

## **Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004**

### **Decision Notice**

**Date: 30 September 2010**

**Public Authority:** The Environment Agency  
**Address:** Environment Agency  
Tyneside House  
Skinnerburn Road  
Newcastle Business Park  
Newcastle upon Tyne  
NE4 7AR

### **Summary**

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The complainant made a multipart request to the Environment Agency relating to its monitoring of the River Test in Hampshire after a pollution incident in 2008. The Environment Agency initially informed the complainant that the request was likely to be considered manifestly unreasonable and asked him to narrow his request. The complainant did narrow his request, however the Environment Agency subsequently claimed that the request was still manifestly unreasonable under Regulation 12(4)(b) as it would take in excess of 60 hours for it to respond. The Commissioner has considered the request. His decision is that the request was not manifestly unreasonable given that the Environment Agency did not provide adequate proof that its estimate for complying with the request was reasonable. He has ordered that the Environment Agency either provide the complainant with the requested information in accordance with regulation 5(1) or issue a further refusal notice as required by regulation 14(1).

### **The Commissioner's Role**

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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

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2. The River Test arises in Hampshire and is known as one of the primary chalk streams in England. It is noted by some as the birth place of modern fly fishing and has been mentioned in literature for its fine fishing. In 2008 parts of the river near to Stockbridge suffered an incident of pollution which discoloured the water in the area, threatened fisheries and caused difficulties for anglers wishing to fish the affected stretch of water. The Environment Agency began an investigation into the event but no source for that pollution event was publicised. Dissatisfied with the Environment Agency's findings angling clubs within the area instructed independent scientific experts to attempt to identify the source of the pollution should it occur again. The complainant works for a non profit organisation which seeks to fight pollution and other damage to the water environment throughout the UK and to protect the rights of anglers and angling clubs. It was hired by one of the Angling clubs affected to investigate legal avenues available to them after the events, and also the Environment Agency's response.

## The Request

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3. On 13 February 2009 the complainant wrote to the Environment Agency requesting from it the following information:
  1. All National Incident Reporting System (NIRS) entries relevant to the waters covering the last six years;
  2. Any warning letter or other such enforcement activity relating to the waters covering the last six years;
  3. Full details of any investigation, with any witness statements taken, or given, by Environment Agency staff, in relation to any pollution on the waters covering the last six years;
  4. All biological and/or ecological and/or fisheries assessments of the waters carried out over the last six years;
  5. Any photographic evidence of or related to pollution of the waters covering the past six years;
  6. All correspondence (letters, emails, faxes, meeting minutes etc) to or from Southern Water, its servants or agents concerning

the performance of or pollution from the Fullerton STW covering the past six years;

7. All water quality sample data relevant to the waters covering the last six years; and

8. Any other relevant documents or data concerning or related to the 2008 pollution.

The Complainant considers that each of these is a separate request. However for clarity he refers to these requests throughout this Notice as 'the request'

4. On 27 February 2009 the Environment Agency responded to the complainant. It stated that the information requested was large, and that it could therefore deem the request to be manifestly unreasonable. It estimated that responding to the request as it was would take approximately 7 – 10 days (50 – 75 hours) of work to search for, and collate the information requested, and that the cost for this would be likely to be £1300 to £2000. It therefore asked the complainant to discuss with its client whether all of this information was necessary given other activities it was undertaking directly with the client and associated clubs. The Commissioner notes that the Environment Agency's response did not specifically state that the cost was the cost that it intended to charge the complainant for this information. It appeared in fact to be suggesting that that would be the overall cost to the Environment Agency to respond to the request.
5. On 11 March 2009 the complainant wrote to the Environment Agency and asked it to breakdown the costs it had associated with the request. It also pointed out that the authority should not be charging for locating and collating the information under the Regulations.
6. On 2 April 2009 the Environment Agency responded. It stated that it realised that the charging information it had mentioned was inappropriate and that it therefore withdrew that comment. However it once again reiterated that it would take 7 – 10 days in order to respond to the request and that it felt that this would be a serious drain on its resources given that the officers concerned would need to be field officers. It stated that administrative or temporary staff would not have the necessary skills to perform this duty in this instance. It stated that as it stood it would deem the request manifestly unreasonable unless the complainant could narrow his request. It also offered to meet with the complainant in order to discuss the purpose behind his request in order to better understand and aid him in narrowing his request by focusing on his specific requirements.

7. On 3 April 2009 the complainant wrote back to the Environment Agency narrowing his request. He stated that it was difficult to narrow down effectively given that he did not have the breakdown he had requested. He also refused the offer of the meeting stating that at this stage that was premature. He stated that items 1, 2, 4 & 7 should be relatively easy to provide given that other Environment Agency offices and SEPA in Scotland provide that sort of information on CD on a regular basis. He stated that he could however narrow his request by asking for the information to points 2 & 5 to cover 2007 & 8 only. He also withdrew his request at point 6 but reserved the right to reopen this if necessary once he had analyzed the information which was provided to him.
8. On 9 April 2009 the Environment Agency responded. It included the necessary breakdown of the time it estimated would be associated with responding to each part of the request. It stated:
  1. Search NIRS for relevant incidents in the last 6 years, extract reports and check all entries for personal information removing names, addresses and telephone numbers. Estimated time 0.5 days (3.7 hours)
  2. Search enforcement records for relevant action, check for personal information removing names, addresses etc. Estimated time 0.5 days (3.7 hours).
  3. Search enforcement records for relevant cases, retrieve files from off site storage, review to check information is disclosable. Estimated time 1-2 days (7.4 - 14.8 hours).
  4. Interrogate fish and ecological data archive for the catchment, format this data and check for completeness or errors. Estimated time 2-3 days (14.8 hours - 22.2 hours).
  5. Search through electronic and printed photographic archives in 3 teams for records of pollution in the catchment. Estimated time 0.5 - 1 day (3.7 - 7.4 hours).
  6. Search all printed and electronic records relating to the performance of Fullerton WWTW including the monitoring file, minutes of regular liaison meetings and meetings on site. Estimated time 0.5 - 1 day (3.7 - 7.4 hours).
  7. Search for and extract all water quality data for routine or pollution response samples. Estimated time 0.5 - 1 day (7.4 hours).

8. Search for any other relevant information relating to summer 2008. Estimated time 0.5 days (3.7 hours).
9. In conclusion it stated that the overall estimated time to fulfil the original request was therefore 7 - 9.5 days (50 - 70 hours). It stated that the narrowing down suggested by the complainant in his email of 3 April 2009 would lower the estimate by 1 – 3 days giving an estimate of 6.5 days.
10. It therefore stated that it considered that the request was manifestly unreasonable and applied Regulation 12(4)(b) to the request.
11. On 21 April 2009 the complainant wrote to the authority asking it to review its decision.
12. On 20 May 2009 the Environment Agency responded. It stated that after reviewing its decision it still wished to rely upon Regulation 12(4)(b).

## **The Investigation**

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### **Scope of the case**

13. On 4 November 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - Whether his request was manifestly unreasonable
  - Whether the authority was correct to disclose the information to the angling club rather than the complainant in the first instance.
  - Whether the authority was able to disclose some information to the Angling club, whilst maintaining the exception as regards the complainant
14. During the course of the Commissioner's investigation part 7 of the complainant's request was resolved informally and part 4 was also partially responded to. The Commissioner notes however that the estimates provided by the Environment Agency still refer to the time it took to respond to these parts of the request in their argument that the request was manifestly unreasonable and he is satisfied that they are entitled to do. The Commissioner has however taken into account the narrowing of the request highlighted in paragraph 7,

## Chronology

15. On 18 June 2009 the Commissioner wrote to the Environment Agency and informed it that a valid request had been received.
16. On 4 May 2010 the Commissioner wrote to the Environment Agency again. He informed it that the case was about to be allocated for investigation and asked for relevant information to be provided to him, together with any arguments that the Environment Agency might wish to submit in support of its position.
17. On 19 May 2010 the Environment Agency responded to the Commissioner. It stated that it had recently provided a cd of information to the complainant's clients and wished the Commissioner to postpone making a decision until such time as the clients had had the opportunity to consider the information and narrow down their request if they so wished.
18. On 3 June 2010 the complainant wrote to the Commissioner. He stated that the disclosure by the Environment Agency did answer the majority of question 7, and some of question 4, however it did not respond to any of the other questions which he had asked. He also complained that the Environment Agency's response had not been sent to him, but to his clients, and that this was inappropriate in the circumstances. He therefore asked the Commissioner to consider this aspect in addition to the other areas of complaint which he had made.
19. On 14 June 2010 the Commissioner wrote to the complainant stating that he would continue to investigate the remainder of the request, but that he noted the complainant's acceptance that the limited disclosure had met part 7 of the request.
20. On the same date the Commissioner wrote to the Environment Agency indicating that although he considered that section 7 of his request was now resolved he was still investigating the remainder of the complaint. He therefore asked it to respond to his earlier questions.
21. On 7 July 2010 the Environment Agency wrote to the Commissioner responding to his letter. It provided a further explanation and a further breakdown of the time which would be needed to respond to the remainder of the request, together with the time which it had already spent responding to point 7, and part of part 4 of the request. Its new estimate stated that it would take approximately 90 hours to respond to the request in full, including the time which it had already spent. The Commissioner notes that this exceeds its earlier statement to the complainant by some extent.

22. The central difference of 23 hours stated by the Agency relates to point 1 of the request. The Agency stated:

“As the requested area is very large, we may have underestimated the time required to carry out this task. A standard 1km search around the watercourse results in 155 incident records which we estimate will take us just under 26 hours, assuming that it will take us an average of 10 minutes per incident record to process. The time estimate could be considerably reduced if the site was more specific”
23. On 16 September 2010 the Commissioner telephoned the Environment Agency and stated that he had reservations about the time estimates suggested. He asked about part 1 of the request, and if the estimated time to respond to that could be narrowed down in some way. The Environment Agency said that it could not easily do that. It stated that its problem was that it did not know what information each record contained (and hence how much work each item would entail) until it was opened and looked at individually.
24. The Commissioner asked the Environment Agency to send him some of the information in the excel format in order that he might better understand how the above figure was reached. The Environment Agency provided the Commissioner with examples of the information from point 1 of the request on 23 September 2010.

## **Analysis**

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### **Substantive Procedural Matters**

#### Regulation 8

#### The costs

25. The Commissioner notes that the complainant specifically asked the Commissioner to consider whether the charges which it considered that the Environment Agency sought to apply were reasonable in the circumstances. He requested that the Commissioner considers this even though the Environment Agency subsequently withdrew that statement.
26. The complainant's argument was that the Environment Agency cannot charge for locating or collating the information. The Commissioner notes and agrees with this statement. In the Information Tribunal's

decision in *David Markinson v Information Commissioner* (EA/2005/0014), the Tribunal clarified that an authority must satisfy itself that a charge is reasonable. It must do this by only taking into account relevant considerations and ignoring any irrelevant ones. It could for instance charge for the cost of paper and printing as a relevant factor. The cost of staff time in identifying, locating and retrieving the information is an irrelevant factor however, and cannot be included. As these staff costs must be disregarded when the information is inspected by the applicant (in accordance with Regulation 8(2)(b)), it is unreasonable to include them when calculating the cost of copying the same information.

27. However the Commissioner has considered the statement which the Environment Agency actually made in its response to the complainant, and notes that it did not actually state that this was a charge which it intended to levy against him if he persisted with his request. In the Commissioner's view, the statement appears to have been made in order to bolster its argument that the request should be considered manifestly unreasonable.
28. Given that no specific amount was ever charged to the complainant to receive the information the Commissioner finds that there is no evidence to make a decision against the authority on this basis.

### Regulation 5

#### The response to the angling clubs

20. In paragraph 13 above the Commissioner outlined the complainant's wish for the Commissioner to consider the actions of the authority in sending some of the requested information directly to some of the angling clubs rather than to the complainant himself. The complainant concluded that the information should not have been withheld from him if it could be provided to another person (i.e. the angling club), and that a disclosure to the angling club when it was he who made the request therefore proved that the Environment Agency's response to him was inadequate.
30. The Commissioner recognises that the request was made by the complainant as part of his representation on behalf of one of the angling clubs. The disclosure was however made to the angling club, not to the complainant himself.
31. The Commissioner has considered the Environment Agency's approach. Although the complainant was acting in his role on behalf of the third party, the request which he made had been made by him, rather than

by the third party. Hence the response to the angling club cannot be considered to have been a response to the complainant's request. It was directed to another person.

32. The Commissioner notes that the refusal notice to the complainant stated that the information was excepted because the request was manifestly unreasonable. It did not state that individual sections could not be disclosed. The essence of its response was simply that the complainant had asked for too much information to make it reasonable to respond. The Environment Agency therefore separately sought to provide some aid to the clubs which it believed were behind the complainant's request by sending it some of the relevant information, albeit not all of the information which had been requested by the complainant.
33. The Commissioner's decision is therefore that the Environment Agency did not breach any of the Regulations specifically by providing the information to the Angling club whilst maintaining its refusal to the complainant. It had already informed the complainant that it considered his request to be manifestly unreasonable because of the large amount of work which would be required to respond fully.
34. The Commissioner therefore considers that this response did not in itself breach the Regulations, nor did it provide evidence that the refusal notice provided to the complainant was made improperly.

## **Exceptions**

### Regulation 12(4)(b)

35. The Environment Agency claims that the information is excepted under Regulation 12(4)(b). Regulation 12(4)(b) is provided in the legal annex to this Decision Notice. It provides an exception to an authority's duty to respond to a request where that request is manifestly unreasonable.
36. The term "manifestly unreasonable" is not defined in the Regulations. The Commissioner is clear however that the inclusion of "manifestly" in Regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under this exception, the request must meet a more stringent test than being simply "unreasonable". "Manifestly" means that there must be an obvious, clear or self-evident quality to the unreasonableness referred to.
37. There is also no single test for what sorts of requests may be manifestly unreasonable. Rather, it is to be judged on each individual request bearing in mind all of the circumstances of the case. The

Commissioner is of the view however that Regulation 12(4)(b) will provide an exception to the duty to comply with a request where that request is vexatious, where it would incur unreasonable costs for the public authority or where responding would be an unreasonable diversion of resources.

38. From the Environment Agency's reasons for applying Regulation 12(4)(b) the Commissioner notes that it is claiming that responding to the request would require an unreasonable diversion of its resources.
39. In considering this, the Commissioner has borne in mind the decision of the Information Tribunal in the case of *DBERR v The Information Commissioner* (EA/2008/0096) when coming to his decision. The Tribunal acknowledged Recital 9 of the European Directive 2003/4/EC which calls for disclosure of environmental information to be "to the widest possible extent" noting therefore, that public authorities may be required to accept a greater burden in providing environmental information than other information (paragraph 39).
40. There are additional factors that should be considered in assessing whether the costs of complying with a request for environmental information are manifestly unreasonable:
  1. Under EIR, there is no statutory equivalent to the "appropriate limit" under the Act. The Commissioner does consider, however, that this limit provides a useful starting point to ascertain what costs might be involved in responding to a request.
  2. The proportion of burden on the public authority's workload, taking into consideration the size of the public authority;
  3. The presumption in favour of disclosure under Regulation 12(2);
  4. The public interest test under Regulation 12(1);
  5. The requirement to interpret the exceptions restrictively; and
  6. The individual circumstances of the case, including:
    - o the nature of the information requested;
    - o the importance of the issue at stake; and
    - o the aggregated burden on resources where the request is one of many within one item of correspondence, or several items of correspondence submitted over a short period of time.
41. These factors are of relevance in deciding whether the diversion of resources required to respond is manifestly unreasonable.
42. The Commissioner has borne in mind the EU Directive from which EIR originates. It states (at Article 4(2)) that "the grounds for refusal...

shall be interpreted in a restrictive way". Furthermore, the Implementation Guide to the Aarhus Convention (page 57) notes that:

"Although the Convention does not give direct guidance on how to define 'manifestly unreasonable', it does hold it as a higher standard than the volume and complexity referred to in article 4, paragraph 2. Under that paragraph, the volume and complexity of an information request may justify an extension of the one month time limit to two months."

Regulation 7 provides for an extension in the time to respond in such circumstances. It is provided in full in the legal annex to this Decision Notice.

43. This latter statement refers to the fact that authorities may inform the requestor that due to the volume or the complexity of the information the authority can extend its time for response from one month to two by informing the requestor that is the case. The Implementation Guide therefore states that the manifestly unreasonable argument requires something more than this in order to be applicable. It essentially implies that volume and complexity alone do not make a request manifestly unreasonable.

#### The burden on the authority

44. The Environment Agency estimates that it will take between 60 and 90 hours to respond to the request. It states that it has provided significant opportunities for the complainant to narrow his request, and that it asked for a face to face meeting with the complainants to aid in narrowing the request to a reasonable size. It argues that as it was not able to do that responding to the request would require a manifestly unreasonable diversion of its resources.
45. The request does encompass a large amount of information and the Environment agency argues that it would therefore be onerous to provide a full response to the complainants. However the Commissioner notes the right to extend the time for response which is provided in the Regulations for precisely this reason.
46. Clearly therefore there was an understanding that some requests would be both voluminous, but of such relative importance that it would be incumbent on the authority to respond to such requests in any event.
47. The complainant has argued that the Environment Agency cannot charge or take into account the time estimated for locating or collating

the information and that if it discounts this then the argument that the request is manifestly unreasonable becomes unsustainable.

48. In the first instance the Commissioner notes that the Environment Agency sought to include time for checking and redacting each item of information. However the Commissioner's decision is that the Environment Agency is not able to account for the time to carry out these activities. Whilst noting that there is not a direct statutory equivalent of the "appropriate limit" under the EIR, the Commissioner considers that it would not be reasonable to allow public authorities to take into account the costs of applying exceptions under the EIR, when such costs are not allowable under the Act.
49. The Commissioner asked the Environment Agency to provide him with examples of the information which it would be required to in order to respond to the first part of the request. This is because the Environment Agency's updated estimate (dated 7 July 2010) was that it would take approximately 26 hours to respond to this section alone. The Environment Agency estimated that each item of the 155 items it had identified would take approximately 10 minutes each to consider.
50. It supplied the Commissioner with examples of this information from the first request. The Commissioner considers that the examples show that the estimate of 10 minutes per item cannot be correct. The individual items are relatively small and contain little text. The items provided to him were redacted, however it would not be able to take into account the time it took to redact the information in establishing the reasonableness of the request in any event. The Environment Agency also stated that it took into account the time to verify the accuracy of the information. Again, the time spent doing this should not be included within the time estimates for responding to the request.
51. His view is that the examples which the Environment Agency provided would take, at most 1 minute to read through, and in some cases only seconds. As the Environment Agency is not able to take into account the time to either check or redact the information the Commissioner's opinion is that the Environment Agency has not justified its claim that responding to this item would take the 26 hours estimated. The evidence suggests that this information may in fact be processed within a relatively few hours.
52. The Commissioner also notes that the resubmitted estimates still take into account all of the requests and do not account for the narrowing of the requests by the complainant, nor his decision to withdraw request 6.

53. The Commissioner therefore considers that the information which was provided significantly overestimates the time which the Environment Agency would take to provide the information.
54. Many of the estimates provided by the Environment Agency appear to have taken into account such factors as redacting and verifying the information. Given this, and following his decision on the estimate provided for the first request, the Commissioner considers that the Environment Agency has failed to provide convincing evidence that its estimates are reliable or reasonable under the circumstances.
55. The Commissioner notes, in this respect, the Information Tribunal's comments in the cases of *Alasdair Roberts v the Information Commissioner* (EA/2008/0050), and *Randall v The Information Commissioner and Medicines and Healthcare Products Regulatory Agency* (EA/2007/0004), that costs estimates should be "sensible, realistic and supported by cogent evidence".

#### The size of the authority

56. The Commissioner has taken account of the size of the Environment Agency when considering how responding to the request might affect it. He notes that the Environment Agency is a large authority. Its annual report shows that as of 31 March 2010 it had 13,181 employees and a budget of £1.25 billion. The Commissioner recognises however that its remit is wide and that even at this size it will be under pressure to deliver its services efficiently and to provide best value to the public purse when carrying out its functions.
57. The Commissioner notes that the Agency stated that responding to the request would require the work of field officers because temporary or administrative staff would not be able to carry out the work. It argues that this would take them away from their normal duties in the field. It did not however explain why that would be the case. Nevertheless the Commissioner notes that the authority is one of the largest in the country, and therefore one which is best placed to deal with requests of this size.

#### The nature/importance of the information

58. The Commissioner has considered the circumstances surrounding the request, and the nature of the information in question.
59. The River Test is noted both historically and currently as a supremely important fishing venue in England. It is a primary, if not the primary

fishing venue of its kind within the UK. Many angling businesses are built on its banks, providing employment and offering fishing opportunities to those who wish them.

60. As is the case with many rivers however, the river is constantly under threat from the requirements of other river users and from the land owners bordering its banks. It is the task of the Environment Agency to investigate and counter or limit those threats wherever possible. The state of the river, and the angling businesses that rely upon it, rely on the Environment Agency to carefully monitor activities on and around it to the degree necessary to safeguard it. Yet the threat to it remains real and significant, as can be evidenced by the precursor to this request; the incidence of pollution which occurred in 2008. There have also been previous press reports of incidents of pollution and long term pollution being caused on the Test by landowners and others bordering or using the river. The Environment Agency website also provides some evidence of such incidents in the "What's in my backyard" section of its website.
61. The Commissioner notes that one of the complainant's questions relates to the Environment Agency's dealings with a water treatment works. Clearly therefore there is the potential for catastrophic damage to the river environment if risks are not identified and addressed prior to any accident occurring. The Commissioner notes that a single pollution incident could affect the waters and the levels of fish in the water for many years. Even in the short term a pollution incident may have a severe affect on the businesses which rely on the river being noted for its unspoiled fishing opportunities.
62. The Commissioner considers that there is some information in some circumstances that is of such relative importance that it is incumbent upon an authority to take extra steps to allow interested parties access to that information. One of the main selling points of the businesses is the pristine fishing opportunities offered by the River Test. The Commissioner also considers that in this case he is able to take into account the fact that the additional transparency might lead to an additional measure of protection for the river and its surrounding environment, because angling clubs have combined together to seek scientific analysis of the Environment Agency's information with a view to identifying the source of any future pollution.
63. Although the Commissioner cannot take into account the specific purposes of the requestor of the information in this case, he can take into account that allowing wider access to this information might allow interested parties (one of which being the requestor), to use their resources to analyse the data with a view to identifying and nullifying

extant and future risks to the state of the river. This may ultimately save taxpayer's money dealing with a future pollution incident on the river.

### Conclusions

64. The Commissioner recognises that the work involved in responding fully to the complainant's request is substantial. Given the description of the work that would be needed however he believes that the time estimates should be reduced significantly. He has already stated that the time estimate of 10 minutes for the first part of the request was not proven by the authority and that he considers that this estimate is unreliable as an indicator of the overall time that the request would take. The Commissioner considers that the authority is also not able to take into account the time it takes to redact information. The Commissioner therefore considers that its estimates were excessive for this request and can be narrowed significantly when the time included for verification and redaction is taken out. As similar redaction and verification time was also included for the other aggregated requests, the Commissioner considers that the overall estimate is not reasonable, has not been supported by evidence and that the Environment Agency has failed to demonstrate that responding to the request would be manifestly unreasonable.
65. The River Test is noted as a primary example of a river of this nature in England. This reputation would quickly fall in the face of a serious pollution incident or a gradual reduction in the purity of the river due to long term pollution. The Commissioner understands that it has already been recognised that the river is suffering from reduced insect levels, and increasing sedimentary levels.
66. Under the circumstances, he considers that responding to this request in this instance would not amount to a manifestly unreasonable diversion of resources to the Environment Agency. His decision is based primarily on the following factors:
  - the Environment Agency's failure to provide convincing evidence to support its argument that the time estimates were reasonable.
  - clear evidence that the Environment Agency had taken into account factors which it was not able to take into account in producing those estimates, such as redacting and verifying the information.
  - the historical and current importance of the river to anglers
  - the selling point of the river being an unspoilt, pristine fishing environment,

- the nature and the importance of the information to the environment and to businesses relying upon the purity of that environment,
  - the clear evidence of the danger that the river faces,
  - the likelihood that the disclosure will lead to a greater evaluation of the information to ascertain what the current risks dangers are and to ascertain what steps might be taken to nullify those risks, and
  - the fact that this in itself might aid the Environment Agency identify the sources of pollution if future events did occur, and react more quickly to prevent further damage occurring, and
  - the size of the authority concerned.
67. The Commissioner notes that the Regulations were provided to allow transparency on this sort of issue in order to allow the public to have a say in how their environment is run, and accordingly, how well that environment is protected for the benefit of all. The public's help in identifying pollution sources and incidents is an invaluable tool which the Environment Agency relies upon on many occasions. In this case, the public, in the form of the angling clubs wish to take that assistance a step further by providing scientific and technical services to aid in identifying dangers to the river.
68. He considers that the attempts of the relevant angling clubs to take proactive steps to ascertain risks and dangers to the river prior to further incidents occurring, and seeking to aid the Environment Agency by using its own resources to identify those risks is an example of the Regulations being used to their best effect.
69. The Commissioner's decision is therefore that the authority was not correct to apply Regulation 12(4)(b) to this request in this instance.
70. As the Commissioner has found that Regulation 12(4)(b) is not engaged he has not gone on to consider the public interest.

## The Decision

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71. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

The authority was not correct to apply Regulation 12(4)(b) to the information.

## **Steps Required**

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72. The Commissioner requires the public authority to take the following steps to ensure compliance with the EIR:

to either disclose the information in accordance with Regulation 5(1), or issue a refusal notice in accordance with the requirements of regulation 14(1). Should a further refusal notice be issued it should not rely upon the exception provided at regulation 12(4)(b) on the grounds of a manifestly unreasonable diversion of resources.

73. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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74. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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75. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

76. 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.
77. 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 30 day of September 2010**

**Signed .....**

**Lisa Adshead  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Duty to make available environmental information on request

5. - (1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to a standardised procedure used.

(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

**Regulation 8(3)** A charge under paragraph (1) shall not exceed an amount on which the public authority is satisfied is a reasonable amount.

**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.

### **Regulation 7 - Extension of time**

**Regulation 7(1)** Where a request is made under regulation 5, the public authority may extend the period of 20 working days referred to in the provisions in paragraph (2) to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within the earlier period or to make a decision to refuse to do so.

**Regulation 7(2)** The provisions referred to in paragraph (1) are –

- (a) regulation 5(2);
- (b) regulation 6(2)(a); and
- (c) regulation 14(2).

**Regulation 7(3)** Where paragraph (1) applies the public authority shall notify the applicant accordingly as soon as possible and no later than 20 working days after the receipt of the request.