff. It is understandable therefore that the request will incorporate a significant amount of recorded information. The Commissioner is aware that there is an ongoing EA investigation. It is therefore also reasonable to assume that the recorded information held will contain some exempt information, which is not suitable for public disclosure under the exceptions specified in the EIR.
28. Due to the broad nature of the request and it asking for everything Defra holds, the Commissioner does not consider an excessive amount of time would be required to establish if the identified information falls in scope. As the complainant has asked for everything, any return that mentions Walleys Quarry will fall in scope. That being said, Defra has already identified 50 weekly briefing papers, 1241 documents on its SharePoint system and 2400 emails containing the term 'Walleys

Quarry'. At just one minute per return, it would take Defra over 61 hours to comply with the request. Realistically the Commissioner notes that it would take more than one minute per return to prepare information for disclosure. At two minutes, the time it would take is well in excess of the cost limit that is applicable under FOIA.

29. Defra has demonstrated that compliance would place a significant burden upon it in terms of time and resources and in the Commissioner's view a 'manifestly unreasonable' level of burden despite the size of it as a public authority and the resources it has. For these reasons, the Commissioner is satisfied that regulation 12(4)(b) of the EIR applies.

The public interest test

30. Defra acknowledged the public interest in disclosure of information concerning the Walleys Quarry Landfill site. It stated that this is why the EA prepares a weekly update to help the community of Newcastle-under-Lyme and the wider area keep informed about developments concerning its regulation of the site.
31. It recognised that disclosure would contribute to the transparency of government and that releasing information in relation to this matter would aid public debate and aid the public to understand more closely the discussions that are taking place.
32. However, Defra considers the public interest rests in maintaining the exception despite the compelling arguments in favour of disclosure in this case. It said that the request is so broad, it incorporates a substantial amount of recorded information. The estimate detailed above is significant, yet it still does not identify and take account of all the potential recorded information it holds on the matter. Identifying, gathering information in scope, then reviewing it and carefully considering any potential exceptions under the EIR as a result on the current and ongoing EA investigation would place a substantial and manifestly unreasonable burden on Defra in terms of time and cost. It would need to consult the EA on the information too and considering the mass array of information in scope this would be a huge task. Defra argued that compliance would, therefore, disproportionately divert Defra's resources away from the provision of other services and key functions.
33. Defra also said that there are regular updates on the EA's website about the site and what is being done. The local authority also provides similar updates on its website. The EA are currently investigating matters at the site as well. It considers these actions go some way to meeting the public interest arguments identified.

34. The Commissioner considers there are very compelling arguments in favour of disclosure in this case, considering the concerns the complainant has raised in respect of the impact of the site on public health. Disclosure would enable the local community to understand more closely what is being done to mitigate the impacts of this site and further the public's understanding in this area and debate around it. Where environmental information is concerned, the Commissioner expects public authorities to accept a higher level of burden in terms of complying with requests for information to those considered under FOIA due to nature of the information at hand.
35. However, the Commissioner considers this is a balancing exercise – weighing up the impact compliance would have on the public authority's time and resources and the identified public interest arguments in favour of disclosure. There are clear and significant public interest arguments in favour of Defra complying with this request and disclosing what information it is able to. That being said there still remains weighty public interest arguments in favour of protecting the resources and time of a public authority where a request would be so burdensome, costly and time consuming to process. It is not in the public interest to divert resources away from the public authority's other functions and services when compliance would take such a significant amount of time.
36. In this case, it has been shown that at a rate of two minutes per document (which is very conservative) it would take Defra 122 hours to collate and review the recorded information it has identified so far and this is not all the recorded information Defra potentially holds. This is significant and only goes to highlight just how much recorded information potentially falls within the broad nature of this request and what compliance would involve. Despite the clear public interest in the information, this would place an overwhelming burden upon Defra in terms of time and expense and despite its size and the resources available to it this cannot be justified. It would have to disproportionately divert a huge amount of time and resources away from other functions in order to comply and on this scale, the Commissioner is satisfied that this is not in the wider interests of the public.
37. For the above reasons, the Commissioner has decided that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exception.
38. He would, however, like to point out that, considering the significant public interest in disclosure because of the nature of the requested information in this case, he would expect Defra to accept some additional burden in terms of compliance if a fresh request for information were to be made and this was much more focussed and

refined. This is with the necessary caveat that even if a new request can be processed under the EIR it is likely that some of the requested information would be exempt due to its connection to the EA's ongoing investigation.

Regulation 9

39. There is a duty on a public authority to provide an applicant with appropriate advice and assistance when applying regulation 12(4)(b) of the EIR so far as it is reasonably practicable. This is to assist the applicant in framing a new request which could be potentially considered without hitting any threshold of cost and time.
40. The Commissioner notes that the complainant framed this request so broadly that they effectively asked for everything Defra holds on the subject. Defra recommended in its response to the complainant that they specify a time period in the request i.e. two months and explain more fully and precisely the kind of information they were looking for. It also suggested that they limit the request to correspondence with the Secretary of State to the EA, as their initial wording 'not limited to' includes correspondence from the public and constituents.
41. The Commissioner considers that appropriate advice and assistance was provided. Defra suggested a specified timeframe, for the complainant to focus any new request on specific discussions and information and maybe refining the scope to just the Secretary of State of the EA. He does not consider any further assistance could have been provided. For these reasons, the Commissioner is satisfied that Defra has complied with regulation 9 of the EIR.

Right of appeal

42. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

43. 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.
44. 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

Samantha Coward
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