

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 25 July 2024

Public Authority: United Utilities Water Limited
Address: Haweswater House
Lingley Mere Business Park
Lingley Green Avenue
Great Sankey
Warrington
WA5 3LP

Decision (including any steps ordered)

1. The complainant has requested turbidity data. United Utilities ('the public authority') refused the request, citing regulation 12(4)(e) (internal communications) of the EIR.
2. The Commissioner's decision is that the withheld information engages regulation 12(4)(e) but the public interest favours disclosure.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information.
4. The public authority must take these steps within 30 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 9 January 2024 the complainant made the following request for information under the EIR for:

"Please can I place a request under EIR for all turbidity data from Near Sawrey wastewater treatment works from January 2022 – December 2022."
6. On 6 February 2024 the public authority refused to provide the requested information, citing regulation 12(4)(e) of the EIR.
7. The complainant requested an internal review on 7 February 2024.
8. The public authority provided its internal review outcome on 27 March 2024.

Scope of the case

9. The complainant contacted the Commissioner on 17 April 2024 to complain about the way their request for information had been handled.
10. The Commissioner considers the scope of his investigation to be to determine whether the public authority has correctly withheld the requested information under regulation 12(4)(e).
11. Turbidity essentially means the level of cloudiness in water. Cloudiness in water is caused by the presence of particles, usually oil, proteins, bacteria, dirt or algae.
12. The Commissioner is satisfied that the requested information is environmental, in line with regulation 2(1)(a), (b) and (c) of the EIR because it's about water quality within a specific wastewater treatment works.

Reasons for decision

Regulation 12(4)(e) – internal communications

13. Regulation 12(4)(e) states that information is exempt from disclosure if it involves 'the disclosure of internal communications'. It's a class-based exception, meaning there is no need to consider the sensitivity of the information to engage the exception. If information represents an internal communication, the exception will apply.

14. For the purposes of the exception, the concept of a communication is broad and includes any information an individual intends to communicate to another. Internal is self-explanatory, any such communication needs to remain in the public authority. Once it's been disseminated outside the public authority, the communication ceases to be internal.
15. The public authority has explained:

“There is a distinction between the requested data and any publicly recorded information which UU is required to collect, obtain analysis of and submit pursuant to its regulatory requirements as dictated by environmental permits issued by the Environment Agency.”
16. So, the public authority has a duty to report to the Environment Agency as the regulator. But that isn't the information that's being requested here, what's being requested is turbidity data which is collected via monitors and then used 'for operational purposes' within the public authority.
17. The Commissioner is satisfied the requested information is information that would only be known to the public authority and is designed to communicate, and monitor, the performance of the wastewater treatment works.
18. The Commissioner acknowledges that in this case the communication originates from a machine, not an individual, but this process was implemented with the intention of communicating water quality data within the public authority. The monitor records water turbidity data and then communicates the information to the operations team. It's therefore an internal communication and so the exception is engaged. Therefore the Commissioner will go onto consider where the balance of the public interest lies.

Public interest test

Factors in favour of disclosure

19. The public authority has identified the public interest 'in the openness, transparency and accountability of how statutory undertakers generally, and in relation to this case, undertake decision making.'
20. The public authority has also cited the importance of promoting the public's understanding of environmental matters.
21. Finally, it's identified that 'the public should have the ability to hold public authorities to account for the way they manage environmental services.'

22. The Commissioner agrees with all the above principles, which essentially are the reasons the EIR exists.
23. There is also an increasing scrutiny on water companies in general, in light of the ongoing investigations involving water companies. The Environment Agency¹ is conducting a criminal investigation into breaches under the Environment Act 1995, The Environmental Permitting (England and Wales) Regulations 2016 and the Police and Criminal Evidence Act 1984 and Ofwat² is conducting an investigation into compliance with the Water Industry Act 1991.
24. Furthermore, the Commissioner notes that Near Sawrey Wastewater Treatment Works discharges into Cunsey Beck, which flows from Esthwaite Water to Windermere and is in a Site of Special Scientific Interest (SSSI) and there have been concerns about its water quality³.

Factors in favour of maintaining the exception

25. The public authority is concerned that disclosure would undermine the 'safe space' required for it to debate live issues, manage operations and reach decisions away from distraction and external interference.

26. It's also expressed concern that:

"Disclosure of internal communications relating to this matter would inhibit authorities in engaging in free and frank discussions during future decision making regarding site operations, and that loss of frankness and candour leads to poorer decision making – known as the chilling effect. This has the potential to have a negative impact on site management."

27. As discussed in paragraph 15, the public authority believes that the public interest in the information has been met by alternate means:

"There are clear statutory controls relating to the collection and analysis of other data types which gives an accurate indication of water quality and this data is reported for regulatory requirements in order to meet statutory controls. This data can be accessed by the public on the Environment Agency's website."⁴

¹ [Update on Environment Agency investigation – Creating a better place \(blog.gov.uk\)](https://blog.gov.uk/2017/06/20/update-on-environment-agency-investigation-creating-a-better-place/)

² [Investigation into sewage treatment works - Ofwat](https://www.ofwat.gov.uk/news-and-press/2017/06/20/investigation-into-sewage-treatment-works/)

³ [Watchdog criticised over Lake District sewage spill permit - BBC News](https://www.bbc.com/news/health-40811111)

⁴ <https://environment.data.gov.uk/water-quality/view/landing>

28. Finally, the public authority is concerned with the accuracy of the requested data:

"The data is indicative only and monitors need to be cleaned, recalibrated, and maintained at regular intervals to establish a level of accuracy...As the data is not collected in accordance with a specific standard or collected in a specific format, there is no assurance of the accuracy of the data. Whilst we acknowledge there is public interest in disclosing information which is an indicator of water quality, disclosing data which is unverified and unassured will negatively impact public confidence regarding the way in which water companies operate their assets, as the data may well indicate a problem with water quality that does not in fact exist."

Balance of the public interest

29. The Commissioner has determined that, in this instance, the public interest lies in disclosure.
30. The public authority provides information to the Environment Agency which gives an accurate indication of water quality and the Commissioner accepts this information is publicly available. However, that doesn't mean the requested information is without value.
31. Ultimately, if the turbidity data is accurate enough to be used for operational purposes, i.e. to indicate whether the wastewater treatment works is operating efficiently, and to indicate the water quality levels, there is a public interest in this information.
32. Arguments about the accuracy of data, and whether information disclosed would be misunderstood by the public, carry little weight when considering the public interest. The EIR covers information held by public authorities, regardless of its accuracy. Furthermore, the public authority can easily explain the difference between the requested information and the regulatory data it provides to the Environment Agency if it wants to.
33. The Commissioner disagrees with the public authority when it describes the requested information as inaccurate; it's raw, factual data which measures water quality. If, as the public authority has indicated, the data is influenced by external factors such as the cleanliness or maintenance and calibration of the monitors, this means the information is accurate in the sense that it shows the monitors aren't operating effectively and there's a public interest in the running of the wastewater works.
34. Returning to the public authority's concerns at paragraph 26, the Commissioner considers the scrutiny of water companies, and the public

interest in this request, is justified and this is being echoed by regulators.

35. On 27 November 2023, David Black, CEO of Ofwat, told the public affairs committee⁵ that he would encourage water companies to be open and transparent about their environmental performance. On 15 July 2024, John Edwards, Information Commissioner wrote an open letter to the CEOs of all water companies⁶, calling on them to be as transparent with their customers as possible.
36. The Commissioner is satisfied that disclosure in this case would meet a significant public interest, both about water companies in general and in this specific case. Therefore the information must be disclosed.

⁵ committees.parliament.uk/oralevidence/13888/pdf/

⁶ <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2024/07/information-commissioner-calls-for-water-companies-to-be-crystal-clear-with-public-over-sewage-pollution/>

Right of appeal

37. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

38. 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.
39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
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