

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

**Date:** 24 February 2023

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

**Decision (including any steps ordered)**

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1. The complainant has requested information about an ongoing dispute over the ownership of a piece of land.
2. The Environment Agency disclosed some information but withheld the rest under regulation 12(5)(b) (course of justice) and regulation 12(4)(e) (internal communications).
3. The Commissioner's decision is that the Environment Agency is that the EA has correctly withheld the information under regulation 12(5)(b).
4. The Commissioner does not require the public authority to take any steps.

**Request and response**

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5. On 4 October 2022, the complainant wrote to the Environment Agency and made the following request:  
  
"Please may I kindly request email correspondence and attachments between yourself and the conveyancer who were tasked with looking at the land under this title deed sy881617."

6. The EA responded on 15 December 2022. It disclosed information, with redactions made under regulation 12(5)(b), regulation 12(4)(e) and regulation 13 (personal data). It also confirmed that some information was withheld in its entirety under regulation 12(5)(b).
7. The complainant requested an internal review on 16 December 2022; they didn't raise any concern about the application of regulation 13.
8. The EA provided the outcome to its internal review on 20 January 2023. It upheld its position.

## **Background information**

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9. The EA has explained that it 'is the landowner of a stretch of unregistered riverbank on [Redacted]. It is unable to find paper title to this land and so has attempted to register it by way of adverse possession. The intention behind registration has been to provide certainty for surrounding landowners, the general public and also river users.'
10. For several years, the land in question has been occupied by residential boaters, of which the complainant is one.
11. The EA has submitted two applications, in 2018 and 2021, to the Land Registry for adverse possession of the land. The EA withdrew both applications.

## **Reasons for decision**

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12. The Commissioner is satisfied that the requested information falls within the definition of environmental information according to regulation 2(1)(c) of the EIR, which relates to measures and activities that will affect the landscape. Therefore, the EA was correct to handle this request under the EIR.
13. Regulation 12(5)(b) of the EIR exempts information from disclosure if doing so would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.
14. The EA has withheld correspondence, between an EA member of staff and in-house lawyer, about the EA's application to Land Registry in 2021. The purpose of the correspondence was the seeking and giving of legal advice. It's accepted by the Commissioner that disclosure of information that attracts LPP (legal professional privilege) would

adversely affect the course of justice, and therefore regulation 12(5)(b) can apply to this information.

15. The EA has also redacted, and withheld in its entirety, internal correspondence, exchanged between November 2021 and April 2022, which also revolves around the aforementioned application. Information does not need to be covered by LPP in order to engage regulation 12(5)(b), the exception also covers information about civil proceedings for example, so long as disclosure means, more probably than not, that those proceedings would be harmed.
16. The complainant has argued that, since the EA does not currently have an active application with the Land Registry in relation to the land, regulation 12(5)(b) cannot be engaged. The Commissioner must consider circumstances as they stood at the time of the request, at which point the EA's second application to Land Registry had not yet been withdrawn. The EA has confirmed to the Commissioner that, even though there is no current application with the Land Registry 'the matter is still very much live.'
17. The EA has elaborated that it is reviewing historical evidence and considering submitting another application to Land Registry. The Commissioner understands that the residential boaters will, as they were previously, be invited to consult or object on any future application.
18. The EA is concerned that the complainant, and other interested parties, may be making their own application of adverse possession of the land and could, simultaneously, use the requested information to their advantage and weaken the EA's claim.
19. Ultimately, the Commissioner agrees with the EA that disclosure 'is more than likely to result in unbalancing the level playing field under which adversarial proceedings are meant to be carried out, thereby prejudicing the adverse possession claim.' Therefore, the exception is engaged and the Commissioner will go onto consider where the balance of the public interest lies.

### **Public interest in disclosure**

20. The EA has only identified two generic public interest arguments in favour of disclosure: under the EIR there is a presumption in favour of disclosure and the general need for openness and accountability.
21. The complainant is concerned that the land has no owner and the EA has failed to inform the Land Registry of the residential boaters' presence. Furthermore, the complainant is concerned that the EA are colluding with the 'surveyors of the land to submit an illegitimate claim which would amount to fraud by false representation.'

22. The Commissioner can't substantiate the complainant's allegations. He acknowledges that the complainant, and perhaps the other boaters, feel they have a stronger claim on the land than the EA. Disclosure of the requested information would paint a fuller picture of the conflict between the boaters and the EA, why the EA maintains its ownership of the land and how it handles such circumstances.

### **Public interest in maintaining the exemption**

23. The Commissioner notes that there will always be a strong, inherent public interest in both protecting the concept of legal professional privilege and upholding the administration of justice.
24. The EA did not withdraw its second application to Land Registry until January 2023, just three months after the complainant submitted the request. The EA has also informed the Commissioner that it is considering a third application. The public interest in maintaining regulation 12(5)(b) increases where proceedings are recent or ongoing and the Commissioner is satisfied that the EA had a live application with Land Registry, in relation to the land, at the time that the request was made. Furthermore, the matter is still live.

### **The balance of the public interest**

25. In this instance, the Commissioner believes that the balance lies in maintaining the exception. It's not for the Commissioner to comment on which party, the boaters or the EA, has the greater claim over the land. That is for Land Registry to decide and it should be able to do so without either party's application being undermined. It's in the public interest for the appropriate owner of the land to be determined, so they can maintain it as appropriate.
26. Furthermore, the Commissioner notes that disclosure in this case has the potential to adversely affect the course of justice beyond the land in question. The EA has explained that its evidence of ownership of the land relies heavily on the exercise of its statutory duties, to control and manage the land, which is not typical of an adverse possession application. The EA has explained that 'We are not aware of any other case law on this point nor where evidence of this nature has been relied upon. A ruling on this point alone may form precedent case law for future adverse possession cases and become a seminal case of important guidance.'
27. Furthermore, the Commissioner has considered the information that has been disclosed to the complainant in response to their request for information: which is a copy of the Land Registry's response to the application from 2021 that the EA withdrew. In the Commissioner's view, this meets the need for transparency and accountability, without

compromising the EA's position in relation to any ongoing, or future applications.

28. Since he is satisfied that the withheld information engages regulation 12(5)(b), he doesn't need to go onto consider the EA's application of regulation 12(4)(e).

## **Right of appeal**

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

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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**