

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

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

17 November 2020

General Regulatory Chamber  
HM Courts and Tribunals Service  
PO Box 9300  
Leicester  
LE1 8DJ

By email to [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

**Appeal to the First-tier Tribunal (Information Rights) against ICO decision notices IC-48075-B0D4 (EIR) and IC-64437-V6M6 (RPSIR)**

Dear First-tier Tribunal Judge,

I would like to appeal against two decision notices issued by the Information Commissioner's Office (the ICO) in response to my complaint about an information request to the Environment Agency (the EA).

This letter sets out my grounds of appeal and the outcome I am seeking, as part of my notice of appeal (Form T98). I have also attached a bundle of supporting documents.

My appeal mainly relates to some points in decision notice IC-48075-B0D4 (EIR). I am generally content with the decision in notice IC-64437-V6M6 (RPSIR). However it follows from the outcome I

am seeking with respect to IC-48075-B0D4 (EIR) that I am also appealing the scope of the analysis and decision in IC-64437-V6M6 (RPSIR).

The Environment Agency is the regulatory authority for the safety of large raised reservoirs in England under the Reservoirs Act 1975 as amended by the Flood and Water Management Act 2010. A large raised reservoir is a structure that holds 25,000 cubic metres or more of water above ground level.

In August 2019 I submitted an access to information request to the EA's Data Team for three related sets of geospatial information. Following is a summary of the information:

1. The latest version of the EA's unpublished Large Raised Reservoirs (AfA134) dataset. That dataset contains names of reservoirs along with their status (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 The latest version of the EA's unpublished Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113) dataset. That dataset contains some of the same information as the Large Raised Reservoirs dataset. The main additional information is a polygon (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. 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>.

At the time of my request, datasets AfA134 and AfA113 were described in metadata records on the Government's [Data.gov.uk](https://data.gov.uk) website. Those records were subsequently removed, but I have included archive copies in my bundle.

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 supporting documents in my bundle include copies of all of my correspondence with the EA and the ICO to date related to my request for information, including the EA's response to my request, my request for an internal review and the EA's response to that, my complaint to the ICO, and the ICO's decision notices.

In broad terms, the ICO's decision across the two notices was that the EA must permit my re-use of the Large Raised Reservoirs (AfA134) dataset under the Open Government Licence, and that the EA was entitled to withhold the other information on the basis of the exception in regulation 12(5)(a) of the EIR.

To date, the EA has not disclosed to me any of the information covered by my request. I do not currently know whether the EA intends to appeal either of the decision notices.

My appeal of decision notice IC-48075-B0D4 (EIR) is on three grounds, summarised as follows:

1. The ICO did not handle the part of my complaint that related to access to the information in the Large Raised Reservoirs (AfA134) dataset.
2. The EA relied on new arguments at the complaint stage to withhold information in the Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113) dataset. Neither the EA nor the ICO informed me of those new arguments before the decision notice was served.

3. The ICO did not consider the minimum level of detail in my request for data on maximum flood depth and maximum flood speed. The ICO conflated this part of my request with a larger body of detailed technical data held by the EA, and treated that body of data as indivisible.

My appeal of decision notice IC-64437-V6M6 (RPSIR) follows from my appeal of decision notice IC-48075-B0D4 (EIR). If the tribunal agrees with the outcome I am seeking from appeal of IC-48075-B0D4 (EIR), the scope of IC-64437-V6M6 (RPSIR) is too narrow as it stands.

I am not attempting to appeal either decision notice in its entirety. My appeal of IC-48075-B0D4 (EIR) is confined to the minimum information specified in my request. I am not appealing the EA's application of the regulation 12(5)(a) exception to any more detailed information than that. I am also not appealing the decision in IC-64437-V6M6 (RPSIR) that the EA shall permit re-use of the information in the Large Raised Reservoirs (AfA134) dataset under the Open Government Licence.

Following is a further explanation of my grounds for appeal.

#### Access to information in the Large Raised Reservoirs (AfA134) dataset

At the time of my information request, as now, the Large Raised Reservoirs (AfA134) dataset was listed online in the EA's [Register of Licence Abstracts](#) as available on request for re-use under the terms of the [Environment Agency Conditional Licence](#).

Like the Open Government Licence, the Conditional Licence offers terms of for re-use of information on a non-discriminatory basis (within the meaning of regulation 13 of the Re-use of Public Sector Information Regulations 2015) .The re-user is not required to sign the licence or otherwise signify acceptance to the licensor prior to re-use. However the standard terms of the Conditional Licence are varied by additional conditions that apply to particular datasets. Re-users can identify the additional conditions by referring to either the Register of Licence Abstracts or metadata records published on Data.gov.uk.

In decision notice IC-48075-B0D4 (EIR) the ICO notes the concern in my complaint that the information in the Large Raised Reservoirs dataset (AfA134) "had not been disclosed or any basis for withholding given" (paragraph 11). The ICO also notes the EA's statement that the dataset

“was provided to the complainant in August 2019 as it is under a legislative requirement to make this information available” (paragraph 12).

There is nothing further in the decision notice to resolve this inconsistency. However the stated scope of the ICO’s investigation (paragraph 14) excludes consideration of my access to the information in the Large Raised Reservoirs dataset (AfA134).

The EA did not provide the Large Raised Reservoirs dataset (AfA134) to me in August 2019 and has not done so since then. The EA’s original and internal review responses included various links to online resources. However those all related to metadata and licensing information rather than the information in the dataset.

I believe the ICO should have considered, within the scope of IC-48075-B0D4 (EIR), the EA’s failure to disclose to me the information in the Large Raised Reservoirs dataset (AfA134) or provide a basis for withholding it.

The ICO did consider the terms of my re-use of the information in Large Raised Reservoirs dataset (AfA134) in decision notice IC-64437-V6M6 (RPSIR). Arguably, the ICO’s decision that the EA shall permit re-use under the Open Government Licence implies that the EA shall also disclose the information to me. However I do not currently know whether the EA intends to appeal or comply with that decision notice.

#### Access to information in the Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113) dataset

At the time of my information request (as now), the Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113) dataset was also listed online in the EA’s [Register of Licence Abstracts](#) as available on request for re-use under the terms of the [Environment Agency Conditional Licence](#).

The additional conditions applied by the EA to re-use of this dataset were (and are) precisely the same as those applied to the Large Raised Reservoirs dataset (AfA134).

In its original response to my information request, the EA made no reference to my request for the additional information (the maximum flood outline polygons) in the Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113) dataset.

In its internal review response, the EA stated: “Advice was provided to enable you to access some of the data sets for Reservoir Flood Map Maximum Flood Outline (AfA113).”

That statement was incorrect, but did not seem to mean that the EA intended to withhold the information in the dataset. Elsewhere in the internal review response, the EA confirmed dataset AfA113 was available for re-use via the Conditional Licence. That presupposes the EA must at the time have considered the dataset to be eligible for release under EIR.

In both its original response and internal review response, the EA stated that it was withholding the “flood depth and maximum flood speed information” because the information was subject to the exception from disclosure provided by Regulation 12(5)(a). Neither response explicitly applied that exception to the maximum flood outline polygons or other information in the Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113) dataset. Elsewhere in the internal review response, the EA cited “issues around national security and public safety” as a reason for restricting re-use of the AfA113 dataset via the Conditional Licence – but not as a reason for restricting access under EIR.

Nevertheless, in decision notice IC-48075-B0D4 (EIR) the ICO states that the EA has withheld dataset AfA113 under regulation 12(5)(a) of the EIR, and the Commissioner considers within the scope of her investigation whether the information has been withheld correctly (paragraphs 13 and 14).

With respect to the maximum flood outline polygons and other information in the Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113) dataset, the EA’s position as stated in the decision notice is based on new arguments, to which I had no opportunity of reply before the decision notice was served.

The ICO’s [guide for organisations on freedom of information](#) states:

It is not good practice to introduce new reasons for refusing a request at this late stage (see When can I refuse a request?) and you should avoid doing so. However, if you do decide you need to rely on a new exemption, then we will consider your arguments in the normal way. You will need to inform us and the requester about your new arguments straight away.

The EA continues to list the Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113) dataset in its Register of Licence Abstracts as “approved for access” and available on request for re-use under the Conditional Licence, on identical terms to those that apply to the Large Raised Reservoirs (AfA134) dataset. Given the opportunity, I would have challenged the EA’s change in position and argued that the ICO should apply the same analysis to both datasets and reach the same conclusion: that the EA shall permit re-use under the Open Government Licence.

#### The minimum level of detail and access to simplified information

My information request anticipated that much of the mapping information held by the EA about inundation risk from large raised reservoirs would be ineligible for public release. For that reason I was careful to specify the minimum information I was seeking about maximum flood outlines, maximum flood depth, and maximum flood speed within the outlines.

In particular my request referred to “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 an interactive map published by the EA at:

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

This is the data referred to in decision notice IC-48075-B0D4 (EIR) as the “simplified version of the information” about maximum flood outlines, flood depth, and flood speed. The ICO notes (paragraph 13) that the EA provided me with a link to that information:

<https://flood-warning-information.service.gov.uk/long-term-flood-risk/map?easting=292274.7&northing=90399.44&address=10023117048&map=Reservoirs>

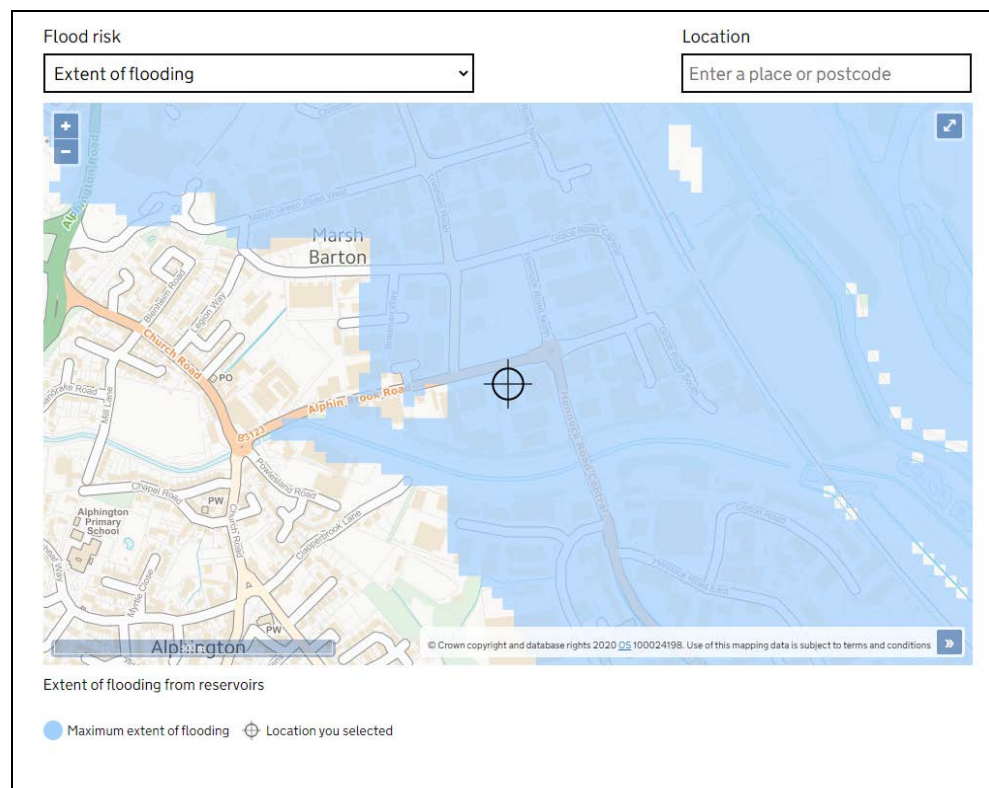
The simplified version of the information is within scope of my request. However, the EA's interactive map only provides a visualisation or view of the simplified version of the information. Access to the EA's visualisation is not equivalent to access to the information underlying the visualisation. As I said in my request:

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.

(WMS or Web Mapping Service is a technical means by which the EA permits users to overlay map images of the simplified information in their own geographic information systems GIS. The map images are equivalent to those displayed on the EA's interactive map. )

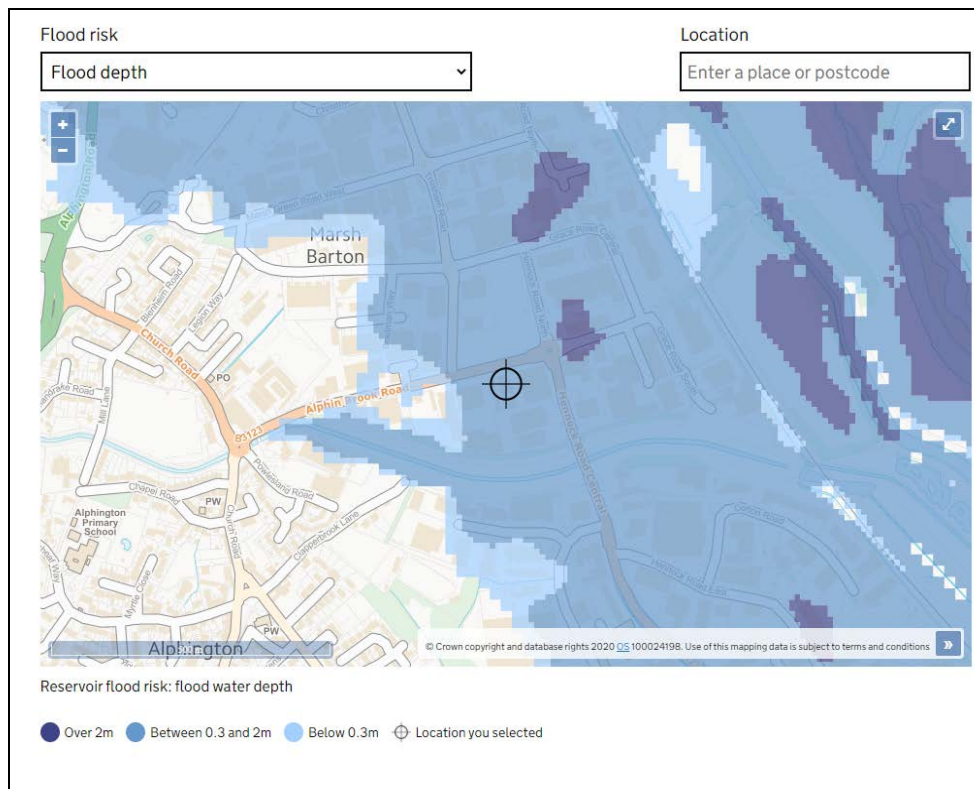
Figures 1-3 below show local areas of the simplified information on flood extents, depths, and speeds as visualised on the EA's interactive map at the link provided in the decision notice:

**Fig 1**  
**Extent of flooding from reservoirs**

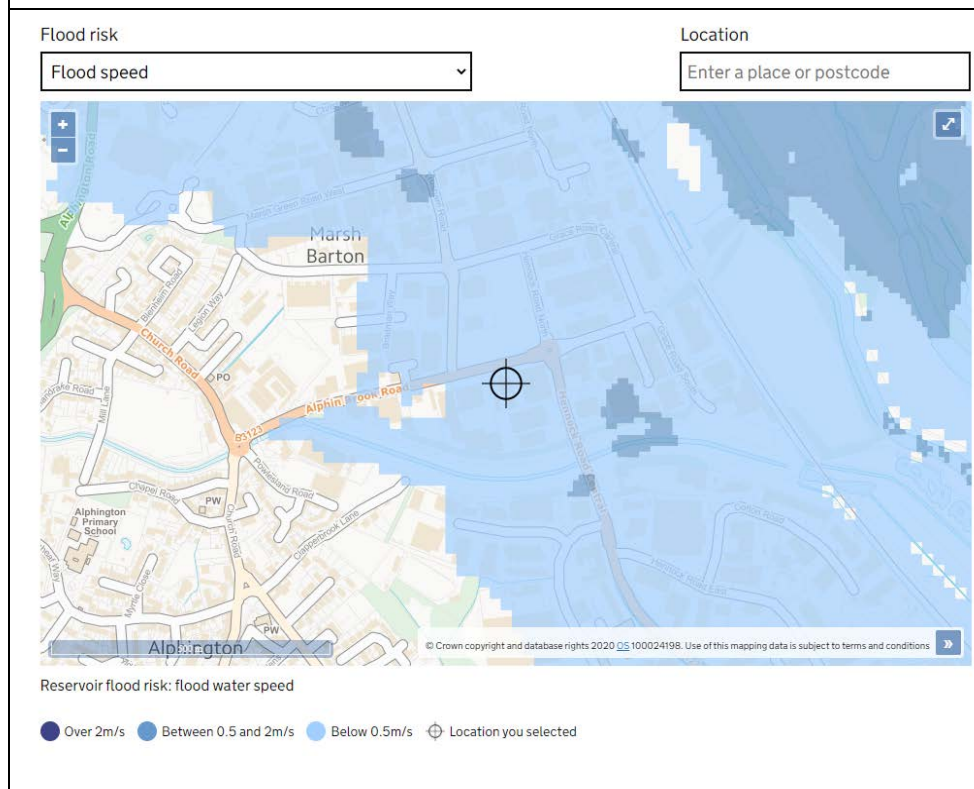




**Fig 2**  
**Reservoir flood risk: flood water depth**



**Fig 3**  
**Reservoir flood risk: flood water speed**



The difference between the public view of the simplified information and the underlying information I was seeking in my request is not merely a difference in formats. The information itself is different.

Figure 4 below illustrates this point. On the left is a map image of a polygon for the extents of St Pancras Gardens in London. On the right is the underlying feature information. Although the map image is rendered from the feature information, the availability of the map image does not provide access to the feature information.

**Fig 4**  
**St Pancras Gardens polygon: map image vs feature information**



```
{
  "type": "FeatureCollection",
  "name": "St_Pancras_Gardens",
  "crs": { "type": "name", "properties": { "name": "urn:ogc:def:crs:OGC:1.3:CRS84" } },
  "features": [
    { "type": "Feature", "properties": { "id": "AC48C2AA-527D-7B2B-E053-A03BA40AE3D9", "function": "Public Park Or Garden", "distName1": "St Pancras Gardens", "distName2": null, "distName3": null, "distName4": null }, "geometry": { "type": "Polygon", "coordinates": [ [ [ -0.131259, 51.535055, 0.0 ], [ -0.131491, 51.535115, 0.0 ], [ -0.131344, 51.535188, 0.0 ], [ -0.131264, 51.535157, 0.0 ], [ -0.131382, 51.535226, 0.0 ], [ -0.131329, 51.535276, 0.0 ], [ -0.132194, 51.535659, 0.0 ], [ -0.130541, 51.536282, 0.0 ], [ -0.130492, 51.53627, 0.0 ], [ -0.13055, 51.536219, 0.0 ], [ -0.130486, 51.536219, 0.0 ], [ -0.130511, 51.53619, 0.0 ], [ -0.130441, 51.536122, 0.0 ], [ -0.130392, 51.536126, 0.0 ], [ -0.130431, 51.536111, 0.0 ], [ -0.130378, 51.536059, 0.0 ], [ -0.130237, 51.536029, 0.0 ], [ -0.130277, 51.535968, 0.0 ], [ -0.130127, 51.535824, 0.0 ], [ -0.129949, 51.535853, 0.0 ], [ -0.129861, 51.535867, 0.0 ], [ -0.129735, 51.535762, 0.0 ], [ -0.129562, 51.535697, 0.0 ], [ -0.12948, 51.535121, 0.0 ], [ -0.129295, 51.534648, 0.0 ], [ -0.12986, 51.534436, 0.0 ], [ -0.130683, 51.534773, 0.0 ], [ -0.130431, 51.534869, 0.0 ], [ -0.13013, 51.534831, 0.0 ], [ -0.1299, 51.53491, 0.0 ], [ -0.12993, 51.535008, 0.0 ], [ -0.130079, 51.535028, 0.0 ], [ -0.130641, 51.534878, 0.0 ], [ -0.130806, 51.534874, 0.0 ], [ -0.131259, 51.535055, 0.0 ] ] ] ] } } ]
}
```

The simplified information about reservoir flood risk visualised on the EA interactive map is a little more complicated than the example in Figure 4, because in addition to the polygon features the underlying information also includes the attribute values used to render the polygons with different colours in the map images.

In my view the ICO should have considered the simplified information underlying the EA's published visualisations as within scope of my information request, and considered whether the EA had correctly applied the exception in regulation 12(5)(a) of the EIR as the basis for withholding that information.

I do not think the EA can sustain an argument that the availability of map images of the simplified information about reservoir flood risk would not adversely affect national security or public safety, whereas the availability of the underlying feature and attribute information would affect national security or public safety.

In decision notice IC-48075-B0D4 (EIR), the ICO did not consider the minimum level of detail in my request. Instead the ICO considered only the version of the maximum flood outlines in the Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113) dataset, and the information on maximum flood depth and maximum flood speed held in another EA dataset, AfA180.

I have included some metadata related to dataset AfA180 ('Reservoir Flood Maps – Spatial Data') in my bundle. I did not mention AfA180 in my information request because I was aware that this dataset was the EA's collection of detailed mapping outputs for flood risk from reservoirs and that it was unlikely information at that level of technical detail would be eligible for public access.

The Information Commissioner's investigation and analysis as described in the decision notice went far beyond the scope of my information request. For example in paragraph 23:

The Commissioner has reviewed samples of the information in the dataset and considers it to be detailed and technical. It provides details of failure scenarios and this information could be used by a motivated individual to assist in targeting perceived weaknesses in national infrastructure. The Commissioner's view is that promoting the dissemination of detailed and technical information through a response to an information request would provide significant intelligence to anyone seeking to undermine the UK's national security. This would increase the risk of a terrorist attack.

In my information request I did not request details of failure scenarios or any other information that an expert in reservoir safety would consider to be "detailed or technical". To the extent that the scope of my information request may extend to any information held only in the EA's dataset AfA180, I am not appealing the ICO's decision that the EA may withhold that particular information.

#### The outcome I am seeking from my appeal

As the outcome of my appeal I would like the tribunal to find that the Environment Agency should:

1. provide me with access to the information in the Large Raised Reservoirs (AfA134) dataset (and permit re-use under the Open Government Licence, in line with the ICO's decision);
2. provide me with access to the information in the Reservoir Flood Map Maximum Flood Outline (Extent) (AfA113) dataset, and permit re-use under the Open Government Licence; and

3. provide me with access to the simplified versions of the feature and attribute information that underlies the reservoir risk layers visualised on its public interactive flood map, and permit re-use under the Open Government Licence.

Thank you for your attention to my appeal.

Yours sincerely,



Owen Boswarva