

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

Date: 15 August 2024

Public Authority: South West Water
Address: Peninsula House
Rydon Lane
Exeter EX2 7HR

Decision (including any steps ordered)

1. The complainant has requested information about "air pollution" or "air quality" in Exmouth. South West Water has advised it doesn't hold any relevant information and therefore regulation 12(4)(a) of the EIR is engaged.
2. The Commissioner's decision is that regulation 12(4)(a) of the EIR is engaged because on the balance of probabilities, South West Water doesn't hold the information the complainant has requested.

Request and response

3. On 14 February 2024, the complainant wrote to South West Water (SWW) and requested information in the following terms:

"I request information relating to the air pollution caused by South West Water's tanking operation in Exmouth. The air quality impact is pertinent due to the repeated instances of this kinds of operation recently, and the expectation that this continues to be a frequent occurrence.

I request information broadly on the air quality impact of tanking and related operations in Exmouth.

This includes the current incident, and the most recent similar tanking operation in recent months.

The information I am requesting includes:

any assessments done on the air pollution impact of your tanking and related operations;
impacts on health of local residents;
risk assessments;
control measures considered and implemented;
public communications and information on air quality impact, especially for those vulnerable to deteriorated air quality;
plans to reduce impact on air quality in the future of similar operations."

4. SWW's final position was that it doesn't hold information within scope of the request ie about "air pollution" or "air quality."

Reasons for decision

5. In their complaint to the Commissioner dated 7 May 2024, the complainant said that SWW had provided inconsistent responses to their request but had also not responded to all the parts of the request, such as the request for risk assessments, and control measures to mitigate air pollution impact.
6. This reasoning is focussed on SWW's application of regulation 12(4)(a) of the EIR to the complainant's request.
7. 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 an applicant's request.
8. In its initial response to the request, SWW advised it collects "air quality data" from contractors in order to comply with its annual carbon reporting obligations, but that it didn't hold the specific data the complainant has requested.
9. In its internal review, SWW noted that in its original response it had explained that the data it holds was generalised and not specific to the area referred to the request. It advised that the 'generalised data' it had referred to was specifically for emissions and not air quality. SWW said that because air quality data isn't the same as emissions data, the generalised data it holds doesn't fall within scope of the request.

10. In its submission to the Commissioner, SWW advised, first, that it had provided the complainant with a further response on 8 May 2024. In that response it had confirmed that it didn't hold information within scope of any part of the request as SWW only collects emissions data, and not air quality data. It acknowledged that its reference to "air quality data" in its initial response to the request may have caused confusion.
11. The Commissioner had asked SWW to explain the distinction between 'air quality' and 'emissions.' SWW explained that as part of its carbon accounting, it collects 'aggregated annual data' on the fuel used by its contractors for tankering. This gives SWW the mileage its contractors travel on its behalf.
12. This fuel figure is measured per contractor across SWW, and isn't separated into specific catchments, such as Exmouth. Using the aggregated annual data, SWW then uses models to calculate the total amount of emissions (including greenhouse gases such as CO₂ and CH₄, and polluting gases such as SO₂ and NO_x) produced for all work SWW undertakes over the year. This is then used as the emissions data for SWW's carbon accounting. The summary of this information can be found in its Annual Project Reports¹ (APR).
13. SWW says that it considers that the data it holds on emissions, as described above, is significantly different from what the complainant has requested. SWW holds data on the amount of emissions produced by its contractors' tankering movements. However, the complainant has requested data on the impacts of tankering movements on air quality in Exmouth. SWW says that the emissions data that it holds doesn't give any indication of the impact that this has on air quality. This is because air quality is highly localised and needs to take into account both the existing air quality in that area, in conjunction with SWW's emissions in that particular area, in this case in and surrounding Exmouth. SWW says it hasn't conducted studies or analysis of this kind.
14. SWW has gone on to note that in its internal review, it advised the complainant that 'air quality data is not the same as emissions data.' It considers that this presented the opportunity for the complainant to amend their request and to ask for generalised emissions data that

¹ https://www.pennon-group.co.uk/sites/default/files/attachments/pdf/Pennon-Group-plc-ESG-Databook-2023_24.pdf

SWW does hold. SWW has noted that it didn't receive any amendment or clarification of this request from the complainant.

15. However, SWW says that, for the avoidance of doubt, it considers that the emissions data that it holds isn't what the complainant has requested. The held data doesn't show the impact that tankering, and therefore the emissions, are having on the local area and its inhabitants. This data simply shows emissions that have been produced by contractors on SWW's behalf (and has been made publicly available).
16. SWW has told the Commissioner that its Pennon Group Energy and Carbon Manager has confirmed that SWW does not, as a company, undertake any analysis to measure of the impact of tankering on air quality within the business. As Energy and Carbon Manager, this individual would be aware of any projects measuring the impact on air quality that could be taking place within Pennon, as it's their responsibility to report this information into SWW's APR. This has further been confirmed by SWW's Operations Manager who covers the Exmouth area. As Operations Manager of the requested area, this individual would again be aware of any projects involving assessing the impact of tankering on air quality, as the catchment is their responsibility.
17. SWW also says it has undertaken reasonable searches to ascertain whether this information is held. If this information were held, it would be as electronic records. SWW's Energy and Carbon Manager has confirmed that this information hasn't been previously held, and therefore hasn't been deleted or destroyed. As such, there would be no previous copies of this information that might be held in other locations.
18. SWW concluded its submission by confirming that it reports on emissions as part of its carbon accounting in order to meet its net zero obligations and targets. As a business, SWW has no obligations, nor business purpose, to hold data at a town/catchment level.
19. The Commissioner considers that SWW has satisfactorily addressed the concerns the complainant raised. It has explained the distinction between air quality or air pollution and emissions - air pollution can come from both natural and manufactured sources and emissions are just one contributing factor to air pollution - and confirmed that it only holds information on emissions. Even then, the emissions data it does hold is for the whole SWW area and isn't broken down into localities. SWW proactively publishes information about its emissions.
20. Having considered all the circumstances, the Commissioner's decision is that SWW doesn't hold the information the complainant has requested and therefore correctly applied regulation 12(4)(a) of the EIR to the request.

21. Although regulation 12(4)(a) is, technically, subject to the public interest test, the Commissioner considers it would be illogical to carry out such a test; he can't find that the public interest favours disclosure of information that he's decided SWW doesn't hold.

Right of appeal

22. 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

23. 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.
24. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF