

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

**Date:** 30 January 2024

**Public Authority:** Department for Environment, Food and Rural Affairs

**Address:** Nobel House  
Seacole Building  
4th Floor, 2 Marsham Street  
London  
SW1P 4DF

**Decision (including any steps ordered)**

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1. The complainant has requested information about a discharge consent from the Department for Environment, Food and Rural Affairs (Defra). Defra refused the request as manifestly unreasonable, citing regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that Defra has failed to persuade him that the request is manifestly unreasonable.
3. The Commissioner requires Defra to take the following steps to ensure compliance with the legislation.
  - Regarding part one of the request - issue a fresh response to the complainant that does not rely on regulation 12(4)(b) of the EIR.
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

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5. The complainant had made a request three days earlier than the request that is being considered in this decision:

"1. Please confirm with specific documentation whether it is true that no discharge consent is required to discharge contaminated liquid through the bottom of unlined chemical waste sites to groundwater, including at Monsanto PCB dump sites :

A. Ty Llwyd where allotments have been closed down and a sinkhole has recently appeared close above a housing terrace which previously suffered from subterranean catastrophic flooding (see <https://www.southwalesargus.co.uk/news/4...> )

B. Sutton Walls which has significantly contaminated well water with a range of toxic chemicals leading to a closure notice being issued by Hereford Council.

2. Please release all Defra or predecessor bodies documentation about the adequacy of the current toxic waste management legal regime regarding the incompletely contained Monsanto barrelled chemical and acid tar lagoon sites, including liaison with Environment Agency.

The national interest here is clear, for both public health and environmental health, isn't it?

3. a) Why are such dangerous chemical waste sites as Sutton Walls and Ty Llwyd not even classified as Contaminated Land within .Environmental Protection Act Part 2A? The current statutory guidance appears unfit for purpose and not to faithfully reflect the primary legislation. Why are Ministers tolerating that amid ongoing chemical contamination of areas such as

i. Ynysddu village

ii. the top of the Ironbridge World Heritage Site in untested stream leading into degraded Upper Furnace Pool then the river Severn?

b) What part does arguably compromised consultant Arcadis play in the surprising conclusions of non-contaminated land across several leaking U.K. hazardous chemical waste sites? See for example of lack of professionalism, unambiguous confirmation of "knowing" pollution of controlled waters from Ty Llwyd in Stanger 2001 consultancy report bizarrely uncited in Arcadis and SKM literature

reviews as part of sub-EPA Part 2A curious undefined process.

4. a) Should [redacted name] have been instructed by Caerphilly Council that the damage to his property was his responsibility \*\*without the Council even testing below his property for the presence of toxic chemicals from the known pre-existing chemical flow out of Ty Llwyd which had caused closure of the allotments a few metres uphill?

b) Is that official misfeasance?

c) Where is the national accountability for this ongoing debacle?

d) Can Arcadis really be trusted with any ongoing assessment at the Monsanto toxic sites given their lamentable local track record?

5. Please confirm whether [redacted name], has been involved in advising in Wales during or since this very significant incident for public and environmental health..."

6. Defra responded on 20 September 2023 as follows:

"Any correspondence for views, explanations, or interpretations would not amount to a valid request under these regimes and would be handled as general correspondence.

You may suggest that part 1 and part 2 is asking for documentation. However, where a request is for confirmation, based on documentation that might be held by Defra, of your own understanding of a particular scenario that you describe, that is not a valid request for information under FOIA or the EIRs.

With that in mind this enquiry is not being handled under the FOIA or EIRs and has been passed to the Defra Helpline to provide you with a response under general correspondence..."

7. The complainant replied:

"You may suggest that part 1 and part 2 is asking for documentation."

It is asking for documentation. Please review this response and reissue."

Defra again stated that it was referring the correspondence to its helpline and responding outside the legislation.

8. On 20 September 2023, the complainant wrote to Defra and requested information (that is the subject of this decision) in the following terms:

"Please release all documentation relevant to :

1. whether a discharge consent is required at Sutton Walls Monsanto PCB barrel dump and buried acid tar lagoon site, which has two unconsented winterbournes coming out of north and south sides and significantly contaminated well water with a range of toxic chemicals from the nationally notorious unlined hazardous chemical site, leading to a compulsory closure notice being issued by Hereford Council.

(Existing Gov website information is notably ambiguous.)

2. why the Environment Agency has been allowed by Defra to underplay the significance of the winterbournes and resultant sediment egress for EPA Part 2A determination. Note the surprising lack of fencing and unrestricted public footpath access.

(Noting also the role of Arcadis in non-determination of contaminated land at Tees South Bank, Ty Llwyd and Sutton Walls and also Veolia and Clearaway involvement in non-classification at several of the Monsanto neurotoxin dump sites )

Please see for essential background :

<https://theecologist.org/2007/oct/26/has...>"

9. This was followed by a second email from the complainant, as follows:

"Seems odd. However I've tried to comply with your purported understanding by submitting a new request which perhaps makes clearer that the request is centrally for documentation. Let's see if that gets creatively blocked too.

We'll see if I get the additional reply about the wider matters which you have effectively promised or that gets blocked too by spurious claim that the enquiry is somehow vexatious."

10. Defra responded on 21 September 2023. It stated that the request was manifestly unreasonable (regulation 12(4)(b)).
11. On the same day, the complainant requested an internal review, disputing the application of 'manifestly unreasonable' to their request.

"...It is not actually clear on what grounds you consider my request to be manifestly unreasonable, since the bare assertion of vexatiousness seems weakly evidenced . Please see particularly relevant prior material in the Bylines article about the already

evident pattern of use of vexatious classification as an official evasion strategy against providing substantive response to FoI requests...”

The Commissioner has only quoted part of the review request which is very long and critical, with additional supporting evidence.

12. Following an internal review, Defra wrote to the complainant on 27 September 2023 and set out the history and context within which the request had been made. The conclusion of the review was that the request made on 20 September 2023 was manifestly unreasonable.

### **Scope of the case**

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13. The complainant contacted the Commissioner on 27 September 2023 to complain about the way their request for information had been handled. They argued that,

“The sequence seems to follow the usual pattern of trying to find a rationale for document non-release. It’s Kafkaesque. It feels like the manifest unreasonableness is from them not me.”

14. The Commissioner considers the scope of this case is Defra’s citing of regulation 12(4)(b) to the requested information.

### **Reasons for decision**

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#### **Is the requested information environmental?**

15. Regulation 2(1) of the EIR defines environmental information as being information on:
  - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
  - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
  - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and

activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;

- (d) reports on the implementation of environmental legislation;
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
16. The Commissioner does not know whether the requested information is held. As it is information relating to discharges, the Commissioner believes that the requested information is likely to be information on factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a) the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

**Regulation 12(4)(b) – manifestly unreasonable**

17. Under regulation 12(4)(b) of the EIR a public authority may refuse to disclose information to the extent that the request is manifestly unreasonable.
18. Unlike section 14(1) of FOIA, regulation 12(4)(b) is subject to the public interest test.
19. Defra considers that the complainant's request is manifestly unreasonable because it is vexatious (rather than because the costs associated with complying with it are too great). Broadly, vexatiousness involves consideration of whether a request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
20. The Commissioner recognises that dealing with unreasonable requests can strain resources and get in the way of delivering mainstream services or answering legitimate requests. These requests can also damage the reputation of the legislation itself.

21. The Commissioner has referred to his own guidance<sup>1</sup> and the submissions provided to him by Defra in making his decision.
22. The emphasis on protecting public authorities' resources from unreasonable requests was acknowledged by the Upper Tribunal (UT) in the leading case on section 14(1), *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC), (28 January 2013) ("Dransfield")<sup>2</sup>. Although the case was subsequently appealed to the Court of Appeal, the UT's general guidance was supported, and established the Commissioner's approach.
23. Dransfield established that the key question for a public authority to ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
24. The four broad themes considered by the Upper Tribunal in Dransfield were:
  - the burden (on the public authority and its staff);
  - the motive (of the requester);
  - the value or serious purpose (of the request); and
  - any harassment or distress (of and to staff).

The Commissioner has therefore considered whether Defra is entitled to rely on regulation 12(4)(b) (manifestly unreasonable) of the EIR to refuse to provide the requested information.

### **The complainant's view**

25. In their review request the complainant mentions several matters of concern to them that relate to their request, such as -

"...documentation about an unfenced English PCB, PAH and BTEX waste dump site which has contaminated groundwater to the extent of well closure and produces noxious vapour in unsigned publically accessible areas".

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<sup>1</sup> [Manifestly unreasonable requests - regulation 12\(4\)\(b\) \(ico.org.uk\)](http://ico.org.uk)

<sup>2</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

"...the absence of major Monsanto toxic chemical dump site EPA Part 2A due process reviews under the intensified seasonal rainfall of climate change. Are consultant findings from a decade ago really sufficient systemically for ongoing non-classification of Sutton Walls et al as contaminated land? This paragraph is background regarding the reasonableness of the FoI request above".

### **Defra's view**

26. Defra characterises the complainant's correspondence as -

"a combination of (1) requests for recorded information and (2) questions that would require Defra to carry out a major investigation in order to provide the confirmation...sought of the assertions and allegations..." made.

27. It refers to the Commissioner's guidance for members of the public which states, "Make sure you describe clearly the information you want to receive." Defra says that "the complainant has consistently failed to do this". It underpins its argument as follows:

"The requests that purported to ask for recorded information, and the resulting complaints, were set against a complex and subjective description of a scenario, requiring examination of multiple links, assertions and accusations, including allegations of Defra group acting like Mafiosi (see the complainant's reference to "omertà" in this context)."

28. Defra's view is that it could not identify the information being requested "without carrying out the complex and subjective exercise that the complainant deliberately and repeatedly set for Defra as the way for us to identify the information..." Its belief is that the "conditions...set do not amount to a comprehensible explanation of the relevant context and are an unreasonable approach to a request".

29. Defra acknowledges that "access is a necessary precursor to public participation and access to justice" and that the EIRs (underpinned by the Aarhus Convention) "ensures that there is public access to environmental information held by public authorities so that members of the public can play a role in decisionmaking on environmental matters". Defra states that the EIRs act as a tool for providing recorded information if it is held and "where the public interest is in disclosure". It argues that:

"They are not intended to act as a proxy for an investigation of a third party's assertions and allegations, although the information



disclosed in response to a request may be used in support of investigations.”

30. Defra’s view is that its -

“correspondence with the complainant has repeatedly set out why enquiries drafted in such a way are not valid requests for recorded information. This is not the same as a denial of [the complainant’s] concerns.”

However, it tells the Commissioner that Defra has accepted other requests for information as valid requests. It has continued to respond to requests from the complainant, most recently on “7 November 2023 on the same topic with a request that was structured correctly”.

31. Defra argues that -

“the impact would be unjustified or disproportionate in relation to the requests themselves and their inherent purpose or value; The complainant’s request could only be fulfilled if Dfefra (sic) first carried out an investigation into [the complainant’s] assertions and allegations.”

32. It contends that -

“the request is a conditional request for information that would require considerable prior analysis of the circumstances the complainant says [they] are investigating before we could establish whether or not that information supports [their] arguments”.

Defra therefore does not accept that it is a “valid request”. The “relevant policy team” would need “to follow up the multiple links and any further matters” raised by those links. It says that “the complainant’s repeated assertion as to its validity led to it considering the request to be “manifestly unreasonable”.

33. By way of information, Defra explained that “this particular topic is likely to fall into the Environment Agencies (EA) and Welsh Government remit, which for the purposes of the EIRs are separate legal entities to Defra”.

### **The Commissioner’s view**

34. The Commissioner expects a public authority to provide the wider context and history to justify its citing of the exception. In its internal review Defra provided some history and context which is set out in the ‘request and response’ section of this decision.

35. However, the Commissioner has concluded that part one of the 20 September 2023 correspondence is a request, though limited to the opening part of the first sentence – requesting information relevant to whether a discharge consent is required at the named location. Although the Commissioner accepts that the complainant has framed the 20 September 2023 subjectively, he does not consider that Defra would need to carry out an investigation of the circumstances the complainant describes in order to respond to the request. He considers the remainder (part two) to be a question that would require the creation of information. It is the complainant's opinion; is not for 'held' information, and is therefore not a request under the EIR and the Commissioner accepts that Defra is not required to respond to it.
36. The Commissioner considers that Defra has failed to demonstrate that the request at part one is manifestly unreasonable, when considered in light of the themes set out in paragraph 24. There is a serious purpose and he does not consider that the burden is significant in light of his determination in the previous paragraph. He considers that the reading of the request may have been influenced by the criticisms within it, though he accepts that this can be one of the markers of a manifestly unreasonable request. However, he is not persuaded that the framing of the request amounts to harassment or would cause distress to staff, though it is clearly critical. His decision is therefore that the request was not manifestly unreasonable and that Defra was not entitled to rely on regulation 12(4)(b) of the EIR to refuse to comply with it.
37. The Commissioner requires Defra to issue a fresh response to the complainant regarding part one of the request that does not rely on regulation 12(4)(b) of the EIR.
38. As the Commissioner's decision is that regulation 12(4)(b) is not engaged, it has not been necessary to consider the public interest in this matter.

## **Other matters**

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39. The Commissioner has concluded in this case that Defra is not entitled to rely on regulation 12(4)(b) of the EIR to refuse the request. However, if the complainant was to make further requests which are similar in nature, Defra could consider applying regulation 12(4)(b) to those requests though it would need to demonstrate that any such request was manifestly unreasonable.

## Right of appeal

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40. 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)

41. 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.
42. 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 .....**

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