

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

### **Decision notice**

**Date:** 11 February 2014

**Public Authority:** Natural England  
**Address:** Foundry House  
3 Millsands  
Riverside Exchange  
Sheffield  
S3 8NH

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

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1. The complainant has requested information broadly concerning financial amounts that have been raised and/or held by two cull companies as a condition of issuing their licences.
2. The Commissioner's decision is that the request is not manifestly unreasonable and so the exception provided by regulation 12(4)(b) was not engaged.
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's information request
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 the Act and may be dealt with as a contempt of court.

#### **Request and response**

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5. On 24 July 2013, the complainant wrote to Natural England and requested information in the following terms:  
  
*"Please disclose the total financial amounts you have required to be raised and/or held by the two companies in Gloucestershire and Somerset combined as a condition of issuing their licences".*
6. Natural England responded on 21 August 2013. It stated that the request was very similar to previous requests and therefore it referred the complainant to its previous responses.
7. Following an internal review Natural England wrote to the complainant on 23 September 2013. It stated that the complainant's request was manifestly unreasonable as defined by Regulation 12(4)(b).

### **Scope of the case**

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8. The complainant contacted the Commissioner on 2 October 2013 to complain about the way his request for information had been handled.
9. The Commissioner has had to consider whether Natural England was correct to apply regulation 12(4)(b).

### **Reasons for decision**

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10. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information "to the extent that...the request for information is manifestly unreasonable". Regulation 12(4)(b) of the EIR is subject to a public interest test. This means that in order to withhold information, in all of the circumstances of the case, the public interest in maintaining the exception must outweigh the public interest in disclosing the information.
11. The Commissioner is of the view that this regulation provides an exception to the duty to comply with a request for environmental information in two circumstances: 1) where it is vexatious, and 2) where it would incur unreasonable costs for the public authority or an unreasonable diversion of resources. However, that is not to say that the exception is limited to these two circumstances only, as the Tribunal in the case of *DBERR v ICO and Platform* (EA/2008/0096) emphasised: "It is clearly not possible to identify all situations in which a request will be manifestly unreasonable" (paragraph 37); there may well be other situations where regulation 12(4)(b) can apply."

12. Natural England has argued that the complainant's request is manifestly unreasonable on the basis that it is a repeated request. In this case, the Commissioner will therefore look at whether the request is manifestly unreasonable on the grounds that it is a repeated request.
13. In order to determine whether the request is repeated, the Commissioner will consider whether the requests are made by the same person, whether it is identical or substantially similar to a previous request and whether a reasonable interval has elapsed since the previous request.

**Are the requests made by the same person?**

14. The Commissioner is satisfied that the requests cited by Natural England are made by the same person.

**Is the request identical or substantially similar to the previous requests and therefore a repeated request?**

15. The Commissioner considers that a request will be substantially similar to a previous request if a public authority would need to disclose substantially similar information to respond to the request, even if the wording of the request is not identical.
16. Natural England has explained that the complainant has made a number of requests since October 2012. The previous requests made by the complainant are as follows:

- 24 October 2012 – Please disclose all reports, information and communications you have received from the two companies licenced to undertake the pilot badger culls which contain information regarding the amount of funds they were seeking to raise and the amounts they had collected and by when, given that you require them to have full funding in place before the culls can proceed.

Please disclose all enquiries you have made to the two companies regarding the progress of collecting the funds required and all reporting requirements you placed on them with respect to this issue.

- 16 November 2012 – What is the amount you required to be deposited in respect of each of Gloucestershire and Somerset.

All communications and evidence you received (either directly or through bring copied by third parties) from the licensees and/or their bankers that the necessary amounts had been lodged and all communications and evidence you received (either directly or

through being copied by third parties) advising you of progress to reaching the necessary amounts and as to the date on which the necessary amounts had been lodged with the relevant bank(s).

Any communications and/or evidence you have received (either directly or through being copied by third parties) as to whether the licensees have refunded these funds or intend to refund these funds (and, if so, by when) or whether they intend those funds to remain lodged with bank(s) and if so on what authority they are doing so.

- 26 April 2013 – Please disclose what amounts you have required to be held by the cull companies in each of Gloucestershire and Somerset.

Please also disclose whether you have yet determined the sums which would need to be lodged/held by organisers of a cull or culls in Dorset and, if so, what that amount/those amounts is/are.

17. Natural England has argued that the requests are substantially similar in that they all seek the same information. Natural England has previously explained that the information is exempt from release and this decision was upheld by the Commissioner in the case FER0479985. Despite this, Natural England explains that the complainant submitted a request for the same information 16 days after the decision notice was issued. Natural England believes the complainant has ignored the findings of the Commissioner in FER0479985 and subsequently submitted a request for the same information.
18. The Commissioner understands that the complainant's previous requests broadly sought information that Natural England holds in relation to the amount held by each of the cull companies in Gloucestershire and Somerset. The complainant's request that is being considered in this decision notice concerns a combined figure in relation to the amount held by the cull companies in Gloucestershire and Somerset. The Commissioner therefore notes that the request is different to his previous requests.
19. The Commissioner will now consider whether there has been a reasonable interval between the requests.

### **Has a reasonable interval elapsed since the previous request?**

20. What constitutes a reasonable interval will depend on the circumstance of the case including how likely the information is to change, how often records are updated and any advice previously given to the requester.
21. The Commissioner notes that *if* the request was the same it is unlikely that the interval between the requests was reasonable. However this issue has no effect because the requests are not considered to be the same.

### **Complainant's submissions**

22. The complainant accepts that he has made multiple requests along similar lines, seeking information on the amount of the cull companies have been required to have available to finance the culls. However, he argues that he is not an expert on EIR requests and an argument to reject his request, purely on the grounds that it concerns the same topic as previous requests is an argument that says if he does not get a request absolutely correct the first time then he is precluded from receiving information that would be made available to someone who did find the right formulation immediately. He states that this is illogical and perverse.
23. The complainant also argues that each time he has submitted a new request he has revised it in order to take into account the reasons behind the previous refusal. He states that it is not the case that his multiple requests are in any way vexatious or manifestly unreasonable, he states he was simply trying to get to a point where his requests did not fall foul of the exemptions cited by Natural England.
24. He further explains that he understands Natural England felt justified in not releasing any information provided to them by the cull companies on the grounds of confidentiality (in FER0479985 the information in question was withheld under regulation 12(5)(d)). He explained he pared down his request to a form which requires the amount Natural England required as a condition of issuing a license. He further explains that he has asked for an aggregate figure across the two cull zones and so, it will not reveal the amount required of either of the two companies.

### **Natural England's Submissions**

25. Natural England state that taking on board the complainant's previous requests, he has had considerable resource spent on his requests for information. It further believes that:

*"The complainant is misusing the right of access to information by making a further request. In doing so he has ignored our repeated*

*refusal notices and the ICO decision notice and he is making '...improper use of a formal procedure'. As stated by the Upper Tribunal in Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (ACC), (28 January 2013), paragraph 27".*

## **Conclusion**

26. The Commissioner acknowledges that the complainant has reworded his request in an attempt to avoid any issues that may occur when considering disclosure of the information. He also notes that there is no evidence of unreasonable behaviour by the complainant and he believes the complainant has a legitimate interest in the information. The Commissioner therefore concludes that the exception is not engaged.

## Right of appeal

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27. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

28. 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.
29. 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



**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
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