

**FREEDOM OF INFORMATION ACT 2000 (SECTION 52)
ENFORCEMENT POWERS OF THE INFORMATION COMMISSIONER
ENFORCEMENT NOTICE**

DATED: 1 August 2023

To: Environment Agency

**Of: Horizon House
Deaney Road
Bristol
BS1 5AH**

1. The Environment Agency ("**EA**") is a "public authority" listed in Schedule 1 and defined by section 3(1)(a)(i) of the Freedom of Information Act 2000 ("**FOIA**"). FOIA provides public access to information held by public authorities.
2. The Information Commissioner (the "**Commissioner**") hereby issues EA with an Enforcement Notice (the "**Notice**") under section 52 FOIA. The Notice is in relation to EA's:
 - a. Continuing non-compliance with section 1(1) FOIA;
 - b. Continuing breach of section 10(1) FOIA.
3. This Notice explains the Commissioner's decision to take enforcement action. The specific steps that EA is required to take are set out in **Annex 1**.

Legal Framework for this Notice

4. A person requesting information from a public authority has a right, subject to exemptions, to be informed by the public authority in writing whether it holds the information, and to have that communicated to him, if the public authority holds it. This is set out in section 1(1) FOIA

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“(1) Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

5. Section 10(1) FOIA specifies that public authorities must respond to requests within 20 working days -

“... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following receipt.”

6. There is provision under FOIA for a public authority to claim a reasonable extension to this limit in certain limited circumstances. The code of practice issued under section 45 of FOIA recommends that, where those limited circumstances apply, an extension should be for a maximum of a further 20 working days.¹ In all cases, the public

¹ [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf \(publishing.service.gov.uk\)](#)

authority must give the requester a written response within the standard time limit for compliance advising of reliance on the permitted extension.

7. The Commissioner has various powers under FOIA. One of these is the issuing of an Enforcement Notice. Section 52(1) of FOIA states –

“If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I, the Commissioner may serve the authority with a notice (in this Act referred to as an “enforcement notice”) requiring the authority to take within such time as may be specified in the notice, such steps as may be so specified for complying with those requirements.”

Background

8. The Commissioner first engaged with EA about its compliance on 7 March 2022, having become aware of an increase of cases brought to him regarding section 10(1) breaches. The Commissioner noted that EA had competing demands and priorities internally and EA conceded that FOIA (but more so the EIR) was not given the priority it should have been having received 46000 requests to date. The Commissioner promoted his ‘core not chore’ message when it came to compliance.
9. Six months later, EA confirmed that its current compliance was 63% and it was adopting an FOI Improvement Programme to tackle this. EA noted that, despite the large number of requests it receives, 0.01% complain to the ICO.
10. EA described positive steps it has taken with FOIA recruitment, changing the culture and how FOIA is perceived internally. It provided the Commissioner with a detailed action plan, which included both

high- and low-level changes to achieve its targets, one of which was to respond to 90% of requests on time by the end of April 2023.

11. The next meeting in March 2023 showed improvement, EA's compliance had increased to 78% as of 7 March 2023. However, compliance for May 2023 then dropped to 76% which was discouraging. At this point, the Commissioner asked some standard questions about EA's compliance with section 10(1) and its backlog, including its oldest cases.
12. In June 2023, EA explained that it had 465 active cases over one month old. However, it became apparent that this data might be unreliable, as EA believes some of the requests were duplicates or closed and therefore not 'active'.
13. The Commissioner acknowledged EA's concern that the data provided was unreliable and might not be a true reflection of its current situation or performance. Whilst the Commissioner recognises such figures will always be subject to change, EA's lack of confidence in its own data is, in itself, demonstrative of poor practice which EA accepts. The Commissioner therefore asked EA to conduct a data cleanse and come back with a more accurate backlog figure.
14. Despite the improvements that EA has made since its first engagement with the Commissioner, the most up to date figures that EA provided demonstrated an unacceptable level of continued poor performance. The age profile of the active cases that EA is dealing with is as follows:
 - More than one month old, 694
 - More than three months old, 214
 - More than six months old, 89

- More than nine months old, 51
- More than twelve months old, 22

15. The Commissioner understands that these figures are, to EA's knowledge, correct as of 20 July 2023 and there's been an increase in the number of active cases that are over one month old.

16. EA's latest compliance figure (for June 2023) sits at 81%. To break this down further, EA's central FOI team oversee and assist FOIA compliance throughout the organisation. However, the responsibility for responding to a request lies within the region to which the request relates.

17. Some regions demonstrate excellent compliance with section 10(1) at 97%. However, the compliance rates of approximately four-five 'repeat offenders' range from 41% to 49% which brings down EA's average dramatically.

18. The Commissioner recognises the volume of requests that EA receives and that the nature of these requests (which often relate to historic flooding information) means that some regions will receive a disproportionate number of requests compared to others. However, the volume and age of these outstanding requests is unacceptable.

The Contravention and Reasons for this Notice

19. FOIA requires a public authority to inform people whether it holds information they have requested and to communicate it to them within 20 working days of receipt of their request.

20. In this case, the Commissioner doesn't consider it lawful or fair that certain individuals will fail to receive the information they're

requesting, or a valid refusal notice, within the statutory timeframe, because their request relates to specific regions. The fact that some regions are performing at 97% whilst others perform at 41% is unacceptable; the Commissioner is of the opinion that information delayed is essentially information denied.

21. The Commissioner discussed with EA the need to divert work, share good practice and redistribute resources across all regions, to maintain a consistently high-level of compliance across the board.
22. What is also of particular concern to the Commissioner and EA is that this is EA's compliance when it's not in a state of emergency. If EA suddenly receives an increase in requests or has to redivert resources to deal with any emergency frontline situation, its compliance will decrease.
23. However, the Commissioner would like to place on record the excellent work that EA has done in changing its culture and the way that FOIA and the EIR are perceived. This has come from the top down and is no easy feat in an organisation of approximately 11000 members of staff. This has been achieved by delivering focused communications to senior management, stressing the importance of compliance, and requesting support.
24. Furthermore, EA has engaged proactively and positively with the Commissioner in responding to his communications and requests for information. It has also agreed to undertake a voluntary audit of its FOIA and the EIR compliance.
25. Taking the above into account, the Commissioner considers it a proportionate regulatory step to issue an Enforcement Notice requiring EA to comply with section 1(1) of FOIA. It is essential that the

improvements described in **Annex 1** are implemented which compliance with this Notice will support.

Terms of this Notice

26. The Commissioner therefore exercises his powers under section 52 of FOIA to serve an Enforcement Notice requiring EA to take specified steps to comply with FOIA. The specified steps are set out in **Annex 1** of this Notice.

27. The consequence of failing to comply with an Enforcement Notice is that the Commissioner may make written certification of this fact to the High Court pursuant to section 54 of FOIA. Upon consideration and inquiry by the High Court, EA may be dealt with as if it had committed a contempt of court.

Right of Appeal

28. By virtue of section 57 of FOIA there is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). If an appeal is brought against this Notice, it need not be complied with pending determination or withdrawal of that appeal.

29. Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 9368963

Email: GRC@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Enforcement Notice is sent.



Phillip Angell
Head of Freedom of Information Casework
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES THE ENVIRONMENT AGENCY TO TAKE THE FOLLOWING STEPS BY NO LATER THAN SIX MONTHS FROM THE DATE OF THIS NOTICE:

- (i) In respect of each information request where the response is outside of 20 working days as at the date of this notice, and where a permitted extension has not been applied, to comply with section 1(1)(a) of FOIA and, if information of the description specified in the request is held, either:
 - (ii) communicate it pursuant to section 1(1)(b) FOIA; or issue a valid refusal notice under section 17 FOIA, unless section 17(6) FOIA applies.

THIS NOTICE REQUIRES THE ENVIRONMENT AGENCY TO TAKE THE FOLLOWING STEPS BY NO LATER THAN 35 CALENDAR DAYS FROM THE DATE OF THIS NOTICE:

- (iii) Devise and publish an action plan formalising the measures it will take to ensure that it complies with its legal duties under Part 1 of FOIA to respond to information requests in a timely fashion. This action plan should focus on how EA intends to ensure that its lowest performing regions (as referred to in paragraph 17 and paragraph 20) meet compliance, while also clearing its backlog of late requests as required by this notice.
- (iv) Whilst this enforcement notice relates to EA as a whole, the Commissioner wishes to place on record his expectation that EA's efforts must go into improving compliance in its lowest performing

Reference: ENF0987659

regions in order to bring its overall compliance up. The Commissioner expects this new action plan to detail how EA intends to improve compliance in its lowest performing regions, whilst not compromising compliance anywhere else.