

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

**Decision notice**

**Date:** 11 May 2015

**Public Authority:** Natural England  
**Address:** 4<sup>th</sup> Floor, Foss House  
Kings Pool  
1 – 2 Peasholme Green  
York  
YO1 7PX

**Decision (including any steps ordered)**

---

1. The complainant has requested a copy of a complaint received by the Environment Agency about the management and use of a particular site. The Environment Agency considered this was excepted information under the 'voluntary supply of information' (regulation 12(5)(f)) and 'third party personal data' (regulation 13) exceptions in the EIR. With regard to the application of regulation 12(5)(f), which is qualified by the public interest test, the Environment Agency found that on balance the public interest favoured withholding the requested information. The Commissioner's decision is that regulation 12(5)(f) is engaged and that in all the circumstances the public interest in favour of maintaining the exception outweighs the public interest in disclosure. The Commissioner has not therefore gone on to consider the application of regulation 13 and does not require the Environment Agency to take any steps as a result of this notice.

**Request and response**

---

2. On 24 July 2014 the complainant made three requests for information to the Environment Agency arising from its inspection of the management

of land at a specified site. Only one of the requests concerns this notice, which asked for the following to be provided –

*(a) A copy of the written complaint which you advised was received via the Chairman of Natural England. You did tell us that the copy you had received has been edited to some extent.*

3. Natural England acknowledged the request on 8 August 2014 and stated that it considered the request was received on 5 August 2014 because the person to whom the request had been sent was out of the office. Natural England provided its substantive response on 2 September 2014. With regard to request (a), Natural England advised that the requested information was being withheld under the 'voluntary supply of information' (regulation 12(5)(f)) and 'third party personal data' (regulation 13) exceptions in the EIR. Unlike regulation 13, regulation 12(5)(f) is qualified by the public interest test and the Environment Agency decided that on balance the public interest favoured maintaining the exception.
4. On 16 September 2014 the complainant wrote and asked Natural England to carry out an internal review into its decision to refuse the request. This was completed and the outcome provided by Natural England on 6 November 2014. The reviewer upheld the original reasons given for withholding the requested information.

### **Scope of the case**

---

5. The complainant contacted the Commissioner on 4 February 2015 to complain about Natural England's decision to refuse the disclosure of the written complaint referred to in (a) of the requests submitted on 24 July 2014. The Commissioner's consideration of whether Natural England complied with the EIR by withholding the requested information is set out in the remainder of this notice.

### **Reasons for decision**

---

6. Natural England has maintained that the requested complaint information is subject to the exceptions set out at regulations 12(5)(f) and 13 of the EIR. The Commissioner has initially considered the Natural England's reliance on regulation 12(5)(f) of the EIR.

**Regulation 12(5)(f) – voluntary supply of information**

7. Regulation 12(5)(f) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

(f) the interests of the person who provided the information where that person –

(i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure.

8. The engagement of the exception is dependent on each of the three conditions, (i) – (iii), being met. Even if this is found to be the case, however, it is then necessary to consider whether there would be an adverse effect on the interests described in the exception as a result of disclosure. The threshold of the adverse effect is a high one and it is necessary to demonstrate that disclosure would have an adverse effect, not that it could or might have such an effect.

9. Having had sight of the letter of complaint, and considering the circumstances in which it was provided, the Commissioner is content the information provided was supplied voluntarily and that the person supplying it could not have been put under any legal obligation to supply it. Further, the Commissioner is not aware of any evidence which suggests that the information was supplied in circumstances such that Natural England or any other public authority would be entitled to disclose the information outside of the EIR. Finally, the Commissioner has been provided with evidence that confirms the person who voluntarily supplied the information has expressly objected to its release.

10. Accepting that conditions (i) – (iii) are satisfied, the Commissioner has next considered whether the interests of person who provided the information would be adversely affected through disclosure. As stated, the adverse effect test sets a relatively high evidential burden, and a public authority must be able to identify harm to the third party's interests which is real, actual and of substance and to explain why disclosure would, on the balance of probabilities, directly cause the harm. Again, the Commissioner is satisfied that this test is satisfied.

11. In this case the Commissioner has no doubt that the supplier of the information would not have expected it to be shared with the wider world, which would inevitably include the party complained about. The Commissioner considers there is a real risk that releasing the information would leave the person supplying the information exposed to unwanted contact from parties related to the site.
12. In the Commissioner's view it therefore follows that there would be an adverse effect, meaning that the exception provided by regulation 12(5)(f) is engaged. In reaching this view, the Commissioner has considered whether it would be possible to edit the requested information in such a way that the substance of the complaint could be disclosed while protecting the identity and associated rights of the person that made the complaint. However, the Commissioner considers in this situation it is not possible to strike an appropriate balance that would not leave the remaining information effectively meaningless.
13. The Commissioner has therefore gone on to consider the balance of the public interest test.

#### **Public interest arguments in favour of disclosure**

14. The complainant considers there is a clear public interest in disclosure because it would demonstrate the merits and substance of the complaint. Furthermore, it would permit the manager of the site in question to establish whether they were the subject of a co-ordinated campaign, which was unfairly harming the manager's ability to operate effectively and profitably.
15. The complainant has extended this argument by also highlighting the waste of taxpayer's money that may be incurred as a result of Natural England and other public authorities having to investigate potentially groundless allegations. From this, it can be inferred that the complainant considers transparency would act as a check which would help ensure any complaints made were serious and reflected genuine concerns.

#### **Public interest arguments in favour of withholding the information**

16. Natural England considers there are both narrow and wide arguments for finding that the balance of the public interest rests with maintaining the exception.
17. From a narrow perspective, Natural England argues that it is necessary to take into account the importance of its role as the custodian of information that was provided in confidence; information that would, after all, have an adverse effect on the provider if it was disclosed.

18. From a wider perspective, Natural England has argued it is precisely the public's trust that the principle of confidentiality will be respected which supports the free flow of information. It considers that the disclosure of information provided in confidence could serve as a significant deterrent to a person thinking about contacting Natural England to raise issues of an environmental nature, thereby staunching a source of information that Natural England relies on to carry out its statutory and regulatory functions. In this regard, Natural England states that it depends heavily on information from the public which notify it of concerns relating to public funded schemes as well as legally protected sites.
19. With reference to the requested complaint information itself, Natural England considers that the overall value of disclosure would be minimal. This is because Natural England has already explained the reasons for its involvement to the manager of the site complained about; the person that would have the most to gain from knowing more about the issue. In Natural England's opinion, there would be little benefit to the wider public in having access to the contents of a complaint letter submitted in this context.

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

20. The inherent importance of transparency as a concept means that some weight should always be attached to the public interest in disclosure. However, the case for the release of information will normally be at its strongest where it can be demonstrated that there would be a specific benefit accruing to the public through transparency and accountability. The Commissioner considers that it is not the function of FOIA or the EIR to resolve localised disputes where there was not some wider public interest arising from this.
21. The Commissioner recognises that the complainant has real concerns about the motivation of those persons that have chosen to raise concerns with the Environment Agency. However, the Commissioner also considers that the wider public interest in the release of the withheld information would not be particularly strong. When balancing the strength of the competing interests, the Commissioner has also been guided by the following factors.
22. Firstly, he considers that ultimately it will be for the Environment Agency to decide on the merits of a complaint brought to its attention. As an independent regulator with limited resources, the Environment Agency can be expected to analyse robustly the value in taking forward any concerns. Secondly, the Commissioner has placed significant weight on both the Environment Agency's narrow and wide arguments. He agrees that information provided voluntarily represents an important source of information for the Environment Agency and therefore any decision that

would affect this flow of communications should not be taken lightly. With regard to the duty of confidence, the Commissioner must also take into account the acceptance that disclosure would have an adverse effect on the person supplying the information in this case. This is an important consideration.

23. Ultimately, the Commissioner has found that in all the circumstances the public interest in disclosure is significantly outweighed by the strength of the public interest in maintaining the exemption. As the Commissioner has determined that the Environment Agency was entitled to withhold the requested information under regulation 12(5)(f) of the EIR, he has not gone on to consider the application of regulation 13.

## Right of appeal

---

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

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

25. 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.
26. 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**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**