

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

Date: 5 June 2023

Public Authority: South West Water
Address: Peninsula House
Rydon Lane
Exeter
EX2 7HR

Decision (including any steps ordered)

1. The complainant has requested data relating to sewage spills. The above public authority ("the public authority") relied on regulation 12(5)(b) of the EIR (course of justice) to withhold the information.
2. The Commissioner's decision is that the public authority has correctly relied on regulation 12(5)(b) of the EIR to withhold the information and the balance of the public interest favours maintaining the exception.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 31 January 2023, the complainant wrote to the public authority and requested sewage spill data relating to 12 different facilities.
5. The public authority responded on 14 February 2023. It relied on regulation 12(5)(b) of the EIR to withhold the information – a position it upheld following an internal review.

Reasons for decision

Is the requested information environmental?

6. Regulation 2(1) of the EIR defines environmental information as being information on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
7. As it is information relating to sewage, the Commissioner believes that the requested information is information on factors affecting the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 12(5)(b) – course of justice

8. Regulation 12(5)(b) of the EIR allows a public authority to withhold information whose disclosure would adversely affect the course of justice or the ability of a public authority to conduct a formal inquiry.

9. The Commissioner notes that there are ongoing inquiries, by both the water regulator Ofwat and the Environment Agency into the performance of water companies. In previous decision notices, he has accepted that disclosure of data relevant to those inquiries would adversely affect their ability to reach a swift, thorough and fair conclusion.¹
10. The complainant has noted that a different company, Thames Water, is now making spill data available in real time. The fact that one water company is making current data available does not prevent the historic data held by another water company from adversely affecting the course of justice.
11. The Commissioner accepts that the exception is engaged for the same reasons as set out in decision notices IC-218612-B1J7, IC-206971-F9G9 and IC-163737-D3Q3.

Public interest test

12. Once again, the Commissioner recognises that there is a considerable public interest in disclosure of information relating to sewage spills.
13. However, for the same reasons as set out in decision notices IC-218612-B1J7, IC-206971-F9G9 and IC-163737-D3Q3, the Commissioner considers that the balance of the public interest should favour maintaining the exception.
14. The Commissioner's decision has been informed by the presumption favour of disclosure but he does not consider that this affects the public interest balance that has been struck.

¹ See for example: <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024898/ic-218612-b1j7.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4023920/ic-206971-f9g9.pdf>; <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022404/ic-163737-d3q3.pdf>

Right of appeal

15. 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

16. 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.
17. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF