

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

Date: 5 August 2024

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

Decision (including any steps ordered)

1. The complainant has requested phosphorus data. United Utilities refused to provide the requested information, citing regulation 12(4)(e) (internal communications) of the EIR.
2. The Commissioner's decision is that the withheld information engages regulation 12(4)(e) but the public interest favours disclosure.
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

5. On 12 January 2024, the complainant wrote to United Utilities and requested information in the following terms:

“Please can I place a request under EIR for the data collected from the phosphorus monitors at Windermere WwTW. This should include data collected by the real time phosphorus monitors on the effluent inflow to the site as well as the data from the final treated effluent before discharge into the South basin of the lake.

Please can you provide the data from when the monitors were installed at the site to the present date.”

6. United Utilities responded on 12 March 2024, explaining that the requested information wasn't environmental information under regulation 2(1) of the EIR. Furthermore, it explained the requested information wasn't held.
7. The complainant requested an internal review on 19 March 2024.
8. United Utilities provided the outcome to its internal review on 13 May 2024. It upheld its previous position.

Scope of the case

9. The complainant contacted the Commissioner on 8 June 2024 to complain about the way their request for information had been handled. They disputed United Utilities position that the information wasn't environmental information and also that it wasn't held.
10. During this investigation, United Utilities changed its position. It appeared to accept that the requested information is environmental and that information within the scope of the complainant's request was held but was exempt under regulation 12(4)(e).
11. Environmental information, for the purposes of the EIR, is any information on the environment. The Commissioner would like to remind United Utilities that “any information on” should be interpreted broadly; information that would inform the public about matters affecting the environment or enable them to participate in decision-making is likely to be environmental information, even if the information is operational in nature.

12. The requested information is data collected from phosphorus monitors at a wastewater treatment works. The Commissioner understands that phosphorus pollution is a growing problem in UK waterways due to agricultural runoff and wastewater effluents.
13. With that in mind, the Commissioner is satisfied any phosphorus monitoring data would be environmental information according to regulation 2(1)(a), (b) and (c) of the EIR.
14. During this investigation, United Utilities confirmed to the Commissioner that:

“The inlet at Windermere WwTW does not have a device which monitors phosphorus therefore we are unable to provide any phosphorus monitoring data for the inlet (or inflow as referred to by the applicant in the request) as the data does not exist...

There is a monitor on the final effluent and further investigations have identified that there is data collected at a local level within systems on site.”
15. The scope of the request is clear. The complainant has asked for data from phosphorus monitors at Windermere wastewater treatment works. The Commissioner accepts that since there’s no appropriate monitor at the inlet, this can’t be provided, but the information that is held clearly falls within scope of the request.
16. What’s left for the Commissioner to consider is whether the requested information should be withheld under regulation 12(4)(e).

Reasons for decision

Regulation 12(4)(e) – internal communications

17. Regulation 12(4)(e) states that information is exempt from disclosure if it involves ‘the disclosure of internal communications’. It’s a class-based exception, meaning there is no need to consider the sensitivity of the information to engage the exception. If information represents an internal communication, the exception will apply.
18. For the purposes of the exception, the concept of a communication is broad and includes any information an individual intends to communicate to another. Internal is self-explanatory, any such communication needs to remain in the public authority. Once it’s been disseminated outside the public authority, the communication ceases to be internal.

19. United Utilities has explained:

“The non-regulatory phosphorus data requested is collected as part of the information we use for operational purposes from a variety of instruments and tests...As these are not monitors which provide regulatory data, and in the event of a monitor going out of specification, we utilise other tests/operational practices to manage site performance and do not rely solely on these monitors. It is important to note that any sensor data cannot replicate the level of accuracy required for regulatory sampling and reporting against permit conditions and this is done via a separate process.”

20. So, United Utilities has a duty to report specific data to the Environment Agency as the regulator. But that isn't the information that's being requested here, what's being requested is the phosphorus data that's used for internal operational purposes.

21. The Commissioner is satisfied the requested information is information that would only be known within United Utilities and is designed to monitor, and communicate, the level of phosphorus in the water at the wastewater treatment works.

22. The Commissioner acknowledges that in this case the communication originates from a process, not an individual, but this process was implemented with the intention of communicating the level of phosphorus within the waste water treatment works. The monitor records this data and it's then communicated to the operations team within United Utilities. It's therefore an internal communication and so the exception is engaged. Therefore the Commissioner will go on to consider where the balance of the public interest lies.

Public interest test

Factors in favour of disclosure

23. United Utilities has identified the public interest 'in the openness, transparency and accountability of how statutory undertakers generally, and in relation to this case, undertake decision making.'

24. It's also cited the importance of promoting the public's understanding of environmental matters.

25. Finally, it's identified that 'the public should have the ability to hold public authorities to account for the way they manage environmental services.'

26. The Commissioner agrees with all the above principles, which are fundamental to the EIR. There is also always a presumption in favour of disclosure under the EIR.

27. There is an increasing scrutiny on water companies in general, in light of ongoing investigations into water companies. The Environment Agency¹ is conducting a criminal investigation into breaches under the Environment Act 1995, the Environmental Permitting (England and Wales) Regulations 2016 and the Police and Criminal Evidence Act 1984 and Ofwat² is conducting an investigation into compliance with the Water Industry Act 1991.

Factors in favour of maintaining the exception

28. United Utilities is concerned that disclosure would undermine the 'safe space' required for it to debate live issues, manage operations and reach decisions away from distraction and external interference.

29. It's also expressed concern that:

"Disclosure of internal communications relating to this matter would inhibit authorities in engaging in free and frank discussions during future decision making regarding site operations, and that loss of frankness and candour leads to poorer decision making – known as the chilling effect. This has the potential to have a negative impact on site management. In our submission, it cannot be in the public interest to require these internal communications to be disclosed as to do so would inhibit the operation of the business."

30. As discussed in paragraph 19, United Utilities is concerned with the accuracy of the requested data, and believes the public interest in the request is addressed by the regulatory data that it provides to the Environment Agency:

"As the data is not collected in accordance with a specific standard or collected in a specific format, there is no assurance of the accuracy of the data... as the data may well indicate a problem with water quality that does not in fact exist. There are clear statutory controls relating to the collection and analysis of other data types which gives an accurate indication of water quality and this data is reported for regulatory requirements in order to meet statutory controls. This data can be accessed by the public on the Environment Agency's website.³"

¹ <https://environmentagency.blog.gov.uk/2023/11/17/update-on-environment-agency-investigation-3/>

² <https://www.ofwat.gov.uk/investigation-into-sewage-treatment-works/>

³ [Open WIMS data](#)

Balance of the public interest

31. The Commissioner has determined that, in this instance, the public interest lies in disclosure.
32. United Utilities provides information to the Environment Agency which gives an accurate indication of water quality and the Commissioner accepts this information is publicly available. However, that doesn't mean the requested information is without value.
33. Ultimately, if the phosphorus monitoring data is accurate enough to be used for operational purposes, i.e. to indicate whether the wastewater treatment works is operating efficiently, and to indicate the level of toxins present in the water, there is a public interest in this information.
34. Arguments about the accuracy of data, and whether information disclosed would be misunderstood by the public, carry little weight when considering the public interest. The EIR covers information held by public authorities, regardless of its accuracy. Furthermore, United Utilities can easily explain the difference between the requested information and the regulatory data it provides to the Environment Agency if it wants to.
35. On this note, United Utilities has explained that the formatting of the withheld information has led to some data being misrepresented. When disclosing the information to the complainant, it should provide an explanation on how the data should be read.
36. Even with the formatting error in question, the Commissioner disagrees with United Utilities when it describes the requested information as inaccurate; it's raw, factual data which measures phosphorus levels.
37. Also, the regulatory data reports on water quality widely across the UK. Whilst it is possible to break this down regionally, the regulatory data doesn't meet the public interest in this information specifically. There is a specific interest here in phosphorus levels at the specific site.
38. Returning to the concerns at paragraph 28, the Commissioner considers the scrutiny of water companies, and the public interest in this request, is justified and this is being echoed by regulators.
39. On 27 November 2023, David Black, CEO of Ofwat, told the public affairs committee⁴ that he would encourage water companies to be open and transparent about their environmental performance. On 15 July

⁴ <https://committees.parliament.uk/oralevidence/13888/pdf/>

2024, John Edwards, the Information Commissioner, wrote an open letter to the CEOs of all water companies⁵, calling on them to be as transparent with their customers as possible.

40. The Commissioner is satisfied that disclosure in this case would meet a significant public interest, both about water companies in general and in this specific case. Therefore the information must be disclosed.

⁵ <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2024/07/information-commissioner-calls-for-water-companies-to-be-crystal-clear-with-public-over-sewage-pollution/>

Right of appeal

41. 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

42. 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.
43. 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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