

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

**Date:** 18 September 2024

**Public Authority:** Severn Trent Water Ltd  
**Address:** 2 St John's Street  
Coventry CV1 2LZ

**Decision (including any steps ordered)**

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1. The complainant has requested information about a sewer capacity assessment associated (SCA) with a proposed development. Severn Trent Water (STW) has now disclosed the relevant information it holds – the SCA - but the complainant considers STW holds more information.
2. The Commissioner's decision is that, on the balance of probabilities, STW doesn't hold any further information and that regulation 12(4)(a) of the EIR is engaged. The Commissioner has also decided that STW's initial refusal of the request and its handling of the complainant's request for an internal review didn't comply with the requirements of regulations 14 and 11(4) of the EIR.
3. It's not necessary for STW to take any corrective steps.

**Request and response**

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4. On 10 December 2023, the complainant wrote to STW and requested information in the following terms:
  - "1. Instructions to whoever is undertaking or has undertaken the re-modelling exercise,
  2. the report on the exercise,

3. conclusions reached following that report, and
4. any relevant correspondence with the Applicant and the Planning Authority.”
5. STW responded on 14 December 2023. It acknowledged that, due to an oversight, the SCA for the site hadn't been undertaken. STW confirmed that the SCA would now be carried out. It addressed what it said were the complainant's questions - including advising that “the instruction to undertake the study has now been issued” - and said that it would get back to the complainant in the New Year when the SCA was ready.
6. The complainant requested an internal review on 18 January 2024. They considered that STW held the instruction to its consultants and should provide this, and the report they'd requested which the complainant also considered STW would hold or would hold shortly. The complainant also raised concerns about procedural aspects of STW's handling of their request.
7. STW didn't provide an internal review within the EIR's 40 working day requirement, and the Commissioner accepted the complainant's complaint to him on 13 May 2024 without a review having been carried out.
8. STW wrote to the Commissioner on 25 July 2024. It explained that the SCA had been produced in March 2024. However, this had indicated further modelling would be required to produce an accurate assessment of the proposed development, given statistical uncertainties in the catchment. STW said that this is standard, if not routine, given that the initial SCA had been a desktop study. It had therefore quickly commissioned the further modelling required.
9. STW said it had informed both the local council and the complainant of the situation on 13 March 2024. It had confirmed that it couldn't release the incomplete SCA, because it was incomplete and inaccurate as it stood (and shouldn't be relied on). STW had confirmed that details of the full SCA would be provided to them both, as soon as it was produced and had anticipated 12 weeks for this work.
10. On 8 August 2024 STW confirmed that it had provided the complainant with a copy of the updated SCA on 2 August 2024.

## Scope of the case

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11. Because STW had disclosed the SCA, the Commissioner suggested to the complainant that their case could be closed. The complainant, however, remains dissatisfied and considers that STW hasn't addressed all the parts of their request.
12. The complainant has wider concerns about the proposed development and their interactions with STW, but the Commissioner's focus is solely on STW's compliance with the EIR. As such, he's considered whether STW holds any further information within scope of the complainant's request of 10 December 2023 and procedural aspects of its handling of that request.

## Reasons for decision

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13. Under regulation 12(4)(a) of the EIR a public authority may refuse to disclose information to the extent that it doesn't hold that information when it receives an applicant's request.
14. The Commissioner asked STW to confirm whether, in addition to the SCA, it holds the other information the complainant has requested and, if it didn't, to explain how it was certain this was the case.
15. In its submission to him, STW has confirmed that it holds no further relevant information.
16. Regarding part 1 of the request, STW explained that the commissioning of SCAs is a standard process within Severn Trent. No instructions are issued per se, the team is simply asked to complete an SCA for a particular property. As such, there are no instructions to provide.
17. Regarding parts 2 and 3, STW said that, likewise, there's no "report" on the SCA; the SCA is in effect a report – but it's one made up of calculations rather than written paragraphs. Therefore, no conclusions were written down following the SCA. It was simply noted that the desktop statistical model wasn't sufficiently accurate, and so a site survey was requested.
18. And regarding part 4, STW said that at that date of the request - 10 December 2023 - STW had had no correspondence with either the [planning] Applicant or the Planning Authority.

19. STW went on to say that it subsequently issued two emails to the Planning Authority, and it had sent copies of these emails to the complainant. STW confirmed that it has never had any correspondence with the planning Applicant.

### **The Commissioner's conclusion**

20. Its response to the request indicated that STW had issued "instructions" to the team carrying out the SCA. However, STW then confirmed to the Commissioner that it didn't hold any such instructions, as such; the team was simply asked to carry out an SCA.
21. The Commissioner questioned STW further. He asked it to confirm whether, at the time of the request, it held any written communication in which it had asked the team to carry out the SCA, if it still held this information if so, and if it would disclose it.
22. STW confirmed the following:

"In answer to your question, we have no written communications. The LPA [Local Planning Authority] notify us of a planning application via a dedicated inbox. It is logged on our system and depending on the location of the property, this will be dealt with by our East or West technician automatically. There are no written instructions."
23. STW has considered the matter further and definitively confirmed that it doesn't hold the instructions requested in part 1 of the request. The Commissioner accepts STW's explanation and finds that regulation 12(4)(a) of the EIR applies to part one as STW doesn't hold that information.
24. Now that it's been completed, STW has disclosed the relevant information it holds that falls within scope of part 2 of the request – the SCA. However, the SCA doesn't contain the narrative "conclusions" that the complainant has requested in part 3 of their request. Regulation 12(4)(a) therefore also applies to that part.
25. Finally, the Commissioner also accepts that at the time of the request STW didn't hold any correspondence between it and the planning Applicant or Planning Authority. Regulation 12(4)(a) therefore applies to part 4 of the request.
26. The Commissioner considers that STW has appropriately considered whether, in addition to the SCA, it holds any other information the complainant requested, and he accepts its explanation why it doesn't. The Commissioner is satisfied that, on the balance of probabilities, STW doesn't hold the remaining information the complainant has requested

and regulation 12(4)(a) of the EIR is engaged in respect of that information.

27. Technically regulation 12(4)(a) is subject to the public interest test. However, the Commissioner considers it would be illogical to find that the public interest favours disclosing information a public authority doesn't hold.

## **Procedural matters**

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28. Regulation 11(4) of the EIR requires a public authority to provide an internal review response as soon as possible and no later than 40 working days after the date of receipt of the request for a review.
29. In its correspondence to the Commissioner of 25 July 2024, STW said that it was unclear whether an internal review was warranted. This was because it had advised the complainant that it would comply with their request but was unable to do so at the time as the requested information was still being produced.
30. STW therefore didn't provide the complainant with an internal review within the required timescale and didn't comply with regulation 11(4). The complainant had requested a review, and a review was warranted. It would have been an opportunity for STW to address the shortcomings in its initial response, outlined below.
31. Regulation 14 of the EIR concerns refusing to disclose information.
32. Under regulation 14(2) a public authority should provide a refusal notice within 20 working days of the request. And under regulation 14(3) the refusal notice should state the exception the authority's relying on to withhold information, and the public interest considerations.
33. Regulation 12(4)(d) of the EIR concerns material still in the course of completion and, under regulation 14(4), if a public authority is relying on regulation 12(4)(d) it should provide a timescale by which it expects the information to be finished or completed.
34. In its response to the request, STW advised the complainant that the SCA was being carried out and that it would provide the complainant with a copy of the SCA when it was ready. It indicated that this would be in the New Year (although it took significantly longer than this in the event).

35. It's not clear to the Commissioner whether, at the time of the request on 10 December 2023, STW simply didn't hold any information associated with the SCA as the SCA hadn't yet been carried out – in which case regulation 12(4)(a) would be engaged. Alternatively, STW may have held early and incomplete work on the SCA in which case regulation 12(4)(d) might have been engaged.
36. STW didn't cite any exemptions when it responded to the request, including clearly confirming that it didn't hold certain information by citing regulation 12(4)(a). Nor did STW outline any public interest considerations in relation to relevant exceptions. The Commissioner therefore finds that STW's refusal of the request didn't comply with regulation 14(2) and 14(3) of the EIR.

## Right of appeal

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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.

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**