

Environmental Information Regulations 2004

Decision Notice

Date: 10 January 2011

Public Authority: Natural England
Address: 1 East Parade
Sheffield
S1 2ET

Summary

The complainant submitted a request for information asking for the invoices that resulted in five pieces of expenditure. Natural England responded and cited regulation 12(4)(b) – manifestly unreasonable. The Commissioner has carefully considered this case and has been satisfied that Natural England has applied regulation 12(4)(b) correctly and that in this case the public interest in maintaining the exception outweighs the public interest in disclosing the information. He therefore finds in favour of Natural England.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. Natural England was added to Schedule One of the Act by section 105(1) of the Natural Environment and Rural Communities Act 2006. Therefore, Natural England is also a public authority under the EIR through Regulation 2(2)(b). It will be referred to as the 'public authority' for the remainder of this Notice.

3. The public authority is the statutory body charged with preserving and improving England's natural environment.
4. The Save Penwith Moors Group ('the Group') was founded to encourage and co-ordinate opposition to plans by the public authority to install barbed wire fencing, gates and cattle grids on previously unobstructed open access local moorland under the HEATH Project¹, that was occurring prior to the introducing of cattle as part of a Higher Level Stewardship 'conservation grazing' scheme². Its campaign is focussed on four areas in West Cornwall and the requests are focussed on these areas. The complainant was one of the coordinators of the Group.
5. The HEATH Project started on 1 January 2005 and ended on 31 December 2008. It was an international project that received a total of 5 million Euros funding from the Heritage Lottery Fund and the European Regional Development Fund (through the EU Interreg IIIB North-West Europe), of which approximately 3.5 million Euros were allocated to Cornwall. The public authority was the lead partner and there were a number of other local partners that were involved.

The Request

6. On 3 February 2010 the complainant requested the following information to be provided either under the Act or the EIR:
 - '1. Receipted invoice/s for installation of the cattle grid and associated hedging by Hectors House on Carnyorth Common that was included under #45 'Hedging at Carnyorth' in the *Final Claim to Interreg IIIB NWE Projects Ref Date 31/03/2009 – Verification of Expenditure 'investments' £14,161.67.*
 2. Receipted invoice/s for item listed #49 'Cattle grid on Watch Croft' in the *Payment Claim 9 to Interreg IIIB NWE Projects Ref Data 30/11/2008 – Verification of Expenditure 'investments' £5,099.50.*
 3. Receipted invoice/s for installation of the cattle grid and associated hedging on Watch Croft as listed #41 'Cattle Grid for Watchcroft' in the *Final Claim to Interreg IIIB NEW Projects Ref*

¹ HEATH is an acronym that stands for Heathland, Environment, Agriculture, Tourism and Heritage.

² Taken from: <http://www.savepenwithmoors.com/WHO%20WE%20ARE.htm>

*Date 31/03/2009 – Verification of Expenditure ‘investments’
£4,600.*

4. Received invoice/s for installation of the cattle grid and associated hedging on Watch Croft as listed #6 ‘Cattle grid for Watchcroft’ in the *Final Claim to Interreg IIIB NWE Projects Ref Date 31/03/2009 – Verification of Expenditure ‘investments’ £3,450.*

5. Received invoice/s for 700 metres of hedge repair as listed #48 in *Payment Claim 9 to Interreg IIIB NEW Projects Ref Date 30/11/2008 – Verification of Expenditure ‘investments’ £30,373.75.*

7. On 4 February 2010 the public authority acknowledged receipt of the request.
8. On 3 March 2010 the public authority issued its response. It explained that it had considered the request under the Environmental Information Regulations. It confirmed that it believed that the exception found in Regulation 12(4)(b) [manifestly unreasonable]³ applied to the request and it would not be providing the information.
9. It explained in detail why it was relying on Regulation 12(4)(b). The arguments that it made can be summarised as follows:
 - The public authority believes that it is entitled not to treat requests from members of the Group as individual requests where they relate to the same or similar issues;
 - Instead it will aggregate those requests. It explained that the Group had made upwards of 130 requests⁴ over the last calendar year and they all related to the same or similar issues;
 - It explained that it considered whether this request was manifestly unreasonable in light of the extent, nature and intention of previous communications;
 - It explained that it had considered the Commissioner’s guidance on Vexatious requests⁵, the Commissioner’s previous Decision Notices⁶ and DEFRA’s guidance on exceptions⁷;

³ A full copy of the relevant parts of the legislation can be found in the legal annex of this Notice.

⁴ It revised this estimate during the Commissioner’s investigation.

- It explained that it viewed the large number of requests made by the complainant and the Group as being obsessive. It supported this argument by stating that a large number of individual staff members were also approached;
 - It explained that it viewed the cumulative effect of the Group's correspondence to be harassing the public authority and its staff. This was because of their quantity and distribution. Their tone has been rude and disrespectful and their contents have been copied across a number of other organisations. The public authority supported its argument by explaining that it believed that the Group's website reported replies and minutes inaccurately and also 'ridiculed' its staff. It explained that it had a duty of care to its staff to protect them from harassment and distress;
 - The request in its context imposed a significant burden on it;
 - The request lacked serious purpose or value as it had already provided breakdowns of expenditure but this did not stop the invoices being requested regularly; and
 - Finally, it conducted a public interest test. It explained that it strived to be open as an organisation and provide requested information at no cost. However, it was required to strike a balance between complying with the EIR and its core business functions. It argued that the significant burden in terms of time, resource and distraction could not be justified to be in the public interest; especially in light of the distress that they are causing.
10. On 8 March 2010 the complainant requested an internal review to be conducted and on 17 March 2010 he made a formal complaint about the response he received. The Commissioner has considered these two letters and believes that his arguments can be summarised as:
- The request relates to publicly funded works that were declared to be either unsatisfactory, unlawful or would have been unlawful had they been completed. The majority of the works had to be 'undone' leading to further public expenditure;

⁵ This can be found at the following link:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

⁶ http://www.ico.gov.uk/tools_and_resources/decision_notices.aspx

⁷ <http://www.defra.gov.uk/corporate/policy/opengov/eir/guidance/full-guidance/pdf/guidance-7.pdf>

- The request also has the purpose to eliminate confusion and discrepancies in the verification of the payments made. He believed that the requests are justified as they are needed to identify and rectify serious faults;
 - The invoices are required to allow him to challenge the waste of public funds from an informed stand point. In particular, he desires to be able to differentiate between the costs of purchase, delivery and installation of the grids;
 - He rejects the contention that the public authority has been transparent in respect to the HEATH project;
 - He believed that the accusations of harassment were unwarranted as the requests were provoked by the public authority's incompetence and failure to comply with Directives on public participation;
 - He explained that he would be prepared to amend inaccuracies on the website if the public authority notified him of them; and
 - He believed he was justified to state that the officers do not know what they are doing in respect to these projects and their answers to earlier information requests.
11. On 7 April 2010 the public authority communicated the results of its internal review. It upheld its position. It said that the decision maker had considered the correct material. It reiterated that the request caused a significant burden and stated that it believed that its previous responses had gone well beyond what was reasonable. It explained that the correspondence distracted it from its core functions and harassed it. It also expressed concern that answering requests resulted in more requests and that requests were copied across many organisations intensifying the burden experienced. Finally, it explained that relevant information had been provided and further steps have been put into place to inform the public such as links to Frequently Asked Questions.

The Investigation

Scope of the case

12. On 20 April 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

13. On 19 July 2010 the complainant agreed with the Commissioner that the scope of the case would be limited to determining:
 - Whether the information that is relevant to [the] request dated 3 February 2010 can be withheld by virtue of Regulation 12(4)(b).
14. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. For the avoidance of doubt he cannot adjudicate on the wisdom or otherwise of placing cattle on moorland.

Chronology

15. On 27 May 2010 the Commissioner wrote to the complainant and the public authority to confirm receipt of an eligible complaint.
16. On 19 July 2010 the Commissioner wrote to the complainant. He explained the proposed scope of his investigation and asked for the complainant to provide any further arguments besides those that he mentioned in his internal review request about why his request should not have been deemed to be manifestly unreasonable.
17. The complainant replied on the same day. He confirmed the scope of the investigation and submitted further arguments that will be considered in the analysis part of this Notice. He also wrote a second email to provide his further submissions.
18. On 26 July 2010 the Commissioner wrote to the public authority. He made detailed enquiries to ensure that it justifies why it believed that the request dated 3 February 2010 was manifestly unreasonable.
19. On 10 September 2010 the Commissioner received the public authority's detailed submissions. These will also be considered in the analysis part of this Notice.

Analysis

Substantive Procedural Matters

Is the requested information environmental information?

20. The EIR define what constitutes environmental information in Regulation 2(1). A full copy of this section of the legislation and any

other section that will be referred to in this Notice can be found in a Legal Annex attached to the bottom of this Notice.

21. To summarise, the legislation provides six gateways for information to constitute environmental information. The Commissioner has considered the nature of the withheld information and considers that all of the information relevant to this request would fall within the definition given at regulation 2(1)(c) of the EIR: ' Information on ...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) and (b) as well as measures designed to protect those elements.'
22. The Commissioner considers that information concerning the expenditure on works that are part of a programme would be a measure likely to affect the state of the elements of the environment. This is because the works would be likely to affect the land and landscape as referred to in regulation 2(1)(a). He considers that the information placed correctly in its context would relate to this measure.
23. He has noted that the complainant has not disputed that this is so. The Commissioner will therefore consider this case entirely under the EIR.

Exception: Regulation 12(4)(b) – Manifestly Unreasonable

24. Regulation 12(4)(b) states that a public authority may refuse to disclose information if the request is manifestly unreasonable. While the EIR does not define 'manifestly unreasonable' it is the Commissioner's view that 'manifestly' means that a request should be obviously and clearly unreasonable – there should be no doubt as to whether the request is unreasonable. Therefore it will apply where it can be demonstrated that a request is vexatious or where compliance would incur unreasonable costs for the public authority or an unreasonable diversion of public resources.
25. It should also be noted at this point that Regulation 12(4)(b) has a public interest component. Therefore if the exception is found to be engaged, it will also be necessary to consider whether the public interest in maintaining the exception should outweigh that in disclosure. Regulation 12(2) also provides that there is a presumption that favours disclosure.
26. In his Awareness Guidance No 22 'Vexatious and repeated requests' (3 December 2008) the Commissioner provides criteria to help decide whether a request is vexatious or not, as listed below. Even though the

public authority has cited regulation 12(4)(b) in this particular case, the Commissioner considers that the same criteria can be used:

1. Would complying with the request impose a significant burden in terms of expense and distraction?
 2. Does the request have the effect of harassing the authority or distressing its staff?
 3. Could the request otherwise fairly be seen to be obsessive?
 4. Does the request lack any serious purpose or value?
 5. Is the request designed to cause disruption or annoyance?
27. It is not necessary for all of the above to apply. However it is the Commissioner's view that at least one of the above criterion must apply for a request to be considered manifestly unreasonable; the more criterion that apply, the stronger the case will be. He also accepts that arguments put forward by the public authority to support its application of this exception can apply to more than one of the above criterion.
28. In this particular case the public authority has relied upon the first four criteria outlined in paragraph 26 above.
29. When considering whether a request can be deemed manifestly unreasonable and whether one or more of the criterion apply, the Commissioner will also consider the wider context and history of the request. In taking this approach, the Commissioner endorses the Tribunal's consideration in *Mr J Welsh v the Information Commissioner* [EA/ 2007/0088] ('Welsh') (paragraph 21) where it stated (in relation to vexatious cases under FOIA):
- 'In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another.'*
30. Therefore, the Commissioner has taken into account the complainant's previous interaction with the public authority when determining whether the request can be correctly characterised as manifestly unreasonable. This means that even if the request appears reasonable

in isolation, it may be manifestly unreasonable when considered in context. The public authority argues that it should be entitled to maintain its position in this on this basis. However the Commissioner recognises that it is the request and not the requester which must be manifestly unreasonable for the exception to apply.

31. The Commissioner has also had regard to paragraph 26 of the Information Tribunal's decision in *Welsh*. The Tribunal spoke of the consequences of determining a request vexatious. It pointed out that these are not as serious as those of finding vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high. The Commissioner will now look at each of the four factors that are relied on (that are specified in paragraph 26) in turn:

Would complying with the request impose a significant burden in terms of expense and distraction?

32. When considering this element of his guidance the Commissioner endorses the Tribunal's approach in *Welsh* (in paragraph 27). It stated that whether a request constitutes a significant burden is

"...not just a question of financial resources but also includes issues of diversion and distraction from other work..."

33. The Commissioner therefore expects a public authority to show that complying with the request would cause a significant burden both in terms of costs **and** also diverting staff away from their core functions.

34. The Tribunal in the case of *Gowers v the Information Commissioner & London Borough of Camden* [EA/2007/0114] ('Gowers') emphasised that previous requests received may be a relevant factor:

'...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor' (paragraph 70 of its decision).

35. The Commissioner also notes the Tribunal's comments in *DBERR v Information Commissioner* [EA/2008/0096] where it stated that: *"public authorities may be required to accept a greater burden in providing environmental information than other information"* (paragraph 39). These comments were based upon the presumption in

favour of disclosure provided in the EIR (Regulation 12(2)) and the obligations which apply to the UK via the Aarhus Directive.⁸

36. The complainant has argued that the burden would not be great in this case. He explained that all he wanted was a photocopy of the invoices and his request was specific in what it sought. He also explained that he believed that this request was only the third that could be correctly attributed to the Group and that the public authority had erred in saying that the other requests from concerned residents could be aggregated with his.
37. The public authority asked for the Commissioner to take into account the following arguments about the request's context, which the Commissioner considers to be relevant to the burden of the request:
 1. It was not an easy task for the public authority to locate the relevant invoices and to do so would take significant administrative resources. This was because while it knew that the information would be contained within its European Project Files it did not know where within the files the invoices would reside. It explained that the Project finished in December 2008 and no staff assigned to it remained in the organisation. There were therefore around 250 unfamiliar files that would need to be sifted and the resource would need to be taken from the current delivery staff, all of whom are responsible for other duties. It therefore argued that the request itself would cause it administrative burden in terms of both expense and distraction;
 2. It believed that the request dated 3 February 2010 was a manifestation of the complainant's previous complaints about the HEATH Project. It explained that the complainant and the Group have not been satisfied with assurances that have been given and have returned to issues as part of a strategy of attrition and in an effort to 'catch' the public authority out;
 3. It believed that it had received at least 72 requests from the Group that relate to the HEATH Project between February 2009 and the date of its internal review. It also provided the Commissioner with a Schedule of those 72 requests while explaining it may have answered more requests as 'business as usual' and not entered them on its log. This was slightly fewer than the 130 that were discussed in the original correspondence. It explained that those requests often involved finding detailed information and the

⁸ The Directive can be located at the following link: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=Directive&an_doc=2003&nu_doc=4

- combined burden was a significant one in terms of both expense and distraction;
4. It had processed all the previous 72 requests and provided evidence to the Commissioner that it had done so. It explained there must be a point where the distraction from its core functions can be stopped;
 5. The staff that had been responsible for the Project no longer worked for it. The work from the requests therefore had to be resourced directly from the local Area team of five people. Further additional time has been spent by many other members of it and the work needed to be done by a number of its teams;
 6. It estimated that it had spent around 1.5 full time equivalents in processing the 72 requests. For clarity, this meant that the equivalent of one and a half members of staff have been taken up just answering requests from the Group. This amounts to a cost of around £60,000 and around 10% of the Area's staff. It explained that the amount of work required was most unusual;
 7. It provided an example of three requests it received in the months leading up to the request the Commissioner is considering. It explained that in all cases it did work beyond the 18 hour limit allowed for under the FOIA cost limit. It did this work in an effort to bring this matter to a conclusion, but this strategy was not successful as it led to the invoices being requested too;
 8. It believed that the provision of any information would inevitably lead to more correspondence and more requests. It evidenced its reason for this belief; and
 9. It showed that the correspondence was also copied to many organisations. It explained that this had the effect of enhancing the burden that was experienced since the other organisation would send the correspondence to it and it would have to respond to acknowledge its receipt. For example, it evidenced one email of the complainant's being copied to the National Trust, two MEPS, an MP, Defra, Interreg, the European Commission and two individuals at the South West UK Brussels Office.
38. The Commissioner has found the public authority's arguments very helpful in this matter. He was particularly grateful to be provided with the Log of the 72 previous requests. From this Log, he has determined that:

- The complainant himself has sent the public authority at least thirty five pieces of correspondence between February 2009 and the date of its internal review. This includes at least five other information requests;
 - The other thirty seven pieces of correspondence that make up the 72 are from two other individuals. Those individuals' names were on the complainant's website at the date of the request and were members of the Group. They also appeared on a BBC Radio 4 programme as members of the Group;
 - The 72 requests generally relate to the matters that are included within the scope of the campaign of the Group;
 - The Commissioner is satisfied that the requests in volume and in context imposed a significant burden in terms of expense; and
 - That the estimated amount of time ascribed to answering these requests was not unrealistic in the circumstances of this case.
39. The Commissioner is also satisfied that the explanation set out in point 7 of paragraph 37 is very persuasive. Further he is satisfied that the points the public authority made in points 1, 2, 8 and 9 of paragraph 37 accord with the evidence that he has been provided.
40. The Commissioner therefore accepts that, in its context, the request for information dated 3 February 2010 caused a significant burden in terms of expense and distraction. He has taken into account the Information Tribunal's comments in *DBERR v Information Commissioner* [EA/2008/0096] outlined in paragraph 35 above and has come to the conclusion that even accepting that the burden threshold should be greater in environmental cases the burden was still beyond what was reasonable when the request was taken in its context.
41. For all the reasons above, the Commissioner considers that if the public authority had responded to this request it would have imposed a significant burden on the public authority in terms of expense and distraction. He therefore finds in favour of the public authority in respect to this factor and he places considerable weight on it in his analysis.

Does the request have the effect of harassing the authority or distressing its staff?

42. The complainant contends that there is no evidence of any of his requests harassing the public authority or its staff. He believed that the accusations of harassment were unwarranted as the requests were provoked by the public authority's incompetence and failure to comply with Directives on public participation. He also explained he was justified to state that the officers do not know what they are doing in respect to these projects and conclude the same from their answers to earlier information requests.
43. The public authority claimed that the volume of previous correspondence and its nature led to its staff being harassed unnecessarily. It also provided detailed submissions about why it regarded itself to be harassed and its staff to be distressed. The arguments that the Commissioner considers relevant are:
1. The volume of the requests imposed a continuous burden on the public authority. The volume was so great staff had trouble keeping up and often emails would arrive before it had the chance to answer the previous ones. For example, it received 13 requests in July 2009, 6 requests between 11-26 January 2010 and 9 requests between 3-15 February 2010;
 2. The Group's emails often overlapped and some of the questions that it needed to respond to were asked multiple times within the statutory deadline;
 3. It regarded the emails as being rude and disrespectful and its staff were repeatedly and aggressively questioned by members of the Group in previous Heathland Forum meetings;
 4. It believed that the Group's website was derogatory to its staff and that aspects are reported inaccurately and in a manner which had the effect of intimidating its staff;
 5. Members of the Group have attacked individuals personally in online public forums and this has caused great distress;
 6. It believed that the Group deliberately copied emails to other bodies to give the implication that its staff didn't know what they were doing;
 7. The Heathland Forum lost its main function which was to assist local landowners and became a forum for the Group to attack its staff on

narrower issues. The public authority feels that in line with its duty of care it could only now send the Team Leader to the Heathland Forum and that the Team leader was exposed to 'aggressive and relentless demands from the Group'; and

8. The public authority has received an insulting anonymous message about issues within the Group's area that related to work done by the National Trust.

44. The public authority has evidenced each of the above eight points to the Commissioner. The Commissioner believes it is worthwhile to explore elements 3 and 5 in more detail in this case.

45. In respect to element 3 the public authority provided the Commissioner with examples where it believed the emails it received were rude and disrespectful, such as the one below:
 - *'I'm sorry, but I don't believe in coincidences and this is all too conveniently coincidental. I smell a set-up and I don't put that past certain people'* (email 4 March 2010);

46. The Commissioner has not been convinced that the emails that were provided as examples sufficiently evidence this point for the purposes of regulation 12(4)(b) and therefore he has not placed any weight on this argument in his analysis.

47. However, it is important that the effect of the request must be assessed in their context and whether they cause distress to staff is to be judged on the effect that they had. For element 5, the public authority provided the Commissioner with links to an online Public Forum containing multiple examples of members of the Group insulting the public authority's staff. For example:
 - 'But isn't it nice to have a reminder of when farming.... Wasn't manipulated by quangos full of overpaid, knowledge – deficient suits who wouldn't know a cowpat if they trod in one';
 - 'Unlike [individual staff redacted] [Individual redacted] actually knows what he is talking about.'
 - 'But I will see [Individual staff redacted] with their P45S if it's the last thing I do.'
 - 'Now, more than ever, I am convinced that, with the collusion of the National Front.... Er, Trust (sorry ', getting my fascist organisations mixed up)....'

- 'In spite of the rhetoric being spewed out by NE/NT, the only benefits from the HEATH Project is the easy money from Europe going into their own pockets'
- '[Individual staff member] (who is looking to build an empire – not doing very well, is he?), some bloke with a black beard and a beerbelly and hasn't been in Cornwall more than 5 minutes (and is an EXPERT)'...

48. The Commissioner notes that the complainant himself is not responsible for the behaviour of other members of the group. However, the Commissioner believes that the requests that are made as part of the same campaign should be considered in light of these comments.
49. The Commissioner has been provided by the public authority with further submissions explaining the real stress that the combination of the volume of requests and the nature of the campaign has had on its staff. The Commissioner cannot mention specific examples as they are the personal data of those staff and would be unfair to them. However, he has been satisfied that the distress that has been suffered is real and has had significant effects.
50. The Commissioner appreciates that to harass is a strong verb and emphasises that it is the effect of the request and not the requester that must be considered.
51. The Commissioner accepts it was not the intention of the complainant to cause unwarranted distress in this case.
52. However, the Commissioner is satisfied that the request in its context did have the effect of harassing the public authority. The Commissioner has considered the Tribunal decision of *Gowers* and the comments in paragraph 53 and 54 of that decision:

"...what we do find is that the Appellant often expressed his dissatisfaction with the CCU in a way that would likely have been seen by any reasonable recipient as hostile, provocative and often personal...and amounting to a determined and relentless campaign to obtain any information which he could then use to discredit them....we find that taken in their context, the requests are likely to have been very upsetting to the CCU's staff and that they...are likely to have felt deliberately targeted and victimised...." (paras 53 & 54).'

53. The Commissioner is satisfied that the request in its context of the Group's campaign would have had the effect of harassing the public authority and has caused real distress to its staff. He therefore finds in favour of the public authority in respect to this factor and he places considerable weight on it in his analysis.

Can the request fairly be seen as obsessive?

54. It is the Commissioner's view that obsessive requests are usually a very strong indication of vexatiousness. Relevant factors include the volume and frequency of correspondence, requests for information the requester has already seen or a clear intention to use a request to reopen issues which have already been debated and considered.
55. The Commissioner has already considered volumes above. The overall weight and the distribution of the weight of the requests from the Group provide evidence that the request in its context could also be seen as obsessive (paragraphs 37 to 39 above). The Commissioner is also satisfied that the complainant and the Group have made a substantial amount of requests for information under the EIR. The public authority has provided a schedule that the Commissioner regards as realistic.
56. He also considers that the history of requests and contact with the public authority shows that a response to one request leads to further requests being made. The Commissioner is satisfied therefore that continued behaviour of this nature would also suggest that the request was obsessive.
57. In order to provide better customer service the public authority's staff decided to contact requestors belonging to the Group by telephone. This was an effort to resolve matters more swiftly. The Group expressed surprise and explained that they would only communicate through either letters or email. The public authority contends that this unconstructive approach provides extra weight about why this request could be viewed as obsessive. The Commissioner has not placed any weight on this argument as he does not have both sides of the story. The Commissioner believes that there are good reasons why a written record is preferred. Indeed, it is possible to make a request for Environmental Information on the telephone and the Commissioner would anticipate that a written record would result.
58. The public authority also explained that in order to make the Heathland Forum meetings more constructive a third party (who also previously had issues with the public authority) tried to mediate with the Group as it pointed out that the 'making of and sustaining outright and personal

attacks on individual.. staff in a public arena will be totally counter productive'. His efforts failed to move things forward because the Group replied that '[the public authority's] cosy partnership with the National Trust is, in my view, sinister in the extreme, especially in the view of the written (and proven) lies peddled by the [public authority] (on NT's behalf) to the Interreg funders in Europe'. The public authority explained that the lack of possibility of constructive engagement should be taken into account when considering whether the request in its context was obsessive. The Commissioner has considered this argument and does not believe that this conduct renders this particular request as obsessive.

59. The public authority has also commented about the scrutiny that the expenditure has already gone through. It explained in light of the scrutiny that was undertaken the request can only be characterised as obsessive. This is particularly so because the complainant has failed to accept the views of professional auditors. The public authority provided details about this scrutiny to support this point:
1. There was an annual Interreg audit which was conducted by PKF (UK) LLP that considered the claims made by the public authority to Interreg. This audit said there was nothing material of concern;
 2. There was also a National Audit Office compliance check that began in December 2009 and was concluded on 23 March 2010 about the expenditure incurred in works on the HEATH Project. The public authority provided the same information that has already been disclosed and the National Audit Office completed its assessment. While it expressed some concerns over poor project management, it did not express any concerns about the funds being misappropriated or anything of a serious nature; and
 3. There was also a Heritage Lottery Fund compliance check in January 2010. The HLF received answers from the public authority and only asked to remain informed.
60. The Commissioner has considered the correspondence between the public authority and these three bodies. He accepts the submissions that the matter has already been considered by the appropriate channels. He notes that both funding partners and a national body have considered this issue. He also notes that the last two compliance checks resulted from complaints from the Group and that the Group will therefore be informed of their results. However, at the time of the request only the first layer of scrutiny had been completed. Therefore the Commissioner does not feel that at the date of the request that the

presence of the other scrutiny renders this request for information obsessive.

61. The public authority confirmed that it believed that the complainant had continually used the information access regimes to attack it over the HEATH Project. It explained that it had already provided the complainant with sufficient information about this expenditure and that the invoices would have been at best a mere duplication of the information that has already been provided.
62. The Commissioner asked the public authority to provide evidence about what it has provided that was relevant in respect to this request. The public authority clarified that it had not provided the invoices before. However, it provided a point by point account of what it had provided for the five parts of the request:
 - Parts one and three – It has provided the cost of the grid to the complainant on 16 December 2009. It also provided a more detailed explanation about the costs of these grids on 15 January 2010;
 - Part two – It has confirmed that it related to two cattle grids and the amount of expenditure was provided to the complainant on 16 December 2009;
 - Part four - it confirmed that it intended to provide the cost on 16 December 2009 but unfortunately there was a typing error. It clarified its error on 15 January 2010; and
 - Part five – it confirmed that it provided partial information on 16 December 2009, but missed out lane reinstatement costs. It then provided complete information on 15 January 2010.
63. The Commissioner has carefully considered the information that has been provided and whether this would suggest that the request was obsessive. He is of the view that the inaccuracies that were in the original response have propagated a level of uncertainty and there is merit in receiving the original invoices to assist in understanding what has been paid for. He therefore finds that the information provided does not suggest that the current is request obsessive.
64. The Commissioner believes that this factor was one that was finely balanced. He has come to the view that the current request cannot be fairly seen as obsessive. However, he is not placing much weight on this factor in his overall analysis.

Does the request have serious purpose or value?

65. The complainant argues that his request has a serious purpose and value because the original invoices will allow him to attribute amounts to activities and understand how the public authority spent public money in respect to set incidents that are of interest to him. The amount of expenditure is known and is indeed specified in his request. This request asks for a breakdown of how around £60,000 was spent.
66. Furthermore, the complainant argued that the lack of public participation meant that he had no choice but to make this request as for example the public authority now refused to attend the Heathland Forum meetings.
67. He said that the incidents that he has specified have all been either unsatisfactory, unlawful or would have been unlawful had they been completed. Therefore, it was important to have accountability where it was apparent that a large sum of public money had in his view been wasted. He explained that he had made complaints to both organisations mentioned in paragraph 5 about this issue.
68. In addition, he believed that there were legitimate concerns around the verification of those payments and the only way that one can be certain that money was paid as it was attributed would have been to provide the original invoices. His request for the invoices therefore had a serious purpose and value for all the reasons above.
69. The public authority has argued that the request in its context cannot be said to have serious purpose or value. There were three main arguments cited. The Commissioner will identify them in this paragraph then consider them in detail in the paragraphs that follow:
 - (1) That the release of the requested information will not provide any meaningful further accountability in light of the information already provided to the complainant previously;
 - (2) That the issue to which the information relates has already been considered by numerous bodies and the need for accountability is mitigated due to this; and
 - (3) That the public authority has provided considerable other information to the public and this also provides the accountability and transparency that is necessary.
70. In respect to the first argument the Commissioner considered the same evidence as in paragraphs 62 and 63 above. The Commissioner has

carefully considered the information that has been provided and whether it on its own it would satisfy the requirements in respect to accountability and go towards rendering the request having no serious purpose or value. He is of the view that the inaccuracies that were in the original response have propagated a level of uncertainty and there is merit in receiving the original invoices to assist in understanding what has been paid for. He therefore finds that the evidence does not suggest that the request has no serious purpose or value.

71. In respect to the second argument the Commissioner considered the same evidence as in paragraphs 59 and 60 above. He notes that the date of the request weakens these arguments as only one set of scrutiny was then completed. Therefore, the Commissioner does not feel that at the date of the request that the presence of the other scrutiny renders this request for information as having no serious purpose or value.
72. Finally, the public authority explained that it has changed its procedures to provide greater transparency in light of the work that has been provoked by the requests. It created a new Frequently Asked Questions section in order to provide further accountability. This can be found at the following link:

http://www.naturalengland.org.uk/regions/south_west/ourwork/default.aspx#Heathproject
73. It explained that this information would also ensure that local residents understood where its responsibilities lay and would enable widened participation. It has also advised the complainant that it has done this in an email dated around 6 January 2010. As noted in paragraphs 43 and 58 above, the public authority also addressed the complainant's comments that it had stopped going to the Heathland Forum meetings because in its view it became a platform for the Group rather than interested landowners and that the Group's conduct against its staff meant that it only felt comfortable to send the Team Leader to these meetings.
74. Considering the arguments of both sides, the Commissioner believes that the request did have a serious purpose in this case. He accepts that the provision of the invoices would provide greater accountability. The Commissioner also recognises that there is an assumption built into the EIR that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to their activities. He therefore finds that this factor does not favour the contention that this request is manifestly unreasonable.

75. The Commissioner has also considered his position in light of the Information Tribunal's comments in *Coggins v Information Commissioner* [EA/2007/0130] (at paragraph 20) that stated that it:

"could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious. For instance, one could imagine a requester seeking to uncover bias in a series of decisions by a public authority, covering many years and involving extensive detail, each of fairly minor importance in themselves but representing a major issue when taken together. This might indeed be experienced as harassing but given the issue behind the requests, a warranted course of action."

76. Therefore the Commissioner has considered whether the serious purpose identified can be considered to have sufficient weight to overcome the other factors which he considers to support the application of regulation 12(4)(b) in this case. In this instance he is not persuaded that sufficient weight can be placed on the serious value identified to make it inappropriate to deem the request vexatious in this case. This is in view of the overall context of these particular requests and his conclusions above about other aspects of his case.

Could a reasonable public authority refuse to comply with the request on the grounds that it is manifestly unreasonable?

77. The Commissioner recognises that there is a fine balance between protecting a public authority from burdensome and harassing requests for information and the promotion of the transparency in its workings.
78. The Commissioner has considered all the evidence presented, including the history and context of the request. The Commissioner accepts that the complainant has genuine concerns about these items of expenditure. However, on the basis of the circumstances of this case, the Commissioner finds that a reasonable public authority would find the complainant's request of 3 February 2010 manifestly unreasonable.
79. In arriving at this decision, the Commissioner has had regard to the Information Tribunal's decision in *Welsh* noted in paragraph 31 above. He notes that it is not necessary for every factor set out in his guidance – and analysed above – to be met. In this case, he has found two factors are satisfied and that, taking into account the circumstances of this case, this is sufficient to render the request manifestly

unreasonable. The Commissioner's decision in this case therefore rests on the complainant's request causing a significant burden, whilst also having the effect of harassing the public authority.

Conclusion

80. As the Commissioner is satisfied that the request is manifestly unreasonable, he has been satisfied that Regulation 12(4)(b) is engaged.

The public interest test

81. Regulation 12(1)(b) requires that a public interest test is carried out where regulation 12(4)(b) is cited. The test is whether the public interest in maintaining the exception outweighs the public interest in disclosing the information. The Commissioner also notes Regulation 12(2) which states: '*A public authority shall apply a presumption in favour of disclosure.*'

The public interest in disclosing the information

82. The public authority has explained that it accepts that the provision of the invoices would assist the Group in understanding why the money in question was spent. It would be likely to understand why actions that affect them are taken by public bodies and enable an informed challenge to be made in light of the information they have.
83. In addition, the public authority explained that the provision of this information would promote accountability and transparency in the decision making process. In this case it would reveal what money was spent on in relation to these five sets of expenditure.
84. Finally the public authority explained that it would promote further accountability and transparency in the spending of around £60,000 of public money. However, it explained that the information it already provided had already shown accountability in this area.
85. The Commissioner's view, as given in the Information Tribunal case *Cabinet Office v Lamb and the Information Commissioner* (EA/2008/0024 & 0029) is that "Disclosure under FOIA should be regarded as a means of promoting accountability in its own right and a way of supporting the other mechanisms of scrutiny, for example, by providing a flow of information which a free press could use." He does not therefore consider that the public interest in accountability is reduced just by the provision of related information.

86. In summary, the Commissioner accepts that disclosure would promote transparency and provide information about the breakdown of expenditure of a considerable sum of public money on contentious projects. As discussed in paragraph 35 the Commissioner notes the Tribunal decision in *DBERR* that there may be a greater burden on public authorities to provide environmental information compared to that in relation to compliance with requests under the FOI Act.

The public interest in maintaining the exception

87. The public authority explained that it considered that the balance of public interest lay in maintaining the exception. It presented the following factors that it believed favoured the maintenance of the exception:
- The amount of public resources spent dealing with the previous requests has had a detrimental effect on delivery of its other projects and such an effect cannot have been intended by the EIR;
 - It is important that it can be able to protect its staff and ensure their health in their working environment;
 - The fact that the public authority has been audited three times (although see the Commissioner's comments in paragraph 60 that state that only one was relevant at the date of the request); and
 - The fact that the information has previously been provided albeit in a different format (an argument that has been rejected by the Commissioner in paragraphs 62, 63 and 85).
88. The Commissioner has noted that the public authority's correspondence with the Group has become its Local Area's main activity. It has taken 10% of its resources. The public authority explained that work has had to be put on hold to cope with the requests. This work has included planning for delivery and renewals of existing agreements in West Cornwall and that this has put at risk the future protection of both protected species and landscapes. It explained that it had led to a reduction of the agreements with landowners, a reduction of progress of key projects (such as the reintroduction of the Chough) and key targets have had to be revised downwards.
89. The public authority also indicated that the submissions it provided the Commissioner concentrated on the Local Area Team and could be regarded as being conservative. The issues have also had to be considered at Executive level and work continues to respond to third

parties and other stakeholders who have been contacted by the Group who want further answers and briefings.

90. The public authority explained that it had to take into account the harm that the volume of the requests has caused to the Area team. The volume and ferocity of some of the dialogue has created real strain and it has a duty of care to protect the health of its staff.
91. Having considered the arguments above carefully, the Commissioner accepts that there are compelling arguments in favour of maintaining this exception in this particular case due to the public interest in protecting the integrity of the EIR and ensuring that they are used responsibly. Although public authorities are encouraged to act in a transparent and accountable way which benefits the public as a whole, it is not the intention of the EIR to require public authorities to tolerate harassment of officials by individuals.
92. If the Commissioner were to find such behaviour appropriate, this would seriously undermine the purpose of the EIR. The Commissioner is strongly of the view that public authorities should be able to concentrate their resources on dealing with legitimate requests rather than being distracted by requests where in the circumstances the wider public interest would not be served by complying with them..
93. The Commissioner is satisfied that if the public authority was required to respond to this request it would place a significant burden on it in terms of time and expense. It would also distract staff from dealing with other matters and divert a disproportionate amount of resources from its core business.
94. Considering the nature of previous requests and the number of requests made to the public authority, the Commissioner has concluded that it is unlikely that any response to this request would satisfy the complainant or the Group to which he belongs and that any response would more than likely lead to further requests for information. These factors lessen any public interest in requiring the public authority to respond to this request.
95. He has also considered further comments in paragraph 26 of the Tribunal decision in *Welsh* that stated that the legislation should not be brought into disrepute by setting the threshold for vexatiousness too high (a view that the Commissioner extends to manifestly unreasonable requests). It explained:

' ... there is a danger that settling the standard of vexatiousness too high will diminish public respect for the principles of free

access to information held by public authorities enshrined in FOIA. There must be a limit to the number of times public authorities can be required to revisit issues that have already been authoritatively determined simply because some piece of as yet undisclosed information can be identified and requested ..." (paragraph 26).

96. In view of the above, it is the Commissioner's view that in all the circumstances of this case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

The Decision

97. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the EIR. It applied Regulation 12(4)(b) appropriately to the request dated 3 February 2010.

Steps Required

98. The Commissioner requires no steps to be taken.

Other matters

99. The Commissioner wishes to note that, while it may be appropriate to take into account previous conduct (as explained in this notice), the public authority must still treat every new request on its own merits. When doing so it is essential that it does not treat the requester (or the Group), rather than the request, as being vexatious or manifestly unreasonable.

Right of Appeal

100. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

101. 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.

102. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 10th day of January 2011

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Environmental Information Regulations 2004

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

.....

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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) and (b) 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 elements of the environment referred to in (b) and (c);

Regulation 12 - Exceptions to the duty to disclose environmental information

Regulation 12(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5);
and
- (b) in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Regulation 12(2) A public authority shall apply a presumption in favour of disclosure.

.....

Regulation 12(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.