

IN THE MATTER OF AN APPEAL TO THE FIRST TIER TRIBUNAL (INFORMATION RIGHTS)
UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000 BETWEEN:

OWEN BOSWARVA

Appellant

- and-

(1) THE INFORMATION COMMISSIONER

Respondents

(2) ENVIRONMENT AGENCY

**APPELLANT'S REPLY TO RESPONSES
OF THE INFORMATION COMMISSIONER AND THE ENVIRONMENT AGENCY**

1. This is a further submission in reply to the Information Commissioner's Response dated 22 January 2021 and the Environment Agency's Response dated 12 February 2021 to my combined grounds of appeal dated 17 November 2020. This submission does not contain any changes to my grounds of appeal beyond than those already agreed by email and summarised in paragraph 18 of the Information Commissioner's Response.
2. The Environment Agency disclosed the AfA134 dataset to me on 24 November 2020 on the basis of the Open Government Licence. I also received an email from an Environment Agency officer on 15 December 2020 confirming the dataset was mistakenly not attached to the original response sent to me in August 2019. I am content that this was an oversight and that my access to and re-use of the AfA134 dataset is not a live issue for the purposes of this appeal.
3. However, I stated clearly in both my internal review request to the Environment Agency and my complaint to the Information Commissioner that the AfA134 dataset had not been disclosed to me. I am concerned that the failure to recognise this oversight at multiple stages affected the decision that the Information Commissioner reached with

respect to the other data related to maximum flood outlines, maximum flood depths and maximum flood speeds.

4. My complaint to the Information Commissioner was made on the basis that neither the AfA134 dataset nor the AfA113 dataset (which includes the maximum flood outlines) had been disclosed to me by the Environment Agency. Both datasets were advertised as available for re-use on identical terms under the Conditional Licence. There is considerable overlap between the two datasets. As a starting point it would have been natural to take a common approach to scrutiny of the arrangements for access and re-use of those datasets.
5. However, at the complaint stage the Environment Agency misinformed the Information Commissioner that it had already disclosed the AfA134 dataset. Also at the complaint stage the Environment Agency applied the exception at Regulation 12(5)(a) EIR to the AfA113 dataset for the first time. In the Environment Agency's original and internal review responses, that exception was explicitly applied only to the data on maximum flood depths and speeds.
6. As a consequence, the Information Commissioner failed to recognise the discrepancy in the Environment Agency's approach to re-use of the AfA134 and AfA113 datasets. Also as a consequence, the Information Commissioner conflated the maximum flood outlines in the AfA113 dataset with the data on maximum flood depths and speeds, as well as with a wider body of more technical data about reservoir flood safety in the AfA180 dataset, for purposes of considering the risks to national security and public safety.
7. The Environment Agency's Response explains in general terms its risk assessment processes for datasets (paragraphs 6-11), including the Approval for Access (AfA) risk assessment. It also deals at length with its approach to access and re-use of the AfA134 dataset (paragraphs 12-22) – which is no longer a live issue for this appeal. It deals rather more succinctly with the AfA113 dataset (paragraphs 23-25), which contains the maximum flood outlines, and conspicuously fails to describe the application of the Approval for Access assessment to that dataset.
8. My own understanding is that, prior to the Environment Agency's introduction of the

Conditional Licence, the AfA113 dataset was approved for release on request through the AfA process, and also approved for re-use on commercial terms. I have included an extract from the Environment Agency's Approval for Access (AfA) Register, dated September 2015, in the bundle with my grounds of appeal.

9. It is also apparent from the Environment Agency's [Explanatory Note on Reservoir Flood Maps for Local Resilience Forums](#),ⁱ published on the GOV.UK website and last updated in 2016, that outline (flood extent) maps have been distributed to local authorities in both PDF and GIS formats with advice that they should be treated as OFFICIAL under the system of Government Security Classifications. This is the same data as the maximum flood outlines in dataset AfA113. In contrast, [Cabinet Office guidance on the Government Security Classifications](#)ⁱⁱ indicates information that would engage the national security exemption if requested under FOIA should be classified as SECRET.
10. The Environment Agency now maintains, in paragraph 43 of its Response, that the maximum flood outlines in the AfA113 dataset are exempt from disclosure and "not available under any form of licence". This is contrary to information in the Environment Agency's published Register of Licence Abstracts, last updated in August 2019.
11. I accept that the Environment Agency may have revised its risk assessment and that the AfA113 dataset may no longer be approved for access. But if that is the case, why has the Environment Agency not submitted, for the purposes of its Response to this appeal, any outputs from a revised risk assessment? The AfA risk assessment is, according to paragraph 11 in the Environment Agency's Response, carried out "with input from technical specialists for the dataset in question, and in-house commercial lawyers." The Environment Agency must surely hold documentation of its current internal assessment of dataset AfA113.
12. Paragraph 28 in the Environment Agency's Response indicates the Open Bundle will include advice that it took from the Cabinet Office and Defra on publication of hazard maps which show the maximum flood depth and flood speed "whilst adhering to the National Protocol for the Handling, Transmission and Storage of Reservoir Information and Flood Maps." I request that the Open Bundle should also contain the current version of the National Protocol itself, which I understand is available on request from the

Environment Agency's Reservoir Safety team but not published on a government website.

13. I look forward to reading that advice in full. In paragraph 28 of its Response the Environment Agency summarises the outcome as follows: "The determination made was that derivative products showing banded classifications of flood depth and speed could be published in the same format as AfA113 but that the data that underpinned the derived data would have an adverse effect on national security and public safety if it were to be released."
14. I am keen to emphasise that within the narrowed scope of this appeal I am not challenging the decision to withhold "the data that underpinned the derived data". I am seeking access and permission to re-use the derived data itself: the banded classifications of flood depth and speed, geo-referenced to a grid, which are already visualised at the same level of simplification in interactive maps on the Environment Agency's public website.
15. I have understood from the Environment Agency's Response that its Closed Bundle for this appeal will contain only the same submission made in response to the Information Commissioner's investigation. I take that to mean the Environment Agency has not made any specific argument as to why the availability of map images of simplified information about reservoir flood extents, depth and speed would not adversely affect national security or public safety, whereas the availability of the underlying feature and attribute information would adversely affect national security or public safety.
16. As a general principle, I agree with the point made in paragraph 28 of the Information Commissioner's Response that "[u]nderlying information, even if simplified, could be capable of providing more information of concern than a simple visualisation." However, in this scenario the underlying information is at the same level of simplification as the visualisation and the content of the information about reservoir flood risk is the same. The difference is that the underlying information has more technical utility because it can be combined more readily with data from other public sources and in formats other than fixed images. I urge the Information Commissioner and the Tribunal to consider whether it is reasonably necessary for the Environment Agency to make that distinction at this level of simplification.

OWEN BOSWARVA

5 March 2021

ⁱ <https://www.gov.uk/government/publications/reservoir-flood-maps-guidance-for-emergency-responders>

ⁱⁱ <https://www.gov.uk/government/publications/government-security-classifications>