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

Date: 14 August 2020
Public Authority: Rural Payments Agency
Address: PO Box 69
           Reading
           RG1 3YD

Decision (including any steps ordered)

1. The complainant has requested an assessment report from the Rural Payments Agency (‘RPA’). The RPA’s position is that regulation 12(4)(a) of the EIR is engaged as it does not hold the requested information. During the Commissioner’s investigation, the complainant confirmed that he accepted that the RPA does not hold the information he requested. But he remains dissatisfied with how the RPA handled his request.

2. The Commissioner’s decision is as follows:
   - With regard to the matter of advice and assistance, the RPA did not breach regulation 9(1) of the EIR.
   - The RPA complied with regulation 9(2) of the EIR because it provided the complainant with timely and adequate advice and assistance with regard to clarifying his request of 29 July 2019.
   - With regard to the timeliness of any internal review, the RPA did not breach regulation 11(4) of the EIR as the complainant did not submit a request for a review to the RPA.
   - The exception under regulation 12(4)(a) is engaged as the RPA did not hold the requested information at the time the complainant submitted his request for it.
• The RPA complied with regulation 14(2) as it refused the clarified request of 16 August 2020 within the required timescale.

3. The Commissioner does not require the RPA to take any remedial steps.

Request and response

4. The complainant has provided the Commissioner with a background to his request. He has told her that in April 2018 he had asked Natural England (NE) to carry out an assessment of Bradgate Park in Leicestershire. This park is protected by the Site of Special Scientific Interest (SSSI) and Higher Level Stewardship (HLS) schemes.

5. NE did not carry out the requested assessment and in September 2018 the complainant wrote to NE and formally requested that it carry out an assessment of the Park under the HLS scheme regulations.

6. In correspondence dated 5 October 2018, NE advised the complainant that it upheld its original decision not to carry out an assessment of the Park. Following a telephone conversation with the complainant, NE reviewed its decision again and advised the complainant in November 2018 that it remained satisfied that an assessment of the Park was not necessary.

7. The complainant says that at this time NE indicated to him that the RPA had taken on responsibility for HLS assessments from 1 October 2018. He says that in November 2018 he asked two HLS officers (presumably two RPA officers) to implement an assessment of the Park but was told that this was not the RPA’s concern and that NE managed the HLS scheme.

8. During June 2019 the complainant says he had tried to determine whether the RPA or NE was responsible for the HLS scheme. He says he received a letter from the RPA at this time in which it “promised” that the RPA would carry out an assessment of the parts of the Park that were within its jurisdiction.

9. On 12 June 2019 the RPA wrote to the complainant. It apologised for aspects of the service he had received from the RPA and explained that the RPA would not fully take over the customer care / contact for the HLS scheme until July 2019. The RPA’s letter advised that a report had been submitted to its Compliance Unit for its consideration and to instigate appropriate action.

10. The complainant has gone on to tell the Commissioner that in correspondence to him dated 3 July 2019, the RPA told him that it had
been advised by its Compliance Unit that “a recent visit had taken place” to examine the delivery of the HLS agreement and whether there were any compliance breaches. The RPA confirmed that it was satisfied with how the HLS scheme was being delivered at the site and had not identified any compliance issues.

11. On 3 July 2019, the complainant says he submitted a request to RPA for the assessment procedures and results ie its complete report.

12. The Commissioner understands from the complainant’s correspondence to her, that NE carried out a visit of the park on 22 July 2019.

13. Following further contact with the RPA, on 29 July 2019 the complainant wrote to the RPA and requested information in the following terms:

"Please see relevant letters in June and July 2019, particularly my request, under the Freedom of Information Act, to [name and job title specifics redacted] Higher Executive Officer, who dealt with a request under Stage II.

You will see that, on 17th June, I requested copy of the assessment (no names) of Bradgate Park, so that I could determine whether I needed to raise a concern at Stage III.

You will also see that I wrote to [name redacted] on 3rd July, indicating that I was requesting relevant information under the Freedom of Information Act, and I asked [name redacted] to pass on my request to the relevant RPA officer prior to my meeting with Mr Edward Argar M.P. on Friday 19th July. Unfortunately, no response was forthcoming from the RPA prior to that meeting.

[Name redacted] indicates, in his kind response, that he expects the RPA to reply to my request and to provide the relevant information. To date I have had no reply. Therefore, I am respectfully requesting again that the RPA provide me with information under the F of I Act and detailed in my letter of 3rd July to [name redacted]. If the RPA can provide this information to me as soon as possible, it will allow me to assess whether I need to raise any further matter at Stage III with Natural England.

Specifically, I requested, and am requesting, under the relevant Act(s), detail of the RPA's limitations of jurisdiction, with reference to a survey of potential damage caused by Trust vehicles within Bradgate Park, together with other issues identified in my complaint against the Trust under Stage I and especially under the HLS at Stage II in 2018 to Natural England, details of the compliance assessment undertaken - the assessment procedures carried out by the RPA and whether there was any ground survey conducted - and any
observations, results and conclusions determined and documented by
the RPA following that assessment, including the grounds for
compliance with respect to the HLS issues I raised in my letter to
Natural England at Stage II.

The above information would have assisted me, and will, assist me, in
informing Mr Argar and others of the perceived level of accountability
of the Bradgate Park Trust to Natural England (and now to the RPA)
with respect to the ongoing management of Bradgate Park under the
SSSI and under the HLS scheme. The RPA has already provided a
map indicating areas of the Park within HLS, for which I am grateful.
However, I would be pleased to have confirmation of that information
and all documents relating to Bradgate Park with reference to the HLS
agreement, including stock quotas. I would also be grateful for an
indication of whether any matters that I have raised, especially track
damage, should be more properly dealt with under the SSSI scheme.

If you could expedite this disclosure in view of the considerable time I
have waited for the results of this Park assessment, over 13 months,
and in view of the time that has elapsed since I first made a request
to [name redacted], I would be extremely appreciative, and I shall be
able to bring this matter to an end.”

14. On 16 August 2019, the RPA acknowledged the request and gave it the
reference RI1 5171. The RPA advised that it would handle the request
under the EIR and asked the complainant to clarify certain terms he had
used in his request.

15. On 16 August 2019, the complainant wrote to the RPA and sent to it
emails that he considered would clarify what information he was
requesting. The RPA and the Commissioner understand the request to
be for an assessment report that followed from a compliance
inspection/site visit of Bradgate Park that the complainant thought that
the RPA had undertaken.

16. The RPA provided a refusal notice on 2 September 2019. In that refusal
the RPA referenced regulation 12(4)(a) of the EIR (which concerns
information not held) and confirmed that it does not hold the
information requested on 16 August 2019.

17. On 11 February 2020, the complainant provided the Commissioner with
correspondence he had received from ruralpayments@defra.gov.uk This
is dated 6 February 2020. The writer of the 6 February 2020
correspondence first acknowledges a complaint the complainant
submitted on complaint of 3 September 2019. She advises the
complainant that she had not had sight of his information request. The
complainant is then advised that the site visit/assessment in question
was a NE site visit and not a RPA site visit. (The Commissioner understands the visit referenced is the visit to the Park that NE undertook on 22 July 2019.) The correspondence confirms that the RPA had not conducted an area based compliance inspection of the Park and that the complainant should contact NE for information about NE site visits.

18. The RPA is an executive agency sponsored by Defra. The Commissioner notes that this correspondence is on Rural Payments Agency letterheaded paper but that the associated email address is a Defra email address.

Scope of the case

19. The complainant first contacted the Commissioner on 16 August 2019 to complain about the way his request for information had been handled.

20. From initial conversations with the complainant the focus of his complaint appeared to be that he considered that the RPA did hold the information he has requested. He subsequently confirmed that he accepted it does not. However, the complainant detailed 16 other concerns, which he described as ‘Failures’, about the RPA’s handling of his request and the Commissioner has considered those that fall within the scope of her role as the regulator of information legislation, and the scope of this complaint against the RPA. For the absence of doubt, the Commissioner has also considered the matter of the RPA’s reliance on regulation 12(4)(a).

21. The ‘Failures’ are summarised in the Appendix to this notice, including those that the Commissioner does not consider it within the scope her role to investigate and those that fall outside the scope of this complaint.

Reasons for decision

Regulation 9 – advice and assistance

22. Regulation 9(1) of the EIR states that a public authority must provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

23. If a public authority conforms to a Code of Practice issued under regulation 16 as regards giving advice and assistance in a particular case, it will be taken to have complied with regulation 9(1).
24. Part III of the 2005 Code of Practice that has been issued under regulation 16 deals with the matter of advice and assistance. It advises that appropriate assistance might include: outlining the different type so information that might meet the terms of the request; providing a general response and setting out options for further information that could be provided on request; or advising the applicant that another person or agency may be able to assist them. Part III also advises that public authorities should publish their procedures for dealing with requests for information.

25. Those concerns of the complainant’s categorised as Failures 3, 6, 11 and 12, Failures 4 and 5 and Failures 8, 9 and 10 can broadly be categorised as advice and assistance matters.

26. With regard to the RPA’s FOIA and EIR procedure, the Commissioner notes that this procedure is, at the date of this notice, published on the RPA’s area of the GOV.UK website under ‘Make an FOI request’\(^1\). The appropriate ‘Information Rights Team’ email address (irt@rpa.gov.uk) is also provided, and there is some reference to the EIR. In his correspondence to the Commissioner, the complainant has also referenced the RPA’s IRT email address having been published on the RPA website.

27. In addition, the Commissioner has noted that the complainant submitted his request of 29 July 2019 and clarification of 16 August 2019 to the RPA’s IRT email address. He received the refusal of 2 September 2019 from that email address and that correspondence advised the complainant to submit a request for a review to the same IRT email address.

28. However, on 3 September 2019 the complainant submitted a complaint about the RPA to: ruralpayments@defra.gov.uk ie this correspondence was sent to a Defra address and not the RPA’s address. As discussed, he received the response to that complaint from ruralpayments@defra.gov.uk on 6 February 2020.

29. The Commissioner has considered other aspects of the RPA’s handling of the request below. But having reviewed the Code of Practice’s advice on regulation 9(1) and having reviewed the complainant’s correspondence with the RPA, the Commissioner finds that with regard to the clarified

\(^1\) https://www.gov.uk/government/organisations/rural-payments-agency
request of 16 August 2019 that is the subject of this notice, no breach of regulation 9(1) occurred.

**Regulation 11 – representations and reconsideration**

30. Under regulation 11(4) of the EIR, a public authority must provide an internal review response soon as possible and no later than 40 working days after the date of receipt of the review request.

31. In this case, the complainant submitted a complaint about the RPA to ruralpayments@defra.gov.uk on 3 September 2019. He received an acknowledgement from that email address on 13 September 2019 and a response from that email address on 6 February 2020. Having reviewed the correspondence of 3 September 2019 the Commissioner does not consider that this was a request for a review and the complainant did not send it to the RPA’s IRT email address. The complainant has marked his 3 September 2019 correspondence as for the attention of the ‘Rural Complaints Team – Rural Payments Agency’. He goes on to explain that his information request to the RPA had indicated that the RPA had not carried out an assessment of Bradgate Park. It is this about which the complainant is dissatisfied, not the RPA’s response to his information request per se.

32. In its refusal of 2 September 2019, the RPA had provided the complainant with its IRT email address and advised him that if he was not satisfied with its response, he should submit a request for an internal review to that email address. It appears that the complainant submitted a more general complaint about the RPA to ruralpayments@defra.gov.uk but did not submit a request for an internal review to the RPA’s Information Rights Team.

33. The Commissioner notes the complainant’s concern categorised as Failure 8A but finds that the RPA did not breach regulation 11(4) as, in her view, the complainant had not submitted a request for an internal review to the RPA. It is not within the scope of the Commissioner’s role to consider the length of time it took the Rural Payments team at Defra to respond to the complainant’s service complaint.

**Regulation 12(4)(a) – information not held**

34. Regulation 12(4)(a) of the EIR says that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant’s request is received.

35. In correspondence dated 2 September 2019 and 6 February 2020 the RPA advised the complainant that it does not hold the information – an inspection report of Bradgate Park – that he has requested.
36. In a submission to the Commissioner, the RPA has told her that its investigations at the time of the request, and searches of its relevant IT systems, showed that the RPA had not undertaken an inspection of Bradgate Park. The RPA has confirmed to the Commissioner, by way of background, that the administration of Higher Level Stewardship (HLS) Schemes transferred from NE to the RPA in October 2018. The transitioned period was ongoing at the time of the request, including the transfer of people and systems.

37. The RPA says that to determine whether it held the information, its Information Rights Team contacted the relevant department within RPA that was responsible for Inspections and Inspection Selection at the time of the request. That team advised that a targeted inspection request form had been completed to request an inspection of Bradgate Park, on 11 June 2019. However, this request for an inspection was rejected.

38. The RPA has advised that targeted inspection requests are researched carefully to ensure that no pre-selected inspection request has been raised, or that a recent inspection has not just been undertaken, or whether a NE Area Team has recently carried out a site visit.

39. The RPA went on to confirm that the targeted inspection request in this case, completed on 11 June 2019, was rejected on the advice of a NE advisor. The ‘Rejection Reasons’ section of the request form showed that the complainant had been contacted about the matter of Bradgate Park by a NE Director. The Director had confirmed that the site is being managed as per the HLS agreement and has been subject to a number of site visits by members of the NE team. From their position of technical knowledge, supported by an RPA inspection in 2017 (which concluded that the Park’s management was satisfactory), the NE Director was satisfied that HLS options have been met and there would be no benefit of a RPA targeted inspection of Bradgate Park being undertaken at that time.

40. Natural England appears to have carried out a site visit to Bradfield Park on 22 July 2019. At the time of the complainant’s clarified request of 16 August 2019 however, the RPA had not carried out any visit to the Park. Its position is therefore that it does not hold any associated assessment or inspection report.

41. In its refusal to the complainant of 2 September 2019 the RPA had confirmed to the complainant that it does not hold the information he requested. The Commissioner accepts that the RPA did not carry out the target inspection of Bradgate Park that the complainant had requested, and therefore does not hold any associated inspection report. In conversation with the Commissioner on 27 July 2020 the complainant confirmed that he too accepted that the RPA does not hold the
42. The Commissioner has noted the complainant’s concerns categorised as Failures 2, 13 and 15. She considers it is the case that some of the RPA’s correspondence to the complainant is not clear and may therefore have suggested to the complainant that it did hold the requested information (and therefore had assessed the Park). For example: its suggestion in June 2019 that it would assess the park; its reference to a ‘report’ being submitted to its Compliance Unit; and its reference to a visit having recently taken place. A visit had recently taken place, but that had been by NE and not the RPA. However, the Commissioner has not seen any evidence to suggest that the RPA was seeking to deliberately mislead the complainant. In its response of 2 September 2019, the RPA clearly stated that it does not hold the requested information and had not carried out a HLS inspection of the Park.

43. The correspondence of 6 February 2020 also advised that NE had carried out an assessment of the Park, not RPA, and that the complainant should contact NE.

44. The Commissioner therefore finds that the exception under regulation 12(4)(a) is engaged and that the RPA did not hold the information at the point it received the complainant’s request for it.

**Regulation 12(4)(c) – request formulated in too general a manner**

45. Regulation 12(4)(c) says that a public authority may refuse to disclose information to the extent that the request for information is formulated in too general a manner and the authority has complied with regulation 9.

46. Regulation 9(2)(a) says that a public authority must ask an applicant to clarify their request as soon as possible and no later than 20 working days after the date of receipt of the request. Regulation 9(2)(b) requires an authority to help the applicant to clarify their request.

47. In this case, the complainant submitted his request on 29 July 2019 and the RPA did not ask him to clarify it until 16 August 2020. In this correspondence the RPA advised that ‘unforeseen circumstances’ had caused a delay in responding. The RPA had, however, asked the complainant to clarify his request within 20 working days of receiving the request. As such, no breach of regulation 9(2)(a) occurred. In its 16 August 2019 correspondence the RPA also detailed what elements of his request were unclear and the Commissioner finds that, therefore, no breach of regulation 9(2)(b) occurred.
48. The Commissioner notes the complainant’s concern categorised as Failure 7 but, despite the background to the request, given the length and complexity of the current request she does not consider it unreasonable for the RPA to have sought to clarify it.

**Regulation 14 – refusal to disclose information**

49. Under regulation 14(2), an authority that is relying on one of the exceptions under regulation 12(4) to refuse to disclose requested information should provide the applicant with a refusal notice as soon as possible and no later than 20 working days after the date of receipt of the request.

50. In this case, the complainant clarified his request on 16 August 2019. The RPA provided a response to the clarified request on 2 September 2019. In this response the RPA referred to the exception under regulation 12(4)(a) and confirmed that it did not hold the requested information. The Commissioner has noted the complainant’s concern categorised as Failure 8A. She understands that this ‘Failure’ relates to the matter of the internal review, but for the avoidance of doubt she has considered the timeliness of the RPA’s refusal and finds that the RPA complied with regulation 14(2).
Right of appeal

51. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

52. 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.

53. 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

Pamela Clements
Group Manager
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
APPENDIX

**Failure 1** – The complainant is not satisfied because he says the RPA admitted it had not provided him with correct information “about responsibility” over several months.

The Commissioner understands the complainant to mean the RPA had misinformed him as to what body was responsible for the HLS scheme and any associated assessment of Bradgate Park.

The Commissioner considers this matter is a service matter that the complainant should progress as a service complaint with the RPA if he has not already.

**Failures 2, 13 and 15** – RPA’s indication that it had assessed the Park was false and an attempt to mislead the complainant.

**Failures 3, 6, 11 and 12** – RPA did not have a functioning EIR or FOIA procedure.

**Failure 4 and 5** – RPA did not have a method of communicating with its FOI team, complainant’s earlier requests had not been passed to appropriate team.

**Failure 7** – Not reasonable for the RPA to ask complainant to clarify his request.

**Failures 8, 9 and 10** – Complainant considers that the RPA lost confidential information sent to it because its Information Rights Team had told him that it was unaware of emails he had sent to it, complainant’s email lost in the system, RPA not equipped to deal with receipt of private/confidential information from the public.

**Failure 8A** – RPA did not provide timely response to internal review request.

**Failure 14** – Complainant not satisfied with the content of Natural England’s report detailing its visit to the Park on 22 July 2019, as it did not address specific concerns he had raised.

The current EIR complaint concerns the RPA. As such, the Commissioner cannot consider matters associated with Natural England.

**Failure 16** – Complainant considers that RPA has based its decision (which the Commissioner understands to be the decision not to carry out its own HLS assessment of Bradgate Park) on no or little evidence.
The Commissioner considers this matter is a service matter that the complainant should progress as a service complaint with the RPA if he has not already.