

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2023

Public Authority: Forestry Commission England
Address: 620 Bristol Business Park
Coldharbour Lane
Bristol
BS16 1EJ

Decision (including any steps ordered)

1. The complainant has requested information relating to the installation of a road barrier and bollards by Forestry Commission England.
2. The Commissioner's decision is that Forestry Commission England has failed to issue a response to the request that complies with the requirements of section 1(1) of the FOIA. Specifically, it has failed to conduct sufficient searches to determine if it holds information within scope of question 5 of the request in order to provide an adequate response. The Commissioner also finds that the public authority did not comply with its obligations under section 16 of FOIA to offer advice and assistance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide advice and assistance to the complainant to clarify and assist in its understanding of the word 'blocked' used in the request, conduct appropriate searches for the information and provide a fresh response which is adequate for the purposes of the FOIA. It must not rely on the assertion that information is not held on the basis of the word 'blocked' used in the 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

5. On 20 September 2022, the complainant wrote to Forestry Commission England and requested information in the following terms:

"I wish to submit a FOI request in respect of the installation of a Forestry England metal hinged road barrier.

The installation of 10 fixed road Glaston bollards on the road passing Hamsterly Forest Visitor Centre. DL133NL

On 14102020 former FE land Agent (redacted) advised Forest residents in a letter that our legal right of way would be subject to a temporary closure for work to be carried out on the road.

The letter also stated this would not affect our right of way. Following receipt of the letter and after that date the Residents right of way was unlawfully blocked outside the scope of the letter with no other correspondence or explanation.

As part of the FOI request we are seeking the following information, emails , or correspondence in respect of the following questions. (I do not want cost or supplier or contractor details) just the information requested below.

The reason for the request is to secure further evidence of Unlawful and substantive blocking of residents rights of way. This is required in the event the matter goes to Court proceedings.

It is within the remit of the FOI request protocols In the event the information is not supplied without a legal legitimate reason we will appeal and resubmit this request via the Information Commissioner's Office to secure the evidence sort.

1. What date was the site / positioning of the metal barrier and the fixed bollards subject of a survey / measuring up ?.
- 2 What date were they ordered from Forestry England suppliers?

- 3 What date were they installed on the road passing Hamsterly Forest Visitor Centre DL133NL.
- 4 Who ordered the products and authorised them to be sited in the current location?
- 5 Who authorised the blocking of the road past the Hamsterly Forest visitor Centre by means of a padlocked metal barrier and fixed road bollards"
6. On 18 October 2022, Forestry Commission England responded to the request. In regard to questions 2 and 3, it provided the dates requested. In regard to questions 1, 4 and 5 it denied holding any information within scope.
7. On 19 October 2022, the complainant asked Forestry Commission England to carry out a review of its response to questions 1, 4 and 5. In regard to question 5, he said that its response "contradicts what Forestry England Senior Management (redacted) disclosed in a public meeting on 24 June 2022, he informed us that he authorised the padlocking of the barrier blocking our legal right of way following advice from Forestry England's Estates and Legal Services."
8. On 2 November 2022, Forestry Commission England carried out a review of the request and wrote to the complainant upholding its original decision. In regard to question 5, it noted that the complainant said (redacted) confirmed he authorised "this activity at a meeting. While this may be the case, there is no recorded information held by Forestry England, and personal recollections of actions or activities are outside the scope of the legislation". In regard to section 16 of the FOIA (Duty to provide advice and assistance), it said that given the very specific nature of the request, it is difficult to see what advice and assistance could have been provided to help identify what information is held that may be of interest to the complainant.

Scope of the case

9. On 5 November 2022, the complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. In regard to question 1 of the request, during the course of the Commissioner's investigation, Forestry Commission England provided the complainant with an explanation why the information is not held. In regard to question 4, it confirmed that the products were ordered by a

civil engineer, and that the placement of them was as a result of an onsite discussion between those involved 'as part of routine site management'. It applied section 40(2) of the FOIA (personal information) to withhold the civil engineer's name. In regard to question 5, it maintained that it does not hold any information within scope. The complainant then asked the Commissioner to focus his investigation entirely on its response to question 5 of the request.

11. The Commissioner has therefore considered Forestry Commission England's handling of the request, specifically whether or not it holds any information within scope of question 5.

Reasons for decision

Section 1 of the FOIA – general right of access

12. Section 1 of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

13. Section 3(2) of the FOIA states that

"For the purposes of this Act, information is held by a public authority if –

(a) it is held by the authority, otherwise than on behalf of another person, or

(b) it is held by another person on behalf of the authority."

The complainant's view

14. The complainant said he believes that information is held about pre-planning and who authorised the installation of the barrier and bollards. This is because, a Land Agent from Forestry Commission England sent residents an email on 14 October 2020 informing them that the road would be temporarily closed on 9 November 2022 for 3 weeks. However, a permanent barrier and bollards were then installed on this

date without any consultation with residents.

15. The complainant also provided the Commissioner with a copy of minutes relating to a meeting held on 24 June 2022. Attendees included residents and a Director of Forestry Commission England amongst others. He also provided an email chain (between the Director who attended the meeting and a resident). He said that the information shows that 'instructions' to install the barrier and bollards were given by another Director within Forestry Commission England to the Director who attended the meeting, who then authorised installation, and took responsibility for this decision at the meeting. Because of this, he expected information, that is, the 'instructions' given by the first Director to be held by Forestry Commission England, and it to have applied section 42 of the FOIA (legal professional privilege) to withhold this information.

Forestry Commission England's position

16. Forestry Commission England argued that the 'specificity' of the information requested within question 5 is misleading in nature. It said that to answer the question when the word "blocking" was used would lead to an admission that a private road over which a number of people have a right of access had been blocked which was illegal. It said that, the road was not blocked, access had been restricted by placement of a barrier and bollards.
17. Forestry Commission England maintained that the director who attended the meeting ("Forest England's most senior official in the region") took responsibility for the activity. However, it does not hold any recorded information showing specific authorisation for an illegal act of "blocking" a right of way.
18. In regard to the minutes, it said that they were provided by the complainant to Forestry Commission England, that they do not contain the requested information, and providing them back to the complainant as information within scope would be misleading and would distort the history and legality of its activities in this case. After a discussion with the Commissioner, it disclosed a copy of the minutes to the complainant, but maintained that this information is not within scope because it does not show who authorised the placing of the barrier and bollards, but only refers to who took responsibility for the activity.
19. Forestry Commission England said that searches for the information relating to question 5 of the request was part of the same process for information relating to question 4. This included, searches by the Forestry Management Director and his district team of calendars, notes

and Outlook inboxes for information relating to the location the barrier and bollards were installed. The information identified was limited to the date of the site meeting with contractors and the choice between bollards ordered.

20. It said that, because the installation of the barrier and bollards was 'routine operational activity 'out in the field' and the specificity of the question is misleading in nature, no information within scope was identified.

The Commissioner's decision

21. The Commissioner notes that Forestry Commission England only clarified during the course of the investigation that it does not hold any recorded information showing 'specific authorisation for an illegal act of "blocking" a right of way'. This explanation was not provided to the complainant in its initial response or review outcome. Although it referred to section 16 of the FOIA in the review and stated "given the very specific nature of the request, it is difficult to see what advice and assistance could have been provided to help identify what information is held that may be of interest". This does not communicate the specific issue and extent the Forestry Commission England had with the use of the word 'blocking' and indeed that further clarification was required, which, was not sought.
22. The Commissioner notes the reason the complainant originally provided Forestry Commission England with a copy of the minutes was so that the Director who attended the meeting could agree them, and not that in the event he made a request under the Act the minutes could be returned to him as evidence of the 'illegal act of blocking'. The Commissioner further notes that the complainant has confirmed that he is in fact seeking information beyond that in the minutes about who authorised the installation of the barrier and bollards, and that the minutes were provided to the Commissioner as evidence that this further information may be held.
23. The Commissioner notes the use of the word 'authorised' in the request, and has applied the dictionary definition of the word to mean 'to give official permission for something to happen, or to give someone official permission to do something'¹. He notes that the complainant believes that 'instructions' were given by another Director to the Director who

¹ [AUTHORIZE | English meaning - Cambridge Dictionary](#)

attended the meeting, that Director then authorised installation, and took responsibility for this decision at the meeting. He also notes that Forestry Commission England said that the information held is only limited to on-site meetings and the Director who 'took responsibility' for the work.

24. It is the Commissioner's view that authorisation in this case relates to the individual within Forestry Commission England who gave permission for (or authorised) the installation of the barrier and bollards. In this case, based on the information in the minutes, this would appear to be the Director who also took responsibility for this action. He is, however, mindful of Forestry Commission England's position that it believes the minutes do not show who authorised the work because of the term 'blocking' used in the question.
25. The Commissioner notes that the request relates to work involving the installation of a road barrier and bollards by a public authority, that it is likely to follow internal processes in advance of such work being carried out, that the evidence provided confirms it wrote to residents and also ordered products in advance of this work being completed. He also notes that at 1.5b in the minutes, the complainant requested a copy of the 'legal advice' relating to this activity that was sought by Forestry Commission England. The minutes contain the response from (redacted) of Forestry Commission England that "It would not be standard practice for it to share legal counsel. Legal advice is subject to legal professional privilege and we would not share, particularly as we are still in a legal process." Therefore, it appears that at least some preplanning information involving the individual who authorised the work is likely to be held.
26. The Commissioner also notes that he initially asked Forestry Commission England a series of specific questions to determine whether it carried out appropriate searches to identify any information held within scope. It failed however to provide answers to these questions. He then asked it to answer these questions again and instead of providing a response to each question, it provided a general paragraph stating that the searches it conducted were a part of the same process for information relating to question 4, and this was limited to the date of the site meeting with contractors. However, there is an inherent difference between the information requested in question 4 and 5 (one seeks information about ordering and placing of products, and the other seeks the identity of the person who authorised this activity). The searches were also limited to on site meetings with contractors.
27. The Commissioner notes that wider searches for the information do not appear to have been conducted, including for information before the

date the site meetings took place (in the event that information exists that shows who authorised the installation of the barrier and bollards within arrangements of the site meeting with the contractors). Similarly, searches were not conducted within other departments (in the event that information exists that shows who authorised the installation within legal or other advice obtained from another department regarding the matter).

28. For the reasons set out above, the Commissioner does not accept the assertion that Forestry Commission England does not hold information within scope of the request on the basis of the word 'blocked' used in the request. He is also not convinced that appropriate searches have been carried out to identify any recorded information that may be held within scope of question 5 of the request. It is his view that by failing to correctly confirm or deny whether the requested information is held, it has failed to issue the complainant with a response compliant with the requirements of section 1(1) of the FOIA.

Section 16 of the FOIA – duty to provide advice and assistance

29. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice² in providing advice and assistance, it will have complied with section 16(1).
30. The Commissioner notes that Forestry Commission England did not provide advice and assistance, it was not clear in its communication with the complainant about what specific aspect of question 5 it had an issue with (the use of the term 'blocking') and that clarification was required. The Commissioner is therefore satisfied that the public authority did not meet its obligations under section 16 of FOIA. The public authority must now provide appropriate advice and assistance to the requester.

² [Freedom of Information Code of Practice - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Right of appeal

31. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

32. 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.
33. 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

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