

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

**Date:** 21 November 2022

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

**Decision**

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1. The Commissioner's decision is that, on the balance of probabilities, the Environment Agency holds no information within scope of the complainant's related requests about a physical file on Emscote Gardens and complied with regulation 5(1) of the EIR. The Environment Agency did not comply with regulation 5(2) as it did not provide a response to the requests within the required timescale.

**Request and response**

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2. On 23 January 2021, the complainant made the following information request to the Environment Agency (EA):

**Request 1 (EA reference 202603)**

"...could you advise why there have been no disclosures relating to the Emscote Gardens Flood Defence file handed personally to Emma Howard Boyd, Chair of the Environment Agency on 5th November 2019 at the Flood Re event held in the House of Commons where the Flood Forum Charter was accepted by the Government."

3. On 10 November 2021 the complainant submitted the following, related request:

## **Request 2 – (EA reference 263764)**

"A file was handed personally by [redacted] (of the Emscote Gardens Flood Action Group ) to Emma Howard Boyd, Chair of the Environment Agency on 5th November 2019 at the Flood Re event held in the House of Commons where the Flood Forum Charter was accepted by the Government. This file was entitled "Emscote Gardens Flood Defence". Follow-up emails were sent by [redacted].

I request to know where the file is now located.

I request to know the department and the name of the person who now holds this file and whether any action has been taken regarding its contents.

At the Information Tribunal in 2007 the Environment Agency was criticised for not keeping a single file on the Emscote Gardens Flood Defence and I should like to know if a single file is now being kept and where it is located."

4. In an ongoing, wider correspondence with the complainant, the EA addressed the complainant's questions and queries. With regard to the above requests, EA's final position of 26 May 2022 was that while it holds digital documents on Emscote Gardens, it does not hold a physical file on Emscote Gardens.

## **Reasons for decision**

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5. This reasoning is focussed on whether, on the balance of probabilities, EA holds a physical file about Emscote Gardens, that the complainant states was personally handed to EA's Chair in November 2019. The Commissioner will also consider the timeliness of EA's responses.
6. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request, if it is not subject to an exception.
7. In a submission to the Commissioner, the EA has confirmed that it does not hold the above information. It says it has no knowledge of the file that was handed to Emma Howard Boyd, and therefore did not make any disclosures about it. EA says it searched in all of the places where the file was likely to be but found no trace of it.
8. EA has explained that initially, it forwarded the request to the Chairman Correspondence team, which advised that it does not have a record of the file. That team forwarded the request to the Chair Office team to investigate. EA says this would have been the most likely route to

retrieve any relevant information as the file was said to have been handed to Emma Howard Boyd, Chair. That team would know most about the file or would have processed the document if required. The Chair Office advised it does not have an e-copy of the information, and if it did hold the information, it would most likely be in the Home Office building in London. EA says it was unable to check this at the time due to Covid restrictions (January 2021).

9. However, the PA to Emma Howard Boyd in the Chair Office team was asked to check in the office for a physical copy of the file. They were unable to locate any physical file in the office.
10. The Partnership and Strategic Overview team leaders in the West Midlands area also searched for the file, as it may have been handed to the local area team. They checked their electronic records and physical files in the office and advised that their teams and the asset performance team do not hold this information.
11. The EA's submission goes on to provide further detail on the searches it undertook, as follows:
  - Chief Executive Correspondence team – checked electronic records.
  - Chair Office – checked electronic records, then later checked in the office in London for a physical file as it would be most likely kept there. Liaised with PA to Emma Howard Boyd as they were in the office intermittently. They checked Ms Boyd's office in Marsham Street, London. They later also checked a team drawer in the office and were unable to locate the file.
  - Partnership and Strategic Overview (PSO) team leaders and colleagues who would have been involved in the Emscote Gardens matter locally were consulted to check if the file has been passed to the Area teams, and if they have seen or hold the file. They checked for the file electronically, and also the Environment Agency office in Fradley for the physical file.
  - A call was also made to EA's West Midlands Customers & Engagement team and the PSO team leaders on 18 May to discuss the file and any other possible locations. The PSO team leaders advised that they had checked the folders on the shared drive where the information would be kept and had checked the offices. There were no other plausible places to check for the file.
  - Besides checking in the office for the physical file, EA also conducted searches to find the information electronically. The local teams conducted searches using search terms: 'Emscote Gardens', 'Mercia Way', ['complainant's name'] and 'Embankment'.

- Data which would have been related to the case (Assets / Flood Defences) is normally saved in folders on the shared drive that the teams use. These folders on the shared drive were searched, such as the Flood and Coastal Risk Management systems folder, watercourse data folder and external engagement folder. Emails were also searched, as well as a back-up hard drive in the office, as this may have held the data.
  - The team is not aware of any other systems where this type of information would have been stored, if it was held.
12. The Commissioner is satisfied that the searches that the EA has carried out for any information within scope of the complainant's request – principally a physical file - have been thorough and appropriate. He acknowledges that it is likely to be frustrating for the complainant but he accepts EA's position that it has no knowledge of a file that the complainant says was handed to the EA Chair some 14 months prior to the request of January 2021. As such, he accepts that EA does not hold the information within scope of the specifics of the complainant's two, related requests, which concern that file. On the balance of probabilities therefore, the Commissioner finds that EA complied with regulation 5(1) in respect of the requests.
13. Regulation 5(2) obliges a public authority to provide a response to a request as soon as possible and within 20 working days following the date of receipt of the request.
14. EA provided a response to the request 1 on 1 March 2022 and a response to request 2 on 26 May 2022. EA has explained to both the complainant and the Commissioner that it was not able to undertake physical searches of its offices at January 2021 because of the COVID-19 restrictions. The Commissioner is sympathetic to the difficulties the pandemic caused to public authorities but he must nevertheless find that EA did not comply with its obligation under regulation 5(2) of the EIR on this occasion.

## **Right of appeal**

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15. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
LEICESTER  
LE1 8DJ

Tel: 0300 1234504  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

16. 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.
17. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

## **Signed**

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**