

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

Date: 15 August 2024

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

Decision (including any steps ordered)

1. The complainant has requested information relating to river dredging. The Environment Agency (“the public authority”) refused the request, citing regulation 12(4)(b) (manifestly unreasonable).
2. The Commissioner’s decision is that to comply with the request would place a grossly oppressive burden on the public authority and it was entitled to refuse it under regulation 12(4)(b).
3. The Commissioner does not require further steps.

Request and response

4. On 5 January 2024, the complainant wrote to the public authority and requested under the EIR:

“This is a formal request for any and all information and documentation (including correspondence) that you hold in connection with the subject matters listed in the numbered paragraphs below...

To be clear, where I mention cessation of river dredging that covers an immediate OR a gradual cessation over time AND OR a reduction by comparison in the amount of river dredging undertaken in England and Wales over at least the past 50 years.

I have viewed the link that follows below and confirm that my questions still stand as to the specifically mentioned and requested information, documentation and correspondence required <https://environmentagency.blog.gov.uk/2021/12/23/floods-and-dredging/>

The subject requests are:

(i) Please provide any and all information and documentation (including correspondence sent or received by whatever means to any body, including any government person or department at the time, authority, party or individual, including by email) that your authority holds, of whatever nature, about the cessation of dredging activity on all rivers in England and Wales at any time and the reasons given to support this decision.

(ii) Without prejudice to the generality of the above request, please provide any and all information and documentation (including correspondence sent or received by whatever means to any body, including any government person, MP, or department at the time, authority, party or individual, including by email) that your authority holds, of whatever nature, about any requests or decisions made by or to your authority to cease river dredging and the reasons for those requests.

(iii) Without prejudice to the generality of the above requests, please provide any and all information and documentation (including correspondence sent or received by whatever means to any body, including any government person, MP or department at the time, authority, party or individual, including by email) that your authority holds, of whatever nature, about any particular or average river level measurements that your authority holds for rivers in England and Wales for and over the twenty-five years prior to the cessation of river dredging in England and Wales and all years since the cessation of river dredging in England and Wales was sanctioned by your authority.

(iv) Without prejudice to the generality of the above requests, please provide any and all information and documentation (including correspondence sent or received, including by email) that your authority holds, of whatever nature, about any reservations or objections, or indeed concerns as to the probability of river flooding as a result of that cessation, or conversely, that your authority holds where there are records of no such worries as to flooding and the reasons for there being no such worries, that your authority or anyone within, contracted or employed by it may have had or made clear in connection with the cessation of river dredging in England and Wales at any time.

- (v) Without prejudice to the generality of the above requests, please provide any and all information and documentation concerning internal meeting notes and minutes that your authority holds, of whatever nature, about the cessation of river dredging in England and Wales at any time.”
5. The public authority responded on 30 January 2024. It refused the request under regulation 12(4)(b) and advised the complainant to refine their request to bring it within the cost limit. It estimated the time to comply with the request would exceed 1000 hours.
 6. On 3 February 2024, the complainant repeated their request of 5 January 2024, but refined it as follows:

“After consideration of your excuses, I am nevertheless prepared to revise my request as follows (but with the above reasoning in mind):

To be clear, where I mention cessation of river dredging that covers an immediate OR a gradual cessation over time AND OR a reduction by comparison in the amount of river dredging undertaken in England and Wales over at least the past 50 years...

I want to see all records that you hold (from whenever) where river dredging in England and Wales was discussed internally by you or by your predecessors or externally with any individual/s, party, authority or body (“anyone”) with a view to its reduction or cessation and the reasons for that decision. Within that request, I want to see all objections to the reduction or cessation of river dredging that you (or your predecessors) received. From anyone.”
 7. On 25 February 2024, the public authority responded and refused the request again under regulation 12(4)(b). It estimated the time to comply with the request would exceed 500 hours.
 8. The complainant requested an internal review on the same day.
 9. On 24 April 2024 the public authority provided the outcome to its internal review. It upheld its previous position.

Scope of the case

10. The complainant contacted the Commissioner on 28 April 2024 to complain about the way their request for information had been handled.
11. The Commissioner considers the scope of his investigation is to determine whether the public authority was correct to refuse the request under regulation 12(4)(b).

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

12. Regulation 12(4)(b) of the EIR states:

'A public authority may refuse to disclose information to the extent that

- (b) the request for information is manifestly unreasonable;'

13. The Commissioner considers that a request can be manifestly unreasonable for two reasons: firstly, if the request is vexatious and secondly where compliance with the request would place an unreasonable burden on the public authority both in terms of costs and the diversion of resources.

14. The public authority is relying on the latter theme of 12(4)(b). There is a high burden on public authorities to demonstrate to the Commissioner that regulation 12(4)(b) is engaged. The Commissioner expects a public authority to provide both a detailed explanation and quantifiable evidence to justify the cost of complying with a request both in monetary terms and resourcing; this is usually based on a sampling exercise.

15. The EIR do not provide a definition of what constitutes an unreasonable cost. This is in contrast to FOIA under which a public authority can refuse to comply with a request if it estimates that doing so would exceed the 'appropriate limit'. This appropriate limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations') as £600 for central government departments and £450 for all other public authorities.

16. Although the Regulations are not directly applicable to the EIR, in the Commissioner's view they can provide a useful point of reference for a public authority that is considering the application of 12(4)(b).

17. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:

- Determining whether the information is held;
- Locating the information, or a document which may contain the information;
- Retrieving the information, or a document which may contain the information; and
- Extracting the information from a document containing it.

18. Unlike FOIA, when considering the application of regulation 12(4)(b), public authority can also take into account the time and cost of considering any exemptions that might apply to any information identified as within scope.
19. The public authority has explained:
- “the scope of this request is exceedingly broad and expansive...the complainant asks for information ‘from whenever’ which is both broad and unclear, the Complainant also asks for the information held by ‘[...] you or your predecessors’. In order for us to comply with this request, we would have to consider the following:
- Information held by the Environment Agency (founded 1996 – present day)
 - Information held by the Environment Agency in respect of our predecessor, the National Rivers Authority (active 1989 – 1996)
 - Information held by the Environment Agency in respect of our predecessor, the Regional Water Authority (commonly known as the Water Board) (active 1974 – 1989)
- Therefore, information held by ‘[...] you or your predecessors’ spans from 1974 – 2024, which is 50 years.”
20. Again, the complainant is asking for all information held on the cessation of river dredging. The Commissioner understands that the public authority is split into 14 regional operational areas. There is no central system on which all information about river dredging would be held; each operational area holds its own relevant data and information and so would need to be contacted separately.
21. The public authority has provided a sampling exercise, in support of its application of regulation 12(4)(b), which shows how long the activities outlined in paragraph 17 would take for the last year for one area of the business. This sampling exercise is outlined in an annex to this notice.
22. The public authority has concluded that:
- “From the above example considering only one area for one year’s worth of information, this would take 49.5 hrs at a cost of £1238.00.
- In order to calculate how long it would take a single area to comply with the request, we must multiply this by 50 (for 50 years). This would be 2,475 hours.
- The Environment Agency is made up of 14 Regional Area Teams. Therefore, comply with the request for ‘river dredging information’ for

all of England, we must multiply 2,475 hours by 14. This would be **34,650 hours.**

The Regulations allow a public authority to charge the activities described above at a flat rate of £25 per hour of staff time. Therefore, the total cost of the Complainant's request would be **£866,250.**"

23. At a glance, this seems like an extraordinary amount of time. However, the Commissioner has reminded himself that the complainant has specified that they wish to receive information held by the public authority and its predecessors. The public authority has explained:

"The team estimates that with the request spanning EA and 'your predecessors', thus dating back to 1974, there is the potential that much of the information in scope would be paper-based records held at off-site storage facilities, such as Iron Mountain. Prior to the popularisation of email in the 1990's, the team estimates that any dredging information held from our predecessors would be largely paper-based, and consequently would most likely be either in an off-site storage facility or an office."

24. The public authority acknowledges that, when it comes to actually performing the searches relevant to this request, certain efficiencies might be made, for example, information within scope for recent years will all involve electronic information, rather than physical documents. However, due to the sheer length of time that the request covers, these efficiencies would be minimal.
25. Sometimes it will be obvious when a request will pose a grossly oppressive burden. However, a public authority should still provide an explanation to the requestor as to what this work entails as doing so will help them contextualise the estimate given. In this case, the Commissioner notes that the estimate given at refusal and review stage is actually less than the sampling exercise indicates.
26. The request isn't without serious purpose or value. But the figure presented by the public authority is credible and so grossly exceeds the guide laid out by the regulations, to the extent that it would be difficult to characterise compliance with the request as anything but disproportionate or unjustified. Nevertheless, the Commissioner has gone on to consider the balance of the public interest test.

Public interest test

Factors in favour of disclosure

27. The public authority has identified:

- The presumption in favour of disclosure under the EIR;
- The general principles of being open and transparent;
- Disclosure would allow the public to be better informed/able to contribute in relation to river dredging, its impact and effect on localised flooding, and how both are dealt with.

Factors in favour of maintaining the exemption

28. The public authority is concerned:

“There would be an adverse effect on our ability to carry out effective and efficient flood and coastal risk management work that would result from the deployment of resources to respond to all aspects of this request. Not only would our National Flood and Coastal Risk Management Team be impacted, but our regional Customer and Engagement staff who would be required to co-ordinate this enormous request in each or the 14 regional areas, which makes the exception relied upon particularly strong in this instance.”

29. The Commissioner agrees. There’s a strong public interest in protecting public authorities from having to deal with manifestly unreasonable requests and not detracting from its core functions.

Balance of the public interest

30. In this instance, the Commissioner has decided that the balance of the public interest lies in maintaining regulation 12(4)(b).

31. The public authority has already directed the complainant to ‘published online resources about floods and dredging, explaining the Environment Agency’s approach.’ If the complainant has a specific concern about a specific river, or a specific concern about river dredging, the Commissioner has no doubt that the public authority would do its best to address this concern.

32. However, the request is broad, and the grossly oppressive burden of complying with it is only compounded by the complainant’s refusal to meaningfully narrow their request, or engage with the public authority’s offer of advice and assistance.

33. Whilst not without meaningful purpose, to comply with the request would impose a clear, grossly oppressive burden, which isn’t

proportionate. The public authority was correct to refuse to comply with the request under regulation 12(4)(b).

Regulation 9 – advice and assistance

34. Regulation 9(1) requires a public authority to consider what advice and assistance it can reasonably provide to an applicant in cases where it relies on regulation 12(4)(b) of the EIR on the basis of burden. Even if this is simply to confirm to the complainant in a given case that no reasonable or practicable advice and assistance can be provided.
35. Regulation 9(3) says a public authority will have complied with its duties to provide advice and assistance if it conformed to a Code of Practice issued under regulation 16. The Code provides the following examples as to what 'advice and assistance' might look like:
 - If available, providing access to catalogues and indexes with the aim of helping requestors verify the nature and extent of the information you hold.
 - Broadly responding to the request while giving options for further information that could be provided on request.
36. In this case, the public authority provided background information to the complainant about dredging, including definitions, in the hope that this would help the complainant to refine their request. The public authority also provided links to published information on the subject of dredging, which it hoped would further inform and assist the complainant.
37. The Commissioner is satisfied that the public authority complied with its regulation 9 obligations.

Right of appeal

38. 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

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

Searching activity	Activity description	Time for each activity (hours)	Total Time (hours)	Total cost (based on £25 per hour in accordance with Regulations)
1) Determining whether the information is held	Contacting the area team to confirm if we hold this information. This could be achieved by a phone call conversation with the area Director.	0.5	0.5	£13
2) Locating the information, or a document which may contain the information	Looking for all meeting minutes where dredging was the subject or mentioned	2	17	£425
	Looking for all emails relating to dredging. This would involve asking multiple colleagues to go through their inbox for the past year	10		
	Looking for briefings where dredging was the subject or mentioned	2		
	Looking for parliamentary questions where dredging was mentioned	1		
	Looking for Requests for Information mentioning dredging	1		
	Looking for general enquiries mentioning dredging	1		
3) Retrieving the information, or a document which may contain the information	Retrieving paper documents that are stored in Iron Mountain or in various office buildings	10	12	£300
	If information is in digital format, then the time retrieving them will mostly be covered by the time taken to locate the document, and so this time estimate just considers the time taken to forward the located documents	2		
4) Extracting the information from a document containing it.	Redacting personal details from correspondence related to dredging	10	20	£500
	Extracting dredging information from documents where dredging was mentioned	10		
			49.5hours	£1238