

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 1 February 2023

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

Decision (including any steps ordered)

1. The complainant requested information from the Environment Agency (EA) relating to salmon stock exploitation rates. EA refused the request under regulation 12(4)(b) as manifestly unreasonable.
2. The Commissioner's decision is that EA is entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with the request and that the public interest favours maintaining the exception. However, EA breached regulation 14(2) of the EIR by not issuing a refusal notice stating that it was relying on an exception within the statutory timeframe.
3. The Commissioner does not require any steps.

Request and response

4. On 24 May 2022, the complainant made the following request for information to EA:

"...The last 10 years (2012 - 2021) - individual 1SW & MSW Rod Exploitation Rates used for calculating annual egg deposition estimates for each of the 44 principal salmon monitored rivers in England.

Please highlight and include the detail of any changes made in individual river Rod Exploitation Rates causing alteration to the original published annual stock assessments in this 10-year timeframe.

Please indicate which salmon rivers with validated counter/trap facilities generate Rod Exploitation Rates data used in estimating their own respective river annual stocks, and/or provide Rod Exploitation Rate data for other river annual stock estimates."

5. On 13 July 2022 EA responded stating that the request was being refused because it considered it to be manifestly unreasonable under regulation 12(4)(b) of the EIR.
6. The complainant asked for an internal review on 23 July 2022 asserting that the request was not a "challenge or complaint to the EA's salmon stock assessment".
7. Following an internal review, EA wrote to the complainant on 9 September 2022 upholding its position.

Background

8. EA provided the Commissioner with some background to this request:

"The focus of the correspondence is linked to the use of salmon stock assessments that underpin rod fishery byelaw consultation processes that seek to implement measures that prevent the taking of salmon or which control certain fishing methods that are known to be damaging to wild Atlantic salmon. The measures are implemented to protect salmon stocks that the Environment Agency has assessed to be at, or below, unsustainable stock levels. The status of salmon stocks is assessed using a national salmon stock assessment process that has been used by both the Environment Agency and Natural Resources Wales continuously since the early

2000s. The stock assessment process has been used to implement byelaws and salmon protection measures and have been tested through independent Public and Local Inquiries which has fully scrutinised and validated the stock assessment process.”

9. The complainant provided the following detail:

“The EA, NRW Natural Resources Wales & Cefas Centre for Environment, Fisheries & Aquaculture Science publish an annual report on the health and status of Salmon stocks in 64 monitored rivers in England & Wales. Annual stock estimates for 53 Rivers without validated counters to estimate stocks are derived from rod-based catches multiplied by a “rod exploitation rate (RER) factor”. That factor has a major bearing on the accuracy of published River stocks and in 2004 the EA gave a commitment to introduce procedures to annually review and revise individual River RER to ensure seasonal factors affecting those rates are adjusted and corrected. The reason - RER data on validated counter Rivers show RER varies considerably between rivers in each year and between years for the same river. Without revising RER stock estimates on on-counter rivers are unreliable. The EA did not introduce this new procedure and for the majority of rivers continued to use a system of applying fixed RER. Consequently the accuracy of national river stocks has been significantly impaired over the last 18 years. A new annually revising system is proposed in improvement outcomes to a four year national Stock Review scheduled for 2024.”

Scope of the case

10. The complainant contacted the Commissioner on 7 November 2022 to complain about the way their request for information had been handled.
11. This notice covers whether EA correctly determined that the request was manifestly unreasonable and whether the public interest favours maintaining the exception. It will also look at any procedural errors.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable request

12. The Commissioner accepts that the requested information is environmental and that EA was right to handle the request under the EIR.
13. Under regulation 12(4)(b) of the EIR a public authority may refuse to disclose information to the extent that the request is manifestly unreasonable.
14. Unlike section 14(1) of FOIA, regulation 12(4)(b) is subject to the public interest test under regulation 12(1)(b).
15. EA considers that the complainant's request is manifestly unreasonable because it is vexatious (rather than because the costs associated with complying with it are too great). Broadly, vexatiousness involves consideration of whether a request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
16. The ICO recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.
17. The Commissioner has referred to his own guidance¹ and the submissions provided to him by EA in making his decision.
18. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("*Dransfield*")². Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
19. *Dransfield* established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
20. The four broad themes considered by the Upper Tribunal in *Dransfield* were:
 - the burden (on the public authority and its staff);

¹ [Manifestly unreasonable requests - regulation 12\(4\)\(b\) \(ico.org.uk\)](http://ico.org.uk)

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

- the motive (of the requester);
- the value or serious purpose (of the request); and
- any harassment or distress (of and to staff).

The Commissioner has therefore considered whether the EA is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to provide the requested information.

EA's view

21. EA contends that the complainant:

“does not agree with proposed rod fishery control measures and therefore challenges the salmon stock assessment methodology that determines salmon stocks to be in the vulnerable at-risk status”.

For this reason, it believes that they regularly object to byelaw consultation processes through the formal statutory consultation process. EA states that a key part of the process is for it “to respond to anyone who objects to proposed measures with a detailed explanation in order that the objection might be removed”. It states that the issues that the complainant has raised have been given consideration and responded to in face-to-face meetings and statutory processes, in addition to EA's formal complaint procedures.

22. EA argues that in the byelaw making processes that have been undertaken in recent years, most rod fishery interests agree with the proposed measures. They recognise that salmon stocks are in crisis. The Missing Salmon Alliance (representing key Non-Governmental Organisations engaged in salmon stock protection) and the North Atlantic Salmon Conservation Organisation (a multi-national convention that includes all member states throughout the North Atlantic where salmon stock exists) also hold this view, according to the EA.

23. The correspondence with the complainant is persistent (ongoing since 2016), primarily directed at customer contact teams in three areas of the country where it “has recently implemented new salmon protection measures through rod and net fishery byelaws”. EA's view is that this correspondence is now “severely compromising the ability of the Environment Agency area and national teams to undertake other priority work”. To further respond,

“would have a significant impact on the health and well-being of EA

staff who had already been the subject of criticism and who have to deal with the burden of additional correspondence”.

This led to a decision on 10 February 2022 to no longer correspond with the complainant on challenges and complaints regarding salmon stock assessment issues.

24. EA has set out on two spreadsheets for the Commissioner the detail and extent of the correspondence with Cumbria and Lancashire areas. It also explains that the area director requested what is described as an “independent internal review” due to concerns about the extent of the correspondence and criticism of staff. This review was provided to the Commissioner. It concluded that EA had been reasonable and made numerous attempts to meet and explain its position. The review concluded that further correspondence should be terminated as points were being repeated without consideration of the responses EA made.
25. Correspondence began in 2019 with the West Midland area which was associated with the initial implementation of an emergency byelaw to protect salmon stocks from net and fishery exploitation. This was followed by the development of a new River Severn salmon protection byelaw which went through the same process as all other byelaws in the north-west. The correspondence associated with this was also provided to the Commissioner.
26. EA considers that the persistent requests and the level of correspondence amounts to an improper use of the legislation. It characterises it as “disruptive” to its resources to an “unjustified level” and it has impacted on it being able to deliver its mainstream services.

The complainant’s view

27. The complainant explained that they are a representative of rod fishery interests. They maintain that they have raised four legitimate complaints that remain unresolved and that they are not a persistent complainant. The complainant refers to a letter that was written by EA that said it was not responding to challenges and complaints “for the time being”. That was on 10 February 2022. Nothing further had been raised apart from an FOI request which is “a matter of major public interest”. The complainant says that they are

“... engaged with the EA, NRW & Cefas concerning recommendations to a national Stock Review process. The information requested is central to the accuracy of EA, NRW & Cefas published annual river stock estimates and an equivalent request to Natural Resources Wales was managed promptly within the normal 20 working day response”.

The complainant points out that EA took seven weeks to refuse their request.

28. The complainant states that they do not "envisage it being necessary to make further information enquiries on this subject". The request will provide the detail required for the "...new proposals and new methodology recommendations" submitted

"to the EA for implementation of new rod exploitation rate procedures in the national Stock Review and it would be reasonable to expect the EA to provide background detail to current use of these river estimates in what is a landmark review process. Particularly where commitments were made by the Agency to introduce procedures to monitor and review river rod exploitation rates annually in 2004."

29. The complainant does not see the need for "further extensive correspondence necessary with Area Teams",

"Releasing the requested information will provide clarity on what revisions and adjustments have and are taking place and may in fact relieve the stress and well-being issues that the Area Teams are being placed under. Withholding it will simply raise further doubts over river management procedures and undoubtedly place further pressure on Area & National staff."

30. The complainant argues that EA:

"must take responsibility for the negative impact on individuals and working relationships between rod fisheries and their EA national and area teams as a result of not implementing improvements to rod exploitation rate procedures that the EA made in published national stock reports in 2004 and each subsequent year thereafter..."

31. In the complainant's view the request is "entirely reasonable". The data is readily available and "can be delegated to appropriate technical staff to collate".

Regulation 12(1)(b) - public interest test

32. Having considered EA's position the Commissioner is satisfied that citing the exception in regulation 12(4)(b) is justified. The Commissioner has therefore gone on to consider the public interest test required by regulation 12(1)(b).

33. The test is whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Public interest factors in favour of disclosing the requested information

34. The complainant considers the requested information to be “of high interest to Fisheries managers in England” as it “will enable them to be informed and respond to proposed changes in use of new rod exploitation rate procedures in the non-statutory consultation phase of the national Stock Review in England & Wales in 2023”.

35. EA recognises that it needs to be transparent and accountable like all public authorities. In the internal review EA acknowledged that

“there is a presumption in favour of disclosing environmental information on request and so we are open with the public regarding salmon stocks. For example, we published our latest assessment on 25 July 2022”.

Public interest factors in favour of maintaining the exception

36. However, it does not accept that it is “obliged to continue corresponding with one person” who EA describes as “both persistent and unreasonable”. EA suggests that the need to protect its staff from “exposure to an unjustified level of distress or disruption” outweighs public interest in disclosure.

37. The Commissioner accepts that the complainant has a serious purpose in wanting the requested information. However, he also accepts that EA has spent a long time attempting to respond to the complainant’s requests and general correspondence. It is beyond the Commissioner’s remit to consider EA’s approach to salmon stock assessment and its inherent accuracy or otherwise. The Commissioner can only consider whether a point has been reached with this request where it can be considered manifestly unreasonable. Although the complainant stresses that there is a public interest, particularly for fisheries managers, the Commissioner has set this against the EA’s view that it is in the public interest that its wider remit is not compromised by the time and resources taken to respond to this request, given its history and context. The Commissioner has concluded that EA is correct, that there is insufficient wider public interest, and the balance lies in the exception being maintained.

38. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the

regulation 12 exceptions. In this instance, the Commissioner believes that the request is manifestly unreasonable and therefore EA was entitled to rely on regulation 12(4)(b) of the EIR to refuse it.

Regulation 14 – refusal of request

39. Regulation 14(2) of the EIR places an obligation on a public authority to issue a refusal in respect of exempt information as soon as possible and no later than 20 working days after the date of receipt of the request. EA acknowledged in its response to the complainant that it had taken longer than the statutory timeframe to respond.

Right of appeal

40. 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

41. 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.
42. 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

Janine Gregory
Senior Case Officer
Information Commissioner's Office
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