

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 FURTHER RESPONSE MADE BY THE ENVIRONMENT AGENCY

1. I ask the Tribunal to also consider this additional submission in reply to the further submission made by the Environment Agency on 19 March 2021 in response to my original reply of 5 March 2021. All references to the Environment Agency's paragraph numbers refer to the Environment Agency's submission of 19 March 2021.
2. In its additional submission the Environment Agency has made several new points and arguments, as well as some observations that misconstrue the arguments in my grounds of appeal and original reply to the responses from the Information Commissioner and the Environment Agency.
3. In response to the Environment Agency's paragraph 2, I am not sure which of the points made by me the Environment Agency considers to stray beyond the boundaries of the appeal. However, I would agree that the appeal raises questions about data availability and data licensing, and about the interactions between rights of access and re-use, that have wider application. I welcome the Environment Agency's willingness to continue engaging with me on these matters outside these proceedings.
4. In response to the Environment Agency's paragraph 4, I re-state once again that my

relevant ground of appeal is not that the Environment Agency introduced a new exception at the complaint stage. My ground is that the Environment Agency applied that exception to disclosure of AfA113 dataset for the first time at the complaint stage. I acknowledge that the Environment Agency introduced the exception, namely the exception at Regulation 12(5)(a) of the Environmental Information Regulations 2004, at earlier stages with respect to disclosure of other information that was in scope of my original request.

5. In response to the Environment Agency's paragraph 7, I welcome the clarification that the National Protocol for the Handling, Transmission and Storage of Reservoir Information and Flood Maps will be included in the Open Bundle. However, I am surprised that the Environment Agency does not intend to submit any correspondence to support the previous assertion that it took advice from the Cabinet Office and Defra in regards to how its obligations could be met whilst adhering to the National Protocol.
6. In response to the Environment Agency's paragraphs 8 and 10, I am at pains to re-state that the derived data that is the partial subject of my request is not the same information as the images produced from that data and published via a Web Map Service (WMS) by the Environment Agency. The difference goes beyond the re-usability of the format, as the WMS layers do not contain the feature information. WMS is not a "copy protected form" nor the derived data in "read-only format". Images published via WMS may be copied and new features that approximate the features used to produce the images may be digitised from a WMS layer (though in the case of the specific WMS layers relevant to this appeal it would be technically onerous to do so).
7. Also in response to the Environment Agency's paragraph 10, I cannot confirm that I have narrowed my request to the derived data that the Environment Agency maintains it has made available in read-only format. AfA113, the Reservoir Flood Map Maximum Flood Outline (Extent) dataset, is also within the narrowed scope of my request. The Environment Agency has not so far confirmed that the undisclosed information in the AfA113 dataset duplicates the information in the derived data used to produce its WMS layer for maximum flood extents. I think there is likely to be some difference, as the AfA113 dataset disaggregates the polygons for the maximum flood extents of individual reservoirs.

8. In response to the Environment Agency's paragraph 11, I am pleased to learn that the Environment Agency now has plans to publish the derived data in re-usable format. (I also admire the deft manner in which the Environment Agency has 'buried the lede' in its submission.) However, based on current information, those plans are likely to be orthogonal to the purposes of my appeal. It is not clear whether the Environment Agency proposes to make the derived data available for re-use under the Open Government Licence as well as in a re-usable format. It is also not clear how the Environment Agency will reconcile that future approach with the security recommendations and national security concerns that underpin its response to this appeal.

OWEN BOSWARVA
19 March 2021