

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 19 August 2024

**Public Authority:** Thames Water Utilities Limited  
**Address:** Clearwater Court  
Vastern Road  
Reading  
Berkshire  
RG1 8DB

#### **Decision (including any steps ordered)**

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1. The complainant requested information from Thames Water Utilities Limited ("Thames Water") relating to sewer flooding.
2. The Commissioner's decision is that the information requested in parts 3, 4 and 5 of the request is environmental information under regulation 2(1) and so Thames Water is obliged to respond to parts 3, 4 and 5 of the request.
3. The Commissioner requires Thames Water to take the following steps to ensure compliance with the legislation.
  - Thames Water must provide the complainant with a response to parts 3, 4 and 5 of the request which complies with the requirements of the EIR.
4. Thames Water 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 Freedom of Information Act 2000 (FOIA) and may be dealt with as a contempt of court.

## Request and response

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5. On 15 May 2024, the complainant wrote to Thames Water and requested information in the following terms (numbering added by the Commissioner):

"I am writing to request information under the terms of the Environmental Information Regulations.

For the time frame: 2021, 2022 and 2023, I would like to know:

1. The number of Thames Water household customers that have experienced sewer flooding on their land.
  2. The number of Thames Water household customers that have experienced sewer flooding in their building.
  3. The number of successful claims Thames Water's Customer Guarantee Scheme for sewer flooding for each year in the time frame (2021, 22, 23)
  4. The number of unsuccessful claims Thames Water's Customer Guarantee Scheme for sewer flooding for each year in the time frame (2021, 22, 23)
  5. Details of how much money Thames Water has paid out to household customers to compensate for sewer flooding in the period 2021, 22, 23."
6. Thames Water responded on 4 June 2024 and provided the complainant with the information requested in parts 1 and 2 of the request. However, it refused to provide the information requested in parts 3, 4 and 5 of the request arguing that it was not obliged to provide such information as it does not constitute environmental information as defined in regulation 2(1) of the EIR.
7. On 5 June 2024, the complainant requested an internal review. Thames Water provided the complainant with the outcome of its internal review on 25 July 2024 in which it maintained its original position.

## Reasons for decision

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8. This reasoning covers whether Thames Water is correct when it says that the information requested in parts 3, 4 and 5 of the request is not environmental information and so is not required to respond to parts 3, 4 and 5 of the request under the EIR.

9. It is important to establish whether the information requested in parts 3, 4 and 5 of the request is environmental information because Thames Water, as a water and wastewater service provider, has an obligation to comply with requests for environmental information under the EIR, but not non-environmental information under FOIA.
10. If the information requested in parts 3, 4 and 5 of the request is not environmental information, the Commissioner does not have the power to investigate how Thames Water has handled those parts of the request or the power to compel Thames Water to take any action in relation to those parts of the request.
11. 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);
12. In its internal review response, Thames Water argued that the information requested in parts 3, 4 and 5 of the request is not environmental information as it is not "information on" any of the

matters covered in regulation 2(1) of the EIR. It stated that the payment of compensation payments, specifically whether or not payments have been made and the value of those payments, has no impact on the environment or the state of human health and safety.

13. As stated in the Commissioner's guidance<sup>1</sup>, "any information" covers any environmental information about, concerning or relating to the various factors, elements and other items stated in regulation 2(1) of the EIR. He also considers that "any information on" should be interpreted broadly. On this point the Commissioner's guidance states that:

"You should interpret 'any information on' 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 does not directly mention the environment.

You should apply the test about whether the information is on or about something falling within the definitions in regulations 2(1)(a)-(f), and not whether the information directly mentions the environment or any environmental matter."

14. The Commissioner is satisfied that the information requested in parts 3, 4 and 5 of the request is information on sewer flooding, a factor affecting or likely to affect the elements. He therefore, considers the information to be environmental information as defined in regulation 2(1)(b) of the EIR.
15. The Commissioner's decision is that the information requested in parts 3, 4 and 5 of the request is environmental information and therefore Thames Water is obliged to respond to parts 3, 4 and 5 of the request under the EIR.

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<sup>1</sup> [Regulation 2\(1\) - What is environmental information? | ICO](#)

## Right of appeal

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16. 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)

17. 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.
18. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Ben Tomes**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**