

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

**Date:** 15 May 2023

**Public Authority:** Northern Ireland Water  
**Address:** PO Box 1026  
Belfast  
BT1 9DJ

**Decision (including any steps ordered)**

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1. The complainant requested a copy of the combined sewer system/road drainage hydraulic modelling for a specific location. Northern Ireland Water (NI Water) withheld the information under regulation 12(5)(a) (public safety) of the EIR. In its internal review NI Water also sought to rely on regulation 13 (personal data) and regulation 12(5)(e) (commercial or industrial information). During the Commissioner's investigation NI Water also sought to rely on regulation 12(5)(b) to withhold the information.
2. The Commissioner's decision is that NI Water has correctly applied regulation 12(5)(a) to the request. The Commissioner does not require any steps to be taken.

**Request and response**

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3. On 6 February 2023 the complainant wrote to the NI Water and requested information in the following terms:

"the combined sewer system/road drainage hydraulic modelling for Coolemoyne Park, Cooleen Park and Circular Road Jordanstown".

4. NI Water issued a refusal notice on 27 February 2023 stating that the information requested was exempt under regulation 12(5)(a) (public safety) of the EIR.
5. On 27 February 2023 the complainant requested an internal review of NI Water's decision not to disclose the information requested.
6. NI Water provided the outcome of its internal review on 27 March 2023. It upheld its position that regulation 12(5)(a) applied to the request and also stated that it considered regulations 13 (personal data) and 12(5)(e) (commercial or industrial information) to also apply.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 27 March 2023 to complain about the way their request for information had been handled.
8. During the course of the Commissioner's investigation NI Water also sought to rely on regulation 12(5)(b) of the EIR in respect of the withheld information.
9. The Commissioner considers the scope of the case to be whether the requested information has been appropriately withheld under any of the exceptions quoted.

### **Reasons for decision**

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#### **Regulation 12(5)(a) – adversely affect international relations, defence, national security or public safety**

10. Regulation 12(5)(a) allows a public authority to refuse to disclose information if its disclosure would adversely affect – (a) international relations, defence, national security, or public safety'.
11. In this case NI Water considers that disclosure of the information requested would adversely affect public safety and national security. It considers that national security and public safety are "interlinked where a specific, densely populated area is made an attractive target, and where any damage to sewerage infrastructure (and, where pictured, water infrastructure) would cause serious harm to public safety and have wider security implications".
12. NI Water explained that there has been a trend in recent years of individuals congregating within the vicinity of wastewater assets. This has been highlighted on social media platforms such as a TikTok video of youths in a storm drain at Silent Valley, along with a notification from

the Police Service of Northern Ireland (PSNI) of youths congregating at a storm drain in Randalstown. NI Water is of the view that disclosure of information detailing all wastewater points of ingress would fuel such illegal activities.

13. NI Water referred to current guidance advising that controls are necessary in respect of proprietary, operational information that is deemed to be sensitive or could compromise its security requirements or the health and safety of its customers. NI Water is a prudent operator and does not consider it to be appropriate to place detailed diagrams of its sites, infrastructure and assets into the public domain where it would have no control over its wider circulation or intended use.
14. The withheld information predicts whether flooding may occur at specific locations, under certain conditions, but it is not a certainty that flooding will occur. NI Water explained that the withheld information is based on predictive data, as opposed to actual measured/recorded information. As such it cannot be considered to be wholly factual or accurate. Large scale predictive modelling is invaluable as a tool for strategic investment planning. However, the level of detail is not sufficient to inform robust risk assessments at street or property level.
15. The withheld information in this case includes the location of water assets such as hydrants and valves, and asset datasets which NI Water is explicitly prohibited from putting into the public domain, as per confidential advice NI Water received from its sponsor government department, the Department for Infrastructure (DfI), its sole shareholder.
16. Any misuse of NI Water's sites and infrastructure presents a risk to those parties of personal injury. This is evidenced in claims it has received from members of the public injured at wastewater sites and the tragic recovery of a body from a Northern Ireland Civil Service Department-owned storm drain in 2020.
17. NI Water considers it is of great importance that there is no easy access for the public to clearly identify manholes, where an individual accessing them may be subject to toxic fumes or blocking the sewer from manhole level. It argues that "this type of detailed proprietary knowledge could be used maliciously to undermine the effectiveness of NI Water's wastewater network with parallel implications for health and safety".
18. NI Water's position is that information relating to its proprietary, operational sites, assets and infrastructure needs to be protected from public disclosure because it highlights areas which someone with malicious intent could target to cause significant damage.

19. The Commissioner has recognised in a previous decision<sup>1</sup> that detailed information about the precise location of wastewater treatment works (WTWs) is capable of engaging this exception. NI Water has explained that low level crime at its sites is not at all uncommon and disclosing the withheld information would likely lead to an increase in such incidents.
20. In reaching a view on this case the Commissioner has also taken into account the Information Tribunal case of Ofcom v IC & T-Mobile (EA/2006/0078)<sup>2</sup>. The Tribunal in this case accepted that disclosure of phone mast locations could assist low level crime. The Commissioner accepts the arguments of NI Water in this case as it has demonstrated that low level criminal activities do occur, and it is reasonable to speculate that disclosing this information into the public domain may increase the risk of this happening. Following through on this argument, the Commissioner recognises that criminal activity at NI Water sites may adversely affect public safety as it could cause a risk to the water supply if interfered with.
21. The argument that disclosure might impact on national security also cannot be ignored. Whilst the Commissioner accepts that the location of NI Water assets may be known to individuals living in the vicinity, disclosure of the withheld information would put more detailed information about their locations into the public domain than is already available. The information could be of use to individuals wanting to commit acts of terrorism by targeting the water supply.
22. In terms of the plausibility of a malicious attack, the Commissioner has taken into account the decision in Andy Mabbet v IC (EA/2015/0288)<sup>3</sup> where the Tribunal placed particular emphasis on an article "Securing Our Water Supply, Protecting a Vulnerable Resource" which it considered provided "significant indications of potential threats to the water supply system".
23. In light of the above, the Commissioner is satisfied that regulation 12(5)(a) is engaged and he has gone on to consider the public interest test.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013505/fer0631104.pdf>

<sup>2</sup> <https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i104/Ofcom.pdf>

<sup>3</sup> <https://informationrights.decisions.tribunals.gov.uk/Public/searchresults.aspx>

## Public interest test

24. In favour of disclosure NI Water considered the following:

- Disclosure would increase transparency as it would provide the public with access to hydraulic modelling data which would promote transparency. It would allow stakeholders to assess and understand decision-making processes around the effectiveness and performance of the relevant infrastructure.
- Disclosure would also enhance accountability and trust between NI Water and its stakeholders, including customers, regulators and the public.
- Open access to hydraulic modelling data "can foster innovation and collaboration among researchers, academia, and other stakeholders, leading to potential advancements in water and sewerage management practices".

25. In favour of maintaining the exception, NI Water explained that its Security and Operational Resilience Manager assessed security implications associated with disclosure of the requested information and their view was that it was important not to "increase the attractiveness of assets for attack to those with malicious intent".

26. The existence of the information in question suggests the existence of weak points or vulnerabilities. Whilst NI Water accepts that the withheld information is predictive as opposed to factual data, it considers that, if the information were put into the public domain, even with a caveat to explain it was predictive, it could be used for malicious purpose. NI Water stated that:

"The impact on public safety (through floodings of homes, etc.), ecology, local amenities, private and business properties and/or local aquatic system is part of the consideration to exempt the data as, to provide any information pointing out supposed weak points in public infrastructure, would immediately put those things at risk. Such an attack would have both security implications and an immediate impact on public safety".

27. NI Water advised the Commissioner that, on 28 March 2023 the Secretary of State for Northern Ireland raised the Northern Ireland-related terrorism threat level from SUBSTANTIAL to SEVERE<sup>4</sup>. Whilst NI

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<sup>4</sup> <https://www.gov.uk/government/news/northern-ireland-related-terrorism-threat-level-raised>

Water accept that this occurred after receipt of the request it considers this to be pertinent to the public interest arguments in this case.

28. NI Water explained that the withheld information is very specific and forms part of a much wider dataset. Whilst NI Water acknowledges that the complainant has a private interest in the information as he lives in the specific area, it does not consider there to be a significant wider public interest in disclosure. NI Water explained that it has already provided the complainant with a significant amount of factual information detailing works undertaken at property level in the same vicinity in response to a different EIR request.
29. NI Water considers that disclosure of any information that puts the public, public infrastructure and/or the environment at an increased risk of being targeted should be protected at all costs. It considers this to be a significant factor to take into account in favour of maintaining the exception in this case.
30. The Commissioner has considered the competing arguments and accepts there is a public interest in disclosure insofar as this would promote transparency and accountability and increase public understanding of decision making associated with the performance of NI Water's infrastructure.
31. Whilst the Commissioner accepts that there are arguments in favour of disclosure in this case, he considers that, as the information relates to a specific location, it would likely only be of interest to certain groups and individuals and there is a more limited wider public interest in disclosure.
32. Balanced against the public interest in disclosure is the increased risks that disclosure presents to national security and public safety. The Commissioner takes the view that there is a strong public interest in avoiding threats to national security or disclosing information which would put people in danger. Only when there are compelling arguments for disclosure will it justify releasing information which has the potential to put the public in harms way or assist someone in preparing an attack. The Commissioner does not consider that any such arguments exist in this case and consequently he has found that in all the circumstances the public interest in maintaining the exception outweighs the public interest in disclosure.
33. As the Commissioner has determined that the information is exempt under regulation 12(5)(a) he has not gone on to consider the other exceptions which NI Water has applied to the withheld information.

## Right of appeal

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34. 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)

35. 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.
36. 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 .....**

**Joanne Edwards**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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