

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

**Decision notice**

**Date:** 15 July 2024

**Public Authority:** United Utilities  
**Address:** Haweswater House  
Lingley Mere Business Park  
Warrington  
WA5 3LP

**Decision (including any steps ordered)**

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1. The complainant has requested information about a) sewage treatment works using continuous monitoring devices, and b) water quality. United Utilities' (UU) final position was that the information isn't environmental information, but UU also withheld it under regulation 12(4)(b), 12(4)(e) and 12(5)(b) of the EIR. These exceptions concern manifestly unreasonable requests, internal communications, and the course of justice, respectively. During the course of the Commissioner's investigation, UU advised that it intends to make available the information requested in part A of the request.
2. The Commissioner's decision is as follows:
  - The requested information is environmental information under regulation 2(1) of the EIR.
  - UU is entitled to refuse to disclose the information requested in part B of the request under regulation 12(4)(b).
  - UU breached regulation 9(1) by failing to provide the complainant with any advice and assistance in respect of part B. It also breached regulations 5(2) and 14(2) as it didn't make some

information available or issue a regulation 12(4)(b) refusal within the statutory timeframe.

3. The Commissioner requires UU to take the following steps to ensure compliance with the legislation:
  - If it hasn't already done so, disclose the information requested in part A of the request.
  - With regard to part B of the request, consider whether there's any advice and assistance UU can offer the complainant to help them submit a refined request, and communicate the outcome to the complainant.
4. UU 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. The complainant made the following information request to UU 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."
6. In a refusal dated 17 January 2024, UU addressed the request as a whole. It applied regulation 12(5)(b) to both parts of the request and 12(4)(d) and 12(4)(e) to part B. Regulation 12(4)(d) concerns information still in the course of completion.
  7. At internal review, UU maintained its position.

8. In its submission to the Commissioner, UU advised that it has reconsidered its position. First, it now considered that the requested information isn't environmental information. In the alternative, it maintained its reliance on regulations 12(4)(e) and 12(5)(b) (but withdrew its reliance on 12(4)(d)) and was also now relying on regulation 12(4)(b).
9. On 28 June 2024 the Commissioner advised the complainant that UU is also now relying on regulation 12(4)(b).
10. The Commissioner subsequently discussed part A of the request with UU and, as a result, UU confirmed that it would disclose the information requested in this part.

### Reasons for decision

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11. This reasoning covers first, whether the requested information can be categorised as environmental information under regulation 2(1) of the EIR.
12. If necessary, the Commissioner will then consider UU's application of regulation 12(4)(b) to part B of the request and again, if necessary, its application of 12(4)(e) or 12(5)(b), or both. He'll also consider procedural aspects of UU's handling of the request.

### Is the information environmental information?

13. UU isn't subject to FOIA but is subject to the EIR in cases where the requested information is environmental information.
14. UU considers that the information that's been requested in this case isn't environmental information.
15. Environmental information is interpreted under regulation 2(1) of the EIR as being (of most relevance in this case):

"...any information in written, visual, aural, electronic or any other material form **on** [the Commissioner's emphasis]:

(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;..."

16. The request is for a list of sewage treatment works that have used or are using continuous monitoring equipment and water quality data collected by those sewage treatment works. In its submission UU says that it doesn't use continuous monitors for compliance purposes. Compliance isn't measured by any online device in the final effluent, as the permit parameters can't be measured in that way. UU says that continuous monitoring at its sewage treatment works is installed for internal, operational performance monitoring. It uses the data these monitors provide at a site operational level to track performance, inform decision-making and drive quality and efficiency.
17. However, it says, none of this data is in any way verified to a "m-certified" [Monitoring Certification Scheme] standard. It's also not necessarily accurate as it doesn't need to be recorded to any standard, because it's for internal use only. All final effluent regulatory permit compliance is determined by laboratory analysis as stipulated by the permit requirements. UU says that it considers that the data that forms part of this request is of significantly low interest to the public and it can't see any value in the public having access to it.
18. UU has gone on to say that data associated with internal operational performance monitoring is maintenance data. It's operational in nature and relates to the internal workings of the site; it doesn't provide information about elements of the environment and factors that impact those elements. In addition, the continuous monitor devices are electrical devices which in themselves are not 'elements of the environment.' UU says that as it has explained above, the data these devices collect ensures - from a process perspective - that the site is operating rather than reporting on the site's compliance.
19. UU has conflated three things here - whether the information's environmental information, whether it's accurate and whether there's a public interest in it. The Commissioner is only considering the first of these here.

20. Just because information is numerical, or operational, that doesn't mean that it can't be environmental information. Part B of the request concerns water quality data. Regulation 2(1)(a) specifically states that environmental information is information on the state of the elements 'such as water.'
21. The Commissioner considers that how well sewage treatment works are operating and performing falls under regulation 2(1)(c) of the EIR, which concerns activities, measures and programmes likely to affect the elements and factors of the environment, as well as measures and activities designed to protect those elements.
22. The Commissioner is satisfied that part B of the request, which concerns the efficacy and operation of sewage treatment works, falls under the definition of 'environmental information' in accordance with regulation 2(1)(a) and 2(1)(c) of the EIR.
23. Part A of the request is for a list of all sewage treatment works where UU has been using or is continuing to use continuous monitoring devices in the final treated outfall.
24. For the reasons given at paragraph 21, and when taken in combination with part B of the request, the Commissioner considers that part A can also be considered to be a request for environmental information. A list of sewage works with a particular monitor is information on measures likely to affect the environment. In addition, the Commissioner interprets 'on' (as in regulations 2(1)'s, "... any information... on:") broadly and the requested list would help inform the public about matters that effect the environment.
25. The Commissioner will go on to consider the exception(s) that UU has applied to the information requested in part B.

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

26. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information if the request is manifestly unreasonable. It's subject to the public interest test.
27. 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.
28. Whether a request will result in a disproportionate cost or burden being caused is case 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.

29. 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 UU in this case, it's £450 or 18 hours work.
30. 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.
31. 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.
32. In its submission to the Commissioner UU has indicated that it **does** use continuous monitors. It has also said that there are 307 sites currently transmitting data, and the Commissioner assumes this is from the continuous monitors.
33. UU says it monitors several different determinants across its sewage treatment works and this monitoring can include Ammonia, Turbidity, Suspended solids, Phosphate, Iron, pH, Aluminium and Nitrate depending on what's required for the individual site.
34. UU says it has 1,697 final effluent quality points on the 307 different sites which are currently transmitting data.
35. The internal system (STS) that processes this data has a 'data query cap' which is the maximum number of rows a report can include before there's a risk of a system failure. These reports can include a maximum of 100,000 rows of data.
36. Each of the 1,697 final effluent quality points updates with 15-minute data routinely. These final effluent quality points will also transmit data on manual checks (a manual open connection when monitoring could send data every few seconds for a period), or when alarms are generated.

37. For five years of data, UU has estimated between 175,200 – 250,000 lines of data per each final effluent quality point. Due to the data query cap, it would take 2-3 queries per point to collect the full five years' worth of data. With an average of 2.5 queries per point UU estimates that the system would have to run 4,242 queries. UU also says that it's important to note that these would need to be run independently to ensure it protects the integrity of the telemetry system and its ability to manage alarms effectively. This system manages the whole of UU telemetry and therefore operationally it can't risk this system being compromised.
38. UU has gone on to explain that it takes, on average, approximately 15 minutes to run each query and to copy and paste the data into an excel format. Therefore, for the full data set this would be a total of 1,060.5 hours of work, which is one full time employee for nearly 29 weeks. Given the sheer volume of data, and the nature of the data being unverified, UU says it would need a competent trained person to conduct this activity to ensure that the system is also protected. Once the data has been extracted it would also be necessary to give a portion of time to exporting the data into a workable Excel sheet. This is because Excel itself has data limits on both workbooks and sheets and UU estimates this would take another two weeks to bring it all together, alongside ongoing admin support. Therefore, UU estimates that it would take a total of 31 weeks for one full time employee.
39. Not all the activities that UU has described can be taken account of when considering the cost and burden of complying with a request, for example exporting the data into a workable Excel sheet. Nevertheless, the Commissioner considers that UU has satisfactorily explained how it holds the information and what would be involved in trying to retrieve and extract it in order to comply with this request. He accepts that it would still take UU 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 UU.
40. UU has confirmed that it doesn't collect the data for compliance purposes but instead to alert UU to any issues that require further investigation. 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 value. However, UU has confirmed that it's not data from which its compliance is measured, and it has demonstrated just how large the task would be for it to retrieve and extract the requested information. The data that the monitors generate may also not be complete, accurate or reliable. Despite the value of the request, in the circumstances the Commissioner therefore 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 UU's resources.

41. The Commissioner's decision is therefore that regulation 12(4)(b) of the EIR applies to part B of the request. He's gone on to consider the associated public interest test.

### **Public interest test**

42. 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.
43. UU has acknowledged the following public interest factors for disclosure:
- There's public interest in statutory undertakers being open, transparent and accountable, generally, and, in relation to this case, how UU makes decisions.
  - Greater public awareness and understanding of environmental matters.
  - More effective public participation in environmental decision-making.
  - It's important that the public should have the ability to hold public authorities to account for the way they manage environmental services.
44. Against disclosure, UU argues that it's in the public interest to protect UU from unjustified levels of stress and workload, and in ensuring the integrity of its systems. UU also considers it's not in the public interest for it to divert its resources in order to carry out "the vast amount of work" it would take to fulfil a request that's unreasonable.
45. The Commissioner accepts that, in relation to water quality, there are strong public interest arguments in favour of disclosure.
46. However, in this case he must find that the public interest nevertheless rests in favour of maintaining the exception simply because of the very significant cost and time burden involved in complying with part B of the request. It's not in the public interest to divert this much resource to this part. The level of disruption compliance would cause is significant and would be disproportionately burdensome for UU.
47. UU correctly applied this exception to part B of the request and the Commissioner has found that the public interest favours maintaining the exception. It's therefore not necessary to consider UU's application of 12(4)(e) or 12(5)(b) to this part.



## Procedural matters

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48. Regulation 5(2) of the EIR requires a public authority to make environmental information available on request as soon as possible and no later than 20 working days after the date of receipt of the request (if the information's held and isn't subject to an exception). UU didn't make the list of STWs available within 20 working days and its response to that part of the request therefore didn't comply with regulation 5(2).
49. Regulation 9(1) 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.
50. UU applied regulation 12(4)(b) during the course of the Commissioner's investigation. As such, it didn't provide any advice and assistance to the complainant at the refusal notice or internal review stage. The Commissioner therefore requires UU to contact the complainant accordingly and issue a further response in relation to part B of the request in line with its obligations under regulation 9(1).
51. In respect of any information to which a public authority has applied an exception under regulation 12, regulation 14(2) states that the refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.
52. UU advised the Commissioner during the course of his investigation that it had now applied regulation 12(4)(b) to the request. The Commissioner communicated this to the complainant. UU didn't therefore comply with regulation 14(2) in respect of its regulation 12(4)(b) refusal.

## **Right of appeal**

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53. 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)

54. 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.
55. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Cressida Woodall**  
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