

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 13 May 2024

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

Decision (including any steps ordered)

1. The complainant has requested information about Yer Tiz mountain bike trail from Forestry England ('FE').
2. The Commissioner's decision is that FE was entitled to rely on regulation 12(4)(b) when refusing this request and the public interest favours maintaining the exception.
3. The Commissioner has also found that FE has breached regulation 9 by failing to provide advice and assistance to the complainant.
4. The Commissioner requires the FE to take the following step to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to help them to submit a request that does not create a manifestly unreasonable burden.
5. The FE must take this step within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 30 August 2023, the complainant wrote to FE and requested information in the following terms:

“Please could you provide all email communications from 1 Sep 2022 until the date of this request, both internal and external, including any attachments, that mention the Yer Tiz mountain bike trail, which is in Leigh Woods (West District).”
7. FE responded on 4 September 2023. It stated that it had received a number of requests from the complainant and other individuals for similar information in the last 2 months. The FE explained it has already taken 30 hours to comply with the complainant’s requests alone and it was therefore relying on regulation 12(4)(b) to refuse this request.
8. Following an internal review FE wrote to the complainant on 2 October 2023. It stated that it was upholding its original decision.

Scope of the case

9. The complainant contacted the Commissioner on 11 November 2023 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to determine whether FE was entitled to rely on regulation 12(4)(b) when refusing to comply with this request.

Reasons for decision

Is the requested information environmental?

11. 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);
12. As the requested information relates to a mountain biking trail in the woods, the Commissioner believes that the requested information is likely to be information on state of the elements of the environment and measures affecting those elements. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 12(4)(b)- manifestly unreasonable requests

- 13. Regulation 12(4)(b) states that a public authority can refuse to disclose information in response to any request that is manifestly unreasonable.
- 14. FE is relying on regulation 12(4)(b) on the grounds of the cost of complying with the request and the request being of a vexatious nature.
- 15. When refusing a request on the grounds of burden, the Commissioner expects a public authority to provide a reasonable estimate of the burden the request would impose. This estimate should be based on the quickest method of retrieving any relevant information. In most cases, this estimate requires the public authority to conduct a sampling exercise.
- 16. Where FE estimates that responding to a request under FOIA would exceed £600, it would be entitled to rely on section 12 of FOIA to refuse that request.

17. Although there is no equivalent limit within the EIR, in considering the application of Regulation 12(4)(b), the Commissioner considers that public authorities may use the FOIA cost limit as a useful benchmark when deciding whether a particular burden would be manifestly unreasonable. However, the public authority must also balance the cost against the public value of the information which would be disclosed before concluding whether the exception is applicable. The Commissioner also usually expects public authorities (and particularly large public authorities) to bear higher burdens when responding to requests for environmental information than non-environmental information.
18. FE advised the Commissioner that in 2023, it received five requests from the complainant, four of which were about the management of mountain bike trails at one particular site, Wych Lodge Forest. This is the fifth request the complainant has made to FE. Although this request is for a different mountain bike trail, FE stated that complying with the request would still be manifestly unreasonable.
19. FE explained that the search and retrieval for the first two requests alone (internal and external communications about the management of mountain bike trails at Wych Lodge) took over 30 hours of work. This is because forestry generally is a long-term commitment and information regarding the management of any site could go as far back as 1919.
20. FE explained that despite its best efforts to respond to the complainant's requests, they have still resulted in subsequent internal reviews, allegations of criminal wrongdoing and appeals to the Commissioner.
21. FE advised that as it does not have a central searchable deposit for information and it is currently in the process of moving servers, it would be required to check the old server, the new server and staff inboxes to ensure it had identified all relevant information.
22. FE explained that as it is a dispersed organisation, this can sometimes overlap ownership of information. FE advised that due to this there are a number of teams which would be crucial to the search for the requested information. FE advised that some such teams are the: National Enquiries Forestry Commission, Forestry Commission Reception, West District enquiries, West District complaints, Information Rights Forestry England, Recreation team, Customer relations team, Information Rights Forestry Commission and Commissioners office. FE specifically pointed out the Forestry England enquiries team is based near the Bristol Office (which is where the Yer Tiz Mountain bike trail is located).
23. FE stated for this particular request, a member of staff conducted a sampling exercise. The individual searched their email account using the

search term "Yer Tiz" and filtering the results to the specific requested period. The individual confirmed that the search had located two emails.

24. Of the two emails located, only one email was in the scope of the request. The individual then reviewed the relevant email and found that it contained an additional 27 documents. In order to determine whether any of the documents fell into the scope of the request, the individual was required to review these documents as well.
25. The member of staff advised that in order to comply with the request it took them a total of 13 minutes to conduct the search and review the emails and attachments to determine whether any information within the scope of the request had been located.
26. FE advised that as previously explained, there are a number of teams who would be required to undertake a search similar to the one above for the requested information. This would include the entire Bristol office, which the FE stated has approximately 450 members. FE advised that at a rate of 13 minutes for each member of staff this would take 97.5 hours.
27. FE also asked its enquiries team to carry out a search using the search term "Yer Tiz", FE confirmed to the Commissioner that, unlike other departments, the enquiries team would not be required to conduct a search in their inbox as it stores queries and responses on SharePoint.
28. The enquiries team informed FE that it took less than one minute to conduct a keyword search and this returned 165 results. These included both documents and folders. One of the folders in question was checked and 10 documents within the folder were located. FE explained that this meant that while 165 results had been located, the total number of documents that would need retrieving and reviewing would likely be higher. If each "result" could be examined within two minutes, that would equate to five and a half hours' work.
29. FE acknowledged that some search times may vary, but this would depend on the number of results which located during the searches.
30. FE stated that the request was also vexatious and the Commissioner recognises that, on occasion, there is no material difference between a request that is vexatious under section 14(1) of FOIA and a request that is manifestly unreasonable on vexatious grounds under regulation 12(4)(b) of the EIR. The Commissioner has therefore considered the extent to which the requests could be considered vexatious.

31. The Commissioner has published guidance on vexatious requests¹. As discussed in the Commissioner's guidance, the relevant consideration is whether the request itself is vexatious, rather than the individual submitting it. Sometimes, it will be obvious when requests are vexatious, but sometimes it may not. In such cases, it should be considered whether the request would be likely to cause a disproportionate or unjustified level of disruption, irritation, or distress to the public authority. This negative impact must then be considered against the purpose and public value of the request. A public authority can also consider the context of the request and the history of its relationship with the requester when this is relevant.
32. In this case, FE stated that due to its ongoing history with the complainant, the number of requests made to FE regarding similar matters (some of which being repeated requests), complaints made to the ICO and subsequent appeals to the first tier tribunal, FE has determined that the complainant is abusing open information legislation to engage with FE.
33. FE also explained that the complainant has also made unsubstantiated allegations of wrongdoing in requests and appeals. Some examples which FE drew the Commissioner's attention to were:

"I think that FE deliberately chose to provide an incomplete response to my initial request, in order to try to circumvent the law and take longer than the 20 working days to properly respond to my request that the law demands. I.e. they deliberately chose to conceal other emails and attachments that were not provided in their initial response, but were provided as part of their review, with the intention of preventing their disclosure, which is a criminal offence under regulation 19 of the EIR."

"Please could you review why you initially ignored this request for 33 working days - I would like to understand how your internal processes broke down in this instance."

"How depressing. Your reply seems to exemplify your organisation's attitude to public service. In a nicer, better, world, you would have just addressed my concerns."

Anyway, I will now start the long and time consuming process of an internal review.

¹ [Dealing with vexatious requests \(section 14\) | ICO](#)

What a great outcome - well done! I hope you feel proud of yourself"

34. FE also referenced 12 emails which repeated a question after the request process had been exhausted. FE advised that the purpose of the above emails, allegations and further requests were to divert attention and frustrate staff.
35. FE stated that, on the face of it, the complainant's requests would indicate some underlying concern or broader grievance. However as the complainant has not stated what any underlying concern they may have is, FE has only been able to react to the requests that have come in, rather than grapple with any broader concerns that might have prompted the requests,.

The Commissioner's position

36. Having reviewed FE's position, the Commissioner is satisfied that FE is entitled to rely on regulation 12(4)(b).
37. The Commissioner recognises that even if the 450 members of staff at the Bristol office were the only members of staff required to search and spent just three minutes searching, that would equate to around 22.5 hours of staff time in order to respond.
38. Any internal correspondence will, by definition, engage regulation 12(4)(e) of the EIR – meaning that the public authority is likely to have to carry out public interest balancing tests for a considerable amount of the information, even if it ultimately concludes that that information should be disclosed. There is also likely to be a considerable amount of personal information (such as email addresses or the names and job titles of junior members of staff) which will require redaction. Other exceptions may also apply. This is in addition to any time spent searching for relevant information and suggests that the burden of responding is likely to exceed 24 hours of staff time easily.
39. The Commissioner also recognises that FE has already spent 30 hours complying with similar requests from the complainant relating to correspondences about the Wych Lodge Mountain bike trail. Because the Yer Tiz trail is more popular (because of its proximity to a large city), FE has argued that it is therefore likely to hold more correspondence relating to Yer Tiz than other trails like Wych Lodge.
40. The Commissioner notes that the trail in question is located near FE's Bristol head office which means there may be a certain volume of internal correspondence that references the trail (and thus falls within the scope of the request) merely because some staff members have used it in their own time. There is unlikely to be a considerable public value in such information.

41. The Commissioner has considered FE's arguments regarding the allegations of wrongdoing in order to annoy staff, the Commissioner has reviewed the evidence supplied by FE including a thread of emails sent by the complainant regarding whether a response was sent to the correct email address. A simple check of the thread showed that FE had responded to the correct thread, however the complainant proceeded to send 12 additional emails to query this.
42. Although the Commissioner acknowledges that the complainant has made a number of requests which all relate to mountain bike trials, this request is the first request which relates specifically to Yer Tiz, he therefore does not consider this to be a repeated request.
43. The Commissioner notes that repeated requests, accusations of wrongdoing and repeatedly sending emails to any public authority can cause annoyance, or stress to staff and would be disruptive for any public authority. The complainant's correspondence, on its own, is not sufficient to conclude that their behaviour is exceeding the threshold of what the Commissioner would deem to be manifestly unreasonable. However, the Commissioner does not consider the tone of the complainant's correspondence to be helpful in promoting a constructive dialogue between the parties.
44. The complainant has advised the Commissioner that FE had implied, in documents disclosed previously, that it is intending on closing the Yer Tiz trail. The complainant stated that this information would be of interest to the public.
45. The Commissioner agrees that information concerning the future of this trail would carry a significant public value – which in turn increases the public value of any request for such information.
46. However, in this case the value of the request is diluted because of the wide parameters the complainant has chosen. The complainant could, without having any knowledge of how such information might be held by the public authority, have restricted their request to just correspondence regarding the trail's closure or future – indeed they themselves noted in correspondence to FE that they could have restricted their correspondence to particular officers. That in itself might not have reduced the burden significantly but, by narrowing in on the most important information and excluding irrelevant information, a more focused request would have had a much higher public value. In phrasing their request as they have done, the complainant has all-but guaranteed that FE will be required to spend a significant amount of time considering information, caught by the request, but not related to the serious purpose they say lies behind it.

47. Reviewing the matter holistically, the Commissioner is satisfied that the request was manifestly unreasonable and therefore FE was entitled to rely on regulation 12(4)(b) on this basis. The Commissioner must now go on to consider the public interest test.

Public interest test

48. The Commissioner notes that there is always a general public interest in openness and transparency. There is a particular public interest in decisions that affect the environment being made in a transparent way.,
49. However, there is a much stronger public interest in public authorities being protected from having to respond to manifestly unreasonable requests.
50. The Commissioner is satisfied that it would not be in the public interest to divert staff time and efforts away from core work in order to search and review any documents that fall within the scope of a broad, unfocused request.
51. 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.
52. Whilst the Commissioner has been informed by the presumption in favour of disclosure, he is satisfied that, for the reasons given above, the exception and the public interest test have been applied correctly.

Procedural matters

Regulation 9 – advice and assistance

53. Regulation 9(1) of the EIR says that a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
54. The advice and assistance which will be reasonable for the public authority to provide will vary according to the circumstances and wording of the request. However, as a general rule, the Commissioner would normally expect a public authority relying on a claim that a request would impose a manifestly unreasonable burden to offer advice and assistance to help the requestor refine their request to one which imposes a more reasonable burden
55. The Commissioner has seen no evidence of FE providing any advice and assistance in a way which would support the complainant in refining or

focusing their request so that it would not impose a manifestly unreasonable burden.

56. FE is now required to contact the complainant and provide advice and assistance as to how their request can be refined or focused so that it does not create an unreasonable burden.

Right of appeal

57. 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

58. 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.
59. 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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