

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

Decision notice

Date: 17 August 2023

Public Authority: United Utilities Water Limited
Address: Grasmere House 1st Floor
Lingley Mere Business Park
Lingley Green Avenue
Great Sankey
Warrington
WA5 3LP

Decision (including any steps ordered)

1. The complainant has requested data relating to sewage spills. United Utilities Water Limited (UU) relied on regulation 12(5)(b) of the EIR (course of justice and inquiries) to withhold the information.
2. The Commissioner's decision is that UU 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 requested UU to provide the following information:
 - 1) Currently United Utilities 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:

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

- 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. UU responded on 3 March 2023. It refused to disclose the requested information citing regulation 12(5)(b) of the EIR.
 6. The complainant requested an internal review on 24 April 2023.
 7. UU carried out an internal review and notified the complainant of its findings on 21 June 2023. It upheld its application of regulation 12(5)(b) of the EIR.

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 the scope of his investigation to establish whether or not UU is entitled to rely on regulation 12(5)(b) of the EIR.

Reasons for decision

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

10. 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.
11. The Commissioner notes that there are ongoing inquiries, by both the water regulator Ofwat and the Environment Agency (EA) into the performance of water companies. In previous decision notices (see paragraphs 14 and 15), he has accepted that disclosure of data relevant to those inquiries would adversely affect their ability to reach a swift, thorough and fair conclusion.
12. 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”.
13. UU advised the complainant in its refusal notice and internal review that it felt disclosure of the requested information would adversely affect the ongoing investigation being carried out by the EA and Ofwat. It said the requested information is relevant to matters which are subject to the current investigation and it is still working with the regulators. Withholding the requested information is necessary to enable effective co-operation with both regulators to ensure that the investigations are carried out appropriately. It referred to this approach being tested and approved in recent decisions issued by the Commissioner and referred to IC-[163737-D3Q3](#) and IC-[206971-F9G9](#) as an example.
14. 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.
15. The complainant has also recently received decision notices addressing the same request to two other water companies where regulation 12(5)(b) was upheld – case references [IC-224675-N8Y8](#) and [IC-244679-N2X3](#).

Public interest test

16. The complainant's view is "there is presumption in favour of disclosure, and the public interest in transparency to provide reassurance for the public about when it is safe to swim in the sea and rivers is significant. It is not clear how long the Investigation may take, and in the meantime the public are still interacting with the waterways creating a potential health risk."
17. The Commissioner's decision notices referenced in paragraphs 14 and 15 above detail how the public interest consideration for those cases favoured non-disclosure and maintaining the exception.
18. The Commissioner recognises that there is a considerable public interest in the disclosure of information relating to sewage spills. UU also provided detailed arguments in favour of disclosure in its internal review response to the complainant.
19. However for the same reasons as set out in the decision notices listed in paragraphs 14 and 15 above, the Commissioner considers the balance of the public interest favours maintaining the exception.
20. 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.

Right of appeal

21. 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

22. 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.
23. 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

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