



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights
Decision notice FER0677441**

Appeal Reference: EA/2018/0017

**Decided without a hearing
On 22 October 2018**

Before

JUDGE CHRIS HUGHES

TRIBUNAL MEMBERS

ANNE CHAFER & HENRY FITZHUGH

Between

MARK WILLIAMSON

Appellant

and

INFORMATION COMMISSIONER

Respondent

and

NATURAL ENGLAND

Second Respondent

DECISION AND REASONS

1. The appeal is dismissed.

2. The Appellant has an interest in land which was the subject of regulatory investigation by the Second Respondent ("NE"). On 13 September 2016 the Appellant wrote to NE seeking information. NE served a remediation notice on the landowners requiring works to be carried out to restore the water table to restore semi-natural land on 23 September 2016 under the Environmental Impact Assessment Regulations. The owners of the land appealed against the service of the notice to the Secretary of State for Environment Food and Rural Affairs (DEFRA) on 20 October 2016. A revised notice was subsequently issued. The appeal against the notices was to be determined by DEFRA on the basis of the written submissions of the parties.
3. The Appellant's information request of 13 September 2016 (as set out in the decision notice) was:-

"I am one of the landowners of the land at Chapel-en-le-Frith, Derbyshire known to Natural England as Brookside Pastures and locally known as The Target Wall fields, Grid ref. SK061799. My name is [redacted] and I reside at [redacted]. On the 4th of August 2016 I submitted a freedom of information request about the above subject via email to above email address, which I obtained from Natural England's own website. I did not receive an acknowledgement for my email, never mind an actual reply, which I think is most regrettable. To repeat my original request, I would like you to forward to myself using my email address, any and all communications and correspondence written and electronic concerning my above land, both internal within Natural England departments and external, between the dates of 1st August 2015 and present date 13th September 2016. External bodies include: High Peak Borough Council officers and councillors, all department Derbyshire Wildlife Trust officials [redacted], farmers of [redacted], Derbyshire [redacted] of the [redacted], Chapel-en-le-Frith, Derbyshire Internal Natural England officials include mainly, but not solely, [redacted] and her department supervisors."

4. NE considered the request under the Environmental Information Regulations (EIR) and provided a substantive response on 7 November 2016. This response provided a CD of information falling within the request and withheld other information relying various provisions of Regulation 12 (exceptions to the duty to disclose environmental information):-

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

.....

(e) the request involves the disclosure of internal communications.

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

.....

(b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;

5. The Appellant complained to the First Respondent (“IC”) who investigated. She concluded that the information identified as “internal communications” were e-mails between various members of NE staff including draft documents being passed around for comment and consultation within NE. These were within the definition of “internal communications” and therefore the exception was engaged.
6. In weighing where the balance of public interest lay between disclosure and non-disclosure she considered the Appellant’s argument in favour of transparency and to show the evidence base for issuing the remediation notice and his argument that since the notices had been issued, the evidence should already be gathered and there was no issue in releasing the information into the public domain. Against this she considered the need to protect a thinking space and for the regulator to have full and frank internal discussions without fear that the information would be disclosed, premature public or media disclosure would prevent such free and frank exchange of views. While the investigation had been completed at the time of request the owners were then going through the appeal process and releasing further information could have adversely affected further action that might be taken in the light of the discussions.
7. In considering these issues (DN paragraphs 34-42) she considered that as the appeal process was in train at the time the request was considered significant weight should be given to the need for a safe thinking space for NE. While there was weight in the argument for transparency and acknowledging the presumption in favour of disclosure provided by Regulation 12(2) she did not consider that there was any significant wider public interest in disclosure beyond the interest of those directly affected (paragraph 42) and given the inherent value of protecting the safe space for deliberation by NE she found that the balance of public interest lay in maintaining the exception.
8. The Appellant in his grounds of appeal raised issues as to the factual basis for and the merits of the decision to take regulatory action he asserted that NE had acted illegally and fraudulently. He submitted that information would be disclosable within the appeal to the Secretary of State (instancing aerial photographs) and that this information should not be withheld on the grounds of “thinking space”. He asserted that NE action indicated a policy direction which was profoundly important for farmers and was oppressive in imposing the costs of appeal on farmers challenging NE actions. He called into question

the action and roles of a voluntary group and whether a named individual had been treated as internal, when he was external to NE. He also complained that the IC had not dealt with NE's failure to deal with his first request.

9. In resisting the appeal the IC noted that the merits of the issues under the EIA Regulations were not within her scope or that of the tribunal. She confirmed that on her review of the withheld material there was nothing to suggest illegality on the part of NE. The withheld information did not disclose correspondence with the individual named by the Appellant. She submitted that disclosure under EIR was disclosure to the whole world and therefore distinct from any obligation to disclose in the appeal proceedings against the enforcement notice. Accordingly the 12(4)(e) exception remained even if a limited disclosure were required in those proceedings. As those proceedings were continuing, there continued to need to be a safe space to deal with relevant issues free from external disruption or other consequences of disclosure. In balancing the public interest the IC remained of the view that the information related to Brookside Pastures and did not disclose any general issues about NE's processes. The information was of limited public interest and she had correctly weighed the public interest.
10. She noted that a limited number of documents did not appear to engage 12(4)(e) "*individuals names and addresses, notes of a telephone conversation... correspondence between NE and Derbyshire Wildlife Trust*" She considered that the names and addresses and the notes of the telephone conversation were personal data and therefore within the 12(3) exception, but the correspondence with the Derbyshire Wildlife Trust did not and she did not consider that disclosure would adversely affect the course of justice and accordingly considered that this material should be disclosed.
11. In resisting the appeal NE set out some of the policy thinking behind the EIA, NE's role in enforcement and the history of the remediation appeal. NE supported the IC view that the issues in the remediation appeal fell outside the remit of the IC and tribunal. NE confirmed that there were no withheld communications with the named individual and that the Appellant had been informed of this in January 2017, aerial photographs had not been withheld. There was no wider public interest in the issue. NE agreed with respect to the further disclosure identified by the IC (paragraph 10) above and confirmed that the information would be made available to the Appellant.
12. In reply the Appellant emphasised his dissatisfaction that the IC had not (in his view) properly addressed issues raised by his previous request for information and also set out his view that the IC gave undue weight to the NE view with respect to the remediation notice. He appended the notice of appeal to DEFRA and revisited issues in that appeal.

Consideration

13. The issues in this appeal are very simple. Although a range of matters have been canvassed by the Appellant and some have been responded to (for example the handling of a previous request for information, the precise nature of the Appellant's interest in the land) these are not matters for the tribunal. There are two matters for the tribunal to consider. The first is whether the information is properly characterised as internal communications. With the small exceptions identified in paragraph 29 of the IC's response and addressed in paragraph 10 above, it is clear that the material consists of internal communications - emails between staff of NE discussing the Brookside Pastures and the draft remediation notice.
14. The second issue is, given that the exception is engaged, where the public interest lies between disclosure and non-disclosure. Although the Appellant argues that there is illegality and oppression in the actions of NE a consideration of the material merely shows that NE staff are seeking to establish the facts about the land and determine what should be done. There is no indication of anything other than the routine administrative processes of a regulator. These are of concern to those directly affected, the Appellant's interest in the land mean that he is one such, but beyond demonstrating how such processes unfold - i.e. a general issue of administrative transparency, there is no wider public interest. On the other side of the balance there is a clear recognition of the need to protect the internal deliberations of such a body so it can conduct its casework properly. The IC has correctly identified the balance of public interest in her decision notice and there are no grounds to disturb that finding.
15. The IC's decision is correct in law and the appeal is dismissed.

Signed Chris Hughes

Judge of the First-tier Tribunal
Date: 5/12/2018