

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

**Date:** 14 February 2018

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

**Decision (including any steps ordered)**

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1. The complainant has requested information from the Environment Agency (EA) relating to the management of flood risk, water flows and water abstraction near to his property. The EA refused these requests, citing regulation 12(4)(b) of the EIR, on the basis that the requests are vexatious.
2. The Commissioner's decision is that the EA was entitled to rely on regulation 12(4)(b) of the EIR in this case. She therefore does not require any further action to be taken.

**Request and response**

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3. Between 8 and 24 August 2017, the complainant wrote to the EA and requested information in the following terms:
  - "other instances where prosecutions have been commenced for offences relating to water abstraction, particularly in cases which have failed to secure a conviction, should the numbers be so large as to be unmanageable" (8 August 2017).
  - Request for a copy of the 2012 JBA report referring to in the Monitoring report received 10 August 2017 (10 August 2017).

- Request for photographs of the channel taken during significant rainfall. "Are there photos still in existence, in which case please supply a copy without delay and explain why they have not been supplied in response to my request for inter alia "other relevant information related to the [redacted] sluice and the stretch of river" between here and Wraxall". If they do not exist please explain what has happened to them. Is there any correspondence related to them? How did the author of the report know of their existence or of the visit?" (11 August 2017).
  - "I have previously requested disclosure of the terms of reference for this [monitoring] report, and all correspondence related to it. You have not provided this, although the report is now finalised. I would remind you of that request and I would also like to see copies of drafts which have been subsequently amended" (13 August 2017).
  - "Please add the following [to email request of 13 August 2017] all notes memoranda and other information related to this exercise, I want to ensure the request is comprehensive and covers all material related to the report". (15 August 2017)
  - "Please supply all information held by the Agency related to the designation of the Land Yeo as Main river. Also all information related to the designation of the "Short Mill Leat" (as you described it) at [redacted] as Main river". (19 August 2017).
  - (Ref Monitoring report reference to the model from the JBA). "If it is a separate exercise could I please have copies of the results and any associated correspondence or other material". (24 August 2017).
4. The EA responded on 30 August 2017. It refused to provide the requested information citing regulation 12(4)(b) of the EIR. With regards to the request of 13 August 2017 it also advised the complainant that it had already supplied information held on "any terms of reference and/or documents and correspondence relating to "the second piece of work [Monitoring report] on 2 August 2017 at 15:20 under case reference 49772-WX. It advised the complainant that he had in fact responded to this email on 4 August 2017 at 14:37 saying "Thanks for the response the emails are helpful".
5. The complainant requested an internal review on 30 and 31 August 2017. He also referred a complaint to the Commissioner on 7 September 2017.

6. The EA completed the internal review and notified the complainant of its findings on 27 October 2017.

### **Scope of the case**

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7. The complainant first contacted the Commissioner on 7 September 2017 to complain about the way his requests for information had been handled. At this time the EA was still within the statutory timeframe for the completion of an internal review as defined by regulation 11 of the EIR. There was therefore no complaint to answer. However, on receipt of the internal review response the complainant raised further concerns with the Commissioner and the case was then reopened for a full investigation to commence.
8. As agreed with the complainant, this investigation is limited to considering the requests made between 8 and 24 August 2017 and the EA's application of regulation 12(4)(b) of the EIR. The Commissioner notes that there has been earlier requests but these are not the subject of this investigation or the Commissioner's decision as outlined in this notice.
9. During the Commissioner's investigation the complainant suggested that he reduces/refines these requests so compliance is then not too time consuming or burdensome on the EA. There is no scope to consider this suggestion. The Commissioner is limited to considering the requests as worded in their entirety and the EA's application of regulation 12(4)(b) of the EIR.

### **Reasons for decision**

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10. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable.
11. There is no definition of 'manifestly unreasonable' under the EIR. The Commissioner considers that 'manifestly' implies that the request should 'obviously' or 'clearly' be unreasonable. A request can be manifestly unreasonable for two reasons: Firstly where it is vexatious and secondly where the public authority would incur unreasonable costs or where there would be an unreasonable diversion of resources.
12. There is no definition of the term "vexatious" in the Freedom of Information Act, however the issue of vexatious requests has been considered by the Upper Tribunal in the case of The Information

Commissioner and Devon County Council v Mr Alan Dransfield (GIA/3037/2011). In the Dransfield case the Tribunal concluded that the term could be defined as “manifestly unjustified, inappropriate or improper use of formal procedure.” The Tribunal identified four factors likely to be relevant in vexatious requests:

- The burden imposed by the request on the public authority and its staff
  - The motive of the requestor
  - Harassment or distress caused to staff
  - The value or serious purpose of the request.
13. The Upper Tribunal’s decision established the concepts of “proportionality” and “justification” as being central to any consideration of whether a request for information is vexatious. The key to determining whether a request is vexatious is a consideration of whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear it is necessary to weigh the impact of the request on the public authority against the purpose and value of the request. To do this a public authority must be permitted to take into account wider factors associated with the request, such as its background and history.

### **The EA’s arguments**

14. The EA explained that the requests relate to a dispute between the complainant and the EA in respect of the management of flood risk, water flows and water abstraction. It stated that for approximately 30 years the EA (and its predecessor bodies) have used boards which can be moved up and down to control the flow of water in the watercourse known as the Land Yeo. It operates the boards for both management of flood risk and water level management in accordance with the local Water Management Plan (WLMP) and the purpose of this water level management is both agricultural and environmental. It explained that it removes the boards in the winter for flood risk management purposes (to avoid overtopping and any breach of upstream banks) and when it puts the boards back it is doing so primarily for the purposes of the ‘summer pen’ provided for in the WLMP.
15. The raising of the boards allows increased capacity in the Land Yeo when the banks upstream are in danger of over-topping (usually between 1 December and 1 April). In low- flow situations this action decreases flow to the Mill Leat serving [redacted]. The EA stated that the complainant acquired [redacted] in 1988 and has been using the flow in the Mill Leat to generate electricity for the last 2 years. It confirmed that the

complainant objects to the raising of the boards on the basis that his hydropower turbine cannot operate if flows are too low in the Mill Leat. It stated that the complainant believes that he is entitled to certain flow, is entitled to compensation for the diminished flow and was, at the time of its first submissions to the Commissioner (15 December 2017), physically obstructing the operation of the boards. The EA advised that the complainant is of the opinion that the EA can lift the boards if there is a flood risk so long as the EA puts them down again afterwards. It confirmed that it cannot agree to do this as it would be a variation to the current operating regime (agreed through the WLMP) and increase flood risk. It explained that the WLMP can be changed with agreement of others. However, other affected parties would not agree to this change as it would increase flood risk to their interests.

16. The EA confirmed that the Wessex Area Flood and Coastal Risk Management (FCRM) team has been in direct correspondence with the complainant on this matter since November 2015. It has answered numerous questions, provided a lot of recorded information in response to his previous requests and addressed and responded to a significant level of correspondence on this matter. It has met the complainant at his property three times to discuss his concerns (5 August 2015, 8 December 2015 and 21 March 2016) and invited him to a meeting with Nailsea Environmental Wildlife Trust to discuss repairs to the river bank (24 May 2016). Although it post-dates the request, a meeting was also held prior to the outcome of the internal review on 19 September 2017 to discuss the operation of the [redacted] boards and his claim that he is due compensation.
17. Many departments and different members of staff have been involved in this matter and the EA estimates that in total 25 members of staff have devoted a significant amount of time already to the complainant. It estimates that these staff have already spent well in excess of 300 hours dealing with the complainant's concerns, complaints and correspondence.
18. To highlight the extent of correspondence, the EA said that between 1 December 2016 and 31 July 2017 it received 60 separate emails from the complainant in relation to this matter. 6 emails were treated as formal requests under the EIR, others were treated as general enquiries and some as correspondence with its Area Director. Prior to January 2017 it is unable to confirm how many information requests the complainant made, as it does not retain copies of requests or responses for more than 12 months.
19. It advised the Commissioner that it considers the complainant's correspondence and complaints about this matter and their frequency has placed a disproportionate and unjustified burden on its resources. It

stated that it has often received multiple questions or contacts in one day and often received further questions on receipt of a response within hours. Over the time of its dealings with the complainant the EA has experienced difficulty in separating out true information requests from other comments and complaints the complainant has raised and therefore the nature of correspondence to date and its frequency has been difficult and burdensome for staff to manage and coordinate. It advised that some of the requests have been duplicates of earlier requests or have been unclear in terminology, therefore requiring clarification.

20. The EA said that in August 2017 it received 7 requests; all a couple of days apart. In addition, during the same timeframe it received 8 emails making general enquiries on the same matter; 3 of which were chasing or following up earlier emails he sent at the start of August. It stated that the pattern, level and frequency of correspondence in August 2017 as an example had the effect of making staff feel harassed. It accepted that this may not have been the complainant's intention but nonetheless it is the effect the pattern of correspondence has had on its staff.
21. The EA concluded by saying that it has been subjected to a disproportionate and unjustified level of disruption. It has provided recorded information, answered numerous questions and responded to many comments on this matter. At the time of the requests it confirmed to the Commissioner that it had already communicated its final position to the complainant and there was nothing further to add. It stated that it has informed the complainant repeatedly that he should refer the matter to the Local Government Ombudsman, if he remains dissatisfied but he has failed to act upon this advice. It believes the complainant demonstrates unreasonable persistence by repeatedly attempting to re-open discussions of matters which the EA has answered and upon which it has no further comments to make.
22. It accepted that there was still the issue of the complainant's claim for compensation and this was still ongoing at the time of the request. However, it stated that this should not be read to mean that it considers there is any case to answer or indeed a valid claim for compensation; only that it is a public authority wishing to support the complainant if he insists on proceeding with such a claim. Although connected, this is one final matter that is outstanding, but running separately to the complaints, correspondence and requests for information discussed above.



## The Commissioner's decision

23. The Commissioner notes in this case that the EA has said that it only keeps records of FOIA requests and its responses for 12 months, so it is only able to confirm how many requests the complainant has made since January 2017. We are therefore only able to confirm with accuracy that the complainant had made 6 previous requests to the EA on this subject. If we take the stance that only 6 previous requests were made it has to be said that the number of requests in this case is not in itself significant and an *obvious* indicator of an applicant abusing their rights under the EIR. However, that said, the number of previous requests is only one factor often considered by public authorities and the Commissioner herself when determining whether a request(s) is vexatious or not.
24. The Commissioner's guidance points out that a request(s) which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. The context and history in which a request is made is often a major factor in determining whether the request(s) is vexatious. And, if a request(s) is likely to cause a disproportionate or unjustified level of disruption, irritation or distress, this will be a strong indicator that it is vexatious.
25. The Commissioner acknowledges that there has been a significant amount of correspondence between the EA and the complainant since the complainant first raised his concerns in 2015. She notes that the majority of this correspondence was addressed in 'the normal course of business' or by the Area Director and the EA has now said that, on reflection, some would have been valid information requests under the EIR. Had the EA dealt with some of this correspondence differently (recognising every individual request for information and processing it as such under the EIR) the number of previous requests (referred to above) would have been higher.
26. As an example, the EA has said that between 1 December 2016 and 31 July 2017 the EA received 60 separate emails from the complainant, all of which have required a response from the appropriate members of staff. The EA has estimated that it has spent well in excess of 300 hours so far in dealing with the complainant's questions, comments, requests for information and explanations and that this has involved a significant number of staff within the EA. It is accepted that responses often generate further questions, comments and further work and potentially, regardless of the response that is provided, such further questioning and correspondence will continue, as the EA and complainant are not in agreement over the management of the boards near the complainant's property.

27. The 7 requests the subject of this notice were made within days of each other in the month of August 2017. In addition to these requests the EA continued to receive other emails from the complainant chasing up earlier emails in that month and checking that emails had been received. The Commissioner considers the manner in which these requests were made, together with other emails around the same time, in addition to the level of correspondence the EA received between December 2016 and July 2017 demonstrates the intensity of the complainant's correspondence and the burden this will have placed on the resources of the EA. Although it is known that it will not have been the complainant's intention, such levels of correspondence in such close succession will have had the effect of harassing the EA staff.
28. The Commissioner notes at the time of these requests the complainant had been informed of the EA's final position on the issues he raised and had repeatedly been advised to refer the matter to the Local Government Ombudsman. The EA therefore clearly felt that it had addressed the complainant's concerns to the best of its ability, devoted enough time and resources to debating the issues at hand and provided various explanations, answers to questions and recorded information. The EA regarded the matter as closed, yet further requests were made potentially wishing to continue dialogue with the EA on a matter which it felt had been fully debated and a final decision communicated.
29. It is acknowledged that there is ongoing discussions around the complainant's belief that he is due compensation. However, this does not detract from the fact that the EA had communicated its final position to the complainant and had nothing further to add at the time of the requests. The EA considers this to be separate to an applicant's rights under the EIR and what the legislation is set up to achieve.
30. The Commissioner accepts that the EA has devoted a significant amount of time and resources to addressing the complainant's concerns and, up to the date of these requests, responded to those requests that it recognised as valid requests under the legislation in accordance with it. The complainant was aware of the EA's final position on matters at the time these requests were made and was aware that his next course of action was the Local Government Ombudsman. As a result, the Commissioner is of the opinion that the requests the subject of this notice were likely to cause a disproportionate or unjustified level of disruption to the EA.
31. In terms of serious purpose and value, the Commissioner considers the requests have limited value to the wider public. She notes that the complaints and requests stem from the management of the boards by the EA near the complainant's property and how the management affects the level of water flow to his mill and therefore his ability to



generate electricity to sell. While the requests have serious purpose and value to the complainant and is hydroelectricity business there is little purpose and value to the world at large.

32. For the above reasons, the Commissioner is satisfied in this case that regulation 12(4)(b) of the EIR is engaged.

### **Public interest test**

33. The EA stated that it recognised the public interest in accountability and transparency and in members of the public being in a position to review the decisions public authorities have made and understand more clearly how they were reached. However, it is of the opinion that it is not obliged to continue corresponding with one person on a matter which is of limited interest to the wider public nor release information which does not add to the ability of the public to understand its approach to water abstraction issues.
34. The EA believes it has answered and addressed the complainant's concerns, correspondence and requests as far as it is able. Continuing to correspond with the complainant would amount to an unreasonable and disproportionate distraction away from its primary tasks of protecting the environment and communicating with the public in general about its work.
35. The Commissioner considers there is always a public interest argument in openness and transparency and in providing the public access to information to enable them to scrutinise the actions and decisions made by a public authority. But in this case, overall, the public interest arguments in favour of disclosure are limited. The information is pursued for private commercial and personal reasons, as a result of the complainant's belief that the EA is not managing the watercourses near his property appropriately. The EA's current management negatively affects the flow of water to his property and therefore impacts on his ability to generate electricity to sell.
36. The EA has explained the amount of time and resources already dedicated to the issues raised and the Commissioner does not consider it is in the public interest for the EA to continue responding to requests for information relating to the same topic. The EA has informed the complainant of its final position and advised him to refer the matter to the Local Government Ombudsman. It is not in the wider interests of the general public for the EA to continue devoting officer time and public resources to answering these requests, as this would effectively divert such officers and public funds away from the EA's statutory functions and the protection of the environment.

### **Procedural matters**

37. Regulation 11 of the EIR states that a public authority shall respond to a request for an internal review within a maximum of 40 working days.
38. In this case, it is noted that the EA just missed this deadline, informing the complainant of the outcome of the internal review a couple of days late. The Commissioner has therefore recorded a breach of regulation 11 of the EIR in this case.

## Right of appeal

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39. 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)

40. 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.
41. 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** .....

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
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