

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

Date: 18 July 2024

Public Authority: Natural England
Address: Foss House
Kings Pool
1-2 Peasholme
York
YO1 7PX

Decision (including any steps ordered)

1. The complainant has requested copies of correspondence about Wirral Borough Council and alleged over spraying and raking at Hoylake beach. Natural England ('NE') relied on regulation 12(5)(f) of the EIR (interests of the person who provided the information) to refuse the first part of the request. NE relied on regulation 12(4)(a) of the EIR (information not held) to refuse the remainder of the request.
2. The Commissioner's decision is that NE was entitled to rely on regulation 12(5)(f) to refuse the first part of the request and that, on the balance of probabilities, no information is held for the remainder of the request.
3. The Commissioner does not require further steps.

Request and response

4. On 12 January 2024, the complainant wrote to NE and requested information in the following terms:

"I wish to put forward a F.O.I request to yourselves, 'Natural England' in relation to your officer's above alleged statements.

My FOI request is for the following;

- 1/ All correspondence & emails in relation to the original accusation/s made to Natural England regarding Wirral Borough Council alleged over spraying & raking of the Hoylake beach site.
- 2/ All notes, correspondence and emails regarding Natural England's initial investigation into this alleged breach of contract.
- 3/ Also all the notes, correspondence and emails for when the final investigations were concluded and Wirral borough Council were notified of the Natural England's conclusion to those accusation of over spraying & raking of the Hoylake beach site."
5. NE responded on 8 February 2024. It stated that it held information in scope of the first part of the request, but advised it was relying on regulation 12(5)(f) of the EIR to withhold it. It advised that it did not hold the requested information for the second and third parts of the request.
6. Following an internal review NE wrote to the complainant on 14 March 2024. It maintained its reliance on regulations 12(5)(f) and 12(4)(a) of the EIR.

Scope of the case

7. The complainant contacted the Commissioner on 21 March 2024 to complain about the way their request for information had been handled.
8. The complainant has argued that NE has previously provided copies of complaints it has received on similar matters without issue.
9. The Commissioner considers the scope of his investigation is to determine whether NE was entitled to rely on regulation 12(5)(f) of the EIR to withhold the information requested in part one of the request and whether information is held in scope of the remainder of the request.

Reasons for decision

Is the requested information environmental?

10. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity

and its components, including genetically modified organisms, and the interaction among these elements;

- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
11. As the requested information relates to alleged concerns about the treatment and maintenance of a particular beach, the Commissioner is satisfied that the requested information is environmental and therefore falls under EIR.

Regulation 12(5)(f) - interests of the person who provided the information

12. Regulation 12(5)(f) of the EIR says that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the interests of the person who provided the information where that person: (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority; (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and (iii) has not consented to its disclosure.
13. It is important to note that the term 'person' as used in the exception applies to both natural and legal persons. A legal person includes, for example, private companies.

14. The exception can only be applied to information that has been provided to the public authority. Having viewed the withheld information relating to the first part of the request, the Commissioner notes that it comprises correspondence and information from individuals outside of the public authority.
15. In its submission to the Commissioner, NE has explained that it has carefully considered the potential consequences of releasing communications about the spraying of the Hoylake beach area. NE considers that such a release would disrupt the free flow of volunteered information and harm its relationships with members of the public and other third parties. It has explained that the subject area of the request is high profile locally, and it considers that it's crucial that it is able to maintain open and constructive conversations with all concerned parties. NE added that the information provided may not be available through other sources, and NE values volunteered contributions that enable it to fulfil its statutory responsibilities.
16. The engagement of regulation 12(5)(f) can be broken down into a four-stage test, as recognised by the First Tier Tribunal
 - Would disclosure adversely affect the interests of the person who provided the information to the public authority?
 - Was the person under, or could they have been put under, any legal obligation to supply the information to the public authority?
 - Did the person supply the information in circumstances where the recipient public authority, or any other public authority, was entitled to disclose it apart from under the EIR?
 - Has the person supplying the information consented to its disclosure?
17. In considering the potential adverse effects of disclosing the requested information, NE has explained that due to the local high profile nature of the subject, any released information will be circulated widely amongst campaign groups and the local press. NE considers that releasing copies of the requested correspondence would lead to individuals being identified and subsequently could have an undesirable impact on their private life. It added that there is no indication that the individuals in question have consented to disclosure and they would not expect the information to be shared with the wider world.
18. In their internal review request, the complainant argued that NE could disclose the requested information by redacting the personal information. In its internal review response, NE addressed this stating:

"I have considered your point regarding the redaction of personal data

but considering the amount of local interest in this case I believe it may be possible to identify individuals from their comments. I believe by releasing the representations, it is more than likely that the individuals may be put under pressure, by others to modify their position; this may subsequently have an undesirable impact on their private life.”

19. The Commissioner agrees with NE’s consideration of the adverse effects that would be caused to the individuals involved. He considers that this is relevant given the high profile nature of the request subject and the level of local interest.
20. NE has stated that those who provided the information were under no legal obligation to do so. Having viewed the withheld information the Commissioner agrees that the provision of the information appears to be entirely voluntary.
21. The Commissioner is also satisfied that the withheld information has the quality of confidence, since the issues to which it relates are not trivial and the information is not publicly available.
22. For a duty of confidence to be owed it is also necessary that an unauthorised disclosure of the information would be detrimental to the confider. This matter has already been considered at paragraphs 17 and 18 above, and the Commissioner concluded that disclosure would have an adverse effect.
23. The final part of the test for engaging the exception is that the person who supplied the information has not consented to its disclosure. The Commissioner is not aware that any of the parties have consented. The Commissioner therefore finds that the exception is engaged.

Public interest test

24. 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.
25. NE has stated that while it believes in transparency in the accountability of public funds, it has concluded that no arguments in favour of disclosing the information exist in this case.
26. NE has argued that it is not in the public interest for individuals to have their private lives disrupted or affected by undesirable actions of others or for the concept of confidentiality to be breached by the release of the withheld information.
27. It added that it is also not in the public interest to harm the relationship between the information provider or future providers of information and

the interests of NE. It considers that such damage would, in turn, affect the free flow of information to NE or other public bodies, which it relies on to carry out its regulatory and statutory functions.

28. NE has stated that it is in the public interest that confidences should be preserved where necessary and that this outweighs any other public interest which may favour disclosure. In this case, NE explained that it has also kept in mind the fact that the request relates to an alleged investigation, which NE maintains has never actually taken place. NE is therefore of the view that the case for preserving public confidence is strengthened where the information requested is, in part, in relation to an investigation that never took place.
29. The Commissioner considers that there is a public interest in wanting to know the details of conversations on about an alleged issue that could affect the wildlife and condition of a local beach. He recognises that people generally have a keen interest in safeguarding the natural environment and areas of natural beauty. There is also a public interest in ensuring NE addresses any concerns or complaints appropriately and that subsequent actions are proportionate.
30. However, the Commissioner also considers that there is a strong public interest in avoiding the adverse effects that disclosing the requested information could have on individuals, and those individuals, and individuals in the future, being able to trust that NE will respect the confidentiality of the information they provide to it. He also considers that there is a strong public interest in maintaining the free flow of information that enables NE to carry out its regulatory and statutory functions effectively.
31. Taking all these matters into consideration the Commissioner finds that, in respect of all the information which engages the exception provided by regulation 12(5)(f), the public interest in maintaining the exception is greater than the public interest in disclosure. NE is entitled to withhold the information concerning the first part of the request.

Regulation 12(4)(a) – Information not held

32. Regulation 5(1) of the EIR requires a public authority that holds environmental information to make it available on request.
33. Regulation 12(4)(a) allows a public authority to refuse to provide the requested information if it does not hold it at the time the request was received.
34. In cases where a dispute arises over the extent of the information held by a public authority, the Commissioner will take account of a number of

factors when considering whether the information is, or is not, held, including

- any evidence or arguments provided by the complainant;
 - any searches carried out by the authority to check whether the information is held;
 - any reasons offered by the public authority to explain why it knows the information is not held; and
 - any reason why it is inherently likely or unlikely that information is held.
35. The Commissioner is not expected to prove beyond reasonable doubt that a public authority does or does not hold information. When determining a complaint, the Commissioner makes a decision based on the civil standard of the 'balance of probabilities' – that is, more likely than not.
36. NE advised that no information was held for questions two and three of the request. These questions concerned information about an investigation into concerns of over spraying and raking at the beach.
37. NE has explained that the Cheshire to Lancashire Area Team, responsible for the coastal area in question, has confirmed to the complainant that NE did not conduct a formal investigation into Wirral Borough Council regarding the reports of over spraying or misuse of the assent for Hoylake Beach. As a result, it explained that there are no documents held within scope of the request.
38. NE explained that it has carried out extensive searches of electronic databases and official email accounts were conducted to ensure that no such information was held. Searches confirmed that no information regarding an NE investigation was found.
39. NE explained that relevant area team staff searched locally stored electronic files and their official email accounts for any files containing information concerning an NE investigation. Searches were also conducted on the central Records Hub, a document repository for case information.
40. NE has emphasized that the requested information is in relation to an alleged investigation that never took place. It has stated that it therefore follows that there is no information held by NE within scope of these parts of the request. NE has confirmed that it holds a large range of information relating to Hoylake area, but nothing specifically about the questions asked. It advised that the complainant has been engaging

with its FOI team, its Area Team and through its enquiries and complaints procedures, and has already received a large amount of information concerning the Hoylake beach area.

41. The Commissioner finds the submissions provided by NE, as set out above, sufficiently explain why it does not hold the requested information for parts two and three of the request.
42. Based on the evidence available to him, the Commissioner finds that, on the balance of probabilities, NE does not hold the requested information.
43. When considering the public interest test, the Commissioner can only find that the public interest in maintaining the exception at 12(4)(a) of the EIR outweighs any public interest in disclosure, simply because the information is not held.
44. The Commissioner is therefore satisfied that regulation 12(4)(a) applies in this case.

Right of appeal

45. 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

46. 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.
47. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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