

Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 22 June 2022

Public Authority: Natural Resources Wales

Address: acesstoinformationteam@naturalresourceswales.gov.uk

Decision (including any steps ordered)

1. The complainant requested information regarding the decision to suspend eel fishing in Wales. Natural Resources Wales (NRW) disclosed the information held relevant to the request but the complainant considered that additional information was held. During the course of the Commissioner's investigation NRW located some additional information which it disclosed to the complainant. The Commissioner's decision is that on the balance of probabilities NRW disclosed all the relevant and non-exempt information that it holds and has complied with regulation 5(1) of the EIR. The Commissioner does not require any steps to be taken.

Request and response

2. On 18 November 2020 the complainant wrote to NRW concerning a letter they had received about changes to eel and elver fishing authorisations in Wales from 2021 and requested information in the following terms:

"We would like to make a freedom of information request in connection with the attached letter.

- 1) We would like copies of all the minutes of the meetings and emails in connections with the internal review/consultation that resulted in the discontinuation of authorisations, from the 1st January 2021, to fish for eels and elvers/glass eel in any waters in Wales,

including the estuaries of the cross-border rivers Dee and Wye. We would also like the scientific data that has been used in the internal review that has resulted in the decision.

- 2) We would like the data collected from the most recent available assessment of silver eel escapement (2014-2016) which substantiates the claim that the Dee was just 3% of the target, West Wales 7% and Severn 9%. This would include the location of the sampling, date and time, the methodology of data collection and of course the raw data".
3. NRW responded on 16 December 2020 and provided the information requested, subject to some information being redacted/withheld under regulations 12(5)(b) (legal professional privilege) and regulation 13 (personal data).
4. On 18 January 2021 the complainant wrote back to NRW expressing concern over the volume of information held relevant to the request in light of the reference within a letter they had received that the decision had been subject to an extensive process of internal consultation on which there had been considerable debate internally as well as with the Welsh Government and the Environment Agency (EA). The complainant pointed out that they would have expected to receive minutes of meetings with these organisations. In this communication the complainant also made a new request for information in the following terms:

"We would like the minutes of meetings and email trail of this consultation process. Highlighted on page 1 of the attached letter suggest the checks and balance would be evidenced, but this does not seem to be the case.

We would like the analysis and data for the 2005-07, unpublished Red Barn Dyke Fishery as highlighted on page 3 in the attached letter".
5. NRW responded on 8 February 2021 and confirmed that the decision to stop authorisations had been discussed at various meetings of NRW Groups and with the EA. It also confirmed that it did not hold the source data and analysis for the unpublished Red Barn Dyke Fisheries and suggested the complainant contact the EA for this information.
6. On 9 February 2021 the complainant wrote back to NRW and reiterated the previous reference to there having been internal consultation as well as the statement that it had been discussed with the Welsh Government and the EA. They pointed out that they did not think it to be an unreasonable request to have "the background information and evidence on how the decision was reached through the various organisations".

7. On 10 February 2021 the complainant wrote to NRW and requested an internal review into its handling of the requests of 18 November 2020 and 18 January 2021. The complainant stated that they did not think they had been provided with copies of **all** the information held relevant to the request.
8. NRW responded on 23 February 2021 and provided copies of the minutes of the Fisheries Strategy Group on 15 October 2020 where the decision to suspend authorisations was agreed.
9. The complainant wrote back to NRW on 22 March 2021 and again made reference to the statement within a letter from NRW dated 3 December 2020 where it stated that the decision was taken "after considerable debate internally as well as with the Welsh Government and the Environment Agency". The complainant pointed out that they had not received any information relating to consultation with the EA and also they would have expected some dialog with DEFRA in relation to the Non Detriment Finding.
10. NRW responded on 21 April 2021 and confirmed that it had provided all information held concerning consultations, including with the EA. It explained that many discussions took place verbally over the telephone and as such they are not documented. NRW also provided copies of correspondence between its Fisheries officers and Defra policy leads briefing on the proposal.

Scope of the case

11. The complainant contacted the Commissioner on 16 June 2021 to complain about the way their request for information had been handled.
12. The complainant did not challenge any information which had been withheld by NRW under regulations 13 or 12(5)(b) either in their internal review request or in their complaint to the Commissioner. However, the complainant considers that NRW has not located all information held relevant to the request.
13. During the course of the Commissioner's investigation NRW located one additional document which it disclosed to the complainant.
14. The scope of the Commissioner's investigation into this complaint is to determine whether NRW holds any further recorded information relevant to the request other than that which it has disclosed and that which has been withheld under regulations 12(5)(b) and 13.

Reasons for decision

Regulation 5 - duty to make environmental information available on request

15. Under regulation 5(1) of the EIR and subject to a number of EIR provisions, a public authority that holds environmental information shall make it available on request.
16. Under regulation 5(2), information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
17. 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 arguments. He will also consider the actions taken by the authority to check that the information is not held and he will consider any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any reason why it is inherently likely or unlikely that information is not held.
18. NRW confirmed that all information held relevant to the request would be held electronically primarily in the form of emails and word documents held on individual email accounts and electronic filing systems - DMS and One Drives. NRW confirmed that searches were carried out of email accounts both at the time the request was received and subsequently. Searches covered the period from July to December 2020 as this is the period when discussion between various interested parties on the subject matter took place. Searches were also made on NRW's DMS (where documents are stored) as well as the One Drives of individuals who were involved in the process. NRW advised that searches were conducted using various search terms such as "eel", "glass eel", "elvers", "eel + fishing", "eel + authorisations".
19. NRW advised that the status of eel stock is not a new issue as eel have been assessed as 'critically endangered for several years'. However, the process which led to NRW concluding that eel and elver fishing in Wales would be suspended from 2021 took place over a relatively short space of time. As such, NRW are satisfied that the searches undertaken of all email accounts and electronic storage systems would have identified all relevant information.
20. NRW advised that the main officer involved in this matter left NRW last year. Prior to him leaving, actions were taken to ensure that all files he held were transferred into NRW's DMS electronic documents storage system. Further searches of these files were repeated following the

Commissioner's involvement in this complaint. NRW confirmed to the Commissioner that, to the best of its knowledge, no information relevant to the request has been deleted or destroyed.

21. The complainant has alleged that NRW holds further information relevant to their request other than which has been disclosed to date. In support of this view the complainant made reference to statements made by NRW in correspondence that there had been "considerable debate internally as well with Welsh Government and the Environment Agency" regarding the decision to suspend authorisations for eel and elver fishing. The complainant does not consider that the amount of information which has been disclosed to date reflects this statement.
22. The complainant also made reference to the fact that NRW has confirmed in a letter that the decision was discussed at various meetings of NRW groups Fisheries Strategy Group, Strategic Review of Charging Group; NRW Management Business Board; Regulatory Business Board and the Wales Fisheries Forum.
23. The Commissioner asked NRW for background information on the process taken and events which lead to the decision to suspend eel fishing being taken. NRW explained that discussions on options for the remaining fisheries in Wales took place with the EA. In October 2020 a paper on the subject of authorisations for eel and elver fishing was considered by NRW's internal Fisheries Strategy Group (FSG) explaining the background and rationale for the preferred option of suspending the remaining fisheries in Wales until the eel stock sufficiently recovers. This proposal was approved by the FSG and was subsequently referred to NRW's internal Regulatory Business Board in October 2020 who also approved the preferred option to suspend eel fishing in Wales. A copy of this report has been provided to the complainant.
24. NRW confirmed to the Commissioner that the issue of authorisations for eel and elver fishing was discussed at a number of internal meetings, as detailed below. It also confirmed that the minutes of the meetings had been provided to the complainant. The additional information which NRW located during the Commissioner's investigation is an email confirming that the decision made at the FSG was approved by the Natural Resources Management Business Board (NRMBB)
 - FSG - meeting 15 October 2020
 - Regulatory Business Board/Strategic Review of Charging – meeting 19 November 2020
 - NRM – meeting 26 October 2020

25. NRW advised the Commissioner that the majority of meetings and discussions on the subject matter, both internally and with the EA took place either via the telephone or by Microsoft Teams and no notes of the meetings/discussions are held. NRW advised that it regularly liaises with the EA on fisheries matters particularly when they involve a cross border rover interest, such as the River Wye, or migratory fish such as eel and salmon. An NRW officer spoke regularly with the EA during the period the matter was under consideration to make the EA aware of NRW's position. In addition, NRW's principal Fisheries Advisor held regular catch up Teams meetings with his counterpart in EA and the issue of eel fishing was discussed on a number of occasions.
26. NRW confirmed that the report that was considered by its FSG was shared with interested parties including Defra and the Welsh Government. The issue of eel fishing was also discussed with the Welsh Government on a number of occasions at regular monthly liaison meetings that NRW has with colleagues in the Inland Fisheries department. NRW explained that the monthly liaison meetings with the Welsh Government are usually informal and no formal record of comments or decisions is made but often there will be an agenda which is used as a structure for discussions. NRW reiterated that the issue of eel fishing is not a new issue due to declining eel stock and the conflict between fishing and conservation interests. The issue has been discussed with the Welsh Government on a number of occasions over the last few years. NRW explained that there is no specific requirement for it to share information regarding decisions of this nature with the Welsh Government as the power to make such decisions rests with NRW. Information regarding the decision to suspend eel fishing, including the report to the FSG was shared with the Welsh Government mainly for information
27. Whilst the Commissioner recognises that the complainant does not consider that NRW has fulfilled the request, NRW has provided a clear explanation of the searches that it undertook to identify information falling within the scope of the request. No evidence is available to the Commissioner which would indicate that NRW's searches were insufficient, or that it holds further recorded information falling within the scope of the requests. The Commissioner also notes the explanations provided by NRW as to how the matter was discussed both internally and with other interested parties, which explains why additional information is not held.
28. In light of the above, the Commissioner is, on the balance of probabilities, satisfied that NRW has identified all information it holds that falls within the scope of the complainant's request. The Commissioner's decision is, therefore, that NRW has complied with regulation 5(1) of the EIR.

Right of appeal

29. 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

30. 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.
31. 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
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