

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

**Date:** 29 October 2024

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

**Decision (including any steps ordered)**

---

1. The complainant requested information about riverbank restoration work. The Environment Agency ('EA') initially relied on regulation 12(4)(b) of the EIR (manifestly unreasonable) to refuse the whole request but later disclosed some of the requested information and only relied on regulation 12(4)(b) of the EIR to refuse point seven of the request.
2. The Commissioner's decision is that EA was entitled to relying on regulation 12(4)(b) to refuse point seven of the request. The Commissioner also finds that EA complied with its duty to provide advice and assistance under regulation 9 of the EIR. However, EA breached regulations 5, 14 and 11 of the EIR by failing to provide a response, a relevant refusal notice and a reconsideration within the required timescales.
3. The Commissioner does not require further steps.

## Request and response

---

4. On 13 March 2023, the complainant wrote to EA and requested information in the following terms<sup>1</sup>:

"I wish to make the following request under the Environmental Information Regulations 2004 and the Freedom of Information Act 2000 for the following information and associated documentation:

- Names and details of any approved and proposed Projects to restore the natural hydrology of the Rivers Eden, Derwent, Kent in The Lake District known as Stage Zero Restorations.[1]
- Information on any approved or proposed projects to restore the direction and banks of The Little Ouse, Rivers in Norfolk/Suffolk. [2]
- Details (including the area) of any work carried out to restore the direction and banks of The Little Ouse Rivers.[3]
- Names and brief details of Stage Zero Restorations carried out by the Environment Agency and its partners since 2009 on any other rivers in England. [4]
- Names of other government bodies and organisations involved in Stage Zero Restorations elsewhere in England [5]
- Copy of the Landscape Recovery Pilot Scheme to effect Stage Zero Restorations elsewhere in Norfolk and Suffolk [6]
- Correspondences and documentation between the Environment Agency and:
  - [NAME REDACTED]
  - Norfolk Rivers Trust
  - Breckland Farmer Wildlife Network
  - [NAME REDACTED] of the National Trust. [7]"

---

<sup>1</sup> Numbering added by the Commissioner for ease of reference.

5. EA wrote to the complainant on 1 June 2023 to request clarification and advise that the scope of the request was too broad.
6. On 3 July 2023, the complainant clarified that their request related to:

“The restoration and remediation and direction of the river banks in Norfolk and Suffolk. I am referring to Environmental improvement, remediation or restoration as a result of illegal activity or redirection and modification of existing rivers by the EA.”
7. On 10 August 2023, EA wrote to the complainant again and advised that the scope of the request was still too broad. It advised the complainant to further refine their request by time period or to a specific geographical area.
8. On 16 August 2023, the complainant asked for the timeframe of their request to be narrowed to 2022.
9. EA replied on 29 September 2023 and advised that the scope of the request was still too broad.
10. The complainant wrote to EA on 13 October 2023 to request a review of its response.
11. EA wrote to the complainant again on 25 January 2024 and advised that the scope of the request was still too broad. It estimated that it would take 57 hours to comply with the request and that regulation 12(4)(b) of the EIR (manifestly unreasonable) applied.
12. The complainant repeated their request for an internal review on 5 February 2024.
13. Following an internal review, EA wrote to the complainant on 22 April 2024. It acknowledged that it could have explained its reliance on regulation 12(4)(b) more clearly, but it upheld its position.

### **Scope of the case**

---

14. The complainant contacted the Commissioner on 3 June 2024 to complain about the way their request for information had been handled.
15. When providing its submission to the Commissioner, EA stated that it had reviewed its handling of the request, and could now disclose some of the requested information. It provided a revised response to the complainant on 17 September 2024, disclosing some of the requested information, and stated that it was still relying on regulation 12(4)(b) of the EIR to refuse point seven of the request.

16. EA clarified to the Commissioner that although it had provided a response to point two of the request concerning the Little Ouse River, it had also provided a time estimate in the event that the complainant had meant all rivers in Norfolk and Suffolk. Having revisited the request and subsequent clarification, EA considered that it had provided a response to this point and confirmed it no longer considered this part of the request as manifestly unreasonable.
17. The Commissioner therefore considers the scope of his investigation is to determine whether EA was entitled to rely on regulation 12(4)(b) to refuse point seven of the request. He'll also consider EA's obligation under regulation 9 of the EIR, which concerns advice and assistance.

## **Reasons for decision**

---

### **Is the requested information environmental?**

18. Regulation 2(1) of the EIR defines environmental information as being information on:
  - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
  - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
  - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
  - (d) reports on the implementation of environmental legislation;
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be

affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

19. As the request is for information relating to river bank restoration measures, the Commissioner agrees that the requested information is likely to be environmental as per regulations 2(1)(a) and 2(1)(c) and therefore, EA was correct to handle the request under the EIR.

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

20. Regulation 12(4)(b)<sup>1</sup> of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable.
21. 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.
22. Regulation 12(4)(b) 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.
23. Under section 12 of FOIA, EA would be entitled to refuse any request that would involve more than 18 hours of staff time to comply.
24. 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.
25. For point seven, EA has explained that the requested information is held by 21 different teams and over 200 mailboxes would need to be searched to identify all information in scope for this part of the request. EA estimated that it would take 628 hours to fulfil point seven of the request.
26. EA explained that complying with point seven of the request would impact a significant number of teams and individuals and would require whole teams in a single geographic area being diverted from their core environmental work and regulatory duty. It considers that this further

strengthens its position that the request would be highly burdensome to the responding teams.

27. EA explained that it does not have the relevant software or IT function to scan all servers and mailboxes. Therefore, locating any correspondence and documentation would have to be completed and duplicated on an individual level. It added that it is commonplace for EA staff to correspond from both a team mailbox and their own individual mailboxes if a project relates to them directly. Therefore, during searches EA would be required to not only search the team allocated mailboxes but also the individual mailboxes within those teams.
28. EA explained that some of the requested information could be held in paper files. EA has contracted off-site storage and each EA office building also has its own document storage facility which still holds paper documents. EA explained that there are five key office buildings identified which may contain documentation within scope of point seven.
29. EA estimated that each of the 21 teams would need to do at least 29 hours of work in responding to point seven.
30. EA estimates that it would take 628 hours and an estimated cost of £15,700 when using the average figure of £25 per hour equivalent flat-rate cost of staff time.
31. EA explained that there are a vast number of search terms which could relate to correspondence or documentation between EA and the list specified in the request. For example, when searching for 'Norfolk Rivers Trust', EA might search using any of the following terms: Norfolk Rivers Trust, NRT, NRT Staff members (if known), names or codes of projects – could be any number of projects, past or present. EA considers that this shows how the 10 minute average allocated for each search subject is very approximate and at the very lower end of the potential scale.
32. EA confirmed that it had carried out sampling exercises with two of its teams that looked at correspondence with Norfolk River Trust. The first exercise looked a search terms connected to a specific project concerning riverbank restoration. The first sample exercise took 35 minutes and returned 322 emails across three mailboxes. EA explained that the sample covered just three of the 221 individual or group mailboxes scoped for the geographical location of Norfolk and Suffolk. It added that the sample exercise covered just one project search term and that other teams will know of or be involved in many further projects.
33. For the second sampling exercise, EA looked at the searches that would be required by one of its area teams for correspondence between EA

and Norfolk River Trust. The search involved two shared mailboxes and 11 individual email accounts. EA found that the search returned 1355 items and took 265 mins across 13 mailboxes. EA explained that this averages 21 minutes per mailbox which is significantly higher than the 10 minutes it previously assumed in its scoping.

34. In describing the burden of the request, EA stated:

“To comply with the request would be an unreasonable burden and would require a disproportionate effort to many small teams across the Norfolk and Suffolk area. The resource it would involve in locating, retrieving, collating and redacting the information as described in the scoping and factors above would make this request substantially burdensome, interrupting and stopping the work of not only a single responding team, but also the East Anglia area teams. The work involved in collating the information would substantially burden the Environment Agency and interrupt the normal activities and responsibilities of many staff.”

35. The Commissioner is satisfied that the estimated time required to fulfil point seven of the request clearly exceeds the equivalent FOIA time limit. While some of the estimates appear generous, he notes that even if these were halved or quartered, the time would still far exceed the equivalent FOIA time limit. The Commissioner notes the EA's arguments about the number of teams that would need to be involved in complying with point seven. He also considers that while the request has value, it does not justify such a diversion of resource from EA's usual functions and duties. His decision is therefore that regulation 12(4)(b) is engaged. He will now carry out the public interest test required by regulation 12(1) of the EIR.

## **Public interest test**

### **Factors in favour of disclosure**

36. EA has acknowledged that there is a general presumption in favour of disclosure of environmental information and it confirmed that it has taken account of this when considering application of the exception. It has stated that it only withholds information where it considers that disclosure would cause substantial harm.
37. EA also considers that there is a high level of public participation in the debate of riverbank restoration, including understanding of EA's approach to the matter and its decision-making process, as well as the general public debate surrounding riverbank restoration.

38. EA has also acknowledged that there is a public interest in being able to question whether the most appropriate decisions are being taken in the public sector in relation to riverbank restoration and its impact and effect on local ecosystems.

### **Factors in favour of maintaining the exception**

39. EA considers that there would be an adverse effect on its 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. It has argued that not only would its National Flood and Coastal Risk Management Team be impacted, but also its regional Customer and Engagement staff who would be required to locate, gather and redact the requested information.
40. EA has explained that it needs to deploy its resources in the most effective manner and it is not able to spend large amounts of time and effort on finding, collating and supplying the information in this case. It considers doing so would be disproportionate to any benefit to the world at large in providing the information.
41. EA added that it has now disclosed some of the requested information to the complainant for the other parts of the request and this can be seen to further reduce the public interest to providing the information for point two and seven of the request.

### **Balance of the public interest**

42. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.
43. The Commissioner acknowledges that there is a public interest in EA's work around flood management and riverbank restoration, and he notes that the complainant in this case also has a particular private interest in the requested information. However, he agrees that the significant amount of work required to comply with the request in full would be unreasonable and divert resources across a number of teams within EA. There is a greater public interest in shielding finite public resources from manifestly unreasonable requests.
44. Whilst the Commissioner has been informed by the presumption in favour of disclosure, he is satisfied that, for the reasons given above, the exception has been applied correctly.



## **Procedural matters**

---

### **Regulation 9 – advice and assistance**

45. 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.
46. The Commissioner notes that EA tried to offer suggestions on how the request could be refined to narrow its scope and this led the complainant to clarify and refine their request. In its submission to the Commissioner, EA acknowledges that it could have explained more clearly why it considered the scope to be too broad and provided the complaint with time estimates. It attempted to rectify this in its internal review response, and in its later revised response to the complainant.
47. The Commissioner finds that EA complied with its regulation 9 obligations. However, he agrees that further explanation to the complainant would have perhaps enabled them to refine point seven of their request.

### **Regulation 5 – duty to provide environmental information**

#### **Regulation 14 – issuing a valid refusal notice**

48. Regulation 5(1) of the EIR requires authorities to provide environmental information on request.
49. Regulation 5(2) requires authorities to provide environmental information no later than 20 working days after the date a request has been received.
50. Regulation 14 of the EIR requires a public authority wishing to withhold information to issue a refusal notice within 20 working days.
51. In this case, the complainant submitted their original request on 13 March 2023. EA requested clarification on 1 June 2034, and provided advice that the request was too broad on 10 August 2023. The complainant refined their request on 3 July 2023 and 16 August 2023 respectively. EA replied to the request of 16 August 2023 on 29 September 2023, refusing the request as too broad, but failing to advise that it was applying regulation 12(4)(b) of the EIR. EA replied again on 25 January 2024 and issued its regulation 12(4)(b) refusal notice. It did not provide any environmental information until September 2024.

52. The Commissioner finds, therefore, that EA breached regulations 5(2) and 14 in this case.

**Regulation 11 – reconsideration**

53. Regulation 11 of the EIR sets out public authorities' responsibilities in relation to the carrying out of internal reviews of the handling of requests.
54. Regulation 11(4) of the EIR confirms that authorities should provide an internal review response no later than 40 working days after the date of receipt of a review request.
55. The complainant first wrote to EA to request a review on 13 October 2023 and EA did respond at all until 25 January 2024. The complainant repeated their request for an internal review on 5 February 2024. EA provided its review response on 22 April 2024.
56. As EA's review response was issued outside the 40 working day timeframe, the Commissioner has concluded that it failed to comply with regulation 11(4) in this case.

## Right of appeal

---

57. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

58. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
59. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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