

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

**Date:** 11 July 2024

**Public Authority:** Environment Agency  
**Address:** Horizon House  
Deaney Road  
Bristol  
BS1 5AH

**Decision (including any steps ordered)**

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1. The complainant has requested information about the Environment Agency's internal enforcement policies and enforcement undertakings concerning water pollution incidents. The Environment Agency ('EA') relied on regulation 12(4)(b) of the EIR (manifestly unreasonable) to refuse the request. EA disclosed some of the requested information during the course of the Commissioner's investigation but advised that this did not impact on its reliance on regulation 12(4)(b).
2. The Commissioner's decision is that EA was entitled to rely on regulation 12(4)(b) of the EIR to refuse the remainder of the request and that EA complied with its duty under regulation 9(1) to offer advice and assistance.
3. However, he also finds that EA breached regulation 11 (reconsideration) of the EIR by failing to provide the complainant with the outcome of its internal review within 40 working days.
4. The Commissioner does not require further steps.

**Request and response**

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5. On 11 December 2023, the complainant wrote to EA and requested information in the following terms:

"We should be grateful if you would please provide the following information:

#### Internal enforcement priorities

1 The Environment Agency's ("EA") existing internal policy, guidance or instruction documents issued to officials or officers of the EA documenting the EA's enforcement strategy and priorities in relation to water pollution incidents;

2 The EA's briefing document to staff and officers issued in November 2021 in relation to low-impact water pollution incidents; and

3 All internal policy or guidance documents (including any internal instructions or briefing documents) issued to officials or officers of the EA outlining the EA's enforcement strategy and priorities between 2013 and present in relation to water pollution incidents.

#### Enforcement Undertakings

4 A list of all enforcement undertaking offers (including details of the content and scope of those offers) between 2010 and present that the EA has received and:

(a) accepted, and

(b) rejected.

5 For enforcement undertaking offers rejected by the EA, please provide a list of those offers that resulted:

(a) in a successful prosecution and details of any associated fines and/other sanctions; and

(b) in an unsuccessful prosecution."

6. EA responded on 28 December 2023. It advised that it would take around 34 hours to provide the requested information so it considered the request to be manifestly unreasonable under the EIR.

7. On 11 January 2024, the complainant disagreed that the information requested concerning internal enforcement policies was manifestly unreasonable, but they submitted a refined request to EA concerning enforcement undertakings:

"We are willing to narrow the scope of our requests made in respect of enforcement undertakings accepted and rejected by the EA as follows.

Request 1

Our Letter requested that the EA provide a list of all enforcement undertaking offers (including details of the content and scope of those offers) between 2010 and present that the EA has received and:

- (a) accepted, and
  - (b) rejected
- ("Request 1").

We are willing to narrow the scope of Request 1 to all enforcement undertaking offers (including details of the content and scope of those offers) between 2010 and present that the EA has received in relation to water pollution offences and:

- (a) accepted, and
- (b) rejected.

#### Request 2

Our Letter also requested that the EA provide, for enforcement undertaking offers rejected by the EA, a list of those offers that resulted:

- (a) in a successful prosecution and details of any associated fines and/other sanctions; and
  - (b) in an unsuccessful prosecution
- ("Request 2").

We are willing to narrow the scope of Request 2 as follows: for enforcement undertaking offers in relation to water pollution offences rejected by the EA, a list of those offers that resulted:

- (a) in a successful prosecution and details of any associated fines and/other sanctions; and
- (b) in an unsuccessful prosecution"

8. EA responded on 19 January 2024. It advised that it didn't consider the refined request reduced the time required to provide the requested information. It also advised that it had miscalculated its previous estimate of 34 hours, and it considered 56 hours to be a more realistic estimate.

9. Following an internal review, EA wrote to the complainant on 7 April 2024. It maintained its reliance on regulation 12(4)(b) of the EIR to refuse the refined request.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 17 May 2024 to complain about the way their request for information of 11 January 2024 had been handled.
11. During the Commissioner's investigation EA wrote to the complainant and disclosed some of the requested information that was readily available. It advised the Commissioner that, although it had made the partial disclosure in respect of questions one, two and four(a) of the request, disclosing this information has not reduced the number of hours it would take to respond to the remainder of the request.
12. The Commissioner considers that the scope of his investigation is to determine whether EA is entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the remainder of the requested information.

## **Reasons for decision**

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### **Is the requested information environmental?**

13. 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);
14. As the request is for information relating to enforcement priorities and actions for water pollution incidents, the Commissioner agrees that the requested information is likely to be environmental as per regulation 2(1)(c) and 2(1)(d) and therefore, EA was right to handle the request under the EIR.

#### **Regulation 12(4)(b)- Manifestly unreasonable requests**

15. 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.
16. There is no definition of “manifestly unreasonable” under the EIR, but in the Commissioner’s opinion, manifestly unreasonable implies that a request should be obviously or clearly unreasonable. One such way a request could be manifestly unreasonable is if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable.
17. Regulation 12(4)(b)<sup>1</sup> of the EIR exists to protect public authorities from exposure to a disproportionate burden in terms of the amount of time and resources that they have to expend in responding to a request.
18. Under section 12 of FOIA, EA would be entitled to refuse any request that would involve more than 24 hours of staff time to comply.
19. There is no set limit beyond which a request becomes manifestly unreasonable. Whilst the FOIA cost limit provides a useful benchmark, the Commissioner would normally expect a public authority to incur a

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<sup>1</sup> [Manifestly unreasonable requests - Regulation 12\(4\)\(b\) \(Environmental Information Regulations\) | ICO](#)

higher burden when dealing with a request for environmental information. The public authority should also take into account the resources at its disposal and the public value of the request before relying on this exception.

20. EA has explained that its original time estimate was 34 hours, but it later realised that this did not fully take account of the depth of the request. It recalculated that it would take over 56 hours to provide the requested information. In preparing its submission to the Commissioner, EA advised that it has had to further revise the time estimate after speaking to technical experts who have assisted in further scoping the information for the request. EA now considers it would take 159 hours to deal with the request, even after providing the information it has since disclosed to the complainant.
21. For questions one and three, EA explained that because 'water pollution' covers a vast array of data, there would be information within scope from several regimes (industry, agricultural, non-permitted sites). EA added that the scope of the request for question one was not limited in time, and therefore would require searching for all records held. It explained that this is a considerable task as its guidance and direction on priorities for water incidents are issued annually with in-year updates when required.
22. EA explained that it has both national and local area offices. Area offices create internal policy, guidance and instructions to respond to local pressures and priorities. In order to provide the information requested in questions one and three, EA considers it would need to provide documents at both a national and local area level. There are 15 Area offices that would need to carry out an electronic search across different departments covering the current and historic policy and guidance documents relevant to the request. EA estimated that this would take two hours per local office, a total of 30 hours.
23. EA explained that its national teams create policy, guidance and instructions to provide a national steer, based on funding and priorities from government and its national key performance indicators. EA considers that the request for internal policy, guidance and instructions relating to 'water pollution incidents' is a broad term which covers many subjects, including but not limited to: agriculture; sewage; groundwater; water industry; industrial processes; installations; landfill; and incident response. It explained that there would be separate guidance, policy and instructions for each of these business areas, driven by the funding and priorities for each sector. EA explained that each business area would need to locate the relevant documents through shared network drives and SharePoint and Operations Gateway (a system to disseminate information to all officers on the ground). It

also explained that the inclusion of briefings also brings into scope business boards and the National Civil Sanction Panel. This will include legally privileged data which EA would have to review in detail to apply any relevant exceptions.

24. Since it initially scoped the request, EA now considers it would need more time complete this part of the request. It explained that this is because the request covers the time period when the country was under COVID-19 restrictions. During that time EA had to change its approach to enforcement work and priorities dependent on the rules that were currently in force. For example, site visits were halted or altered for various periods during COVID, dependent on the restrictions in place for that period. This would have been discussed at levels from national down to local area enforcement groups, leading to briefings and instructions being created and disseminated to each area to focus their enforcement and priorities for each relevant period of restrictions. EA therefore estimated that it would need at least 16 hours to provide the requested information held by national teams.
25. Regarding question four of the request, EA explained that it has routinely published lists of accepted Enforcement Undertakings ('EUs') on its website - initially on the EA's own website and then on the GOV.UK website, which superseded its own. Previously each list was only made available for a limited period, usually one calendar year, until it was replaced by a new list. However since February 2023, EA changed its practice from replacing lists to adding new EUs to the previous list. This means that the format of information available on GOV.UK for current EUs will not be the same as the format of information as for previous years which have been withdrawn. Consequently, EA has explained that providing all accepted EUs in the format requested 'including details of the content and scope of those offers' would be a considerable and burdensome undertaking.
26. EA has identified 201 Enforcement Undertaking Offers received and accepted. It explained it would need to review the details of each one to be able to fully comply with this part of the request. EA explained that the EU Offer forms identified are from before it began publishing the level of information which is currently published. EA's EU Lead estimates that it usually takes around 20 minutes per EU offer form. It would involve carefully reading, assessing and summarising the information in each offer form into a format for public viewing, excluding any personal data or confidential information from the summary. The EU Offer forms are technical in nature, and contain details of the offence committed, as well as the offer being made by the offeree. EA estimates that this work would take 67 hours in total, at 201 forms x 20 minutes per form.



27. EA has advised that there is no requirement to publish rejected EUs as part of the Environmental Permitting Regulations 2016, and so this information is not something that it has previously released under freedom of information legislation. EA has identified 104 EU Offers received and rejected in scope of the request. EA estimated that compiling the information on rejected EUs would take 34 hours in total, at 104 forms x 20 minutes per form.
28. For question five, EA explained that 66 of the 104 rejected EUs are closed with court prosecution data recorded and the remaining 38 do not have court prosecution data recorded. EA explained that it would have to investigate each of these individually as potentially a different civil sanction may have been imposed, such as a variable money penalty. To check these 38 instances, EA estimated it would take 20 minutes per line to provide further details. 12 hours in total, at 38 lines x 20 minutes per line. It explained that an unsuccessful prosecution could encompass a wide range of outcomes, including but not limited to: no case to answer, prosecutions being dropped, defendants not being prosecuted to the full extent, or taking further action.
29. Due to the broad scope of the request, and large amount of potentially relevant information held in a number of different offices, the Commissioner accepts EA's explanation of the burden that would be involved in complying with the request.
30. The Commissioner acknowledges that there's a great deal of public concern and interest in water pollution and associated enforcement measures. The information requested therefore does have a purpose and a value. He notes however, that EA has stated that it routinely publishes information about enforcement undertakings and that, during the course of the investigation, it has signposted the complainant to information in scope of the request that is readily available. The Commissioner considers this reduces the value of the remainder of the requested information. In addition, EA has explained how large the task would be for it to comply with this request. Therefore in the circumstances the Commissioner doesn't consider that this level of burden can be justified, and he doesn't consider complying with the request would be an appropriate and reasonable use of EA's resources.
31. The Commissioner's decision is therefore that regulation 12(4)(b) of the EIR applies to the request.

### **Public interest test**

32. EA has recognised the public interest in openness, transparency and accountability. It stated that it endeavours to make information



available that informs the public about how it regulates and makes decisions.

33. EA recognised that there is a strong public interest in relation to the regulation of water companies, and whether EA is a fair and consistent regulator, as well as the general public debate surrounding water pollution. It also acknowledges that there is a public interest in being able to question whether the most appropriate decisions are being taken in the public sector in relation to the regulation of water and sewage companies and how EA deals with water pollution incidents.
34. EA has stated that it only withholds information where it considers disclosure would cause substantial harm. In this case EA considers that harm would be caused by the diversion of time and resources away from its regulatory work which would have a negative impact on the environment.
35. EA has considered that, in diverting resources to comply with the request, there would be an adverse effect on its ability to carry out effective and efficient regulatory and enforcement work. EA explained that it needs to deploy its resources in the most effective manner, and it is not able to spend large amounts of time and effort on finding, collating and supplying the information requested in this instance. It considers doing so would be disproportionate to any benefit to the world at large in providing the information.
36. The Commissioner recognises that there is a strong public interest in the regulation of water companies and water pollution incidents, however given the volume of information requested, he does not consider that it would be in the public interest for EA to divert resources from its regulatory and enforcement functions to deal with the request. He also notes that although the complainant stated that the public interest outweighed the reasoning for withholding the information, they did not state why.
37. Regulation 12(2) of the EIR requires a public authority to apply a presumption in favour of disclosure when relying on any of the regulation 12 exceptions.
38. The Commissioner has been informed by the presumption in favour of disclosure. However, he is satisfied that, for the reasons given above, the public interest nevertheless favours withholding the information and that the exception has been applied correctly.

## Procedural matters

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### Regulation 9 – advice and assistance

39. 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.
40. The complainant has expressed dissatisfaction with the advice and assistance that they received from EA. They also expressed dissatisfaction that they requested further explanation of EA's estimate about the time required to fulfil the request and did not receive this.
41. EA has argued that it provided advice on how the complainant could refine their request on three occasions. It suggested that the complainant could reduce the scope of the request in terms of time period and the level of detail required.
42. The Commissioner notes that EA did not provide the requested explanation of its estimate, and that this may have been helpful to enable the complainant to understand the work required to fulfil the request. EA did however provide some explanation in its internal review response and suggested how this part of the request could be brought into scope

"To aid further, reductions to the timescale requested would have the potential to bring the request into scope, such as: Internal Priorities Since 2013 there have been a significant number of events which have changed priorities such as drought, flood and covid. Reducing the timeframe or specifying a particular topic of interest in this part of the request would have the potential to bring it into scope. Enforcement Undertakings Reducing the request to the last 5 years would have the potential to bring this part of the request into scope. There is a significant amount of time needed to find and redact these documents."

43. The Commissioner is therefore satisfied that EA met its obligations under regulation 9 of the EIR.

### Regulation 11 – reconsideration (internal review)

44. Regulation 11 of the EIR states that

"(3) The public authority shall on receipt of the representations and free of charge—

(a) consider them and any supporting evidence produced by the applicant; and

(b) decide if it has complied with the requirement.

(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.”

45. In this case, the complainant requested an internal review on 2 January 2024 and EA did not provide the outcome of its internal review until 7 April 2024. The Commissioner therefore finds that EA has breached regulation 11 of the EIR by failing to carry out an internal review within the statutory time limit of 40 working days.

## **Right of appeal**

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46. 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)

47. 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.
48. 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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