

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

Decision notice

Date: 2 July 2024

Public Authority: Thames Water Utilities Limited
Address: Clearwater Court
Vastern Road
Reading
Berkshire RG1 8DB

Decision (including any steps ordered)

1. The complainant has requested information about sewage treatment works using continuous monitoring devices, and water quality. Thames Water Utilities Limited (TWL) applied regulations 12(4)(a) and 12(4)(b) to the request which concern information that's not held and manifestly unreasonable requests, respectively.
2. The Commissioner's decision is as follows:
 - Regulation 12(4)(a) isn't engaged but the request engages regulation 12(4)(b) and the public interest favours maintaining this exception.
 - TWL complied with its duty under regulation 9(1) to offer advice and assistance.
3. It's not necessary for TWL to take any steps.

Request and response

4. The complainant made the following information request to TWL on 5 December 2023:

"...The required information concerns the sewage treatment works you have operational which you are using continuous monitoring devices in

the final treated outfall, as well as various data points for water quality. This request has been made to all 9 English water companies, Welsh Water, Hafren Dyfrdwy and Scottish Water.

To clarify, please provide the following information and data:

- a. 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;
 - b. 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."
5. On 12 December 2023, the complainant refined their request, as follows:
- "I can reduce the size of the request to ask for only data since 1.1.2020, which will significantly reduce the length of retrieving data."
6. In its response of 19 December 2023 TWL referred to regulation 12(4)(a) and advised that it didn't hold a "centralised list of where such monitoring is present." But TWL also said that the request remained "too large" and that it was relying on regulation 12(4)(b) of the EIR to refuse it.
7. By way of advice and assistance, TWL said it could accommodate pulling together one month worth of data from a maximum of 15 sites. It attached "a list of our STW's" which it said could help the complainant select the sites. The Commissioner must assume that this was a list of **all** TWL's sewage treatment works.
8. In its internal review of 2 February 2024 TWL noted:
- "...we could have been clearer in our response advising why we do not hold the relevant information however the exceptions we have stated previously still apply."
9. TWL explained that it has 357 sewage treatment works and that some of these may have a final effluent flow monitor installed. However, it said, as there's no regulatory requirement for these monitors, it doesn't maintain a comprehensive or accurate list of these assets. It said that many of them are out of service or have been removed from the site altogether.

10. TWL went on to advise:

“The data retrieved from final effluent quality monitors are considered inconsistent and unreliable which is why we have a sampling programme at each site. Samples taken will be thoroughly tested and provide accurate results. Although local sewage treatment sites will be aware if they have final effluent quality monitors which they may use operationally, the only way of us collating this information would be to contact each site individually and create a new record of whether the asset has been used historically and whether it is currently in use based on staff knowledge. Under EIR, you are only entitled to receive information held by the public authority at the time of your request and Thames Water is not required to create new information to respond to your request. As we would need to contact each site to ascertain whether the asset is working and in use, we consider this to be creating new information.”

Reasons for decision

11. This reasoning covers TWL’s application of regulation 12(4)(a) and regulation 12(4)(b) to the request. He’ll also consider a procedural aspect of TWL’s handling of the request.

Regulation 12(4)(a) – information not held

12. Under regulation 12(4)(a) of the EIR, a public authority may refuse to disclose information to the extent that it doesn’t hold that information when it receives the applicant’s request.
13. From its correspondence to the complainant and submission to the Commissioner TWL’s final position appears to be that it considers that the information requested in part A of the request engages regulation 12(4)(a).
14. Part A of the request is for a list of sewage treatment works (STWs) that have been using or continue to use continuous monitoring in the final treated outfall.
15. In its submission to the Commissioner, TWL has said that,

“The requester has asked for data which is non-regulatory. This means that the monitors we have in place are not maintained, to the extent that we don’t know where we have monitors and whether they are working or not, or how accurate they are. They may be used locally by the on-site team on occasion but again we do not have a record of this.”

16. Here, TWL has stated that it has monitors [at some STWs] that aren't maintained. But the request isn't for a list of STWs that have used or are using **maintained** continuous monitoring equipment and that generate **accurate** data. It's for a list of STWs that have used or are using that type of monitoring. As such at least some of its STWs have used or are using continuous monitoring, irrespective of whether they're maintained and accurate. The Commissioner therefore doesn't accept that TWL definitely doesn't hold the requested information, or the 'building blocks' to assemble that information if it were required to ie the requested list of STWs that have used or are using continuous monitoring.
17. The Commissioner hasn't been persuaded that regulation 12(4)(a) is engaged in respect of part A of the request. He's gone on to consider TWL's application of regulation 12(4)(b) to both parts of the request.

Regulation 12(4)(b) – manifestly unreasonable request

18. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable. It's subject to the public interest test.
19. When determining whether a request for information is manifestly unreasonable, a public authority should consider whether a request is likely to cause a disproportionate cost or burden, or an unjustified level of distress, disruption or irritation.
20. Whether a request will result in a disproportionate cost or burden being caused is fact specific, and the EIR doesn't 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.
21. 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, and TWL in this case, it's £450 or 18 hours work.
22. 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.

23. 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.
24. As has been noted, part A of the request is for a list of STWs that have been using or continue to use continuous monitoring. The Commissioner notes that TWL has provided the complainant with a list. In the circumstances, he's assumed that this is a list of all its STWs, not just those with monitoring capabilities.
25. TWL explained in its internal review that to assemble list of STWs that have used or are using continuous monitoring, it would have to contact each of the 357 sites individually and record whether "the asset" [ie the monitor] had been used historically and whether it's currently being used, based on what current staff know.
26. In its submission to the Commissioner, TWL said that, in order to provide such a list, it would need to look up each individual site on its system and,

"see if it is possible to download information from the installed equipment. We have 357 sites which would need checking which is an extensive task for our teams."
27. It's not clear to the Commissioner, as a lay person, why TWL needing to download "information" from each SWT is relevant to identifying if each STW had used or is using continuous monitoring.
28. However, from the regulation 12(4)(a) discussion it seems to the Commissioner that TWL accepts that at least some of its STWs are likely to carry out the monitoring in question, although TWL doesn't know which ones, if the monitoring equipment is maintained or if the data the monitoring records is accurate. With some work, however, TWL could draw up the specific list that's been requested.
29. The Commissioner acknowledges that there is a great deal of public concern and interest in water quality. The requested information therefore does have a purpose and some value. But the Commissioner notes that, while there may be an argument that the water regulator should require water companies to carry out continuous monitoring, it doesn't currently. In his view, that lessens the value of a list of STWs with this kind of monitor, particularly as monitors may not have been maintained and could therefore be unreliable.
30. The two parts of the request are linked; part B asks for the water quality data generated by the list of STWs requested in part A. The Commissioner will therefore go on to consider part B.

31. The Commissioner's gone on to consider part B of the request. In its submission TWL has said that collecting the data for the requested timeframe would be particularly burdensome. It says that even if it employed new staff, it wouldn't be able to provide the data within "the required EIR extended timeframe."
32. TWL has explained that its systems will only allow it to pull off data one month at a time per site (if it's even available). It says each site will take at least one hour to run and collate. 350 sites multiplied by 12 [months] equates to 4,200 hours per year requested. This means that to compile four years' worth of data would take 16,800 hours of work which would have a significant impact on the team's ability to complete other tasks, such as providing data to the water services regulator.
33. The Commissioner queries whether it would fully occupy a staff member for the one hour it takes for a computer to run and collate one month's information; the member of staff could go away and do other things while the computer is running. He's therefore sceptical about the 16,800 hours of work that TWL has generated.
34. However, if it were to take a member of staff 20 minutes to pull each month of data (15 minutes to set up and five minutes to check the result), pulling 48 months of data for a single STW would take 16 hours. As there's likely to be more than one station with the continuous monitoring equipment, that figure multiplies. If only one quarter of the 357 sites had the equipment, this would generate a figure of 1,424 hours.
35. The Commissioner broadly accepts TWL's explanation of what would be involved in complying with part B of the request and that it would take TWL hundreds of hours of work to comply. This would disproportionately divert staff away from other functions for a significant amount of time and place a significant burden on TWL. In addition, the information gathered wouldn't necessarily be complete, accurate or reliable.
36. As the Commissioner has noted, there's a great deal of public concern and interest in water quality. The information requested in part B therefore does have a purpose and a value. As he's also noted however, the water quality data gathered may not be complete, accurate or reliable. The Commissioner considers this reduces the value of that information. In addition, TWL has explained how large the task would be for it to comply with this request. Although part B has a value, in the circumstances the Commissioner doesn't consider that that level of burden can be justified, and he doesn't consider complying with the request would be an appropriate and reasonable use of TWL's resources.

37. As noted, the Commissioner considers the two parts of the request have a relationship with each other – part B can't be addressed without part A. As such, he's has considered the purpose and value of both parts of the request, and the burden associated with complying with both of them. He considers that, on balance, while the request, considered as a whole, has a purpose and value, this is outweighed by the burden that complying with the request, as a whole, would cause to TWL.
38. The Commissioner's decision is therefore that regulation 12(4)(b) of the EIR applies to the whole request.

Public interest test

39. The complainant considers that the information should be publicly available to provide insight into the company's performance on pollution output at a time of great public concern.
40. TWL has acknowledged there are public interest factors that favour disclosure: disclosure may increase openness and transparency and there's an inherent public interest in "providing" value for money as TWL is a public authority.
41. Against disclosure, TWL has noted that the monitoring equipment isn't maintained, so the information gathered is likely to be inaccurate and could have "gaps." TWL has noted that complying with the request would be a disproportionate burden on it and its staff. Its obligation to be open and transparent is met through data it provides to the regulator and which it would be happy to provide.
42. The Commissioner accepts that, in relation to water quality matters, there are strong public interest arguments in favour of disclosure. He also recognises that there's a presumption in favour of disclosure inherent in the EIR.
43. However, in this case he must find that the public interest nevertheless rests in favour of maintaining the exception simply because of the huge cost and time burden involved in complying with the whole request. It's not in the public interest to divert this much resource to one request and to compile data that isn't wholly reliable. The level of disruption compliance would cause is significant and it would be disproportionately burdensome for TWL.
44. To summarise, the Commissioner has found that TWL correctly applied the exception under regulation 12(4)(b) to the whole request. Whilst the Commissioner has taken account of the EIR's presumption in favour of disclosure, he doesn't consider that this tips the balance in favour of disclosure in this case. Instead, he finds that the public interest favours maintaining this exception.

Procedural matters

45. Regulation 9(1) requires a public authority to consider what advice and assistance it can reasonably provide to an applicant in cases where it relies on regulation 12(4)(b) of the EIR on the basis of burden. 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.
46. As noted, in its response to the request, TWL advised the complainant that it could pull together one month's worth of data from a maximum of 15 sites. TWL also provided the previously mentioned list of its sewage treatment works that it said the complainant could select from.
47. TWL has stated that it doesn't know which STWs carry out the monitoring in question. If the complainant were to choose 15 STWs from the list, therefore, it could transpire that some of those 15 don't carry out that monitoring. However, the Commissioner nonetheless accepts that TWL complied with its duty under regulation 9(1) of the EIR.
48. In its submission to the Commissioner, TWL has explained that it would take between 15-18 hours to pull off one month's data from 15 sites. Alternatively, it says, TWL has a regulatory sampling programme which measures the same information, and which is maintained and accurate. TWL says this information is available if the complainant submits a new request and it would be far less burdensome to comply with such a request as it already holds this information.

Right of appeal

49. 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

50. 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.

51. 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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