

From: **National Requests** <national.requests@environment-agency.gov.uk>
Date: Thu, 24 Oct 2019 at 10:29
Subject: NR141184
To: owen.boswarva@gmail.com <owen.boswarva@gmail.com>

Mr. Boswarva

By email

Our ref: NR141184

Your ref:

Date:

Dear Mr. Boswarva,

Review of Freedom of Information/Environmental Information Request

Request by Mr Boswarva to review the decision by the Environment Agency to not release certain information under Section 12 of the Environmental Information Regulations 2004 (EIR) for the two unpublished EA data sets; i. Large raised Reservoirs (AfA134) and ii.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). This relates to an earlier email dated 9 August 2019 in respect of information, held by the Environment Agency.

I refer to your email dated 30 August 2019, in which you advised us that you are appealing our decision to refuse disclosure of certain information that you requested on the 9 August 2019. You asked us to consider 9 points.

Review

Considering the 9 points:

- i. Points 1, 2 & 8:

Advice was provided to enable you to access some of the data sets for Reservoir Flood

Map Maximum Flood Outline (AfA113). What was not disclosed was the flood depth and maximum flood speed information. As part of this review, I have concluded that the decision made to withhold the flood depth and maximum flood speed information was correct. We consider that disclosure of this information would adversely affect; i) national security and, ii) public safety. As such, the information is subject to the exception from disclosure provided by Regulation 12(5)(a) of the Environmental Information Regulations 2004.

I have considered the public interest factors in favour of releasing or withholding the information under EIR Regulation 12(5)(a), and I confirm that I agree with the decision to withhold the information, held by the national Reservoirs Safety Team.

I recognise that there is significant public interest in this matter as a result of the recent high profile incident at the Toddbrook reservoir, and that there is significant interest in obtaining information that it is felt would contribute to the public debate relating to reservoir and dam safety. Along with our general presumption in favour of openness and transparency, these are the key factors that I have considered in favour of disclosing this information.

Factors in favour of withholding the information relate to the issues around national security, and public safety. 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.

On this occasion, I consider that the public interest lies in withholding the information. I consider that despite the presumption in favour of disclosure of environmental information, and the public interest factors in favour of release, there is an overriding public interest in ensuring that the requested information is not disclosed. This is because of the risk that disclosure would pose with regard to compromising public safety and national security. We cannot compromise public safety by releasing information into the public domain which would be accessible to those who would like to cause malicious harm. Even relatively mundane information about the reservoir could be matched with other information in the public domain and compromise public safety.

The threat to national security does not have to be direct or immediate but there must be a real possibility of an adverse effect. There is significant public interest in ensuring that the safety of reservoirs is not compromised by the disclosure of information. With the current high level of public interest in reservoirs, release of even seemingly harmless information

could be a risk to national security. Maintaining national security is not only about protecting current targets but about also preventing reservoirs from becoming future targets.

i. Points 3 and 4:

In our email of 30th August, we explained that we couldn't licence this information to you under the Open Government Licence. However, we provided the data and offered to licence it to you under the terms of a Conditional Licence and the conditions set out for Large Raised Reservoirs AfA134. Unfortunately, the link we provided for the Register of Licence Abstracts was incorrect. Please accept our apologies. As my colleagues have explained we are fixing the link and will do this as soon as possible.

ii. Points 5, 6 and 7

The conditions that you identify in point 5 are the correct conditions for datasets AfA134 and AfA113. 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.

iii. Point 9:

Access to the Risk of Flooding from Reservoirs - Maximum Flood Extent can be found using the following link:

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

Service levels

I also find that we followed our internal Freedom of Information procedures and that we complied with our duty to respond within the statutory timescales.

Right of Appeal

If you are not satisfied with this review of our decision not to supply the requested information you can make an appeal to the Information Commissioner, who is the statutory regulator for freedom of information. The address is:

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Tel: 0303 123 1113 (local rate) or 01625 545 745 (national rate).

Fax: 01625 524 510.

Email: casework@ico.org.uk.

Website: <http://www.ico.org.uk>

Yours sincerely

National Request Team

Contact Centre Services - Part of Operations, Regulation & Customer

(Tel: 03708 506 506

: Web Site: www.gov.uk/environment-agency

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From: **National Requests** <national.requests@environment-agency.gov.uk>
Date: Thu, 5 Sep 2019 at 17:06
Subject: NR141184
To: owen.boswarva@gmail.com <owen.boswarva@gmail.com>

Dear Owen

RE: Request for a review of a response to an information request under the Freedom of Information Act 2000 (FOIA) / Environmental Information Regulations 2004 (EIR).

Thank you for your letter/email which was received on 30 August 2019. We are treating your letter/email as a request to review our decision to refuse the information you requested by your email/letter received on 30 August 2019 and a complaint that in making our response we did not follow our internal procedures.

We are required to provide you with a response to your request for a review within a maximum of 40 working days which we calculate to be 25 October 2019. However, we will try to respond to you well before this date.

Yours sincerely



National Request Team
National Customer Contact Centre
Contact Centre Services - Part of Operations, Regulation, Monitoring & Customer
Environment Agency

(External: 03708 506 506

From: **Owen Boswarva** <owen.boswarva@gmail.com>

Date: Fri, 30 Aug 2019 at 18:08

Subject: NR138557 - request for Internal Review

To: National Requests <national.requests@environment-agency.gov.uk>

Dear [REDACTED],

Thank you for your email of this morning.

Please find attached my request for an internal review of the Environment Agency's response to my information requests.

Best regards,

Owen Boswarva

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

telephone [REDACTED]
email owen.boswarva@gmail.com

30 August 2019

National Request Team
Environment Agency

By email to national.requests@environment-agency.gov.uk

Your ref: **NR138557**

FOI/EIR and RoPSIR requests for information about Large Raised Reservoirs – Internal Review

Dear [REDACTED],

Thank you for your email received earlier today.

I would like to request an internal review of the Environment Agency's response to my FOI/EIR and RoPSIR requests. I have appended my original email of 9 August 2019, which contains the full requests, and EA's response.

Please consider in particular the following points:

1. I requested access to information contained in two specific unpublished EA datasets, Large Raised Reservoirs (AfA134) and Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113). EA's response refers to only one of these datasets, Large Raised Reservoirs (AfA134), and ignores the part of my request that refers to the maximum flood outline polygons.
2. It is unclear to me why EA has not disclosed the information in the above two datasets. EA's response provides some information about licensing for re-use of Large Raised Reservoirs (AfA134). However EA's response does not specify any exception as a basis for withholding the information. As you will be aware, rights to access information under the EIRs are separate from rights under RoPSIR to obtain a licence to re-use that

information. Please disclose the information or provide the basis on which EA is refusing this part of my access request.

3. With respect to AfA134, EA's response says that EA "may be able" to license the information to me under the [Environment Agency Conditional Licence](#). RoPSI requires EA to be more definitive than that, by stating the terms (if any) under which EA will license the information.
4. EA's response provides a link to EA's Register of Licence Abstracts: <https://data.gov.uk/dataset/environment-agency-register-licence-abstracts>. The link currently redirects to a Data.gov.uk metadata record at <https://data.gov.uk/dataset/f3684ee9-4c81-4ccd-a658-7f8d9dc70706/environment-agency-register-licence-abstracts>. That record contains a resource link for the Register – however the link is currently invalid because it directs to a DataShare facility that EA has not used for some time. (I have contacted EA's Data Team today and understand they will fix the links in the Data.gov.uk record and on the Conditional Licence page.)
5. However I have now read v1.2 of EA's Register of Licence Abstracts, dated August 2019 and published this week on the Defra Data Sharing Platform at <https://environment.data.gov.uk/dataset/09240987-a681-4fce-bec3-490aae1cd8f8>. That document specifies conditions of use for several reservoir datasets including AfA134 and AfA113. The conditions for AfA134 and AfA113 are the same, and I have copied them here for the record:

1. You may use the Information for your internal or personal purposes and may only sublicense others to use it if you do so under a written licence which includes the terms of these conditions and the agreement and in particular may not allow any period of use longer than the period licensed to you.
2. Notwithstanding the permission in condition 1 you must not publish the Information in any way
3. The period of permitted use is one year.
4. We have restricted use of the Information as a result of legal restrictions placed upon us to protect the rights or confidentiality of others. <In this instance it is because National Security concerns. If you contact us in writing (this includes email) we will, as far as confidentiality rules allow, provide you with details including, if available, how you might seek permission from a third party to extend your use rights.
5. This condition does not apply if use is limited to use that is authorised by any statute or use that does not require a licence from us
- 6.1 This Information must be treated as confidential information in accordance with this condition.
- 6.2 You may only disclose it (and only such part as is necessary) to such of your employees, agents and contractors who need to access it to enable them to perform their obligations or permitted uses under or in connection with this agreement and you must, before allowing them access to it, unless they are already bound by alternative equivalent obligations, warn them of the duty of confidentiality under this condition and instruct them not to disclose it to anyone else.

6.3 This condition shall survive the expiry or termination of this agreement

6.4 This condition shall not apply to the extent that you are required to disclose by law;

6.5 You must not retain the Information (nor may your employees agents or contractor (nor any copy thereof) after expiry of the Licence other than in pursuance of any statutory requirement.

6.6 You shall indemnify us against all costs (including reasonable and proper legal costs), claims, damages, demands and expenses arising directly or indirectly out of any third party claim that arises out of a breach of the confidentiality requirements of this condition except to the extent that any such claim arises out of a negligent or wilful default by us;

6.7 We will in respect of a third party claim to which the above sub-condition applies:

- give you notice of such claim
- on receipt of a written request from you, give you the sole conduct of the defence and settlement of any such claim, and
- at no time admit liability; and
- act in such a way as to mitigate their losses; and
- act in accordance with the reasonable instructions of the other and give all such assistance as it may reasonably require to defend or settle such claim.

6. The above conditions are quite onerous and include a bar on publication of the information, and are obviously not suitable for the purposes stated in my RoPSIR request. As indicated in that request, given my intended use I consider that terms more restrictive than those in the Open Government Licence will "unnecessarily restrict" the way in which the information can be re-used, contrary to RoPSIR regulation 12. EA's response to my request does not provide any rationale for applying the Conditional Licence instead of OGL to the datasets. The entry in the Register makes a vague mention of "National Security concerns". This seems implausible as a basis for restrictions on re-use of the information in AfA134 and AfA113, if that information is generally available for access under the EIRs – particularly given that much of the information in AfA113 is visualised on the EA's own public website at <https://flood-warning-information.service.gov.uk/long-term-flood-risk/map> and information in AfA134 was previously visualised on EA's What's In Your Backyard? site.
7. As I understand it EA's Conditional Licence is intended to be non-discriminatory within the meaning of RoPSIR regulation 13, which means that under the stated conditions datasets AfA134 and AfA113 are in principle available to anyone on request for re-use at least for internal or personal purposes. I would therefore also question, in particular, the condition that the information must be treated as "confidential". That condition is especially incoherent if EA is not applying any exceptions to withhold the information under the EIRs.
8. EA is withholding disclosure of "detailed Inundation Flood Maps showing depth and velocity" by applying the exception in EIR regulation 12(5)(a). I take this to be information equivalent to the "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" in my access request. I request that EA reviews its application

of the Public Interest Test. The generic nature of this part of EA's response suggests a lack of proper consideration – for example the reference to "your interest in this reservoir" when my request made no mention of any specific reservoir. EA's response frames the Public Interest Test as a balance between openness, accountability and transparency on the one hand, and public safety on the other hand. However I believe there is a strong argument that releasing more detailed information about large raised reservoirs and the risk of inundation would increase, rather than reduce, public safety by promoting awareness and resilience in communities close to reservoirs and, where relevant, encouraging those communities to hold reservoir undertakers and regulators to account for risk management measures.

9. The appendix to EA's response states: "We have been able to provide some of the requested information and basic depth and speed details are available on gov.uk". I am confused by this as EA's response does not directly provide any of the information I have requested. If EA considers that any of the requested information is already accessible to me elsewhere, please explain which information and where it is available – simply referencing the gov.uk domain is not sufficient or helpful. (As mentioned I am aware of the reservoir information visualised at <https://flood-warning-information.service.gov.uk/long-term-flood-risk/map>, but that service does not make accessible the bulk spatial data covered by my requests.)

Thank you for your attention to this internal review request.

Kind regards,

Owen Boswarva

Appendix 1: Information request dated 9 August 2019

From: Owen Boswarva <owen.boswarva@gmail.com>

Date: Fri, 9 Aug 2019 at 01:50

Subject: FOI/EIR and RoPSIR requests for information about Large Raised Reservoirs

To: <data.info@environment-agency.gov.uk>

Hello Data Team,

I would like to request access to some information held by the Environment Agency about Large Raised Reservoirs in England, and also permission to re-use that information under the Open Government Licence.

Please provide the latest version of information contained in the following two unpublished EA datasets:

Large Raised Reservoirs (AfA134)

<https://data.gov.uk/dataset/aa916e73-f575-4752-ad4c-590029d3641c/>

Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113)

<https://data.gov.uk/dataset/4d3cc201-01ee-4ad9-a1cb-4777a8c55a00/>

or the equivalent latest information if the above datasets are no longer maintained.

My understanding is that this information should include, at minimum, for each reservoir:

- reservoir name
- status (e.g. in operation)
- a national grid reference
- undertaker name
- undertaker address

and for each maximum flood outline:

- a polygon
- an EA unique reference number for the reservoir
- reservoir name

Please also provide any 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 am requesting this data at a level of detail equivalent to the spatial data underlying the "flood depth" and "flood speed" layers described under "flood risk from reservoirs" on this EA interactive map:

<https://flood-warning-information.service.gov.uk/long-term-flood-risk/map>

Please provide all of the above information to me in re-usable formats.

I am aware that some of the above information is available to view via the EA's long term flood risk information maps and via WMS. However I do not consider that those services make the data reasonably accessible to me within the meaning of access to information laws.

I further request, 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 the above access to information 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 request that the Environment Agency grants permission to re-use the information for this purpose under the terms of the Open Government Licence v3 (<http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>). 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.

Thank you for your attention to these requests.

Best regards,

Owen Boswarva

Contact details

e-mail: owen.boswarva@gmail.com

telephone: [REDACTED]

address: [REDACTED]

Appendix 2: Environment Agency's response dated 30 August 2019

From: National Requests <national.requests@environment-agency.gov.uk>

Date: Fri, 30 Aug 2019 at 11:04

Subject: NR138557

To: owen.boswarva@gmail.com <owen.boswarva@gmail.com>

Owen Boswarva

Our ref: NR138557

Your ref:

Date: August 2019

Dear Mr Boswarva

Re: Request for information about Large Raised Reservoirs

Thank you for your request received on 09 August 2019 for information about Large Raised Reservoirs

The following information is not available under the Open Government Licence but we may be able to license it to you under the [Environment Agency Conditional Licence](#).

Large Raised Reservoirs (AfA134) – detailed information about this dataset including conditions can be found on the [Register Licence Abstract](#) (you will need to download this spreadsheet to access the information about AfA134).

However, you must first check the supporting information available online to determine if the conditions on use are suitable for your purposes.

If they aren't, this information is not provided with a licence for use, and the data is provided for read right only.

We are unable to provide detailed flood depth and maximum flood speed as releasing this information would adversely affect national security and public safety.

There is some flood depth and speed information available on gov.uk on the long term flood risk information pages.

As a public body we are required under the Freedom of Information Act/Environmental Information Regulations to give reasons for this refusal. We also need to show that we have considered the Public Interest balance between refusal and disclosure. **You can find the details in the appendix attached.**

If you are not satisfied you can contact us within 2 calendar months to ask for our decision to be reviewed. We shall review our response to your request and give you our decision in writing within 40 working days.

If you are still not satisfied following this, you can raise a concern with the Information Commissioner, who is the statutory regulator for Freedom of Information and the Environmental Information Regulations. The contact details are:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel: 0303 123 1113
Website: <http://ico.org.uk>

Yours sincerely



National Request Team, NCCC

Contact Centre Services - Part of Operations, Regulation & Customer

(Tel: 03708 506 506

: Web Site: www.gov.uk/environment-agency

Appendix

Relevant exceptions

The exceptions that apply to the withheld information are:

EIR regulation 12(5)(a) – We consider that disclosure of detailed Inundation Flood Maps showing depth and velocity would adversely affect national security and public safety.

The Public Interest Test

We have weighed the public interest factors in favour of maintaining the exception for adverse effect on national security and public safety and find that they outweigh the public interest factors in disclosing the information. In carrying out the public interest test we have considered:

Factors in favour of releasing the information, in particular the general presumption of openness. The Environment Agency would only withhold information if it is sure that disclosure would cause substantial harm. Here the harm is to public safety which is a serious matter. We have considered the need to promote accountability and transparency taking into consideration your interest in this reservoir and interest generally in ensuring that large raised reservoirs are both safe and maintained. We have considered whether the information is already public and in the case of detailed flood map information, it is not. We have considered the contribution that release of the information would make to public debate of issues and we recognise your particular interest. We have sought to release as much information as is possible and as enclosed in order to allow the public to engage in debate and to be transparent in the regulation of the reservoirs.

We have considered factors in favour of withholding the information, in particular the strength and number of grounds in the legislation. 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.

We have been able to provide some of the requested information and basic depth and speed details are available on gov.uk

As indicated, upon assessing the factors in the public interest test, we have assessed that in relation to the national security exceptions, we find that the factors in favour of withholding information outweigh the public interest factors in disclosing the information.