

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

Date: 31 July 2024

Public Authority: Anglian Water Services Limited
Address: Lancaster House
Lancaster Way
Huntingdon
PE29 6XU

Decision (including any steps ordered)

1. The complainant has requested information from Anglian Water Services Limited (Anglian Water) relating to sewage treatment works using continuous monitoring devices, and water quality data. Anglian Water disclosed the information relating to sewage treatment works but applied regulation 12(4)(b) to the water quality data on the basis that it was a manifestly unreasonable request.
2. The Commissioner's decision is that Anglian Water was entitled to rely on regulation 12(4)(b) of the EIR to refuse to provide the water quality data. The Commissioner also finds that Anglian Water complied with its obligation under regulation 9(1) to offer advice and assistance.
3. The Commissioner does not require Anglian Water to take any further steps as a result of this decision notice.

Request and response

4. On 5 December 2023, the complainant wrote to Anglian Water and requested the following information:

"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. Anglian Water responded on 4 January 2024. It provided the complainant with the information requested in part a) of the request. However, it refused to comply with part b) of the request, citing regulation 12(4)(b) of the EIR (manifestly unreasonable). Anglian Water explained that the amount of information requested in part b) was vast. To provide advice and assistance, it advised the complainant that they could reduce the scope of the request and gave an example of asking for the water quality data of selected monitors and for a reduced period of time.
6. The complainant wrote to Anglian Water on 24 January 2024 asking it to carry out an internal review of its refusal to provide the information requested in part b) of their request. In this request, they also reduced the scope of the request as follows (the ‘reduced request’):
- “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 01.01.2020 to the present date; or, where the continuous device was fitted after 01.01.2020, from installation to the present date.”
7. Following an internal review, Anglian Water wrote to the complainant on 11 March 2024, maintaining that it considered the exception under regulation 12(4)(b) to have been validly applied to the request as originally worded. With regards to the reduced request, Anglian Water again relied on regulation 12(4)(b), on the basis that it would still take “...a little over 50 hours work” to respond to the reduced request.

Scope of the case

8. The complainant contacted the Commissioner on 14 March 2024 to complain about the way their request for information had been handled.
9. The Commissioner considers the scope of his investigation is to consider whether Anglian Water is entitled to rely on regulation 12(4)(b) of the EIR as a basis for refusing the reduced request.

Reasons for decision

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

10. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information if the request is manifestly unreasonable. As with most EIR exceptions, this exception is subject to the public interest test.
11. 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. In this case, Anglian Water has relied on regulation 12(4)(b) on the basis that the request would cause a disproportionate cost.
12. Unlike FOIA, the EIR doesn't contain a specific limit at which the burden of complying with a request is considered to be too great. However, the Commissioner's guidance states that public authorities may use the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations") as a starting point for determining what a reasonable burden might be.
13. 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 Anglian Water in this case, it is £450. The Fees Regulations also state that public authorities must assess the cost of time spent on responding to a request at £25 per hour. For the £450 limit, this equates to 18 hours of work.
14. When making this estimate, 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 request to be manifestly unreasonable, the public authority must then balance the public value of the request against the burden of responding. The Commissioner considers that large public authorities should be expected to shoulder larger burdens.

16. In its submission to the Commissioner, Anglian Water confirmed that it does hold the water quality data requested in part b) of the request. It stated that a spreadsheet showing the 245 data points (Sewage Treatment Works) was provided to the complainant with its initial response to the request on 4 January 2024.
17. Anglian Water has explained that for each of the 245 data points, it will need one minute to identify the water quality data (245 minutes in total), and five minutes to locate that data (1,225 minutes in total).
18. To retrieve the water quality data, Anglian Water has stated that this will take five minutes for each data point (1,225 minutes in total).
19. Anglian Water has stated that the time for exporting the information will be about four minutes for each data point (980 minutes in total), one minute to create the file (245 minutes in total) and another minute to save the file (245 minutes in total).
20. In total, Anglian Water estimates it would take 4,165 minutes, or over 69 hours, to complete the task. It stated that this estimate was based on the reduced request for four years' worth of data.
21. Anglian Water stated that the work that would need to be undertaken in relation to the above activities would be carried out by searches on computer using Power BI software. It explained that only one search can be completed at a time.
22. Anglian Water explained that the operator must query the application in the following order; identify the data point, locate it, retrieve it, export it, create the file and save the file. This must be repeated 245 times.
23. Anglian Water stated that the telemetry export only allows 100,000 lines of data to be exported. It clarified that this equates to less than three years' worth of data for each data point, assuming the timestamps are every 15 minutes. Therefore, four years of data (as per the complainant's reduced request) would require two retrieval and export exercises, and for the original request this could be significantly more.
24. Anglian Water confirmed that its estimate is based on the quickest way it can gather the information using its current resources. Anglian Water explained that it uses the Microsoft application Power BI to do most of the work. It explained that Power BI is a data visualization and reporting platform that is used by businesses and professionals every day. It stated that although the platform is commonly used by business analysts, it is also designed to be easily accessible for those without any specialised data knowledge.

25. Anglian Water has stated that the only person it has to carry out the work is a member of staff currently employed to provide information requests to regulatory bodies such as the Drinking Water Inspectorate, Environment Agency and Ofwat.
26. Anglian Water stated that this would take that person away from their usual job to provide information to regulatory bodies and the business for nearly two weeks working on a 7.4-hour day, and that this does not include display screen equipment breaks and welfare breaks.
27. Anglian Water has argued that because each part of the search would take a maximum of 5 minutes, no other work could be completed during the process.
28. Anglian Water referred the Commissioner to its initial refusal, in which it explained to the complainant that although it acknowledged that Anglian Water is a significant sized organisation, its primary role is the provision of drinking water and sewerage services to members of the public, not providing information; that to extract and collate the information would be time consuming; and that the request would inevitably distract the team members from delivering sewerage services.
29. In terms of actual cost, Anglian Water has explained that it is not able to disclose the member of staff's salary but has used the national average wage as a benchmark. With "employer's on-costs", Anglian Water has estimated the cost to the business would be around £2000; although it indicated that there is an inherently greater value loss to the business from the staff member being occupied and therefore unable to perform their normal role.
30. Anglian Water understands that a public authority is not entitled to know the reasoning for making the request. However, in considering the weight in favour of disclosure, it considered that there was no focus to the request, either in terms of time or geography. It argued that although turbidity, suspended solids and ammonia were mentioned, the request was for all matter relating to water quality and was therefore unfocused as to any particular element within the final effluent discharges.
31. Public authorities must respond to requests for environmental information. It may not be a core function, but it is a legal requirement.
32. The Commissioner treats arguments about distraction from core functions with caution. Anglian Water admits that it is a "significant sized" organisation. The Commissioner sees no good reason why the company could not spread the burden out more evenly if it wished to do so. The individual Anglian Water has highlighted might be the person

best placed to carry out the tasks, but they seem relatively straightforward and capable of being carried out by individual given rudimentary training.

33. Therefore, to the extent Anglian Water complains that the burden is concentrated, this is an additional burden it has created for itself, not one that has been created by the request.
34. The Commissioner accepts that water quality is an issue which is particularly controversial at this time. The requested information would help to inform that debate, although he recognises that the lack of any specific focus to the request would reduce that value somewhat.
35. The Commissioner is sceptical about the accuracy of Anglian Water's estimate, and he notes that it does not appear to be based on a sampling exercise. Some of the tasks appear to overlap; for instance, Anglian Water has recorded separate tasks of "identifying", "locating" and "retrieving" information, but has not explained why these would be discrete tasks.
36. The Commissioner also notes that Anglian Water's estimate in its submission to him of 69 hours total time to complete the task is significantly more than the "...little over 50 hours" quoted in its internal review response to the complainant. Anglian water has not explained this discrepancy.
37. However, he also notes that, even if the 69-hour estimate were cut in half, that would still represent a considerable time burden and one in excess of the FOIA cost limit.
38. The Commissioner is therefore satisfied that the time it would take to comply with part b) of the request (and therefore its cost) would represent an unreasonable burden on Anglian Water. Regulation 12(4)(b) of the EIR therefore applies. He has gone on to consider the associated public interest test.

Public interest test

39. Anglian Water is aware of the presumption in favour of disclosure but is of the view that the breadth of the request means that the work involved in dealing with it is vastly out of all proportion to the benefit to public debate.
40. 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.

41. The Commissioner acknowledges once again 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, Anglian Water has demonstrated just how large the task would be for it to retrieve and extract the requested information. Despite the value of the request, in the circumstances the Commissioner doesn't consider that the level of burden can be justified. Complying with the request would not therefore be an appropriate, proportionate or reasonable use of Anglian Water's resources.
42. The Commissioner is therefore satisfied that the public interest rests in favour of maintaining the exception in this case, simply because of the burden that compliance with the request would incur.
43. Whilst the Commissioner has been informed by the presumption in favour of disclosure, he is satisfied that, for the reasons given above, the exception has been applied correctly.

Procedural matters

44. 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 that no reasonable or practicable advice and assistance can be provided.
45. As explained in paragraph 5 of this decision notice, Anglian Water suggested that the complainant could reduce the scope of the request and gave an example of asking for the water quality data of selected monitors and for a reduced time period.
46. It reiterated this advice in its internal review response when refusing the reduced request.
47. The Commissioner is therefore satisfied that Anglian Water met its obligation under regulation 9 of the EIR.

Other matters

48. In their representations to the Commissioner, the complainant raised a concern about Anglian Waters' initial response to their request for information, in which it "required that a request for internal review be

submitted by post to their legal director". The complainant believed the requirement "to be a blatant attempt to obstruct or delay the internal review process."

49. The Commissioner notes in Anglian Water's initial response that it advised the complainant "If you are unhappy with the service you have received in relation to your request and wish to request an internal review, you should write to: Legal Director, Anglian Water Services, Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon PE29 6XU."
50. The Commissioner would remind Anglian Water that paragraph 60 of the EIR Code of Practice¹ requires public authorities to treat "any written reply from the applicant (including one transmitted electronically) expressing dissatisfaction with an authority's response to a valid request" as a request for internal review. If a public authority refused to accept such a request electronically, it would be a failure to comply with the Code of Practice.
51. Whilst Anglian Water **did** process the internal review request it received via post, the advice given in its initial response seems likely to cause unnecessary confusion and delay.
52. It may therefore be helpful for Anglian Water to adjust its response template, so as to avoid giving the impression that it will not accept representations made electronically.

¹ https://ico.org.uk/media/for-organisations/documents/1644/environmental_information_regulations_code_of_practice.pdf

Right of appeal

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

Website: 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.

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