

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

Decision notice

Date: 25 August 2023

Public Authority: Forestry Commission England
Address: 620 Bristol Business Park
Coldharbour Lane
Bristol
BS16 1EJ

Decision (including any steps ordered)

1. The complainant requested internal correspondence about bike trails at a particular location. The above public authority ("the public authority") initially refused the request as manifestly unreasonable before, in its internal review, determining that the public interest favoured disclosure and disclosing most of the information.
2. The Commissioner's decision is that the public authority breached regulation 14 of the EIR as its initial refusal notice was inadequate.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 22 May 2023, the complainant wrote to the public authority and requested information in the following terms:

"Please could you provide all internal Forestry Commission, Forest Enterprise England and Forestry England email communication, including any attached documents, that relate to the mountain bike trails at Wych Lodge in Somerset...

"...If you consider that to it would take a manifestly unreasonable amount of work to comply with the request as written above, then please limit the timeframe of the request by working backwards from

today's date until such a point you would consider compliance would be manifestly unreasonable, and then remove the day furthest away in time, in order to define the timeframe of the search. If you choose to take this approach, please justify why expanding the timeframe of the search any further would be manifestly unreasonable...

"...Please could your written response be given in the body of a single email in reply, rather than in a separate document attached to an email (even though any supporting documentation may be provided as attachments)."

5. The public authority responded on 15 June 2023. It stated that it considered that the request as drafted was manifestly unreasonable and required clarification.
6. The complainant responded the same day noting that his request already set out the steps the public authority should take if the original formulation of the request was manifestly unreasonable.
7. The public authority issued a further response on 20 June 2023. It provided a small quantity of information and relied on regulation 13 of the EIR (third party personal data) to make redactions.
8. The complainant disputed that this was the only information the public authority held and sought an internal review.
9. The public authority completed its internal review on 21 July 2023. It confirmed its view that the request was manifestly unreasonable but that, having reconsidered the matter, it was now of the view that the public interest favoured disclosing the information. It now disclosed the information – with the exception of some personal data and some information that it relied on regulation 12(4)(e) of the EIR (internal communications) to withhold.

Scope of the case

10. At the outset of the investigation, the Commissioner asked the complainant to confirm whether or not he considered that he had now been provided with all the information within scope. The complainant confirmed that he was satisfied, but that he was unhappy with the procedural handling of the request and, in particular, that it had taken too long to obtain the information.
11. The Commissioner has therefore restricted his analysis to the procedural handling of the request.

Reasons for decision

12. Regulation 14 of the EIR states that, where a public authority wishes to refuse a request, it must provide the requester with a refusal notice within 20 working days. The purpose of such a notice is to help the requester understand why they are not receiving the information they have asked for and what their appeal rights are – so that they can challenge any reasons for refusal they believe to be incorrect.
13. The refusal notice must state:
 - the EIR exceptions being relied upon to withhold information; and
 - where relevant, details of the public interest test that has been carried out; and
 - that the requester is entitled to seek an internal review if they are dissatisfied with the response; and
 - that the requester has the right to complain to the Commissioner.
14. The public authority confirmed in its internal review that its correspondence of 15 June 2023 was intended as a refusal notice. The Commissioner notes that this refusal notice was provided within 20 working days.
15. The refusal notice the public authority issued on 15 June 2023 did not state that it was relying on regulation 12(4)(b) of the EIR to refuse the request, but it did state that it considered the request to be manifestly unreasonable. In the circumstances, the Commissioner considers that it should have been reasonably obvious to the complainant which exception was being relied upon and therefore he considers that the public authority met its statutory obligations in this respect.
16. However, the correspondence did not provide any details of the public interest considerations or of the complainant's further rights of appeal. The Commissioner therefore considers that the public authority's refusal notice did not comply with regulation 14 of the EIR.
17. The Commissioner does not consider that the public authority committed any other procedural breaches of the EIR in its handling of the request.

Other matters

“Deliberate” withholding of information

18. The complainant accused the public authority of “deliberately” withholding information from disclosure – which he noted was a criminal offence. That is a very serious allegation and it is one that the Commissioner does not consider is supported by the facts.
19. In this case, the public authority received a request that it considered to be manifestly unreasonable. Given that it later confirmed it had taken 30 hours to compile the requested information, the Commissioner does not consider that this was an obviously incorrect exception to cite. The public authority then asked the complainant to consider narrowing his request, but he refused to do so. Having carried out an internal review, the public authority remained of the view that the request was manifestly unreasonable but, having considered the matter afresh, was of the view that the public interest was sufficiently strong as to justify incurring this burden and disclosing the information anyway.
20. In an ideal world every public authority would respond entirely correctly to every request it received at the first time of asking – but the Commissioner accepts that this is unrealistic. The whole purpose of an internal review is to correct any errors or deficiencies in the initial response and to look at the whole matter again with fresh eyes. The public authority has clearly done so and has been willing to change its stance. The fact that the public authority was willing to change its stance rather undermines any assertion that there has been any deliberate unlawful act to prevent disclosure.
21. The Commissioner also notes that the public authority had issued two responses and completed an internal review within 41 working days of the request being received. Notwithstanding the finding at paragraph 2, he does not consider this to be evidence of a public authority with a poor approach to transparency.

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

22. The Commissioner would draw the attention of the complainant and the public authority to his guidance on [regulation 12\(4\)\(c\) of the EIR – request formulated in too general a manner](#).
23. Whilst the EIR do not contain a formal definition of what is and is not a valid request for information, a public authority may rely on regulation 12(4)(c) of the EIR in circumstances where a request is too vague, unclear or non-specific.

24. In the Commissioner's view, this would include requests that are framed by reference to the degree of burden – such as the complainant's suggestion that the public authority should simply keep searching until just before it believed it would incur a manifestly unreasonable burden.
25. As the public authority correctly pointed out in its refusal notice, such requests do not provide a clear, unambiguous, objective definition that allow a public authority to distinguish the information that the requester wants to receive, from all the other information that it holds. For such requests, the information received would depend on how the public authority conducted its search. For example, to answer such a request, the public authority could legitimately begin its search in an area where it knew the least relevant information was likely to be held. Alternatively it could spend its entire time identifying information covering just one aspect of a particular project and not have time to identify information relating to any other aspect.
26. It is for the person making the request to set out, as clearly as they are able, the information they require. If the public authority considers that the request is too vague to enable it to distinguish between the information the requester wants and all the other information it holds. It should rely on regulation 12(4)(c) to refuse the request and invite the requester to clarify their request. The public authority is not then required to process the request further until the requester has clarified their request sufficiently for the public authority to identify the relevant information.
27. A **vague** request is one where the public authority simply cannot identify the information that is being sought because not enough detail has been provided. This is different from a **broad** request, where the public authority could, given unlimited time and resources, identify all relevant information.
28. A public authority should rely on regulation 12(4)(c) where a request is too vague and regulation 12(4)(b) where a request is too broad to be answered without imposing a manifestly unreasonable burden.
29. When seeking clarification, a public authority should be mindful of its obligation to provide advice and assistance. Providing information about the type of records that are held, how they are held and how the organisation is structured may help a requester to clarify their request more quickly.

Right of appeal

30. 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

31. 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.
32. 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
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