Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 August 2020

Public Authority: Environment Agency
Address: Horizon House
Deanery Road
Bristol
BS1 5AH

Decision (including any steps ordered)

1. The complainant has requested a variety of data related to ethnicity and disabilities. The Environment Agency ("the EA") refused part of the request because it estimated that the cost of complying would exceed the appropriate limit. In relation to the remainder of the request, it provided some data but also withheld some, which it believed would reveal personal data contrary to GDPR.

2. The Commissioner's decision is that the EA has correctly relied on section 12 to refuse the part of the request that it has done. However, she also finds that it failed to comply with its duty, under section 16 of the FOIA, to provide reasonable advice and assistance to help the complainant refine his request. It was entitled to rely on section 40(2) of the FOIA to withhold some of the information but has applied this incorrectly to some of the information. Finally, she finds that the EA failed to identify all the information it held within the scope of the request and failed to issue a refusal notice relying on section 12 of the FOIA within the 20 working day deadline. She therefore finds that the EA breached sections 10 and 17(5) of the FOIA respectively.

3. The Commissioner requires the EA to take the following steps to ensure compliance with the legislation.

    - Provide, to the complainant, the information it has withheld in respect of questions [1], [10] and [14].

4. The EA must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 18 October 2019, the complainant wrote to the EA and requested information in the following terms (the Commissioner has renumbered the request to make the analysis that follows easier to understand):

> *"My request is:*
>
> *[1] What is the percentage of BAME[1] staff in National Estates?*
>
> *[2] What is the % of BAME staff in National Operations?*
>
> *[3] What is the percentage of BAME staff in National Estates who have been promoted in the last 3 complete monitoring period years?*
>
> *[4] What is the percentage of BAME staff in National Estates who have been demoted in the last 3 complete monitoring period years?*
>
> *[5] What is the percentage of non-BAME staff in National Estates who have been promoted in the last 3 complete monitoring period years?*
>
> *[6] What is the percentage of non-BAME staff in National Estates who have been demoted in the last 3 complete monitoring period years?*
>
> *[7] What is the % of BAME staff in the Environment Agency who have been promoted in the last 3 complete monitoring period years?*
>
> *[8] What is the % of non-BAME staff in the Environment Agency who have been promoted in the last 3 complete monitoring period years?*

[1] Black and Minority Ethnic

[9] What is the percentage of staff declaring a disability in National Estates, and what is the % of staff declaring a disability in the Environment Agency?

[10] What is the percentage of staff declaring a disability in National Estates that have been promoted in the last 3 complete monitoring years?

[11] What is the % of staff not declaring a disability to have been promoted in National Estates last 3 complete monitoring years?

[12] What is the % of Environment Agency staff declaring a disability that have been promoted in the last 3 complete monitoring years?

[13] What is the % of staff not declaring a disability to have been promoted in the Environment Agency during the last 3 complete monitoring years?

[14] What is the percentage of all BAME staff in Kingfisher House (KFH) that have been promoted in the last 3 complete monitoring years?

[15] What is the percentage of all non-BAME staff in KFH that have been promoted in the last 3 complete monitoring years?

[16] What is the percentage of staff recommended workplace reasonable adjustments in EA Estates, and what is the % of staff recommended workplace reasonable adjustments in the Environment Agency?

[17] What is the percentage of staff recommended workplace reasonable adjustments in EA Estates that have been promoted in the last 3 complete monitoring years?

[18] What is the % of staff not recommended workplace reasonable adjustments to have been promoted in EA Estates last 3 complete monitoring years?

[19] What is the % of Environment Agency staff recommended workplace reasonable adjustments that have been promoted in the last 3 complete monitoring years?

[20] What is the % of staff not recommended workplace reasonable adjustments to have been promoted in the

Environment Agency during the last 3 complete monitoring years?

6. The EA responded on 11 November 2019. It provided information in respect of elements [2], [5], [7], [8], [9], [11], [12], [13] and [15]. It relied on section 40(2) of the FOIA to withhold information in respect of elements [1], [3], [4], [6], [10] and [14]. Finally, in relation to elements [16]-[20], it said that:

"No data is centrally collated or compiled for workplace adjustments in the Environment Agency. Hence this information is not available to supply."

7. Following an internal review the EA wrote to the complainant on 20 December 2019. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 18 December 2019 to complain about the way his request for information had been handled. In particular, as a trade union representative, he argued that the information should be provided as part of the EA's trade union recognition agreement to provide monitoring data to its recognised trade unions.

9. On 22 May 2020, in response to the Commissioner's investigation letter, the EA advised that, whilst it wished to maintain its original position in respect of elements [1]-[15], it now believed that it did in fact hold information in respect of elements [16]-[20]. However, the EA considered that section 12 of the FOIA (cost of compliance exceeds appropriate limit) might apply to these elements and requested further time to consider its position. On 4 August 2020, the EA confirmed that it did indeed intend to rely on section 12 to refuse these elements of the request.

10. The Commissioner notes that the general sharing of information between a public authority and its recognised trade unions (whether under a specific recognition agreement or under general trade union legislation) is beyond her jurisdiction. This request was made under the FOIA and, as disclosure under the FOIA is disclosure to the world at large (not just the individual requestor), whilst the complainant's status as a trade union representative may enable him to pursue this matter via other avenues, it is not relevant to the matters the Commissioner must consider.

11. The Commissioner considers there are four questions for her to consider:

    a. Is the EA entitled to rely on section 40(2) in the manner that it has done?

    b. Has the EA reasonably estimated that the cost of complying with elements [16]-[20] would exceed the appropriate limit?

    c. If the answer to (b) is yes, has it provided reasonable advice and assistance to help the complainant refine his request within the cost limit?

    d. Has the EA complied with the procedural requirements of the FOIA?

Reasons for decision

a. Section 40(2) of the FOIA (personal data of a third party)

12. Section 40(2) of the FOIA allows a public authority to withhold information if that information is, or would reveal, the personal data of an individual other than the requestor.

13. Section 3(2) of the Data Protection Act 2018 defines personal data as:

    "any information relating to an identified or identifiable living individual".

14. There are two elements for the Commissioner to consider, when assessing whether particular information is personal data. First, the information must be capable of being linked back to a specific individual (or specific individuals). Secondly, the information must have the individual as its focus, be used to inform decisions about them or have biographical significance for them. It must also be information (or reveal information) that is not widely available.

15. The EA argued that the numbers that it had withheld were low (fewer than 10 – or would be fewer than ten if the percentage were converted into a raw figure). Because the numbers were so low, it argued, there was a clear risk of individuals being identified from the data.

16. If individuals were identifiable from this data, the EA continued, disclosure would inform the world at large that those individuals had been promoted and reveal information about their ethnicity or disability status.

17. When pressed by the Commissioner, the EA accepted that some of these individuals' ethnic or disability status would already be known or could be deduced: for example from the way an individual presented visually, their name or from social media content. However, it noted that the information it held on ethnicity and disability was only that reported by the individuals themselves as part of its equalities monitoring activities. That would mean that there would be individuals who were from a BAME background, or who would otherwise be regarded as having a disability, might have chosen, for personal reasons, not to report this to their employer (as they are under no obligation to do so).

18. Equally, not every individual who had reported to the EA that they identified as being BAME or as having a disability would present in such a way. Ethnicity is much more complicated concept than a person's visual presentation and can be based on a variety of factors such as an individual's ancestry, history, religion, language and culture. There is also currently an increased emphasis on self-identification in respect of ethnicity – thus two people with the same heritage may consider themselves to have different ethnicities.

19. The EA explained that employees were currently asked to choose from 16 possible options to describe their ethnicity. These options included "prefer not to say" and "white" – which, the EA explained, would incorporate those of eastern European or Irish descent as well as those considering themselves to be British. The EA's stats for individuals identifying as "BAME" included every employee who had selected a category other than "white" or "prefer not to say".

20. The EA also noted that not every person who considers themselves to have a disability will necessarily have some sort of aid (such as a wheelchair or hearing aid) to help them overcome their disability – and even those that do have such an aid may keep it hidden.

21. The EA therefore argued that disclosure would reveal, to the world at large, information which had been provided, by its employees, in an expectation of confidence. It argued that such disclosure would therefore breach the data protection principles.

22. The Upper Tribunal in *Information Commissioner v Miller* [2018] UKUT 229 (AAC) ruled that a number does not become personal data merely by virtue of being small. The public authority must be able to demonstrate how the withheld information could be linked to an individual. The first hurdle to clear in establishing whether section 40(2) would apply is to demonstrate the information is identifiable. The Upper Tribunal also noted that the fact that information may be particularly sensitive does not mean that the hurdle of identification is any lower than it would be if the information were not sensitive.

23. When considering whether statistical data can be linked to individuals, the Commissioner must consider both the overall size of the dataset and the number of other data points available. For example, it is easier to identify one individual out of a set of ten than it is to use the same data to identify the same individual out of a set of ten thousand. Equally, the greater the number of additional datasets that a person can cross-reference, the greater the chance of identifying individuals.

24. In the case of elements [3], [4], [6], [10] and [14], in order to fit into one or more of these categories, an individual must: be employed in a particular area of the EA; have been promoted (or demoted) and; identify as either being BAME or having a disability.

25. The Commissioner notes that the prospect of anyone *without* a connection to the EA being able to use this data to identify any individual is extremely remote. Nevertheless, this data would also be available to those within (or who had recently left) the EA as well and thus she must also consider whether the withheld information would reveal anything to other EA employees.

26. If the withheld information were identifiable, the Commissioner considers that it could reveal two things: firstly, it could reveal which individuals had been promoted and secondly it could reveal which promoted individuals identified as BAME or as disabled.

27. In relation to promotions, the Commissioner considers that information on promotions would be widely available throughout the organisation. For example, the individual would be likely to have a new job title which would be reflected in their email footers, on staff distribution lists and departmental organograms. Admittedly this information would not be available to the wider world but, as the Commissioner has already noted, those outside the organisation would be unable to link the withheld information to an individual anyway. Therefore those who could already identify the individuals would learn nothing (as regards to who had or had not been promoted) from the withheld information that they did not already know. Those who could not already identify the individuals would equally learn nothing from the withheld information because they would be unable to link it back to an individual.

28. Secondly the Commissioner has considered whether it would be possible for a person to use the information about who had been promoted to deduce the ethnic or disability status of an individual. She concludes that, in most cases, it would not.

29. The Commissioner considers that this case is not about whether, in disclosing the withheld information, the EA would be revealing an employee's ethnic or disability status, but whether it would be revealing

the information the individual employee has provided to the EA about their ethnic or disability status. There is a subtle distinction between the two.

30. The EA cannot know for sure the true status of each and every one of its employees. The employees cannot be forced to provide that information and many may, for personal reasons, choose not to disclose it. In many cases, the information the EA holds about a particular individual will align with the way the person presents (an individual who has told the EA they are Asian, may have a name of Asian origin or an individual who has told the EA they are disabled may require a wheelchair to move around), but this will not always be the case. Therefore the Commissioner must consider whether disclosure of the withheld information would reveal the actual status information that the EA holds.

31. To analyse ethnicity first, the Commissioner considers that the EA's employees would fall into one of four categories:

    a. Employees who *would* present as being from an ethnic minority and *have* informed the EA that they identify as being part of an ethnic minority.

    b. Employees who *would* present as being from an ethnic minority and *have not* informed the EA that they identify as being part of an ethnic minority.

    c. Employees who *would not* present as being from an ethnic minority and have informed the EA that they *do not* identify as being part of an ethnic minority.

    d. Employees who *would not* present as being from an ethnic minority and *have* informed the EA that they identify as being part of an ethnic minority.

32. For employees falling within categories (a) and (c), the information that they have provided to the EA would align with the way they presented visually. For employees in categories (b) and (d), the information would not align. The question for the Commissioner is therefore whether any employees from category (b) or (d) could be identified from the data.

33. Suppose that 20 employees were promoted in the relevant period. Suppose that five of those employees would fall into category (a), one into category (b) and the remaining 14 fell in category (c). A person wishing to identify individuals would be able to identify the 14 employees in category (c), but would not be able to say definitively which of the remaining six employees fell within category (b).

34. Equally, suppose a different group of 20 employees had been promoted, four of whom fell into category (a), one into category (d) and the remainder into category (c). A person wishing to identify individuals might be able to identify the four category (a) employees, but would not, without additional data points, be able to identify the category (d) employee from the remaining 15.

35. The EA has not made the Commissioner aware of any other available datasets which could be cross referenced to allow for such identification. The Commissioner therefore considers that in both the scenarios above, the overall size of the dataset and the lack of data points would allow individuals, whose actual ethnicity status did not align with what they had reported to the EA, to "hide" within the broader group of people.

36. The EA raised the point that people may attempt to guess a particular employee's ethnic status (based on visual presentation and other clues in the public domain) and that there was a possibility that, where this is done incorrectly, it could be harmful to the individual. The Commissioner accepts that this might be the case but notes that this can happen already, precisely because of the information already in the public domain – indeed the very fact that *mis*-identification can occur undermines the argument that individuals *can* be identified.

37. The Commissioner considers that the same analysis would apply to those with a registered disability: some employees will have an obvious disability, others will not. Of those that do have a disability, some will have informed their employer and others will not. Once again, unless the dataset is very small, or there are other data points which can be compared, it would not be possible to distinguish between those four categories of employees.

38. In the case of questions [3], [4] and [6] the Commissioner does consider that the dataset is sufficiently small as to allow the information that individuals have supplied to the EA to be deduced. In the case of questions [1], [10] and [14], the Commissioner considers that the request asks for a large enough sub-set of data as to obscure the individual ethnicity or disability status of the individuals concerned.

39. The Commissioner therefore considers that the information that the EA has withheld which falls within the scope of elements [1], [10] and [14] is not identifiable and thus not personal data. As the information is not personal data, section 40(2) cannot apply.

40. In respect of elements [3], [4] and [6], the Commissioner considers that, not only can the withheld information be linked to specific individuals but that disclosing it *would* reveal special category data

about the individuals concerned because it would reveal the ethnicity information those individuals had provided to the EA.

41. Information about ethnicity and medical conditions is considered to be particularly sensitive information and is known as Special Category personal data. Both the General Data Protection Regulation (GDPR) and the Data Protection Act (DPA) give this particular class of personal data additional protections on top of the usual processing safeguards.

42. In particular, special category data cannot be processed unless a specific condition within Article 9 of the GDPR is satisfied. The Commissioner considers that the only such conditions which would be relevant to disclosure under the FOIA would be that the data subjects had themselves either consented to the disclosure or manifestly made the data public.

43. The Commissioner is not aware that any of the data subjects concerned have specifically consented to the disclosure of this information – and she notes that the EA is not obliged to seek their consent.

44. Equally, the Commissioner does not consider that she has been provided with sufficient evidence that the data subjects concerned have manifestly made the data public themselves – bearing in mind that the information involved is the information they have supplied to the EA, not any other information which might be in the public domain. She therefore considers that none of the Article 9 conditions are met and thus disclosure of this information would be unlawful.

45. As disclosure would be unlawful it would breach the first data protection principle and therefore the EA was entitled to rely on section 40(2) to withhold this information.

b. Section 12 – cost of compliance exceeds appropriate limit

46. In respect of questions [16] to [20], the EA argued that, whilst it held the information, it was not stored centrally. Because the data would have to be compiled across multiple areas of the organisation, the EA argued that complying with this part of the request would exceed the appropriate limit.

47. Section 12 of the FOIA states that:

> *(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.*

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

48. The "Appropriate Limit" is defined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") and is set at £450 for a public authority such as the EA. The Regulations also state that staff time should be notionally charged at a flat rate of £25 per hour, giving an effective time limit of 18 hours.

49. When estimating the cost of complying with a request, a public authority is entitled to take account of time or cost spent in:

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

50. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".[2] The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

51. The Commissioner asked the EA to set out its detailed estimate of either the cost of complying with the request or the amount of time required to produce the response.

52. In response, the EA provided a copy of a document which appeared to have been compiled by one of its service areas estimating the time required to locate and compile the requested information.

[2] http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i136/Randall.pdf

53. Under a section headed "Determining whether we hold the information requested. (If we already know that we hold it, this time will be zero.)", the EA acknowledged that the information was held, but only held locally by managers. However, it then argued that:

> *"We would need to make a request to our Management Information Team to provide a staff in post (SIP) report from SOP, to include employees with line management responsibility or those at a grade likely to have line management responsibility over the last 3 consecutive years (for example HEO and above). We estimate this will take 72 hours (3 days) to run and quality assure the reports.*
>
> *"Communication would need to be shared with this 'known group of line mangers' asking them to search any personal records they have about the employees who have a workplace adjustment who have subsequently been or not been promoted. We estimate this will likely take 80 hours (2 weeks) for managers to reasonable act on and provide any information.*
>
> *"The EDI team would need to review all returns from the 'known group of line managers' before we can determine if we hold the information. We estimate this will likely take 80 (2 weeks) to review, sort and confirm data returns."*

54. In addition to the 232 hours already spent, the EA then appeared to argue that it would need an additional 80 hours to "locate the information", 120 hours to "retrieve and collect the information" and a further 40 hours to "extract the information from a document." Finally (and despite being told by the Commissioner to focus exclusively on the four permitted activities), the EA argued that it would need a further 40 hours to redact personal information.

55. In total, as the Commissioner understands it, the EA is arguing that to comply with this section of the request would require 512 hours work (equivalent of £12,800).

56. Given the very substantial estimates of the time taken to perform what appear to be relatively straightforward tasks (such as 72 hours to establish who within the organisation has line management responsibility), the Commissioner would have expected the EA to have been able to back up its estimates with some form of sampling exercise and she did specifically ask the EA whether one had been carried out. However, the EA responded to say that:

> *"We have not carried out a sampling exercise as we do not consider that would be an effective use of public resources where:*

- *we consider that the time it would take to compile the information would exceed the appropriate limit;*
- *there is no business need to hold a central record of the information;*
- *there is no identifiable public interest in collating and disclosing the information; and*
- *the motive of the request for information is private, to pursue a grievance against the Environment Agency as an employer, with no corresponding public interest."*

57. In the absence of any supporting evidence, the Commissioner struggles to accept the EA's estimate as credible. Firstly, it has clearly included time taken to complete activities which it is not permitted to include as part of its estimate (such as separating exempt material and "quality-checking" data). Secondly, the estimate appears to double-count some of the permitted activities. For example under "determining whether information is held" the EA argues that it will take 80 hours to "review, sort and confirm data results" but under "retrieving information" it states that it will need an additional 120 hours to "collate, filter and review responses from line managers to ascertain if we have the information." Finally it has included 232 hours of staff time on a task (determining whether information is held) that it has already admitted it does not need to do.

58. Whilst the Commissioner considers that the EA's formal estimate lacks credibility, she does consider that there are sufficient facts in its submission to enable her to reach a determination as to whether complying with the request would exceed the cost limit. Rather than prolong the investigation to seek further submissions, she has therefore considered these facts alone.

59. The Commissioner recognises that the manner in which a public authority records information is a matter for that public authority to determine – based on its legislative obligations and business requirements. The Commissioner is only required to consider the way a public authority does, as a matter of fact, hold information and not the way in which it *ought* to hold information.

60. The Commissioner can see that there would be some benefits to not holding information about reasonable adjustments centrally and she can accept that the EA may not have a central record. The EA was also keen to point out that, as part of its commitment to equal opportunities, managers would occasionally agree "reasonable adjustments", on an

informal basis, that would go above and beyond that which the EA would be required by law to put in place.

61. Therefore, having accepted that information is held locally, the Commissioner must consider the cumulative effect of each manager being required to spend time collating the required information. If large numbers of people have to do the same task, even if that task only takes each person a short time, the cumulative effect can still be large.

62. The Commissioner notes that, if the EA had 500 managers (which does not seem excessive for an organisation of over ten thousand people) and each manager was required to spend just five minutes identifying relevant information, that would still be a cumulative total of 2,500 minutes or in excess of 41 hours. Whilst the work of compiling the individual responses could be reduced significantly if the data was requested from each manager in a standard format, it will still require additional time on top.

63. The Commissioner therefore accepts that this section of the request would take in excess of 18 hours staff time to comply with and therefore the EA would be entitled to rely on section 12 to refuse questions [16] to [20].

64. The EA also noted that it considered that it would have been able to aggregate this request with a near-identical request submitted by the individual on whose behalf the complainant is acting upon. Given that she has already found that this request would have exceeded the cost limit on its own, the Commissioner has not considered whether aggregation would have been possible.

c. Section 16 – advice and assistance

65. Section 16 of the FOIA requires a public authority to provide "reasonable advice and assistance" to those making or wishing to make a request.

66. What constitutes "reasonable" advice and assistance will vary according to the particular circumstances of the request. However, section 16 notes that a public authority will be taken to have complied with its duties where it has followed the section 45 FOIA Code of Practice.

67. The relevant section of the Code of Practice states that:

> *"Where it is estimated the cost of answering a request would exceed the 'cost limit' beyond which the public authority is not required to answer a request (and the authority is not prepared to answer it), public authorities should provide applicants with advice and assistance* ***to help them reframe or refocus their request***

> ***with a view to bringing it within the costs limit.*** [emphasis added]

68. Given that section 12 was only applied at a late stage, the Commissioner asked the EA to explain what advice and assistance it had offered to the complainant and, if it hadn't offered any, to explain why not.

69. The EA responded to say that:

> *"Due to the specific nature of the request, even if the request were to be narrowed, for example by asking about a shorter time period, we consider that the time to respond to a narrower request would exceed the appropriate limit when aggregated with the related requests."*

70. The Commissioner has not been made aware of the response that was provided to the earlier request. However, she still considers that reasonable advice and assistance could have been provided to the complainant. For example, questions [16], [17] and [18] only relate to a particular part of the organisation with much fewer staff – thus the cost of compiling the information (even if it were held locally) would be much lower.

71. The EA noted that, even if it were able to identify relevant information, the information would likely be exempt under section 40(2) and therefore advising the complainant to submit a revised request, which would be unlikely to result further information being disclosed, would not be "reasonable." The Commissioner disagrees.

72. Firstly, the Commissioner considers that it is not unreasonable to expect a public authority to advise a requestor in such circumstances both that their request could be refined and that refining the request may result in other exemptions being applied. Whether the requestor then goes on to submit a fresh request is a matter for them.

73. Secondly the Commissioner considers that, given her findings above, the complainant should be offered the opportunity to submit a refined request and, if necessary, challenge the EA's use of section 40(2).

74. The Commissioner therefore considers that the EA did not offer reasonable advice and assistance and thus failed to comply with its section 16 duty.

75. Finally, having identified a breach of section 16, the Commissioner considered whether it would be proportionate to order remedial steps. She considers that it would not.

76. The analysis above will assist the complainant in submitting a revised request that falls within cost limit. The Commissioner therefore considers that it would be disproportionate to order the EA to provide any additional advice and assistance.

d. Procedural matters

77. Section 10 of the FOIA requires a public authority to identify information it holds within the scope of a request "*promptly and in any event not later than the twentieth working day following the date of receipt*."

78. The EA's original response stated that it did not hold information within the scope of questions [16]-[20] but it later admitted that it did in fact hold this information. As it failed to relevant information within 20 working days it thus breached section 10 of the FOIA.

79. Section 17(5) of the FOIA states that:

> *A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.*

80. The EA failed to provide the complainant with a refusal notice citing section 12 of the FOIA within 20 working days. It therefore breached section 17(5) of the FOIA.

Other matters

81. In its initial submission, the EA provided the Commissioner with a copy of the withheld information. Whilst the precise information sought was a percentage, the EA also provided the Commissioner with the raw figures that had been used to calculate the percentage.

82. When analysing this information, the Commissioner noticed some inconsistency between the raw figures the EA had used. For example, the percentage that had been calculated in respect of question [10] appeared to assume a different total number of disabled staff working within National Estates than that which the EA had disclosed in response to question [9] – when the two figures should have been the same (ie. the total number of promoted disabled staff and the total number of non-promoted disabled staff should sum to the overall number of disabled staff within National Estates).

83. Before disclosing the information ordered in this decision notice, the EA should ensure that the relevant figures are consistent with each other and – if they are not, be prepared to offer an explanation as to why the inconsistencies should be expected.

Right of appeal

84. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

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

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

85. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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

Signed ……

Phillip Angell
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Wilmslow
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SK9 5AF