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The Information Commissioner's Office (ICO)

By email to casework@ico.org.uk

EA refs: NR138557 and NR141184

**Concern about accessing or re-using information from a public body –
EIR and RoPSIR requests to the Environment Agency for information about large raised
reservoirs**

Dear ICO,

I would like to report a concern about the Environment Agency's handling of an access to information and re-use of information request. A copy of my email correspondence with the EA, including the internal review response, is enclosed in a separate PDF.

My information request relates to three categories of geographic data related to large raised reservoirs in England, for which the EA is the regulatory authority. For clarity I should explain that my request is not directly connected to the recent incident at Toddbrook Reservoir or any other specific concerns about reservoir safety. I have a professional interest in mapping of environmental risk and have previously obtained flood-related information from the Environment Agency and Defra under the EIRs and RoPSIR.

The information request

In August I submitted an access to information request to the Environment Agency for three sets of data:

1. The latest version of the EA's unpublished Large Raised Reservoirs (AfA134) dataset, or equivalent latest information if the dataset is no longer maintained. At the time of my request this dataset was described in a metadata record on Data.gov.uk at

<https://data.gov.uk/dataset/aa916e73-f575-4752-ad4c-590029d3641c/>. That record has subsequently been removed. However my understanding is that the Large Raised Reservoirs dataset contains names of reservoirs along with their status (i.e. whether they are in operation), a national grid reference, and the name and contact address of the undertaker (the person/body legally responsible for the reservoir).

2. The latest version of the EA's unpublished Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113) dataset, which is described in a metadata record on Data.gov.uk at <https://data.gov.uk/dataset/4d3cc201-01ee-4ad9-a1cb-4777a8c55a00/>. This dataset contains some of the same information as the Large Raised Reservoirs dataset. The principal additional information is a polygon (i.e. a set of boundary coordinates) for each reservoir that defines the modelled extent of the largest area that might be flooded if the reservoir were to fail and release the water it holds.
3. Data on maximum flood depth and maximum flood speed (for risk of inundation from large raised reservoirs) that the EA holds for areas within the maximum flood outlines. I gather this data may be held as an ASCII grid and/or as part of an additional data product. At minimum I requested this data at a level of detail equivalent to the spatial data underlying the "flood depth" and "flood speed" layers visualised in the detailed view of "flood risk from reservoirs" on this EA interactive map: <https://flood-warning-information.service.gov.uk/long-term-flood-risk/map>.

I requested the above information in re-usable formats.

I further requested, in accordance with regulation 6 of the Re-use of Public Sector Information Regulations 2015, permission to re-use all information provided in response to my access request "for the purpose of combining that information with data from existing open public datasets and making the outputs available to others in a re-usable electronic form under an open licence." I requested permission to re-use the information under the terms of the Open Government Licence (OGL) and stated the view that, given my intended use, any more restrictive licensing terms would be likely to "unnecessarily restrict" the way in which the information can be re-used, contrary to RoPSIR regulation 12.

The Environment Agency's response

The Environment Agency responded to my information request by email at the end of August. The response did not disclose any of the requested information. The response said the EA "may be able to" license the Large Raised Reservoirs (AfA134) dataset to me under the Environment Agency Conditional Licence. The response also said that the EA was withholding information on "detailed flood depth and maximum flood speed" by applying EIR regulation 12(5)(a) – in particular that disclosure of the information would adversely affect national security and public safety. The response did not make any reference to the maximum flood outline polygons (AfA113).

The internal review

I requested an internal review of the EA response. Please see my email of 30 August for the points I asked the EA to consider.

I highlighted that the response did not mention the maximum flood outline polygons, and that with respect to the first two requested sets of data the EA had neither disclosed the information nor provided any basis on which it was withholding the information. I established what I understood to be the Conditional Licence terms and confirmed that those conditions were not suitable for the intended purpose of my re-use. I also questioned the EA's application of the public interest test with respect to the decision to withhold the flood depth and speed information.

The EA's internal review response, provided on 24 October, seemed intended to support the positions taken in the original response. However it did not engage materially with my points, and contained a number of confusing errors.

The review referred to an EA decision "to not release certain information under Section 12 of the Environmental Information Regulations 2004 (EIR) for the two unpublished EA data sets; i. Large raised Reservoirs (AfA134) and ii. Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113)." However the original response only applied the Section 12 exception to the third set of data, the flood depth and speed information.

The review also said that advice had been provided to enable me to "access some of the data sets for Reservoir Flood Map Maximum Flood Outline (AfA113)", and further that the EA had "provided the data" and offered to licence it to me on the same terms as for the Large Raised Reservoirs (AfA134) data. Neither of these statements is consistent with the original response.

The review provided a link to a landing page for a publicly available Web Mapping Service (WMS) image of the maximum flood outline polygons (AfA113)

<https://environment.data.gov.uk/dataset/2209d30e-8f3f-41e1-a07b-6c0d8fa4d6b2>.

However (as noted on that page) the WMS does not provide access to the underlying spatial data, which was the subject of that part of my request.

Points of concern

I would like to draw the Information Commissioner's attention in particular to the following points of concern.

1. The EA's original response and internal review response, considered together, are insufficiently clear for me to fully understand its position on access and re-use of the information I have requested.

2. With respect to the first and second sets of data – the Large Raised Reservoirs (AfA134) dataset and the maximum flood outline polygons (AfA113) – the EA has neither disclosed the information nor identified any basis in the EIRs for withholding access.
3. Notwithstanding that the EA has not disclosed the first and second sets of data, it has indicated a willingness to grant permission to re-use this data under Conditional Licence terms. However it should have been clear to the EA that those terms include conditions that are not compatible with my intended purpose. The EA has not set out any reasoning to overcome the requirement in section 12 of RoPSIR 12 that the conditions it imposes must not unnecessarily restrict the way in which a document can be re-used.
4. It may that the EA intends to disclose the first and second sets of data only once I agree to the Conditional Licence terms for re-use. However it has not stated that in the correspondence, and the EIRs do not provide a basis for withholding access pending agreement on re-use.
5. I have inferred from the internal review response that the EA is relying on concerns about national security and public safety not only as the basis for withholding access to the flood depth and speed information (the third set of data) but also to justify conditions on re-use of the first and second sets of data:

"These datasets can be provided in response to a request for information. However, due to the issues around national security and public safety we do not publish this data on data.gov.uk. Also, we restrict the re-use of this data via the Conditional Licence and the conditions you have identified."

This position is incoherent. The EA cannot plausibly argue that the risk to national security and public safety is sufficiently low that there should be no barrier on access to the data other than the need to request it, and at the same time that there is some risk that can be effectively reduced via conditions on re-use.

6. The Conditional Licence, as the EA has applied it to the first and second sets of data, includes a condition that the information must be treated as confidential. As well as being incompatible with my intended purpose for re-use, this condition is incompatible with my rights to report on and discuss the information when it is disclosed under the EIRs.
7. In applying EIR regulation 12(5)(a), the EA's original response to my request said:

"During the current heightened status of threat to national security, there is a high level of public interest in not releasing information that would result in a threat to public safety. The advice from the Security Service is that to release key details of the infrastructure or vulnerabilities of the reservoirs would prejudice the protection and safety of the public through potential damage or disruption to the national infrastructure by acts of sabotage."

However none of the information I have requested relates to the physical characteristics of any reservoir, or to the risk level assigned to any reservoir.

The first set of data – the Large Raised Reservoirs (AfA134) dataset – contains only a point location for each reservoir, whether the reservoir is operational, and details of the party legally responsible for the reservoir. As a matter of statutory definition a large raised reservoir is a structure that holds 25,000 cubic metres or more of water above ground level. Individually these structures, and the fact of their operation, cannot be hidden from public view.

Information from the Large Raised Reservoirs (AfA134) dataset was available in searchable form on the EA's 'What's In Your Backyard' website (now defunct) until at least 2016:

<https://webarchive.nationalarchives.gov.uk/20141203164347/http://watermaps.environment-agency.gov.uk/wiyby/wiyby.aspx?&topic=reservoir>

<https://webarchive.nationalarchives.gov.uk/20160915090953/http://maps.environment-agency.gov.uk/wiyby/wiybyController?ep=maptopics&lang=en>

and equivalent details for large raised reservoirs in Wales remain available for download from a Welsh Government website:

<http://lle.gov.wales/catalogue/item/LargeRaisedReservoirs/>.

This information is also similar in nature to the inventory of UK reservoirs compiled by the Centre for Ecology and Hydrology (CEH) and published last year under the Open Government Licence:

<https://catalogue.ceh.ac.uk/documents/f5a7d56c-cea0-4f00-b159-c3788a3b2b38>.

The second set of data – the maximum flood outline polygons (AfA113) – is visualised via WMS and the EA's 'Long term flood risk information' service, both of which are accessible to the public. It is therefore difficult for me to understand how access to the underlying spatial data used to produce those visualisations would present any additional risk to national security or public safety.

The third set of data – information on "detailed flood depth and maximum flood speed" – is also visualised via the EA's 'Long term flood risk information' service. I can understand how this category of data might plausibly be used to quantify the potential for harm from a reservoir failure. However I did say in my request that the data underlying the visualisations that the EA has already made public would be sufficient for the purposes of this part of my request.

8. EA's approach to the national security exception is significantly broader in the internal review response than in the original response. I am not convinced this approach is compatible with the requirements in the EIRs.

In justifying the application of the national security exception the EA says that "Even relatively mundane information about the reservoir could be matched with other information in the public domain and compromise public safety" and that "With the current high level of public interest in reservoirs, release of even seemingly harmless information could be a risk to national security."

This is of course the 'mosaic' argument highlighted in ICO guidance. However surely the EA still needs to form an argument as to how the requested information could cause harm if combined with other information already in the public domain? Nothing in the correspondence indicates that the EA has formed that argument. Instead the EA seems to take a blanket view that if the requested information is about reservoirs or dams it can assume a risk of harm and move straight to consideration of the public interest test:

"We have very clear guidance (informed by intelligence from the security services) that supports our decision making in relation to the release of reservoir and dam information. We apply this guidance consistently to all such requests for information, and ensure we account for any wider contextual changes through our application of the public interest test."

Thank you for your attention to these concerns.

I appreciate that the information I have requested from the Environment Agency is of a somewhat technical nature – please let me know if I can offer clarification on any aspects of my request.

Yours faithfully,

Owen Boswarva