

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

FURTHER SUBMISSIONS OF THE APPELLANT

1. In her further submissions of 10 May 2021, the Information Commissioner identifies some areas of disagreement between myself and the Environment Agency as to what information is made available and on what basis and what information remains in dispute for the purposes of this appeal. That analysis seems sound and I do not think there is anything I can add at this point to resolve those apparent areas of disagreement.
2. However, I observe that if the Information Commissioner is struggling at this stage to form her own view on the nature of the different information held by the Environment Agency, the Environment Agency cannot have explained the information clearly at the complaint stage. It is central to my grounds of appeal that the Information Commissioner, in making her decisions, did not adequately distinguish between the larger body of information about reservoir flood risk held by the Environment Agency and the more limited information in scope of my request (which has been further limited for the purposes of this appeal).
3. As a clarification to paragraph 1 in the Information Commissioner's further submissions, my own understanding is that the Environment Agency holds the following datasets or

information that remain at issue in this appeal:

- (i) Dataset AfA113, known as Reservoir Flood Map Maximum Flood Outline (Extent). There is no "and" – the dataset contains a set of extent polygons with attribute fields but no additional flood map. Some of the individual attributes are also contained in dataset AfA134, which has now been released by the Environment Agency.
 - (ii) The simplified data on flood depths and speeds used to render the Environment Agency's public maps/visualisations. In my combined grounds of appeal I excluded "any information held only in the EA's dataset AfA180" (page A30 in the open bundle). The Information Commissioner says "separate from AfA180", which is not quite the same thing – the simplified data may be derived from more detailed information in AfA180. The public maps/visualisations also include a third layer which I believe is derived from the extent polygons in dataset AfA113.
4. I understand from the case management directions of 21 April 2021 that the Tribunal has received a sample of the disputed information, which will not be disclosed to me. I trust the Tribunal is assured that the sample is representative of the information at issue.
 5. I would also like to highlight two points raised by material disclosed in the open bundle, which seem to support the arguments in my grounds of appeal.
 6. Firstly, the Environment Agency notes in its response of 19 March 2021 (page A309 in the open bundle) that Cabinet Office guidance “does not require that information that is withheld from disclosure under the Environmental Information Regulations 2004 on the grounds of national security should be classed as SECRET. It may also be marked as Official Sensitive.”
 7. I am therefore interested to see that in the Environment Agency’s metadata for dataset AfA113, as provided to the Information Commissioner at the complaint stage (page C909 in the open bundle), only two attributes are protectively marked as “This is SENSITIVE INFORMATION”: the EA unique reference number, and the grid reference for the reservoir location. Conspicuously, neither the reservoir name nor the extents polygon are

marked as SENSITIVE.

8. Secondly, it appears from emails disclosed in the open bundle (pages C910-C919) that while considering my complaint the Information Commissioner had no opportunity to review even a sample of dataset AfA113 or other geospatial information covered by my request, because the case officer did not have access to GIS software to view shapefiles.
9. I cannot understand why the Information Commissioner, as the regulator for access to environmental information, does not provide case officers with the means to view information in geospatial formats. Entry-level GIS packages such as QGIS are available at no cost and used across the public sector.
10. For the purposes of handling my complaint, the Information Commissioner asked the Environment Agency for screenshots instead ("a few screenshots would go a little further to allow us to say we've seen at least a sample of the information.") However, it appears the screenshots provided by the Environment Agency showed only the publicly available visualisations, and not the geospatial information that was central to my request.
11. In my view the Information Commissioner cannot have adequately scrutinised the Environment Agency's application of the regulation 12(5)(a) exception nor the public interest test, based on such a partial description of the information at issue.

OWEN BOSWARVA
11 May 2021