

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

Date: 2 August 2023

Public Authority: Anglian Water Services Limited

Address: 1 Lancaster House
Lancaster Way
Ermine Business Park
Huntingdon
PE29 6XU

Decision (including any steps ordered)

1. The complainant has requested data relating to sewage spills. Anglian Water Services Limited (AWS) relied on regulation 12(4)(b) (manifestly unreasonable) and 12(5)(b) of the EIR (course of justice and inquiries) 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 3 February 2023 the complainant wrote to AWS and requested information in the following terms:

"1) Currently Anglian Water submits the total number of spills from each of your storm overflow and the total number of hours spilling to the Environment Agency on an annual basis (calendar years) which is publicly available. We are looking for more detail on each of these spills. So, for each spill reported in 2022 (calendar year), please could you provide the following information:

<i>Storm overflow name</i>	<i>Location ID/Permit number</i>	<i>Spill start date and time</i>	<i>Spill stop date and time</i>	<i>Total hours spilling (duration of spill)</i>	<i>Reason for spill</i>
<i>E.g. Kemble</i>	<i>XX</i>	<i>24th February 10:18</i>	<i>25th February 09:20</i>	<i>23</i>	
<i>E.g. Kemble</i>	<i>XX</i>	<i>2nd March 12:01</i>	<i>2nd March 16:19</i>	<i>16</i>	
<i>E.g. Kemble</i>	<i>XX</i>	<i>5th June 15:38</i>	<i>8th June 10:23</i>	<i>67</i>	

2) Of those spills from your storm overflows that occurred in 2022 how many did you report as dry spills (total number and share of total spills), utilising the Environment Agency definition of a dry day as "A dry day is a day when rainfall does not exceed 0.25mm" from this guidance Water companies: environmental permits for storm overflows and emergency overflows - GOV.UK (www.gov.uk)..."

5. AWS responded on 3 March 2023 and refused to provide the information, citing regulations 12(4)(b) and 12(5)(b) of the EIR.
6. On 24 April 2023 the complainant asked for an internal review.
7. AWS provided an internal review on 9 June 2023 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 12 July 2023 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of this case is AWS's application of regulations 12(5)(b) and 12(4)(b) of the EIR to the requested information.

Reasons for decision

Is the requested information environmental?

10. 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);
11. As it is information relating to the management of wastewater, the Commissioner believes that the requested information is information on factors affecting the elements of the environment and falls under the EIR.

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

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

13. 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 (see paragraph 16), he has accepted that disclosure of data relevant to those inquiries would adversely affect their ability to reach a swift, thorough and fair conclusion.
14. The complainant explained that whilst they appreciated that the requested information "is relevant to the Investigation", they were not satisfied that it "would have the adverse effect outlined" or "been satisfied by the water company that the Investigation will receive the type of granular information" requested. The complainant's view is that this is "already a well-publicised problem" and that pressure and lobbying are "already a possibility".
15. AWS provided argument to the complainant in its initial response to them arguing that release, "...would adversely affect the ability of Anglian Water to protect itself by due process and natural justice to release the information requested to the public". In its internal review, AWS explained to the requester that release,

"could result in third parties carrying out their own analysis of whether or not Anglian Water has complied with its permits in respect of the use of storm overflows. These analyses may or may not be accurate and could, for example, be the subject of media attention and/or political attention through lobbying MPs. This in turn could result in pressure being directly or indirectly applied by the public, interested parties, politicians and media outlets to the independent regulators who are responsible for enforcing compliance with environmental permits and regulation."

16. The Commissioner accepts that the exception is engaged for the same reasons as set out in decision notices [IC-233573-N8Y8](#), [IC-230605-Q2W0](#), [IC-191914-H6X8](#), [IC-218612-B1J7](#), [IC-206971-F9G9](#), and [IC-163737-D3Q3](#).

Public interest test

17. The complainant's view is that transparency is necessary and that there is a "significant" public interest "to provide reassurance for the public about when it is safe to swim in the sea and rivers". They highlight the length of time the Investigation might take whilst "the public are still interacting with the waterways creating a potential health risk".
18. AWS pointed to the Commissioner's decisions in [IC-163737-D3Q3](#), [IC-206971-F9G9](#), and [IC-218612-B1J7](#) as precedent for the public interest favouring non-disclosure.

19. As set out in [IC-233573-N8Y8](#) the Commissioner recognises that there is a considerable public interest in the disclosure of information relating to sewage spills.
20. However, for the same reasons as set out in that decision notice and , the decision notices listed in paragraph 16 the Commissioner considers that the balance of the public interest favours maintaining the exception.
21. The Commissioner's decision has been informed by the presumption in favour of disclosure but he does not consider that this affects the public interest balance that has been struck.
22. As the Commissioner has decided that the requested information was appropriately withheld under regulation 12(5)(b) of the EIR he has not considered AWS's citing of regulation 12(4)(b). However, he considers the citing of these two exceptions to the same information to be somewhat contradictory, given regulation 12(4)(b) relates to the burden of compiling and extracting the information it has already identified and withheld under regulation 12(5)(b).

Right of appeal

23. 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

24. 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.
25. 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

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