

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 19 September 2023

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

#### **Decision (including any steps ordered)**

---

1. The complainant has requested all meeting notes, email and other correspondence between the Environment Agency (EA) and Elmbridge Council on the issue of illegally moored or overstaying boats along the River Thames. EA refused to comply with the request, citing regulation 12(4)(b) (manifestly unreasonable) of the EIR.
2. The Commissioner's decision is that EA has failed to persuade him that the requests were manifestly unreasonable. Additionally EA breached regulation 14 of the EIR by failing to issue its refusal notice within 20 working days and regulation 11 by failing to complete its internal review within 40 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the complainant that does not rely on regulation 12(4)(b) of the EIR.
4. The public authority must take these steps within 35 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 FOIA and may be dealt with as a contempt of court.

## **Request and response**

---

5. On 12 January 2023, the complainant wrote to EA and requested information in the following terms:

"We wish to see copies of all email and other correspondence between Sir James' [Bevan] Office, EA Thames Waterways Officers and Elmbridge Council Officers on the issue of illegally moored or overstaying boats along the River Thames (also known as unconsented or unauthorised mooring).

We also wish to see the dates of all face to face and remote meetings between EA Waterways officers and EBC Officers, together with agendas and notes of the meeting.

The timescale that we require for the above information is: From: 16<sup>th</sup> July 2021 To: the present time."

6. EA responded on 24 February 2023, providing advice on how the request could be structured to the best effect for the complainant to obtain the information they sought.
7. The complainant refined their request and wrote to EA on 7 March 2023 as follows:
- "As you requested, we have considered the scope of our request and as a result are able to reduce the time frame to end at 31 Oct 22 - so it now covers a period of only 15 months which does not seem to us to be excessive, especially as we find it difficult to accept that the quantity of material in those 15 months was particularly vast."
8. Following an internal review EA wrote to the complainant on 20 June 2023 and upheld its original position. EA apologised for its failure to comply with the time limits, caused by delays in their internal procedures to pass the request to the correct department.

## **Scope of the case**

---

9. The complainant contacted the Commissioner on 5 June 2023 to complain about the way their request for information had been handled. They believed that the estimate of time required to collate the information within the scope of the request was considerably less than

the 30 hours quoted. Additionally, the complainant had not, at that point, received an internal review response from EA.

10. Following correspondence from the Commissioner, EA responded to the complainant and provided an Internal Review on 20 June 2023 in which it upheld its original decision.
11. The Commissioner has therefore considered whether EA is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to provide the requested information.

## Reasons for decision

---

### Is the requested information environmental?

12. As the request is for information relating to the illegal moorings of boats on the waterways and specifically on the River Thames, the Commissioner agrees that the requested information is likely to be environmental as per regulation 2(1)(c) and 2(1)(d)<sup>1</sup> and therefore, EA was right to handle the request under the EIR.

### Regulation 12(4)(b)- Manifestly unreasonable requests

13. Regulation 12(4)(b) of the EIR provides that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
14. There is no definition of “manifestly unreasonable” under the EIR, but in the Commissioner’s opinion, manifestly unreasonable implies that a request should be obviously or clearly unreasonable. One such way a request could be manifestly unreasonable is if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable.
15. Regulation 12(4)(b)<sup>2</sup> of the EIR exists to protect public authorities from exposure to a disproportionate burden in terms of the amount of time and resources that they have to expend in responding to a request.

---

<sup>1</sup> <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/>

<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

16. Under section 12 of FOIA EA would be entitled to refuse any request that would involve more than 24 hours of staff time to comply.
17. There is no set limit beyond which a request becomes manifestly unreasonable. Whilst the FOIA cost limit provides a useful benchmark, the Commissioner would normally expect a public authority to incur a higher burden when dealing with a request for environmental information. The public authority should also take into account the resources at its disposal and the public value of the request before relying on this exception.
18. EA argued that to identify all information within the scope of the request for the reduced timeframe of 15/16 months, would require it to check emails, diaries, meeting notes and personal files and records of eleven officers excluding the Chief Executive Office for interactions with Elmbridge Borough Council (EBC) as there is no central location for the recorded information.
19. EA estimated that using the quickest method of key word searches on all computer systems to identify, check, redact confidential personal and enforcement material and collate the information would require 2.75 hours per officer (11). Therefore a minimum of 30 hours would be required to complete the task.
20. EA confirmed that all correspondence held by the Chief Executive is also held by Thames Area officers who were already included in the calculations. EA additionally assured the Commissioner that all relevant officers who could hold information had been identified due to the limited number of teams with designated officers within this work area.
21. However, EA stated that it did not conduct any sampling or scoping exercises. It has been unable to provide the Commissioner with an estimate of either the number of documents that fall within the scope of this request, or the amount of material that would need to be reviewed manually to decide whether it was or was not within scope. When pressed on this point, EA stated that its time estimate was based on the its past experiences of responding to "similar requests" within the Thames Area. However it has not provided the Commissioner with any details so he is unable to judge whether these requests would provide an appropriate point of comparison.
22. Without conducting some form of exercise to identify the number of potentially relevant documents within the scope of the request and without details of the volume of material that could be checked within 2.75 hours, the Commissioner can make no assessment of whether such a figure is robust, or even relevant. If the figure of 2.75 hours were reduced to 2.5 hours per officer, the overall burden would fall to just

27.5 hours – which is unlikely to be enough, on its own, to be manifestly unreasonable.

23. Given its relative size and available resources, even if the burden of dealing with the request were in the region of 27.5 hours, the Commissioner is not persuaded that any diversion of resources would have a considerable impact on EA's other functions.
24. EA has already confirmed that the information is not already in the public domain and it has not indicated any other information that would inform the public about the action it is taking. Whilst the information relates to a relatively small geographical area and its subject matter may only be of importance to a relatively small proportion of those living, working or visiting that area, that does not necessarily mean that it would not be of considerable importance to those people.
25. The Commissioner is disappointed that EA did not take the opportunity to provide the needed detail when invited to do so by the Commissioner.
26. In summary, EA has provided insufficient detail for the Commissioner to be persuaded that, in all the circumstances, complying with this request would incur a manifestly unreasonable burden and therefore the Commissioner's decision is that regulation 12(4)(b) is not engaged and EA must now issue a fresh response.

## **Procedural matters**

---

27. The Commissioner notes that the complainant submitted their request on 12 January 2023, however, EA did not respond until 24 February 2023. In that response EA did not cite an exception from the duty to provide information and it did not disclose any information. The duty to seek clarification of a request only applies where the public authority believes a request has been formulated in too general a manner..
28. Regulation 14 of the EIR requires a public authority wishing to withhold information to issue a refusal notice within 20 working days. EA failed to issue a refusal notice within 20 working days and consequently breached regulation 14 of the EIR.
29. Regulation 11(4) of the EIR requires a public authority to complete a reconsideration (internal review) of its response within 40 working days of being asked to do so. The public authority failed to inform the complainant of the outcome of its internal review within 40 working days and consequently breached regulation 14 of the EIR. The Commissioner notes that EA apologised for this.

## **Other Matters**

---

30. Had the Commissioner accepted that the request was manifestly unreasonable, it is likely that he would have found that EA breached its regulation 9 duty to provide advice and assistance.
31. Where a public authority claims that regulation 12(4)(b) is engaged on the basis of cost, it should provide the requester with advice and assistance where reasonable to help them refine the request so that it can be dealt with within the appropriate cost limit. This is in line with the duty under regulation 9(1) of the EIR.
32. When it first responded, EA asked the complainant to refine their request so that it would be less burdensome – but provided no guidance that would have helped the complainant to work out what a more reasonable request would be. Nor, when it provided its subsequent responses, did EA take the opportunity to explain how the burden of the request might be reduced.
33. Simply telling a requester to narrow their request or to "be more specific" is not providing advice and assistance. A public authority must explain how the request might be narrowed – such as by narrowing the time parameters, or restricting the number of officers whose email accounts must be searched – or it must state that, in the circumstances, there is no reasonable advice and assistance that can be offered.

## Right of appeal

---

34. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

35. 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.
36. 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 .....**

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