

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

Date: 21 August 2024

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

Decision (including any steps ordered)

1. The complainant requested, from South West Water (SWW), information 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) of the EIR. Therefore, SWW is obliged to respond to these parts of the request.
3. The Commissioner requires SWW to take the following steps to ensure compliance with the legislation.
 - SWW 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. SWW 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 15 May 2024, the complainant wrote to SWW and requested information in the following terms.

6. For ease of reference, the Commissioner has replaced the complainant's bullet points with numbers:

"I am writing to request information under the terms of the [EIR].

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

1. The number of your customers that have experienced sewer flooding on their land.
 2. The number of your customers that have experienced sewer flooding in their building.
 3. The number of successful claims compensation for sewer flooding for each year in the time frame (2021, 22, 23)
 4. The number of unsuccessful claims for compensation for sewer flooding for each year in the time frame (2021, 22, 23)
 5. Details of how much money has been paid out to your customers to compensate for sewer flooding in the period 2021, 22, 23."
7. On 11 June 2024 SWW responded and provided the complainant with information relating to parts 1 and 2 of the request. With regard to parts 3, 4 and 5 of the request, SWW said "the compensation information requested is not 'Environmental Information' as defined in [the EIR]".
8. On the same day, the complainant asked for an internal review.
9. On 7 August 2024 SWW provided its internal review response, and maintained its original position, adding that parts 3, 4 and 5 of the request aren't subject to the EIR.

Reasons for decision

10. This reasoning covers whether SWW was correct when it said that the information requested in parts 3, 4 and 5 of the request is not environmental information so it is not required to respond to those parts of the request under the EIR.
11. It is important to establish whether the information requested in parts 3, 4 and 5 of the request is environmental information. This is because SWW, as a water and wastewater service provider, has an obligation to consider requests for environmental information under the EIR, but not non-environmental information under FOIA.

12. 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 SWW has handled those parts of the request or the power to compel SWW to take any action in relation to those parts of the request.
13. Regulation 2(1) of the EIR defines environmental information as being:
- “... any 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) and (b) 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) ...”.
14. In its internal review response, SWW stated that the information requested in parts 3, 4 and 5 of the request is financial in nature, not environmental. Therefore, SWW believes that those parts of the request do not fall under the EIR.

15. As the Commissioner's guidance¹ explains, "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. As his guidance states:

"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."

16. 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 of the environment. Therefore, he considers the information to be environmental information as defined in regulation 2(1)(b) of the EIR.
17. Having concluded that the information requested in parts 3, 4 and 5 of the request is environmental information, he finds that SWW is obliged to respond to parts 3, 4 and 5 of the request under the EIR.

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-2-1-what-is-environmental-information/#eir4>

Right of appeal

18. 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

19. 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.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Kennedy
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Information Commissioner's Office
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Water Lane
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