

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

**Date:** 27 June 2024

**Public Authority:** United Utilities Water Limited  
**Address:** Haweswater House  
Lingley Mere Business Park  
Lingley Green Avenue  
Great Sankey  
Warrington  
WA5 3LP

**Decision (including any steps ordered)**

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1. The complainant has requested telemetry alarm signalling data. United Utilities Water Limited ('the public authority') refused the request for several reasons.
2. The Commissioner's decision is that:
  - The requested information is environmental information under regulation 2(1) and so the public authority was obliged to deal with the request.
  - The request is not manifestly unreasonable and so the public authority isn't entitled to rely upon regulation 12(4)(b) to refuse it.
  - The requested information doesn't engage regulation 12(5)(b) and so the public authority cannot withhold the requested information under the exception.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Disclose the requested information.

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**

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5. On 9 January 2024, the complainant wrote to United Utilities and requested information in the following terms:

“Please can I place a request under EIR for all telemetry alarm data for Near Sawrey wastewater treatment works and Esthwaite lodge pumping station from 2018 to the current date.”
6. The public authority responded on 6 February 2024, refusing the request under regulation 12(5)(b) (the course of justice and inquiries exception).
7. The complainant requested an internal review on 7 February 2024.
8. The public authority provided the outcome to its internal review on 27 March 2024. It upheld its original position.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 19 March 2024 to complain about the way their request for information had been handled. They disputed the public authority’s use of regulation 12(5)(b).
10. The Commissioner wrote to the public authority and asked it to reconsider its handling of the request, in light of a recent decision of the Commissioner’s, in which regulation 12(5)(b) was applied to similar information.<sup>1</sup> He asked if it wanted to change its response, or add any arguments in support of its application of regulation 12(5)(b).

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<sup>1</sup> [ic-278687-q9s1.pdf \(ico.org.uk\)](#)

11. The public authority returned to the Commissioner and confirmed its final position to be:
  - The public authority no longer considered the requested information represents environmental information, for the purpose of the EIR.
  - If it did represent environmental information, it would be exempt under regulation 12(4)(b) (manifestly unreasonable).
  - It maintained the requested information would be exempt under regulation 12(5)(b) but added no further arguments.
12. The first thing for the Commissioner to determine is whether the requested information is environmental. If it is, he'll consider whether it can be withheld under regulation 12(4)(b). Depending on his findings he may go onto consider regulation 12(5)(b).
13. The Commissioner considered this case alongside another, IC-300506-F5G4, which asked for telemetry alarm data for Esthwaite Lodge for 2020-2023.
14. Because the two cases are so similar, and the Commissioner acknowledges that there is some overlap in scope, United Utilities provided one submission which covered both cases.

## Reasons for decision

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### Is the requested information environmental?

15. It's important to establish whether the requested information is environmental information because the public authority, as a water and waste water service provider, has an obligation to comply with requests for environmental information, under the EIR, but not non-environmental information, under FOIA.
16. If the requested information isn't environmental, the Commissioner doesn't have any power to investigate how the request has been handled, or compel the public authority to take any steps.
17. 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);

18. The public authority has explained:

"The purpose of the telemetry data is to provide an indication of how the site is operating and if we need to respond to issues or check the status of the sit. There is no specific standard of detail of what telemetry data/records are required or the format or accuracy the telemetry data should have. The data relates to the internal workings of a piece of electrical equipment rather than providing information about elements of the environment and factors that impact those elements."

19. It's expanded that, any information surrounding discharging from this site, due to electrical power failure, isn't environmental information because:

"details of electrical power failure and mechanical breakdown is maintenance data which is operational in nature relating to the internal workings of pieces of mechanical, electrical or civil equipment, rather than providing information about elements of the environment and factors that impact those elements..."

the wastewater treatment works and pumping station are a collection of mechanical, civil and electrical constructed devices which in themselves are not 'elements of the environment', and the products the sites are managing are not elements of the environment – neither

potable water nor wastewater are substances naturally found in the environment.”

20. The Commissioner acknowledges the information requested is maintenance data. However, the information must be considered in a wider context; it's the maintenance data of a wastewater treatment works and pumping stations in the Lake District.
21. Esthwaite Lodge pumping station pumps into the Esthwaite Water, a 280 acre lake in the Lake District and Site of Special Scientific Interest.<sup>2</sup> Near Sawrey wastewater treatment works discharges into Cunsey Beck, which flows into Esthwaite Water.<sup>3</sup>
22. 'Discharges', as referred to in regulation 2(1)(b) of the EIR is meant to be interpreted broadly and will include:
  - the by-product of an activity or process;
  - that is added (or potentially added) to and affects the elements of the environment;
  - over which any control is relinquished.
23. United Utilities has explained to the Commissioner that telemetry alarm data provides it 'with an indication of how the site is operating and if we need to respond to issues or check the status of the site.' If alarms are being issued at the sites, due to power failure or mechanical breakdown, and in turn this affects the discharges (as referred to within regulation 2(1)(b)) being pumped into the lake, this is environmental information.
24. The Commissioner rejects the arguments that potable (drinking) water and wastewater are not substances naturally occurring in the environment, and therefore the information can't be environmental. The request is about discharge into water due to mechanical failings and therefore falls within the definition of environmental information according to regulation 2(1)(a), (b) and (c) of the EIR.
25. With the above in mind, the Commissioner is satisfied that the requested information is environmental. He'll now go onto consider the exceptions applied.

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<sup>2</sup> [Watchdog has no idea how much sewage is spilling into protected Lake District site \(inews.co.uk\)](http://www.inews.co.uk)

<sup>3</sup> [Watchdog criticised over Lake District sewage spill permit - BBC News](http://www.bbc.com/news)

## **Regulation 12(4)(b) – manifestly unreasonable**

26. Regulation 12(4)(b) of the EIR states:

'A public authority may refuse to disclose information to the extent that

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(b) the request for information is manifestly unreasonable;'

27. The Commissioner considers that a request can be manifestly unreasonable for two reasons: firstly, if the request is vexatious in the sense that it represents an abuse of the EIR process, and secondly where compliance with the request would incur an unreasonable burden on the public authority both in terms of costs and the diversion of resources.
28. In assessing whether the cost or burden of complying with a request is too great under the EIR, the public authority must take into account the nature of the request and any wider value in the requested information being made publicly available and the importance of any underlying issue to which the request relates, and the extent to which responding to the request would shed light on that issue.
29. Following the lead of the Upper Tribunal in *Craven v Information Commissioner & DECC* [2012] UKUT 442 (AAC), the Commissioner considers that there is no difference between a request that is vexatious under section 14 of the Freedom of Information Act (FOIA) and one which is manifestly unreasonable under the EIR. If a request would be found to be vexatious under section 14, then it will also be manifestly unreasonable and hence 12(4)(b) of the EIR will be engaged.
30. The singular practicable difference is that a public authority must consider the balance of public interest when refusing a request under the EIR whereas it does not have to do so under FOIA.
31. Under FOIA, a public authority can refuse to comply with a request if it estimates that doing so would exceed the 'appropriate limit'. This appropriate limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations')<sup>4</sup> as £600 for central government departments and £450 for all other public authorities.

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<sup>4</sup> [The Freedom of Information and Data Protection \(Appropriate Limit and Fees\) Regulations 2004 \(legislation.gov.uk\)](http://legislation.gov.uk)

32. Although the Regulations are not directly applicable to the EIR, in the Commissioner's view<sup>4</sup> they can provide a useful point of reference for a public authority that is considering the application of 12(4)(b) of the EIR. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:

- "Determining whether the information is held;
- Locating the information, or a document which may contain the information;
- Retrieving the information, or a document which may contain the information; and
- Extracting the information from a document containing it."

33. United Utilities explained:

"Using Esthwaite Lodge to demonstrate the size of the dataset, there are 8 analogue points at the site which take a sample reading ever 5 minutes. There are also 26 digital signals (on or off) which update every time there is a change in status. On average the number of data points created per year for analogue points would be 105120. The average number of data points for digital points varies and is dependent on the number of signal changes occurring at site – for example, a pump might operate 20 times per day which would equate to 7300 digital data points. But a pump availability signal may only come in once a month and so this is extremely variable.

The number of data for Esthwaite lodge Pumping Station only 5 months in for results 37644 lines in an excel worksheet. For 6 years' worth of data (2018-2023) this would estimate at a total of 543703.. It is important to note that not all telemetry data is an alarm, and the data set would require an assessment to extract the 'alarm points.'"

34. It's insufficient for the request to involve a large amount of data for regulation 12(4)(b) to have been applied correctly. The public authority needs to demonstrate that to carry out the activities discussed in paragraph 32 would be too burdensome to do so, and at the very minimum exceed the appropriate limit. In this instance, for United Utilities, that limit is £450, which at a rate of £25 per hour works out at 18 hours.

35. Importantly, any estimate as to how long compliance with a request would take must be based on the quickest method of retrieving the information that falls within scope of the request.

36. When pushed on this, United Utilities conceded that:

“The system that the telemetry data is extracted from can be filtered as ‘alarm points’ before a search is ran...Using the estimated 6 years worth of data exemplified below, an alarm point only dataset would reduce the overall total by approximately 100th giving an estimate of 5,430 alarm points.”

37. So actually, all telemetry data doesn’t need to be ‘assessed’ in order to extract alarm point data – the data can be filtered.

38. The public authority has gone onto explain:

“Whilst this would reduce the dataset significantly, each point would have to be reviewed before disclosing to provide context to each alarm point. This review would involve an employee locating each alarm point listed in the extracted report in a separate internal system and then conducting a technical review to determine what the alarm point is signalling and whether that would fall within the scope of the request; if the alarm point did indeed fall within the scope the employee would then provide an explanation of that particular point.”

39. The Commissioner disagrees that information would need to be reviewed to see if it fell within scope, the scope of the request is clear, it’s asking for all telemetry alarm data so all information filtered as ‘alarm points’ will fall within scope.

40. United Utilities has added:

“Without the context being given to each alarm point, there is a risk that disclosing the data ‘blind’ without that review, would lead to the public misleading the alarm statuses and the internal terminology that is used.

This in turn could lead to further queries which would involve the relevant business areas having to focus on those follow up queries which would distract them from their usually daily activities – this would be an inappropriate use of resources and would not be in the public interest. As such it is important that the technical analysis is conducted...

This activity may take approximately 5 minutes per each alarm point. Using the estimated 6 years worth of data exemplified below, an alarm point only dataset would reduce the overall total by approximately 100th giving an estimate of 5,430 alarm points. If allocating 5 minutes to each alarm point this would equate to 452 hours of a staff members time.”



41. To reiterate, a public authority can only take into account the activities listed in paragraph 32 when estimating how long compliance with the request would take and providing an explanation or context of what the data shows isn't one such activity.
42. Regulation 12(4)(b) is all about avoiding any disproportionate burden to a public authority. However, the only burden that can be considered is that of complying with the request, rather than the burden of responding to any follow up correspondence.
43. The figure that that United Utilities has come up with for Esthwaite Lodge, 452 hours, seems to be in relation to 'reviewing' each alarm point. In reality, it seems that the public authority can easily locate, retrieve and extract the alarm point data for each site by running a report. For clarity, United Utilities has used Esthwaite Lodge as the example of how telemetry alarm data is recorded, but has explained to the Commissioner that this example is applicable to Near Sawrey wastewater works also.
44. When considering if regulation 12(4)(b) applies, the public authority must consider the burden of compliance with the request against factors including:
  - the nature of the request, any wider value in the requested information being made publicly available
  - the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue.
45. United Utilities has explained to the Commissioner:

"The data that forms part of this request is of significantly low interest to the public and we cannot see any value in the public having access to it."
46. The complainant's concern about this specific pumping site is likely to be shared with the wider public, especially in light of the Environment Agency and Ofwat's investigations into water companies in England and Wales, the public authority included.<sup>5</sup>

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<sup>5</sup> [Investigation into sewage treatment works - Ofwat](#); [Environment Agency investigation into sewage treatment works - GOV.UK \(www.gov.uk\)](#)

47. The Commissioner has reminded himself of the function of telemetry data, to provide the public authority 'with an indication of how the site is operating and if we need to respond to issues or check the status of the
48. site.' If the public authority received multiple alarms indicating that the pumping station wasn't operating as it should be, or needed attention, this is important information to address the concerns surrounding the site and the quality of the water at Esthwaite Water.
49. The Commissioner acknowledges that telemetry alarm signalling data is specialised and technical. However, he disagrees that the requested information is 'low interest' against the concerns raised about Esthwaite Water.<sup>6</sup>
50. The public interest in this information, coupled with the low burden that running the alarm signalling reports would take, the Commissioner doesn't believe that regulation 12(4)(b) has been applied appropriately. Therefore, the public authority isn't entitled to rely upon it.
51. The Commissioner will now go onto consider the reliance on regulation 12(5)(b).

**Regulation 12(5)(b) - (the course of justice and inquiries exception)**

52. Regulation 12(5)(b) of the EIR exempts information from disclosure if doing so would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.
53. In it's refusal notice United Utilities explained:

"As you will be aware there is currently a national investigation by relevant regulatory authorities regarding discharges to the environment. We are still working with our regulators regarding the ongoing investigations. Therefore the information you have requested below falls within the exception under Regulation 12(5)(b) of the EIR which provides an exception to disclosure which would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature."

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<sup>6</sup> [Watchdog has no idea how much sewage is spilling into protected Lake District site \(inews.co.uk\)](https://www.inews.co.uk/watchdog-has-no-idea-how-much-sewage-is-spilling-into-protected-lake-district-site/); [Written questions and answers - Written questions, answers and statements - UK Parliament](https://www.parliament.uk/business/committees/committees-a-z/commons-select/written-questions/written-questions-answers-and-statements/)

54. In its internal review outcome, it added:

“Disclosure of this information would adversely impact the course of justice regarding these investigations of United Utilities (“UU”).”

55. At the very beginning of this investigation, the Commissioner drew United Utilities’ attention to IC-278687-Q9S1. In this case, the Commissioner ordered the disclosure of data because it’s not enough for the requested information to be relevant to either Ofwat or the Environmental Agency’s investigations. In order to engage the exception, disclosure of the withheld information must adversely affect either of the said investigations.

56. The arguments that United Utilities has presented in its refusal notice and internal review outcome don’t indicate how disclosure of the requested information would adversely affect either Ofwat or the Environment Agency’s investigations.

57. The Commissioner gave United Utilities another opportunity, in light of his decision in relation to IC-278687-Q9S1, to submit further arguments demonstrating a causal link between the requested information and any detriment to it, Ofwat or the Environment Agency, in so far as any of the ongoing investigations are concerned. It gave no further arguments.

58. Because the public authority has failed to explain why regulation 12(5)(b) is engaged, it’s not entitled to rely on the exception.

59. Having exhausted all of United Utilities positions as to why the requested information can’t be disclosed, it follows that it must be disclosed.

## **Other matters**

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60. In the case IC-300506-F5G4, which asked for telemetry alarm data for Esthwaite Lodge for 2020-2023, the Commissioner ordered the disclosure of this data. Again, he acknowledges that there is some overlap between the scope of these two requests.

61. United Utilities need only disclose any information that falls within the scope of the two requests once but it must make sure it explains to the complainant clearly which information falls within the scope of both requests.

## **Right of appeal**

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62. 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)

63. 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.

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

**Alice Gradwell**  
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