

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

Decision notice

Date: 20 December 2018

Public Authority: Ordnance Survey Ltd
Address: Adanac Drive
Southampton
O16 0AS

Decision (including any steps ordered)

1. The complainant requested information regarding the mapping of his local area.
2. The Commissioner's decision is that Ordnance Survey ("OS") should have dealt with the request under the EIR, but that the request is also manifestly unreasonable. OS was therefore entitled to rely on Regulation 12(4)(b) of the EIR to refuse the request.
3. The Commissioner does not require any further steps to be taken in respect of this request.

Background

4. The complainant and OS have been engaged in a long-running dispute over the way that OS has mapped land in the complainant's immediate local area and, in particular, immediately behind his house.

Request and response

5. On 28 August 2018, the complainant wrote to OS and made a request in multiple parts. The various elements of the request referenced numerous other documents, but in summary, each element asked OS to explain the significance of some particular aspect of its mapping of his

area or asked OS to explain a discrepancy between one or more historical documents.

6. OS responded on 5 September 2018. It refused the request as vexatious citing Section 14(1) of the FOIA.
7. The complainant sought an internal review on 5 October 2018. OS informed him of the outcome of its review on 31 October 2018 – it upheld its original decision.

Scope of the case

8. The complainant contacted the Commissioner on 3 November 2018 to complain about the way his request for information had been handled.
9. Ordnance Survey is a private company which is wholly owned by the Department for Business, Energy & Industrial Strategy. It is therefore a public authority as defined by Section 3(1) of FOIA – and hence Regulation 2(2) of the EIR.¹
10. At the outset of the investigation and in its submissions to the Commissioner, OS has stated that it does not consider the requested information to be environmental. It has also queried the validity of the request. The Commissioner will therefore consider these points as part of the decision notice.
11. The Commissioner considers that the scope of her investigation is to determine:
 - a. which information access regime the request should have been dealt with under and;
 - b. whether the request was valid under that regime and, if so;
 - c. whether the request was vexatious.

Reasons for decision

¹ Regulation 2(2)(b) of the EIR states that an organisation will be a public authority for the purposes of the EIR if it is a public authority for the purposes of FOIA. Therefore OS will be a public authority regardless of the information access regime used.

Is the requested information environmental?

12. 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;*

OS' position

13. OS has argued that its maps, by themselves, are not environmental information.

14. In its submission to the Commissioner, OS stated that whilst the information in its maps might contain information *on* the elements of the environment, they do not contain information on the *state* of the elements of the environment.

"For example, an OS map will show the position of a river, but will not show whether the river is polluted or not. OS therefore is of the view that 'location' is not the same as 'state' nor is 'location' within the compass of the word 'state'."

15. The OS pointed to the various and considered objections it made during the drafting of the EIR Code of Practice to the inclusion of maps under EIR and its own external guidance – all of which cited the position above. As this position has never been challenged, OS claimed that this pointed to a "general acceptance" that its interpretation was correct – that "state" and "location" were different.

"By way of illustration, if one heard that a friend, Mr X, had been in an accident, and asked what 'state' Mr X was in, one would not expect to be told in reply 'Mr X is in London'; instead, one would be

expecting to hear if his injuries were serious, if he was conscious or unconscious, had broken any bones etc."

16. OS further cited the decision in *DBEIS v Information Commissioner & Henney* [2017] EWCA Civ 844, which cautioned against an over-broad interpretation of the EIR. The judgement in *Henney*, stated that environmental information "must fall within one or more of the...categories set out in that provision."
17. There was not, OS argued, *"any support for extending the definition of environmental information beyond the ordinary and natural meaning of the words."*
18. OS noted a lack of relevant case law in relation to its mapping but also stated that the fact that many more requestors, when requesting information, cited the FOIA, rather than the EIR, further indicated a "general acceptance" of its position.

The Commissioner's position

19. The Commissioner's view is that OS has adopted an overly-narrow interpretation of the definition of the EIR and that the requested information would be environmental.
20. The Commissioner accepts that the wording of Regulation 2(1)(a) requires information to be on the "state of the elements of the environment" but she does not accept that OS' maps do not contain information on the state of the elements of the environment.
21. The Oxford English Dictionary defines "state" in this context as being:

"The particular condition that someone or something is in at a specific time."
22. It seems plain to the Commissioner that a map will provide information on "the particular condition" of the landscape "at a specific time" – ie. the time that the map was published. Whilst OS attempts to keep its maps as accurate and up to date as it possible, inevitably each of its maps is essentially a diagrammatic snapshot of the mapped area at that specific moment in time.
23. OS has quoted an example of a river (although the example would hold for other water features). OS accepts that its maps would show the geographical location of the river, but argues that this is not information on the "state" of the river, such as whether the river was polluted or not. Leaving aside the question of why Regulation 2(1)(b) ("factors" affecting the elements of the environment) would exist if such factors (such as pollution) were already covered by the "state" of the elements,

the Commissioner is not convinced that a map would not describe the "state" of the river.

24. A map would not just show the crude geographical location of a river. It would also show its width, features of the river (such as sandbanks or a delta) and, by also displaying the land contours, show how the river had interacted with the landscape over time.
25. OS' maps also show areas of woodland and whether those areas are primarily made up of deciduous or coniferous trees. The Commissioner would consider this to be information on the "state" of the woodland.
26. In addition both rivers and woodland are both features of the broader landscape – along with urban areas. All may expand, diminish or even disappear over time. Therefore, where such features are (or are not) at any given moment in time is information on the "particular condition" of the landscape. It follows logically that such information would be on the "state" of the landscape.
27. Finally and, perhaps most importantly for this particular case, the Commissioner considers that OS' maps would show the "state" of land boundaries – in that it would indicate where and how those boundaries were marked on the landscape (such as via a ditch or line of trees).
28. Even if the Commissioner is wrong on this particular point, she also notes she has previously determined (and the First Tier Tribunal has agreed) that information (including maps – albeit not OS maps) on Rights of Way to be information on "measures" affecting the elements of the environment.² As OS' maps also show the location of Rights of Way, it would follow that such maps would be environmental information under Regulation 2(1)(c).
29. The Commissioner therefore considers that any recorded information within the scope of the request would be environmental and thus the EIR was the correct regime to consider the request under.

Was the request valid?

30. There is no set definition, under the EIR, as to what constitutes a valid request. The Commissioner's guidance states that:

² See for example:

[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1590/Tilly,%20Dennis%20EA.2014.0314%20\(10.07.2015\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1590/Tilly,%20Dennis%20EA.2014.0314%20(10.07.2015).pdf)

*"A request does not have to specify or describe the information. Any clear sign that someone wants some environmental information is likely to count as a request under the Regulations, even if you can't tell exactly what information they want."*³

31. The Commissioner notes that many of the complainant's questions were prefaced with "please explain why....." and it would appear that he is, in many cases, seeking an explanation or justification for policy decisions. However, the Commissioner still believes that it would not be an unreasonable assumption, on behalf of a person requesting such information, that OS may hold some information, in recorded form, which would address the questions asked. Indeed OS has previously provided some of the recorded information which they hold.
32. The Commissioner therefore considers that the request was one which is valid under the EIR.

Was the request Manifestly Unreasonable?

33. Regulation 5(1) states that: "a public authority that holds environmental information shall make it available on request."
34. Regulation 12(4)(b) of the EIR provides an exception from disclosure if the request is Manifestly Unreasonable and the public interest favours maintaining the exception.
35. Following the lead of the Upper Tribunal in *Craven v Information Commissioner & DECC* [2012] UKUT 442 (AAC), the Commissioner considers that there is, in practice, no difference between a request that is vexatious under the FOIA and one which is Manifestly Unreasonable under the EIR – save that the public authority must also consider the balance of public interest when refusing a request under the EIR. The analysis that follows looks at vexatiousness as, if the request is found to be vexatious, then it will also be Manifestly Unreasonable and hence Regulation 12(4)(b) will be engaged.
36. The term "vexatious" is not defined within the FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that "vexatious" could be defined as the "*manifestly unjustified*,

³ <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations/receiving-a-request/#what-should-we-do-when-we-receive-a-request-for-environmental-information-1>

inappropriate or improper use of a formal procedure". The Upper Tribunal's approach in this case was subsequently upheld in the Court of Appeal.

37. The *Dransfield* definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
38. *Dransfield* also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: *"...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests."* (paragraph 45).
39. The Commissioner has published guidance on dealing with vexatious requests, which includes a number of indicators that may apply in the case of a vexatious request.⁴ However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
40. When considering the question of vexatiousness, a public authority can consider the context of the request and the history of its relationship with the requestor, as the guidance explains: *"The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request."*

⁴ <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

The complainant's position

41. The complainant's view is that the OS maps do not correctly display the boundaries behind his house. It is not necessary to enter into a detailed explanation of reasons, but in summary the complainant believes that the maps shows a boundary behind his house where none exists on the ground and woodland on land that is cultivated.
42. The complainant has further explained to the Commissioner that these "errors" in the mapping have led to his land being designated as part of a Site of Special Scientific Interest (SSSI) and members of the public mistakenly believing they have access across his land. Other public authorities have, the complainant argues, compounded the error by using the "erroneous" maps as the basis for decisions.
43. The complainant has undertaken a considerable amount of local historical research at his own expense to chart the evolution and expansion of the settlement in his local area from around 1813 onwards.
44. The Commissioner understands the complainant's position to be that the requested information is necessary for him to "prove" that the OS maps are incorrect and should be revised.

OS' position

45. Naturally, OS disputes the complainant's characterisation of its maps. It has stated to the Commissioner that the maps of the complainant's property reflect the visible features of the land in line with its national policy on mapping.
46. OS went on to explain to the Commissioner that it has been involved in a grievance with this particular complainant since at least 2003 (although it believes it may have been in correspondence with him as far back as 1998). It has provided, to the Commissioner, five ring binders' worth of correspondence to and from the complainant covering the period from 2007 to the present and notes that its files contain some 108 letters from the complainant.
47. OS confirmed to the Commissioner that, in both 2004 and 2007, it sent surveyors to the complainant's property to survey the land and to make recommendations as to any alterations which might be necessary. Whilst the visits did result in some changes being made to the mapping, these were not the changes that the complainant felt were necessary.
48. Despite this engagement, the complainant continued to contest the accuracy of the maps of his area. This resulted in correspondence with OS both directly, via the complainant's MP, via the Department for

Communities & Local Government and even via the Prime Minister's Office.

49. In late 2013, possibly as a result of OS informing him that it would no longer consider his complaints, the complainant began to turn his focus to making information requests to OS.
50. The requests typically focused on either surveys that OS had historically carried out or attempting to elicit explanations as to discrepancies between historical documents. Between 2013 and 2018, OS logged 33 separate requests – although many of these requests overlapped each other and all were connected to the central hypothesis that the OS maps were wrong.
51. In its submission to the Commission, OS noted that:

"when a new request is received from the complainant, OS has to review the content of the letter and its enclosures, review the history of the complainant's requests to determine if any new points are raised and whether OS has any new information to provide. Each new request takes a considerable amount of OS resources from around the business, in particular the FOI Officer, legal team and mapping consultants. OS would estimate a minimum of 3-4 hours is spent per request, only to ascertain that there is no new information to provide.

"The fact that this matter has been on-going for at least 15 years demonstrates that the complainant has persistently pursued the matter despite full explanations from OS and refuses to accept that OS has provided as much information and assistance as it is able. This to us clearly appears to indicate obsessive behaviour by the complainant on this particular subject matter.

"It is apparent that the complainant will continue to pursue the matter and, as such, in the event that OS continues to respond to such requests, the drain on resources will continue to impact OS's core business functions, to no apparent purpose; therefore, it is not considered reasonable for OS to continue to comply with such requests.

52. OS went on to explain that it considered that the value of such requests was disproportionately outweighed by the time and effort required to answer them. It noted that the requests related only to the immediate vicinity of the complainant's house and therefore there would be little wider public interest in the issue. On the flip side, OS felt that, having to comment on documents which were often over 50 years old, was a distraction from its core function of keeping its current maps up to date.

53. Finally, OS noted that much of the information which the complainant had requested in this particular request, he had either been provided with or been informed that OS did not hold such information. OS argued that this further reduced the value of the complainant's request.

The Commissioner's view

54. The Commissioner's view is that the request, when considered in context, was vexatious.
55. Having viewed a considerable amount of correspondence between the parties, the Commissioner has noted that the correspondence appears to have been characterised by good faith and courteousness on both sides. Whilst the tone of the complainant's correspondence has, perhaps understandably, become more frustrated over the course of the years, his tone remains measured.
56. The Commissioner has also seen no substantial evidence to suggest that the complainant has deliberately targeted any particular individual at OS in his correspondence. Although she considers that the complainant's correspondence would have caused a considerable burden on the relatively few individuals who would have been required to coordinate the response, the complainant's correspondence has been aimed at OS as a corporate body.
57. Also, with the exception of his central thesis of OS' maps being "flawed", the complainant does not appear to have made allegations of cover-ups, conspiracies or other illegal behaviour on the part of OS.
58. Despite this, the Commissioner is mindful of the ongoing burden, on OS, of dealing with the complaint's continuing requests and correspondence. OS has demonstrated that this correspondence is considerable and that it shows no immediate sign of abating.
59. OS is not a large public authority and the burden of dealing with the information requests is likely to be falling on a very small number of people. The time spent on dealing with these requests (which mostly relate to historical matters where, even if the complainant were right, would have no bearing on the situation today) is, in the Commissioner's view, an unacceptable distraction from OS' core role in maintaining maps which reflect, as accurately as possible, the current situation on the ground.
60. The Commissioner's view is that the complainant is using information requests as a means of pursuing a broader grievance with OS. This is an inappropriate and improper use of the EIR procedure.

61. The complainant started out with a genuine grievance. Both parties appear to have taken reasonable steps in 2007 to resolve the grievance amicably. OS clearly felt that it could not resolve the grievance in a manner which would satisfy both the complainant and its own internal policies. It is not for the Commissioner to determine whether that process was fair to the complainant – but it is reasonable for her to consider, some ten years later, what value a further information request would add to that process.
62. The fact that the information requested is either information that OS has already stated it does not hold (although the Commissioner is making no finding here as to what it might hold) or provided to the complainant, further reduces the value of this particular request. The complainant's requests are both frequent and overlapping – adding to the burden on OS, which must establish what information has already been provided before responding to the request.
63. Ultimately the Commissioner is therefore left to conclude that what might have originally been a legitimate grievance has now become an obsession on behalf of the complainant. She considers it unlikely, even if OS were to respond to the request, that this would bring matters to a conclusion and it is therefore time that, from an information request perspective, a line is drawn.
64. She therefore finds that the request is vexatious and thus the exception at Regulation 12(4)(b) is engaged.

Public Interest Test

65. Where the exception at Regulation 12(4)(b) is engaged, Regulation 12(1)(b) of the EIR requires consideration of the balance of public interest in maintaining the exception.
66. The Commissioner considers that there is always an inherent value in organisations which spend public money being open, transparent and accountable for the way in which that money is spent. Therefore there should always be significant public interest reasons for withholding information.
67. OS has recognised that disclosure of information under EIR would help to inform the public of the work that it carries out.
68. However, weighed against that is the strong public interest in protecting public authorities from an ongoing burden of answering continuous requests on the same topic where previous requests have failed to resolve matters. Especially when those requests resolve around a core grievance which either cannot be resolved or has been looked at exhaustively.

69. Finally OS has already noted that this issue relates to a very small area of land which is largely owned by the complainant.
70. The Commissioner considers that, in the case of this request, the balance of public interest lies in favour of maintaining the exception.
71. If the information requested were of significant and contemporary public interest, there might be a case for disclosing the information – even if the request were vexatious. However, in this case no such compelling factors exists which would undermine maintaining the exception.
72. The Commissioner considers that the wider public interest in such information would be negligible given the relatively small area of land involved. She also considers that, even if the complainant were correct in his assertions about historical maps, this would be of little historical interest and of even less *current* public interest. It would not therefore outweigh the public interest in protecting OS' limited resources.
73. There is no public interest in allowing a particular individual (or group of individuals) to continue to divert the resources of a public authority from its core purpose – where there is no realistic prospect of that process bringing the issue to a conclusion.
74. The Commissioner therefore finds that the request was Manifestly Unreasonable, that Regulation 12(4)(b) is engaged and that the balance of the public interest favours maintaining the exception.
75. OS was therefore entitled to rely on Regulation 12(4)(b) to refuse the request.

Other Matters

76. The complainant in this case has invited the Commissioner to consider the accuracy or otherwise of the OS maps. The Commissioner declines to do so as this is not her function. Her role is to determine whether OS handled the complainant's request in accordance with the EIR.
77. If the complainant is dissatisfied with the way that OS has dealt with his broader grievance, he should refer the matter to the Parliamentary & Health Service Ombudsman.

Right of appeal

78. 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@hmcts.gsi.gov.uk

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

79. 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.
80. 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

Ben Tomes
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF