

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

**Date:** 4 October 2019

**Public Authority:** Natural Resources Wales

**Address:** [acesstoinformationteam@naturalresourceswales.gov.uk](mailto:acesstoinformationteam@naturalresourceswales.gov.uk)

**Decision (including any steps ordered)**

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1. The complainant requested various pieces of information relating to felling licences. Natural Resources Wales ('NRW') initially applied regulation 12(4)(b) to the request as it considered it to be manifestly unreasonable due to the time it would take it comply with it. During the Commissioner's investigation NRW disclosed the information requested and stated other information was not held. The Commissioner's decision is that NRW has complied with regulation 5(1) as it does not hold any further recorded information relevant to the request. However, the Commissioner finds that NRW breached regulation 5(2) of the EIR in failing to provide the requested information within the required timescale. The Commissioner also finds that NRW breached regulation 14(2) of the EIR by failing to issue a refusal notice within the statutory time limit. The Commissioner does not require any steps to be taken.

**Request and response**

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2. On 2 January 2019, the complainant wrote to NRW and requested information in the following terms:

*"Following previous information received and a lack of response to my stage 2 complaint after 2 months, it appears as if I will have no alternative but to refer the issue of non-compliance of the Habitats-Directive to the EU for their consideration.*

*Accordingly, could you please provide the following:*

- *A list of all felling licences applied for which could affect the Wye Valley SACs in Monmouthshire and whether they were granted or not over the past 10 years.*
- *A copy of any environmental information considered for those applications.*
- *A note as to whether appropriate assessments were undertaken and whether they stated that the qualifying feature of the SAC would potentially be harmed by the development*
- *A note as to which licences have been granted in spite of adverse comments on the appropriate assessment.*
- *The qualifications of the person undertaking the appropriate assessment. (Please note I am not asking for names).*
- *Where the appropriate assessment shows there could be an effect on the qualifying feature and has been overruled, the environmental qualifications of the person overruling the AA.*
- *Any Board papers giving direction or discussion as to the issuing of Felling Licences in spite of negative appropriate assessments.*

*I appreciate that this is a little work, but as you will appreciate it is all information that the EU will require in considering this matter, so will not be wasted time”.*

3. NRW initially responded on 28 January 2019 and advised that it needed further time to *“complete your request”*, in light of the amount of information caught by it. NRW advised that it would provide a further response by 25 February 2019.
4. NRW next wrote to the complainant on 12 March 2019 and apologised for the delay in responding. It also apologised that it should have asked the complainant at an earlier stage if he would be able to refine/narrow the request in order to avoid any charge being made as it had estimated it would take up to 132 hours to comply with it. NRW explained that if the complainant was unwilling to refine the request it would consider the original request. The complainant wrote back to NRW on the same day and expressed dissatisfaction with the response as he had been expecting copies of the information requested by 25 February 2019. He also pointed out that NRW had not provided an estimate in respect of the cost of complying with the request.
5. On 18 March 2019 NRW issued a further response confirming that the request of 29 December 2018 would take approximately 132 hours to process, and as such any charge would be £3,300 (calculated at £25.00 an hour).
6. On 18 March 2019 the complainant wrote back to NRW and advised that he did not *“expect to pay for your errors”* in its initial handling of the

request. He asked NRW to provide all of the information requested as soon as possible.

7. On 11 April 2019 NRW sent a further response confirming that the original request "*exceeds the cost limit for complying*". It advised that, if the complainant was unable to narrow the scope, it would consider refusing the request.
8. Again, the complainant wrote back to NRW on 11 April 2019 expressing further dissatisfaction with its handling of the request. He reiterated that "*given your promises in January that you would provide all the information, I expect you to live up to do what you have said you would do*".
9. Following correspondence with the Commissioner, on 17 May 2019 NRW issued its internal review response confirming that it considered regulation 12(4)(b) to apply in light of the time and resources it would take to comply with the request.

### **Scope of the case**

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10. The complainant originally contacted the Commissioner on 1 March 2019 to complain about the way his request for information had been handled. The complainant also contacted the Commissioner on 11 April 2019 and again on 30 May 2019 following receipt of NRW's internal review response expressing his continued dissatisfaction with the handling of his request.
11. During the course of the Commissioner's investigation NRW contacted the complainant to further clarify the exact nature of the information sought. Following this, NRW disclosed the information held, subject to some personal data being redacted under regulation 13. Although the complainant did not challenge the personal data which had been redacted he expressed dissatisfaction with NRW's response to part 5 of the request relating to the qualifications of its Felling Licence Team Leader.
12. Following further correspondence from the Commissioner, NRW confirmed that it did not hold any recorded information relating to the qualifications of its Felling Licensing Team Leader.

## Reasons for decision

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### Regulation 5 – Duty to make environmental information available on request

13. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request.
14. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and argument. She will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. She will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information was held, she is only required to make a judgement on whether the information was held on the civil standard of the balance of probabilities.
15. As stated earlier in this notice, following the involvement of the Commissioner, and as a result of additional clarification from the complainant, on 9 July 2019 NRW disclosed the information held relevant to the request. Following this disclosure, the complainant expressed dissatisfaction with the response to part 5 of the request.
16. Part 5 of the request (as clarified on 2 July 2019) was for:

*"the qualifications (in relation to the licensing/nature conservation) of the person who granted the license although it could have impacted as per assessment"*.
17. In its response dated 9 July 2019 NRW provided the following information in relation to this request:

*"Felling licences are issued and governed in accordance with our non-financial scheme of delegation. In this instance the Felling Licensing Team Leader is qualified to issue the licence decisions on behalf of NRW"*
18. The complainant wrote back to NRW on 9 July 2019 expressing dissatisfaction with the information provided in relation to part 5 of the request. He pointed out that it was:

*"illegal to issue any permit where a HA [Habitat Assessment] has been undertaken where that assessment does not show that there will be no effect on a protected species. Given that HAs are undertaken by professional ecologists, I did ask what the qualifications of the person*

*overriding the professional opinion of the ecologist were. Your response 'Felling licences are issued and governed in accordance with our non-financial scheme of delegation. In this instance the Felling Licensing Team Leader is qualified to issue the licence decisions on behalf of NRW'. Seems to indicate the person overruling the professional ecological assessment is not ecologically qualified. Is this correct".*

19. Following further correspondence from the Commissioner, NRW acknowledged that its response of 9 July 2019 did not address the issue of the qualifications of the Felling Licence Team Leader. It wrote to the complainant again on 2 September 2019 and confirmed that it did not hold any recorded information relating to the qualifications (in relation to licensing/nature conservation) of the individual concerned. NRW also provided the complainant with a copy of the job description for the role in question.
20. In its response to the Commissioner NRW confirmed that, in relation to part 5 of the request, searches were undertaken of the post holder's personnel file, its electronic Human Resources system and information held by the post holder's line manager and no recorded information was identified relating to licensing and nature conservation qualifications of the individual concerned.
21. NRW confirmed that the job description for the Felling Team Leader post (a copy of which was provided to the complainant) did not require the individual to have any specific licensing and/or nature conservation qualifications. NRW re-iterated that the Felling Licence Team Leader is *"required to operate under the NRW non-financial scheme of delegation to make their decisions as appropriate"*.
22. Based on the representations and evidence provided by NRW the Commissioner is satisfied that it has carried out adequate searches of where relevant information would be held. The Commissioner has not seen any evidence of any inadequate search or grounds for believing there is any motive to withhold information relevant to the request. Based on the searches undertaken and the other explanations provided the Commissioner is satisfied that on the balance of probabilities, the NRW does not hold any further recorded information relating to the request, other than that which it has disclosed.
23. Regulation 5(2) of the EIR states that information shall be made available *"as soon as possible and no later than 20 working days after the date of the request"*.
24. In this case the complainant made his initial request on 2 January 2019. NRW initially refused the request under regulation 12(4)(b) however during the course of the Commissioner's investigation, NRW

reconsidered its decision, and following further clarification from the complainant it disclosed the requested information on 9 July 2019.

25. As NRW did not communicate the requested information to the complainant within 20 working days of the request, the Commissioner has decided that NRW has breached Regulation 5(2) of the EIR.

#### **Regulation 14 – refusal notice**

26. Under regulation 14(2) of the EIR, a public authority is required to issue a refusal notice no later than 20 working days after the date of receipt of the request.
27. Regulation 7(1) provides that where a request is particularly voluminous or complex, the public authority may extend the time for compliance from 20 to 40 working days, where it believes that the complexity and volume of the request would make it impractical to comply or reach a decision about whether to refuse the request, within 20 working days. If the authority does require an extension, under regulation 7(3) it must still inform the requester of this within the initial 20 working day limit.
28. In this case the request was submitted on 2 January 2019 and on 28 January 2019 NRW wrote to the complainant stating that it needed further time to *“complete your request”* and advising that a further response would be issued on 25 February 2019. As such NRW complied with regulation 7(3) of the EIR. However, NRW did not subsequently respond within the required 40 working day extended deadline. In addition, NRW’s next response of 12 March 2019 did not comply with the provisions of the EIR because although it is clear that NRW were refusing to comply with the request, it did not cite a specific exception on which it was relying, as required to do so under regulation 14.
29. In light of its failure to issue a refusal notice within 40 working days, the Commissioner finds that NRW breached regulation 14(2).

## Right of appeal

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30. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

31. 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.
32. 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 .....**

**Joanne Edwards**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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