

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

Decision notice

Date: 26 November 2018

Public Authority: United Utilities plc
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 information about compensation claims associated with the Franklaw water bug outbreak. United Utilities plc (UU) withheld the information under regulation 13 of the EIR as it considers the information to be the personal data of third persons.
2. The Commissioner's decision is as follows:
 - Under regulation 13(1) of the EIR, UU is entitled to withhold claimants' full postcodes and information on any claimant illnesses associated with those full postcodes.
 - The 'outbound code' element of the postcodes in question combined with information on claimants' symptoms and illness onset cannot be categorised as personal data and does not engage the regulation 13(1) exception.
 - UU breached regulation 14(2) of the EIR because it did not refuse the complainant's request within 20 working days.

3. The Commissioner requires UU to take the following step to ensure compliance with the legislation:
 - With reference to the table in paragraph 28, release the outbound code element of each of the postcodes in question, the symptoms each claimant experienced and the date their illness started.
4. UU must take this step 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.

Background

5. UU has provided a background to the request. It says that in and around August 2015, following routine monitoring of water samples at its Franklaw Water Treatment Works, it detected the presence of cryptosporidium oocysts. As this can lead to gastric infections, as a precautionary measure, UU issued a 'Boil Water Notice' advising residents in the Lancashire region to boil their water before consumption. Through its engagement with Public Health England (PHE) UU says that it has been established that there has been no increase in cryptosporidium-related gastric infections reported by GPs and PHE also reported that there was no evidence of cases linked to the water supply.
6. UU says that, nonetheless, a number of residents have sought to bring claims for compensation or illnesses as well as other types of damages. Whilst some of these claims, according to UU, have not been properly established, in an attempt to ameliorate the perceived problems, UU says it has in some cases adopted a pragmatic approach by settling some of the claims. A number of claims remain outstanding.
7. The Commissioner notes that the Franklaw incident, and UU's subsequent fine, was reported in the national and industry press and on various government department websites.

Request and response

8. On 3 December 2017 the complainant wrote to UU and requested information in the following terms:

"I am writing to request the following information – under the freedom of information act.

[1] I would like the post codes and symptoms of the 95 rejected complaints regarding the Franklaw incident and also [2] why they were dismissed and the date they first became ill. Also [3] I would like the same for the 10 successful claims for compensation and for the 10 still outstanding. [4] I would also like this list to highlight which cases had legal representation.

Should you feel that there is a breach of confidentiality then the first 3 digits of the postcode would be sufficient as this would not allow identification of any individuals to be made."

9. UU responded on 13 April 2018. It refused the request under regulation 13 of the EIR. It said it considered the information was also exempt from release under regulation 12(5)(f). Regulation 12(5)(f) concerns the interests of the person who provided the information being adversely affected.
10. UU provided an internal review on 12 June 2018. With regard to the elements of the request concerning claims and legal representation associated with the Franklaw incident (part of part [2] and part [4]), UU said that this was a legal matter, did not concern environmental information and, as such, it was not obliged to provide a response to these parts under the EIR. UU did nonetheless provide the complainant with a little information about the claims process.
11. UU went on to maintain its reliance on regulation 13(1) with regard to the remaining elements of the request – part [1], part of part [2] and part [3]. It confirmed that this request is for individuals' postcodes, symptoms exhibited and dates that illness began associated with 115 claims in total. UU noted that the complainant was prepared to accept only the first three digits of the postcodes concerned. UU said the complainant was already aware that it had responded to 10 claims and rejected 95. It went on to say that the information associated with areas, numbers and types of symptoms is sufficiently low or distinct so as to present a greater risk of identities being revealed. UU also said that it was not aware of any 'permissive' condition that would enable it to release what it considered was individuals' sensitive personal data.

Scope of the case

12. The complainant contacted the Commissioner on 12 June 2018 to complain about the way her request for information had been handled. As a private company, UU is not covered by the FOIA and is covered by the EIR only in so far as a request is for environmental information. In correspondence to the Commissioner, the complainant has confirmed that the focus of her interest is on the information on postcodes and

illnesses associated with the Franklaw incident ie the information that can be categorised as environmental information.

13. In its submission to the Commissioner, UU has not referred to the exception under regulation 12(5)(f). The Commissioner's investigation has therefore focussed on UU's application of regulation 13(1) to the elements of the request that are covered by the EIR; namely part [1], part of part [2] and part [3]. She has also considered the length of time it took UU to refuse the request.

Reasons for decision

Regulation 13 – personal data

14. Regulation 13(1) says that a public authority shall not disclose requested information if it includes the personal data of third persons and a condition under regulation 13(2) or 13(3) is satisfied
15. One of the conditions, listed in regulation 13(2)(a)(i) EIR, is where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act 1998 ('the DPA'). Although now superseded by the General Data Protection Regulation, the DPA was still in force at the point that UU provided its response to the complainant.
16. The Commissioner has first considered whether the withheld information would constitute the personal data of third parties.

Is the information personal data?

17. The DPA says that for data to constitute personal data it must relate to a living individual and that individual must be identifiable.
18. Information will 'relate to' a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
19. The information in this case comprises information associated with the individuals who pursued claims against UU; namely information about postcodes (full postcodes and to the first three digits) and illnesses ie the symptoms and dates when illness started.
20. In its submission to the Commissioner UU explained that it had initially overlooked the complainant's comment that they would be prepared to accept postcode information to the first three digits. UU has said it

would like to revisit the issue of disclosing postcode information to a three digit level and indicated that it may be willing to release this information if it cannot be categorised as personal data. In its submission, UU has however also referred to its response to the complainant with regard to full postcodes. It considers that releasing the full postcodes could potentially lead to specific individuals being identified.

21. The Commissioner has first considered whether full postcodes can be categorised as personal data. UU has provided the postcodes to the Commissioner. It has noted that it comprises the postcodes of 120 claimants claiming to seek compensation for purported illness due to detection of cryptosporidium in its Franklaw Water Treatment works, which represents an increase from the previous figure of 115 un/successful claims (10 successful + 10 outstanding + 95 unsuccessful).
22. From her knowledge of postcodes, albeit this is not exhaustive, the Commissioner understands that the majority of the 120 full postcodes in question will relate to specific streets and will each cover an average of 15 properties.
23. In a previous decision - FS50704419¹ - the Commissioner found that a full postcode can be categorised as personal data because someone who is motivated so to do could both apply their local knowledge and employ investigative techniques in order to identify specific individuals from those postcodes. The Commissioner therefore finds the same in this case, that the full postcodes initially requested are the personal data of third persons. In forming this opinion she has also again reviewed her published guidance: *Anonymisation: managing data protection risk code of practice*².
24. The complainant has also requested the symptoms each of the individuals residing at each of the full postcodes experienced, and the dates each of these individuals' illnesses began. The Commissioner is satisfied that, when combined with the full postcode, this information is

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2258620/fs50704419.pdf>

² <https://ico.org.uk/media/1061/anonymisation-code.pdf>

the personal data of third persons. It is information about illness symptoms, the date of onset of that illness and the fact that those individuals submitted compensation claims to UU. (As such it is also sensitive personal data as it concerns individuals' health which must be handled with particular caution.) Someone with the motivation so to do, or who already has local knowledge, could link that information with a particular postcode and establish whether a specific individual had been ill as a result of the Franklaw incident. This information can therefore also be categorised as personal data.

25. From paragraph 31, the Commissioner has considered whether a condition under regulation 13(2) or 13(3) has been satisfied with regard to the full postcode, symptom and illness onset information.
26. However, the Commissioner has first considered whether the first three digits of each postcode can be categorised as personal data. The first three digits are called the 'outbound code'; for example 'BD7' or 'BD9'. Sometimes there are four outbound code digits, for example 'BD21'. In FS50704419 the Commissioner found that partial postcodes could not be categorised as personal data as the volume of households covered by only the first element of a postcode was so high.
27. By way of an example in the current case, one of the full postcodes that UU has withheld covers fewer than 10 households, while the first three digits of this same postcode covers over 20,000 households. The Commissioner is satisfied that the outbound code elements of the withheld postcodes cannot be categorised as personal data as it would not be possible to confirm the identity of specific individuals from the very high number of households captured by only the first part of each of the postcodes – the outward code.
28. In addition, the Commissioner is not persuaded that the request for information on symptoms and illness onset can be categorised as personal data when combined with the outbound code element only of each postcode, because this element of each postcode covers a wide geographic area. If it were to be released, the information would together comprise the following, by way of example:

Claimant	Postcode: outbound code	(Number of households covered)	Illness onset	Symptom
1	AB2	10,0000	23 Aug 15	Cramps
2	CD8	15,0000	13 Aug 15	Vomiting
3	EF14	30,0000	1 Aug 15	Cramps & vomiting
4...	CD8	15,000	12 Aug 15	Cramps
...120	YZ27	20,0000	3 Sep 15	Fever

29. The Commissioner does not consider that any specific individual could be identified from this information, even by a so-called 'motivated intruder' ie someone motivated to identify someone through their own knowledge and/or research. This is because of the number of households covered and also because of the length of time that has passed since the incident – three years. In that time some of whatever wider, local knowledge about any illnesses residents may have suffered is likely to have dissipated.
30. She is therefore satisfied that this particular information – the outbound code element of each postcode combined with information on illness onset and symptoms associated with the (anonymised) claimants who live in those wide geographic areas – is not personal data. Consequently, it has not been necessary for the Commissioner to go on to consider whether releasing this information would breach one of the conditions under regulation 13(2) or 13(3).

Is a condition under regulation 13(2) or regulation 13(3) satisfied?

31. The Commissioner has considered whether a condition under regulation 13(2) or regulation 13(3) is satisfied with regard to the full postcodes and information on illnesses experienced by the claimants in those postcodes.
32. The conditions under regulation 13(2)(a) are that disclosing information that is personal data would contravene (i) any of the data protection principles or (ii) section 10 of the DPA (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it. UU's position is that disclosing the full postcodes and information about the illnesses of claimants associated with those full postcodes – and the fact that they submitted a claim -

would not be fair or lawful and would therefore breach the first data protection principle.

33. In assessing fairness, the Commissioner considers whether the information relates to the public or private life of the individual; whether the individual has consented to their personal data being released, their reasonable expectations about what will happen to their personal data and the consequence of disclosure on the individual concerned.
34. The information in question relates to the private life of a group of individuals. Consent has not been sought to release these individuals' personal data which, in the Commissioner's view, is reasonable in the circumstances. The Commissioner considers that the individuals concerned would have the reasonable expectation that their personal data – some of which is about their health and so is sensitive personal data – would not be placed into the public domain as a result of an FOIA request. Disclosing this information is therefore likely to cause those individuals a degree of distress.
35. Despite these factors, a consideration of whether it would be fair to release personal data must also take into account whether there is a compelling public interest in doing so that outweighs the legitimate interests of the individuals concerned.
36. In its submission, UU has acknowledged that there is public interest in the incident at Franklaw Water Treatment Works which had the potential to affect human health (although UU has noted that in its view – and PHE's view – this was not established on this occasion) and that it is right and proper to be as open and transparent about this as possible.
37. In her initial correspondence to the Commissioner, the complainant explained that she wants to establish if contaminated water was entering the water system via particular pipelines during July (2015) – UU's position is that there was no contamination until August. She said she is seeking to correlate incidents of illness in Blackpool against the supply of water from particular pipelines. In the complainant's view public health issues should override any concerns about the 'slim chance' that individuals could be identified. In subsequent correspondence the complainant explained that she is convinced that she has personally been made ill as a result of the Franklaw incident. The complainant considers that UU failed to provide the Drinking Water Inspectorate with a full account of its actions and has managed to convince particular solicitors that water was safe to drink during July 2015 without, she says, any evidence.

38. The Commissioner has reviewed the published news articles, and other information, about the Franklaw incident. She notes that the incident was subject to a Drinking Water Inspectorate investigation (with a report published in October 2017) and that UU was subject to a £300,000 fine. Concerns having first been raised in 2015, the incident had to all intents and purposes been concluded by October 2017 and at the point the complainant submitted her request for information.
39. In the Commissioner's view, the wider public interest in any public health issue arising from the Franklaw incident has been met through the Drinking Water Inspectorate's investigation and resulting published report; PHE's involvement; the fine imposed on UU and the measures UU put in place following the incident. The Commissioner acknowledges the complainant's concerns but does not consider that she has presented compelling evidence that the Drinking Water Inspectorate's investigation was in any way flawed. Because she considers the wider public interest has already been met, the Commissioner is satisfied that disclosing individuals' full postcodes and information about illnesses and compensation claims associated with those postcodes would not be fair.
40. To summarise, the Commissioner is satisfied that UU was correct to withhold the full postcodes and information about illnesses and claims associated with those full postcodes under regulation 13(1). It is the personal data of third persons and a condition under regulation 13(2) is satisfied because releasing this information would breach the first data protection principle. Because a condition under regulation 13(2) has been met with regard to this information, it has not been necessary to consider the condition under regulation 13(3).

Regulation 14 – refusal to disclose information

41. Under regulation 14(1) of the EIR, if a public authority refuses a request for environmental information the refusal must be made in writing.
42. Regulation 14(2) says that the refusal should be made as soon as possible and no later than 20 working days after the date of receipt of the request.
43. In this case, the complainant first submitted her request, by letter, on 3 December 2017. It was re-submitted on 5 March 2018 but UU did not issue a refusal notice until 13 April 2018.
44. In its submission to the Commissioner, UU observed that it had not received the request the claimant sent to it by letter on 3 December 2017. (It communicated that to the complainant when it finally provided a response on 13 April 2018.) The complainant had then re-sent the request by email on 5 March 2018. UU has acknowledged in its

submission that it did receive the request when it was re-submitted on 5 March 2018 but that, due to an administrative error, its EIR team did not have sight of it. Consequently UU did not issue a refusal notice within the required 20 working days and has breached regulation 14(2) on this occasion.

Right of appeal

45. 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@hmcts.gsi.gov.uk

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

46. 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.
47. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF