

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

Decision notice

Date: 10 February 2023

Public Authority: Natural Resources Wales

Address: Cambria House
29 Newport Road
Cardiff CF24 0TP

Decision

1. The Commissioner's decision is that the complainant's request for information about a permissive access policy is manifestly unreasonable under regulation 12(4)(b) of the EIR and Natural Resources Wales is not obliged to comply with it. It is not necessary for Natural Resources Wales to take any steps.

Request and response

2. The complainant made the following information request to Natural Resources Wales (NRW) on 23 September 2022:

"The three attached documents appear to be encrypted I'm some way, as when I download them on my Android phone all I can see is random numbers and letters.

I would be grateful if you could resend these in a Word format if possible.

I understand the permissive access policy position as you have set it out in your email, although I believe it is self contradictory. However, I have a final request for information, as follows.

Please confirm whether or not NRW holds any archived information for the Forestry Commission Wales, in the form of a policy proposal or decision to or by a Forestry Commission committee or other body that confirms the precise details and background to the permissive access policy that you have referred to.

If there was such a policy proposal or decision by a Forestry Commission committee or other body, please provide a copy of this.

I am interested to learn whether those persons who made the policy proposal or decision took into account the potential harm to protected riverine species in SSSI designated rivers in the Forestry Estate that could result from encouraging the public to walk in all of these rivers.

If the said committee or other body did not consider this important nature conservancy issue, the proposal or decision would clearly have been in breach of the Forestry Commission's nature conservancy duties, and the continuation of a policy to permit access to SSSI designated rivers after the Wildlife and Access to the Countryside Act would have been a Potentially Damaging Operation.

Please provide the following additional information.

It has previously been stated that it is NRW's policy that it does not encourage the public to walk in riverine SSSIs, or words to that effect. At what level was this policy decision made, and is there any record or document that sets out the reasons behind this policy?

For instance, did this policy proposal or decision make reference to the Forestry Commission's statement that the public are welcome in the forests, broadly speaking.

The basis of my intended complaint to the Ombudsman is that NRW's stated and understandable policy that it does not encourage the public to walk in riverine SSSI's was a necessary qualification or exception to the former Forestry Commission policy that would have encouraged the public to walk in riverine SSSI's.

NRW may have as you say inherited this broad Forestry Commission policy, that so far lacks any formal documentary detail, but NRW has at some point amended or clarified this broad policy by the decision that it is not NRW's policy to encourage the public to walk in riverine SSSIs.

[Redacted]'s assertion in his email of 21st August 2021 misrepresented NRW's actual policy, because he has in effect encouraged the public to walk in all SSSI designated rivers in the

WGWE. This is clearly an act of gross negligence that is also a PDO under the 1981 Act, which is neither transparent nor accountable. This act of gross negligence was and continues to be Maladministration.

Your final response to my complaint is also Maladministration because you have failed to take the appropriate action to protect the riverine SSSIs in the WGWE that [redacted] has put at risk by his unauthorised and maverick major policy decision.”

3. NRW’s final position in its internal review of 14 December 2022 was that the request was manifestly unreasonable and that regulation 12(4)(b) of the EIR was therefore engaged.

Reasons for decision

4. This reasoning covers NRW’s application of regulation 12(4)(b) to the complainant’s request.
5. Under regulation 12(4)(b) a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable.
6. A request may be manifestly unreasonable because it is vexatious or because of the disproportionate burden complying with the request would impose on the authority, in terms of cost or time. NRW’s position is that the request is vexatious.
7. In its internal review decision, NRW noted that from March 2021 to October 2022, it had received 69 contacts from the complainant, containing in excess of 90 questions. The majority of these questions were a repeat or modified questions about the same or similar topics. NRW said that it considered the obsessive nature of the correspondence had put an unacceptable burden on NRW. It deemed it to be unreasonable to expend further resources on dealing with a matter it considered to be closed, particularly when the resources and staff time that had already been spent were taken into account.
8. Based on their correspondence, NRW’s view was that the complainant had been intransigent in their dealings with NRW, had failed to accept NRW’s position and had insisted on referring to issues that have been closed. The complainant had also made unsubstantiated allegations of maladministration and/or concealment of information. NRW said that this was despite NRW being consistent in its approach to dealing with the requests and other requests submitted via alternative avenues such

as business responses, complaints and a Subject Access Request which resulted in a complaint which was partially upheld.

9. NRW noted that all correspondence and requests it had received involved various areas of interest linked to a legal case it had brought against the complainant in which the complainant was successfully prosecuted. The highly personalised and persistent nature of the requests contributed to its decision to refuse the request in this case. NRW advised that following their legal prosecution, it considered that the continued requests were intended to disrupt NRW business regarding a subject which has already received a "huge allocation" of time and resources. NRW also noted that the complainant or their legal advisors had not made an appeal to the court.
10. NRW said that, having reviewed the correspondence, it had provided the complainant with all the information it holds relevant to the topic area, having searched all electronic and archived files. It therefore considered the matter closed and that the complainant's subsequent contacts were an attempt to use the EIR to reopen a matter which has previously been considered. This meant the request had no serious purpose or value. The continual requests for information, NRW advised, therefore seemed to be for the purpose of disrupting NRW for no justifiable gain.
11. Considering the history of correspondence about this topic and the complainant's reluctance to accept the responses provided, NRW said that it considered the complainant would be unlikely to accept any response it provided and a response would instead more than likely lead to further requests for information, and accusations.
12. Finally, NRW noted that there had been extensive correspondence between the complainant and NRW. This had involved numerous NRW departments including legal services, the contact centre and environment team. NRW advised that the cumulative burden of dealing with these requests and continuing to process such requests when the matter has been considered, would cause a disproportionate or unjustified level of disruption, irritation and distress. This was especially the case when the accusations of misinforming and maladministration that the complainant had already directed at its staff were taken into account.
13. In a submission to the Commissioner NRW has provided a detailed trail of the correspondence and requests it has received, and a summary detailing how the complainant's correspondence meets the four broad themes under the regulation 12(4)(b) exception of: motive, value and purpose, burden, and harassment and distress. NRW has also provided the Commissioner with examples of its correspondence to the complainant and the complainant's correspondence to NRW. Within the

sample folder it provided to the Commissioner are many examples which NRW says shows the obsessive nature of the complainant's correspondence, the refusal to accept what NRW has provided to them and unsubstantiated allegations of maladministration via its complaints and access to information team.

14. NRW noted that the complainant made a total of nine EIR requests, one complex Subject Access request and two complaints (one not upheld, the other partially upheld).
15. It had received the first request for information from the complainant on 25 March 2021. All of the submissions the complainant has made since this date relate to the same topic of open access surrounding Afon Wen and carrying out a particular activity on Welsh Government Woodland Estate. These matters link to NRW's prosecution of the complainant. The complainant requested information and correspondence with NRW up until 7 October 2022.
16. Since the complainant's correspondence dated from 11 June 2021, many elements of the correspondence were general queries rather than requests for recorded information that NRW holds. NRW says it advised and assisted the complainant on several occasions about the elements that were a request for information, advising that the remainder were queries for the appropriate business area to respond to. This included providing a response to 57 questions, a copy of which NRW has provided to the Commissioner.
17. NRW has noted that the complainant has repeatedly challenged and disagreed with NRW's policy processes. They refuse to accept references to the policy document that they have requested. Although the policy is not a standalone document, NRW has assisted the complainant by providing all the relevant documents it holds, and it provided documents which reference the policy.
18. Although there has been ad hoc correspondence from the complainant over the last decade, NRW says, this has escalated substantially since NRW commenced enforcement action against them for carrying out a particular activity on NRW land without authorisation.
19. In their complaint to the Commissioner, the complainant disputed NRW's position in its 14 December 2022 internal review. The complainant presented 34 arguments to support their position that their request was not manifestly unreasonable. These are summarised as follows:
 - Their requests for information to NRW have always been rational and purposeful both in the context of fulfilling the educational

purposes of the charity with which they are involved, and to assist NRW to carry out its statutory duties.

- The reason for their further requests is because NRW has not published policy information to guide the public about the issue of access for recreation in respect of riverine Sites of Special Scientific Interest (SSSI) in the Welsh Government Woodland Estate (WGWE).
 - They are campaigning to highlight the fact that NRW has not formulated a coherent formal policy in order to fulfil its statutory duties to protect riverine SSSIs in the WGWE, which they believe is necessary to encourage responsible access to the WGWE for recreation.
 - If NRW is to be transparent, open and accountable, it must admit that it has made no formal policy decision that supports assertions it has made about public access to the entire WGWE, and that it has misrepresented Welsh Government policy as well.
 - If NRW holds the requested information, it should be easy to find.
 - NRW is not able to distinguish between “professional, intelligent and purposeful inquiry regarding the formation of public policy” and obsessive requests that are truly pointless.
20. The Commissioner is not persuaded by the complainant’s arguments. He is more persuaded that, having been successfully prosecuted by NRW, the complainant is dissatisfied with that outcome and bears a grudge against NRW. From the samples provided to him, the Commissioner agrees with NRW that the complainant’s correspondence to NRW evidences an unreasonable level of persistence bordering on the obsessive. Whether or not it was the complainant’s deliberate intention to disproportionately disrupt, harass and burden the NRW, that is the cumulative effect their correspondence had. In respect of their requests for recorded information, the EIR was not introduced to have that effect. At the point of the request in this case, therefore, NRW considered a line had been reached and regulation 12(4)(b) was engaged.
21. In the circumstances, and because NRW’s responses to the complainant’s previous requests and queries had comprehensively addressed the subject that is the focus of this request, the Commissioner is satisfied that NRW was entitled to refuse the request as manifestly unreasonable.

22. The Commissioner has next considered the public interest test associated with the application of regulation 12(4)(b). In its internal review, NRW acknowledged the EIR's presumption of disclosure. NRW also acknowledged the strong public interest in openness, transparency, public understanding and accountability in relation to public authorities' activities. NRW has noted that the complainant has already received all the relevant information it holds. It said it has made all reasonable attempts to provide the complainant with relevant information including searching several archived box files, at a cost to NRW.
23. As arguments against disclosure, NRW said there was a public interest in protecting the integrity of the EIR and in ensuring it is used responsibly. It said that the EIR do not require public authorities to tolerate harassment by individuals who demonstrate obsessive behaviour when requesting information. NRW did not consider the complainant's request was an appropriate use of the EIR; it has little to no benefit to the wider public and would not inform any public debate in a meaningful way. NRW considered it was relevant that it has already disclosed relevant information and other relevant information is already in the public domain regarding NRW's policy position. In NRW's view, there is little public interest to the request; it is more the complainant's private interest related to a legal case in which they were successfully prosecuted by NRW.
24. NRW said that complying with the request, and the likelihood that this would generate further contacts based on previous trends, would place a disproportionate burden on its resources. NRW argued that there is substantial public interest in ensuring it manages its already limited resources as effectively as possible.
25. The Commissioner has found that the complainant's request is manifestly unreasonable by virtue of being a vexatious request. He has found it to be vexatious as it is part of what appears to be a campaign against NRW that is likely to have stemmed from NRW's successful prosecution of the complainant. Consequently, there is little wider public interest in NRW complying with the request. The public interest in transparency has been more than met through the information NRW has already provided to the complainant, its detailed responses to their other correspondence since March 2021 and up to the point of this request and in related information that is already in the public domain. There is greater public interest in NRW's resources being protected from manifestly unreasonable requests such as this one, so that it can focus those resources on activities of more value. To confirm, the Commissioner is satisfied that the public interest favours maintaining the exception under regulation 12(4)(b) of the EIR in this case.

Right of appeal

26. 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

27. 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.
28. 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

Cressida Woodall
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