

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

Decision notice

Date: 13 May 2024

Public Authority: South West Water

Address: Pennisula House, Rydon Lane, Exeter, EX2
7HR

Decision (including any steps ordered)

1. The complainant has requested South West Water (SWW) to disclose a list of all Sewage Treatment Works (STW) where it has been using continuous monitoring devices in the final treated downfall and all water quality data for the last four years. SWW refused to disclose the information citing regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is that SWW is entitled to refuse to disclose the information in accordance with regulation 12(4)(b) of the EIR. It however breached regulation 9 by failing to provide any advice and assistance to the complainant and regulation 5 for failing to disclose recorded information to which the complainant was entitled under the EIR.
3. The Commissioner requires SWW to take the following steps to ensure compliance with the legislation.
 - Provide advice and assistance to the complainant so far as this is reasonably practicable to do so, in accordance with regulation 9 of the EIR.
 - In relation to question 1 of the request, disclose an updated list of all relevant Sewage Treatment Works.
4. The public authority must take these steps within 30 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.

Request and response

5. On 5 December 2023, the complainant wrote to SWW and requested information in the following terms:

“1. A list of all Sewage Treatment Works where you have been using or are continuing to use continuous monitoring devices in the final treated outfall;

2. All water quality data including times dates and values for turbidity/suspended solids, ammonium/ammonia and other available parameters collected by the devices in a) above from installation to the present date.”

6. SWW responded on 10 January 2024. In relation to question 1, it provided a list of all treatment works. In respect of question 2, SWW refused to disclose the requested information citing regulation 12(4)(b) of the EIR.
7. The complainant requested an internal review on 23 January 2024. They also submitted a narrowed request for question 2, limiting the scope to the last 4 years.
8. SWW carried out an internal review and notified the complainant of its findings on 19 March 2024. It maintained that regulation 12(4)(b) of the EIR applied to the narrowed request.

Scope of the case

9. The complainant contacted the Commissioner on 19 March 2024 to complain about the way their request for information had been handled. They believe the public interest in the disclosure of the requested information should take precedent and commented that despite narrowing the scope of the request to the last 4 years, SWW still refuse to disclose the information.
10. The Commissioner considers that the scope of his investigation is to determine whether or not SWW is entitled to rely on regulation 12(4)(b) of the EIR. He will first consider the complainant's narrowed request and whether the exception applies. It follows that if it applies to the

narrowed request, it will of course apply to the original request which asked for the data from installation.

Reasons for decision

Regulation 12(4)(b) – manifestly unreasonable

11. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information if the request is manifestly unreasonable. It is subject to the public interest test.
12. As SWW has correctly explained in its submissions to the Commissioner, when determining whether a request for information is manifestly unreasonable, a public authority is directed to consider whether a request is likely to cause a disproportionate cost or burden, or an unjustified level of distress, disruption or irritation.
13. Whether a request will result in a disproportionate cost or burden being caused is fact specific, and the EIR does not contain a limit at which the cost of complying with a request is considered to be too great. However, the Commissioner's guidance suggests that public authorities may use the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations") as an indication of what Parliament considers to be a reasonable charge for staff time.
14. The Fees Regulations stipulate that a cost estimate must be reasonable in the circumstances of the case. The limit given for central government departments is £600; for local government it is £450, or 18 hours work. Included within the limit the authority can consider the time taken to:
 - a) determine whether it holds the information;
 - b) locate the information, or a document which may contain the information;
 - c) retrieve the information, or a document which may contain the information; and
 - d) extract the information from a document containing it.
15. For the purposes of the Fees Regulations, a public authority may use this hourly charge in determining the cost of compliance. However, the public authority is then expected to consider the proportionality of the cost against the public value of the request before concluding whether the request is manifestly unreasonable.

16. SWW firstly wished to highlight that the purpose of the continuous monitors is not for compliance purposes. It explained that its compliance is not measured by any online device in the final effluent, as the permit parameters can not be measured in that way. It confirmed that the purpose of these signals is to flag up any inconsistencies to alert SWW to any issues that require further investigation. Accordingly, it wished to make it clear that the data is not wholly accurate as it does not need to be recorded to any standard, as it is for internal use only. It feels the data is of significantly low interest to the public and it cannot see any value in the public having access to it.
17. At the request of the Commissioner it outlined what the pieces of data are that fall within the scope of the request and how much actual data is held.
18. It said that each of its STW have permitted monitors in place to monitor certain values. The values monitored are determined by the permits issued by the Environment Agency. Accordingly, each STW will monitor one or more of the following values:
 - Suspended solids
 - Turbidity
 - Ammonia
 - pH
 - Nitrate
 - Phosphorus
 - Aluminium
 - Iron
19. The values above are recorded every 15 minutes so a single site would generate at least 96 signals per day, per value. On this basis, it said, a 4 year data query would result in a data set with a minimum of 140,160 records per signal per value.
20. SWW advised that it has on average three values permitted for monitoring at each site but the amount of values monitored can range from 1 – 5 per works. On the basis SWW has approximately 600 sites, it calculated the following lower and upper tier brackets for signals generated over a 4 year span:

Lower tier: 600 sites monitoring 1 value at 96 signals per day – c. 84 million signals

Average: 60 sites monitoring 3 values at 96 signals per day – c. 252 million signals

Upper tier: 600 sites monitoring 5 values at 96 signals per day – c. 450 million signals

21. SWW advised that these calculations are based on a desktop exercise following numerous discussions internally to attempt to understand and give a representative view of the extent of the data requested. It said that it had concluded that the number of data being requested would be in the tens of millions, and most likely in the hundreds of millions.
22. It advised the Commissioner that when it was carrying out this exercise it noticed a mistake in the previous information disclosed to the complainant. In its response to question 1 SWW provided a list of monitors for c. 200 sites. This data set was drawn up from a search of monitors with the word 'final' in the name. However, on review, as part of the further work requested by the Commissioner it has now identified that SWW actually has c.600 sites, many of which would require a more extensive search to locate the names and values monitored. It said the initial error in identifying the relevant information stems from SWW's naming conventions as well as a shift away from legacy data storage systems.
23. SWW confirmed in correspondence to the Commissioner that it would now disclose an updated list of sites to the complainant to correct this error.
24. As requested by the Commissioner SWW carried out a sampling exercise to estimate more precisely the time and cost it would take to extract the requested information. It explained that there are two key stages that would be required in providing the information. The first is identification and extraction by its Operational Technology Team and the second is review and cross-referring data sampling to the individual site by its Waste Water Operations Team. It provided the following detail:

“Operational Technology Team location and extraction

SWW holds the requested data on the following three systems:

1. 'Telemetry' is SWW's Regional Enterprise Telemetry System which gathers data from outstations and presents alarms to our control room in Exeter. The data is presented in one system but the signals require verification as multiple combinations of signal names may be encountered. SWW has estimated that it would take two hours to identify the data points and signals and three hours to run the extract and transfer the data.

2. 'IWorks' is SWW's Enterprise Site Supervisory Control and Data Acquisition ("SCADA") system which is present at 70 of SWW's Sewage Treatment Works ("STW"). This is a local system to each site which gathers data and archives it more frequently, much more than the Telemetry system. SWW estimates that it would take two hours to identify the data points and signals and three hours to run the extract and transfer the data.

3. 'Paragon' is SWW's legacy Site SCADA system which is present at 50 of SWW's STWs. This system has no data hierarchy and the signal names can be very different/unique. Individual sites will need to be reviewed in depth to find the signal names for each site by checking SCADA screens rather than a database query (as for iWorks). The data is also not presented centrally in a consistent manner. SWW estimates that it would take 120 hours to move data out of the data base and identify the data points and 24 hours to extract and transfer the data.

Total of Operational Technology Team location and extraction: 154 hours.

Waste Water Operations Team review

SWW has estimated the Operations review by using example sites Countess Wear STW (large site), Heatherfield STW (medium site) and Princetown STW (small site).

SWW estimates that it would take 1 hour per large site per 12 months of data. For 4 years for its 50 large sites this would equate to 200 hours.

SWW estimates that it would take 30 minutes per medium site per 12 months of data. For 4 years for its 50 medium sites would equate to 100 hours.

SWW estimates it would take 10 minutes per small site per 12 months of data. For 4 years for its 500 small sites would equate to 333 hours.

Total of Water Water Operations Team: 633 hours

Total SWW time: 787 hours"

25. SWW concluded that the amount of work that would be required in order to provide the requested information is far beyond the 18 hour guideline in the Fees Regulations. It has estimated that it would cost around £20,000 to comply with the request or take 787 hours. It said this is a disproportionate amount of time and cost which would cause a high level of disruption to the teams and their everyday functions. It therefore considers the proportionality of the cost against the public value is not

reasonable and is not proportionate. Therefore, regulation 12(4)(b) of the EIR comfortably applies.

26. The Commissioner considers SWW has explained in detail how the information is held and what would be involved in trying to retrieve and extract it in order to comply with this request. Despite the complainant narrowing the scope to the last 4 years, it remains the case that it would take SWW hundreds of hours of work to comply. This would disproportionately divert staff away from other functions for a significant amount of time and place an inordinate burden on SWW.
27. The Commissioner acknowledges that the complainant considers the requested information has value and purpose and that this should outweigh any burden compliance would place on SWW. However, he disagrees.
28. SWW has confirmed that the data is not collected for compliance purposes but instead to alert SWW to any issues that require further investigation. While the data has some purpose and value, SWW has confirmed that it is not data from which its compliance is measured and SWW has demonstrated just how large the task would be for it to retrieve and extract the requested information. The level of burden cannot be justified and the Commissioner does not consider complying with the request would be an appropriate and reasonable use of resources.
29. For these reasons, the Commissioner is satisfied that regulation 12(4)(b) of the EIR applies.

Public interest test

30. SWW stated that it has approached this request with a presumption in favour of disclosure. It advised that it recognised the public interest in disclosure and how this helps foster an approach of transparency and accountability. It stated that it acknowledges the importance of the public having access to key environmental data and how it is important for the public to have the ability to hold public authorities to account for the way they manage environmental services.
31. However, in this case it considers the public interest rests in maintaining the exception. It considers the public interest is best served by protecting SWW's staff from unjustified levels of stress and work load and in preventing the level of disruption compliance would cause to the delivery of its mainstream function of water service, especially given the amount of work compliance would require of its Waste Water Team. It said that the cost to the business and the vast amount of work it would take to fulfil the request is unreasonable and simply too high.

32. The Commissioner accepts there are public interest arguments in favour of disclosure. There is the general public interest in the openness and transparency of public authorities and the importance of making environmental information available to the public where appropriate. Disclosure of information enables the public to better understand how public authorities are run and how they are managing the functions given to them.
33. However, in this case the public interest rests clearly in favour of maintaining the exception simply because of the huge cost and time compliance with the request would incur. It is not in the public interest to divert such extensive funds and time to one request. The level of disruption compliance would cause is significant and would be overly burdensome on SWW. It would also not be a proportionate use of its resources either.

Procedural matters

34. Regulation 9 requires a public authority to consider what advice and assistance can reasonably be provided to an applicant in cases where it relies on regulation 12(4)(b) of the EIR on the basis of cost. Even if this is simply to confirm to the complainant in a given case that no reasonable or practicable advice and assistance can be provided.
35. The Commissioner has discussed regulation 9 of the EIR with SWW and it has confirmed that it has duly considered its obligations in this regard. It however acknowledges that it has not at any point offered any advice or assistance directly to the complainant. It said that it would be able to explain to the complainant what information it could provide within the cost limit. However, this would be with the caveat that it does not know how useful this amount of data would be to them.
36. As no actual advice and assistance was provided at the refusal notice or internal review stage, the Commissioner requires SWW to contact the complainant accordingly and issue a further response in accordance with its obligations under regulation 9.
37. In relation to question 1 and the recently identified additional information held, as this was not identified and disclosed to the complainant alongside the original list, the Commissioner has recorded a breach of regulation 5 of the EIR.

Right of appeal

38. 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

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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