

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

Date: 25 January 2023

Public Authority: Environment Agency
Address: Horizon House
Deaney Road
Bristol
BS1 5AH

Decision (including any steps ordered)

1. The complainant has requested engineering reports on a reservoir. The above public authority ("the public authority") eventually provided some information but relied on regulation 12(5)(a) of the EIR in order to withhold the remainder.
2. The Commissioner's decision is that the public authority has correctly engaged regulation 12(5)(a) of the EIR and that the balance of the public interest favours maintaining this exception. As the public authority disclosed information and issued its refusal notice outside of the 20 working day timeframe, it breached regulations 5(2) and 14 of the EIR respectively.
3. The Commissioner does not require further steps.

Request and response

4. On 27 August 2021, the complainant contacted an employee of the public authority with whom he had recently met and, referring to the Mill Leese Flood Storage Area, requested information in the following terms:

"I am therefore formally requesting that you forward to me:

- a. The section 12 and Section 10 reports by the Supervising and Inspection Engineers mentioned on page 2 of the handout you provided at the 10 August on-site meeting;
- b. Operational instruction 362_09 The Safe Management of Trees;
- c. Mill Leese Embankment Tree PSRA, proposed works and ecological assessment summary;
- d. Bat Tree and Activity Survey Report. Corylus, 3 February 2021.

"...I would also like replies to the following questions:

- e. On how many occasions, and on what dates, during the operation of the Flood Storage Area has the water level over-topped the spillway tower?
- f. On how many occasions, and on what dates, has the spillway tower or culvert become blocked by debris, or otherwise malfunctioned, allowing water levels to rise beyond the top of the spillway tower and what levels above the top of the spillway tower were recorded on each occasion?
- g. On how many occasions, and on what dates, has the water level in the Flood Storage Area risen above the level of the bank of the Mill Leese stream at the trash screen but below the level of the top of the spillway tower and what water levels were recorded on each occasion?

"For all of the above questions I would like information to cover the periods under both Shepway District Council and Environment Agency management.."

5. The public authority responded on 1 October 2021. It provided the information it held within the scope of elements b, c and d, but stated that it need additional time to deal with the remaining elements.
6. On 29 November 2021, the public authority issued a further response. It provided information within the scope of elements e, f and g. In respect of element a, it provided redacted versions of the reports and relied on regulation 12(5)(a) of the EIR to withhold the redacted information. It upheld this position following an internal review.

Scope of the case

7. The complainant contacted the Commissioner on 9 April 2022 to complain about the way his request for information had been handled. He was unhappy that the two reports, sought by element a of his request, had not been provided in full.
8. The complainant informed the Commissioner that the public authority had recently arranged for significant removal of vegetation around the reservoir, which had had a considerable impact on the landscape. The justification for this work had been an apparent recommendation, by engineers inspecting the reservoir, that a vegetation management plan be put in place. The request was aimed at understanding and informing the local community about why such work had been deemed necessary.
9. During the course of the investigation, the Commissioner received unredacted versions of the reports. Having done so, he suggested to the public authority that the specific sections relating to vegetation management did not appear to be especially sensitive and that there was a public interest in understanding why the vegetation management was necessary.
10. The public authority reconsidered its position and disclosed most of the information identified by the Commissioner – although it continued to redact information concerning (in very broad terms) routine vegetation management (ie. not related to the significant works the complainant is concerned about) and the manner in which outflows are managed.
11. The complainant was not satisfied with this disclosure and asked for the full report to be disclosed.

Reasons for decision

12. The Commissioner considers that the requested information is information on both the elements of the environment themselves and on measures likely to affect the elements of the environment. The public authority therefore correctly dealt with this request under the EIR.
13. Regulation 12(5)(a) of the EIR allows a public authority to withhold information whose disclosure would adversely affect defence, international relations, national security or public safety.
14. The public authority noted that reservoirs in general can hold a considerable amount of water and that, in the event that that water is

released in an uncontrolled manner, it can cause injuries or even deaths as well as considerable damage to property.

15. The public authority also noted that the security threat level (currently "substantial") indicated that there was an ongoing risk of terrorism for all critical national infrastructure – including reservoirs. Even seemingly mundane information could, it argued, assist a terrorist in preparing an attack.
16. It also drew attention to the National Protocol for the Handling, Transmission and Storage of Reservoir Information and Flood Maps (which appears to be in the public domain¹). The Protocol sets out the general principles organisations should consider when sharing information about reservoirs, as well as setting out its advice on the categories of information that should be disclosed or withheld.
17. The Commissioner has recognised in previous decisions that detailed technical information about reservoirs is capable of attracting this exception.² However, as the Protocol itself recognises, "one size does not fit all" and it is important to consider the nature of the information being withheld.
18. The complainant has argued that, whilst this particular site has to be classed as a "raised reservoir," the reality is that it only contains significant volumes of water when there has been heavy rainfall – and even then, only for a short period of time thereafter. This view appears to be validated by other data the public authority has disclosed.
19. The Commissioner also notes that the withheld information is, for the large part, either very technical or mundane. Although he also recognises that most of the information is information which the Protocol recommends should either not be disclosed or should only be disclosed with vulnerabilities omitted.
20. However, whilst the Commissioner recognises that this particular reservoir is unlikely to be a high profile terrorist target, it obviously forms a key part of flood resilience in the local area. Although the reservoir may only rarely impound significant quantities of water, when

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https://www.owenboswarva.com/FOI/EA_Reservoirs/National%20Protocol%20June%202018.pdf

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2020/2618499/ic-48075-b0d4.pdf>

it does, an uncontrolled release could cause significant damage to property.

21. The Commissioner also recognises that targets which are considered to be lower profile still carry a risk as they might be seen as easier targets to attack.
22. Finally, the Commissioner recognises that would-be terrorists are highly-motivated individuals and therefore likely to draw on publicly available information to select targets and plan attacks. Even though some of the information being withheld is relatively mundane, information about the condition of a reservoir and the methods available for controlling outflow could, if placed in the wrong hands, make an attack both more likely and, if it did happen, more destructive.
23. The Commissioner is therefore satisfied that the exception is engaged.

Public interest test

24. The Commissioner recognises that, in the local area surrounding the site, there was a public interest in understanding why significant environmental works were deemed to be necessary. However, he considers that that public interest has now been met by disclosure of the additional information during the course of the Commissioner's investigation. The Commissioner considers that the remaining information is not related to those works.
25. The Commissioner also recognises that those living close to a reservoir will have a particular interest in ensuring that it is being maintained in a safe condition – however, in this case that public interest is much lower because of the nature of the site. There would be a much stronger public interest in disclosure of information about a reservoir which usually contains a large volume of water – which presents an ongoing risk – than one that will only present a risk on a few occasions each year.
26. Finally, the Commissioner considers that the remaining withheld information is unlikely to be of use to anyone without a professional interest. He sees no compelling public interest reason that would override the very real risks he has already identified.

Procedural matters

27. The public authority breached regulation 5(2) of the EIR as it provided some of the information it held outside of the 20 working day timeframe.
28. The public authority breached regulation 14 of the EIR as it provided its refusal notice outside of the 20 working day timeframe.

Right of appeal

29. 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

30. 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.
31. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF