

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

Decision notice

Date: 11 August 2021

Public Authority: Forestry Commission England
Address: 620 Bristol Business Park
Coldharbour Lane
Bristol
BS16 1EJ

Decision (including any steps ordered)

1. The complainant has requested information about bike trails in Rowberrow Warren woodland. Forestry England, an Agency of the Forestry Commission, relied on regulation 6(1)(b) (form and format of information) in respect of two parts of the request because it considered this information was already accessible to the complainant. Forestry England relied on regulation 12(4)(a)(information not held) with regard to the remaining three parts of the request.
2. The Commissioner's decision is as follows:
 - Forestry England is entitled to rely on regulation 6(1)(b) in respect of part 5 of the request as the relevant information it holds is easily accessible to the complainant in another form or format.
 - Regulation 12(4)(a) of the EIR is engaged with respect to parts 1, 2, 3 and 4 of the request as the Commissioner finds that, on the balance of probabilities, Forestry England does not hold the requested information.
3. The Commissioner does not require Forestry England to take any remedial steps.

Request and response

4. On 21 September 2020 the complainant wrote to Forestry England (FE) and requested information in the following terms:
 - “1) Please give the legal definition/status of a "well established unofficial trail”.
 - 2) When did the 2 permissive mountain bike trails become "well established unofficial trails” (ie was it 1 year ago, 10 yrs? 20?).
 - 3) On what date was the agreement with the Landowner for permissive use first signed (and any renewal)? Pls send a copy of the agreement.
 - 4) The change of status to 'permissive' trail affects liability for FE and the Landowner. How has it been apportioned?
 - 5) FE's current Forest Plan for the Warren says it will: "...provide public access on designated Public Rights of Way only, due to a leasehold tenure. Signage needs to be maintained regarding tenure of the site as Rowberrow is leasehold. Signage will stipulate that PROW only are to be used. Beat team will monitor usage and ensure the up-keep of the signage.". These actions, which FE has a legal obligation to deliver, block the accrual of continuous usage rights for wild trails/footpaths. Has this policy changed and, if it has, how & when was the change approved and published?"
5. FE responded on 6 November 2020, advising that it was handling the request under the EIR. FE addressed the complainant's questions and sent links to where particular meeting minutes and its Forest Plan policy are published.
6. The complainant requested an internal review on 3 December 2020, and FE provided one on 4 December 2020. FE advised that it was relying on the exception under regulation 12(4)(b)(manifestly unreasonable request) to refuse to comply with the request because of the cost associated with doing so and because it considered the request was part of a campaign.
7. FE subsequently provided the complainant with a further review on 16 February 2021. It revised its position, withdrawing its reliance on regulation 12(4)(b). FE relied on the provision under regulation 6(1)(b) with regard to questions 1 and 5, and the exception under regulation 12(4)(a) with regard to questions 2, 3 and 4.

Scope of the case

8. The complainant first contacted the Commissioner on 9 November 2020 to complain about the way his request for information had been handled.
9. The information requested concerns bike trails through a woodland. As such the Commissioner is satisfied that this information is environmental information, and that FE was correct to handle the request under the EIR. The Commissioner's investigation has therefore focussed on FE's reliance on the regulations under 6(1)(b), and 12(4)(a) of the EIR.

Reasons for decision

Regulation 6 – form and format of information

10. Where an applicant has requested information in a particular form or format, under regulation 6(1)(b) of the EIR a public authority "shall make it so available" unless the information is already publicly available and easily accessible to the applicant in another form or format.
11. In part 5 of his request the complainant has requested information about FE's Forest Plan – whether that policy has been changed and, if so, how was it approved and when. In its response to this question, FE had confirmed that the Forest Plan had not changed and provided the complainant with a link to where the Plan is published.
12. In its submission to the Commissioner, FE has advised that the complainant's question is answered by looking at the Forest Plan, which is published on its website. FE has confirmed that there has been no change to the Forest Plan and that it does not hold information to prove a negative.
13. The Commissioner considers that FE's position that it does not hold information to prove a negative is reasonable. As such, she finds that all the information that FE holds that is relevant to this part of the complainant's request – the published Forest Plan – is easily accessible to the complainant and that FE is not required to make that Plan available to the complainant in another form or format.

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

14. Under regulation 12(4)(a) of the EIR, 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.

15. In part 1 of his request, the complainant has requested the legal definition/status of a "well established unofficial trail".
16. In its submission FE has told the Commissioner that, in its view, a legal definition is something that would be derived from a decision of the courts and is not something that the Forestry Commission/FE can create. FE says that any definition of this nature would be readily accessible on the internet through a search using the terms 'well established' and 'unofficial trail'. The ordinary meaning of the words is also available in any dictionary. Furthermore, FE says, in a letter to him dated 6 November 2020 it advised the complainant that 'Unofficial trails are areas of land where cyclists choose to ride by their own volition'.
17. As has been noted, regulation 6 states that a public authority shall make information available (in a particular form or format). For regulation 6 to be relevant, a public authority must therefore hold the information that has been requested. The Commissioner clarified this point with FE and on 10 August 2021 FE confirmed that it does not hold recorded information on the definition of a "well established unofficial trail". FE says it has neither received any legal definition (ie as a result of legal action) nor sought any legal advice/opinion of the term "well established unofficial trail". Whilst it may have used the term, it would have been on the basis of the common understanding of the terms as defined in a dictionary. FE noted that it had advised the complainant on how it defines 'unofficial trails'.
18. Because FE does not hold the information requested in part 1, the Commissioner finds that regulation 6 is not relevant but that regulation 12(4)(a) is. Given the nature of this part of the request and the explanation FE has given, the Commissioner is satisfied that FE does not hold the information requested in part 1.
19. The Commissioner has next considered parts 2, 3 and 4 of the request. In its correspondence to the complainant of 16 February 2021, FE relied on regulation 12(4)(a) in respect of all three parts but provided the complainant with details of Ride Mendip's public liability insurance with regard to part 4.
20. In its submission to the Commissioner, FE has said that question 2 is much like asking 'how long is a piece of string?'. It says it does not hold any formal, or other type of, something being declared a "well established unofficial trail". This is because it has no reason to "do such a thing" by which the Commissioner understands FE to mean that it has no reason to formally declare a route as a "well-established unofficial trail" at a particular point in time. FE has also noted its response to question 1 and that its Forest Plan does not include the terms 'unofficial' or 'well established'.

21. FE says it has communicated to the complainant anecdotal evidence on the use of the site in question based on the knowledge of local managers. This was that the 'Christmas Trees' trail had been ridden for around 15-20 years and the 'pump track' trail had been ridden for more than ten years. These became officially recognised trails in September 2018.
22. It appears to the Commissioner that certain trails in the woodland that is the focus of the complainant's request became officially recognised (bike) trails in 2018. However, FE has no reason to formally give a route the status of "well established unofficial trail" at a point in time. Consequently, the Commissioner accepts FE's explanation and finds that FE does not hold any recorded information on when particular routes became "well established unofficial trails".
23. Turning to part 3, this is for the date the agreement with the landowner for permissive use was signed and a copy of the agreement. In its submission, FE notes that whilst the complainant may think FE should have a signed agreement with the landowner (which is his view on the terms of the lease – the land in question is held on a long lease), FE does not have such an agreement. It says that the individuals involved in the management of Rowberrow Warren would, from personal knowledge of their own work, know if such an agreement existed. FE has confirmed that such an agreement does not exist and therefore conducting a search for it was unnecessary.
24. However, FE says, on 17 April 2018 the landowners attended a meeting where they agreed to allow Ride Mendip to manage two permissive trails in the wood. The minutes of the meeting were sent to the complainant in November 2020 as they were the held information that came closest to any agreement with the landowner.
25. The Commissioner accepts that those individuals who manage Rowberrow Warren would know if a formal agreement with the landowners for permissive use of particular areas of the woodland existed. Those individuals have stated that no such agreement exists. As such, the Commissioner finds that Forestry England does not hold the specific information requested in part 3 of the request.
26. Finally, part 4 of the request. This is for information on how liability has been apportioned between FE and the landowners. In its submission, FE has categorised this part as a question (rather than a request for specific [recorded] information). FE says the question contains the complainant's own views on liability and that this liability should be apportioned. FE has told the Commissioner that it does not pre-apportion liability; it has no reason to do so. As a government department FE does not carry liability insurance, it self-insures. Any

apportionment of liability in the event of a claim would be addressed when the claim arises (and would be a decision of the courts if necessary). This means that FE has no reason to create or hold the information relevant to the question that is being asked. It has therefore not carried out a search for any relevant information.

27. The Commissioner agrees that part 4 has been framed more as a question rather than a request for recorded information. In his question, the complainant has made an assumption about liability matters. FE has now explained the actuality; that it does not carry liability insurance and therefore holds no information within scope of the complainant's question. The Commissioner has not been presented with evidence to suggest that FE *does* carry liability insurance and therefore she again finds that FE does not hold the information requested in part 4 of the request.
28. To summarise, the Commissioner's decision is that regulation 12(4)(a) of the EIR is engaged in respect of parts 1, 2, 3 and 4 of the request as, on the balance of probabilities, FE does not hold the requested information.

Other matters

29. The Commissioner reminds the complainant that the EIR concerns solely information that a public authority holds in recorded form. Like the FOIA, the EIR does not require an authority to answer queries, give opinions or explanations. However, some parts of the complainant's request are framed more as general questions.
30. Unlike the FOIA, the EIR does not include a definition of a valid request. However, the FOIA's definition of a valid request for information as being one that "describes the information requested" can equally be applied to a request made under the EIR. The Commissioner has published guidance for applicants on how to word a request in order to get the best result¹. The complainant may find this guidance helpful if he wants to submit an EIR or FOIA request to a public authority in the future.

¹ <https://ico.org.uk/your-data-matters/official-information/>

Right of appeal

31. 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

32. 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.
33. 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

Cressida Woodall
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