

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

Decision notice

Date: 28 November 2024

Public Authority: Anglian Water
Address: Lancaster House
Lancaster Way
Ermine Business Park
Huntingdon
Cambridgeshire PE29 6XU

Decision (including any steps ordered)

1. The complainant has requested a trade effluent consent register and trade effluent sampling results. Anglian Water disclosed some information and has relied on regulation 12(5)(e) of the EIR to withhold the remainder. Regulation 12(5)(e) concerns the confidentiality of commercial or industrial information.
2. The Commissioner's decision is that Anglian Water cannot rely on regulation 12(5)(e) to withhold the requested information as it is information related to emissions for the purposes of regulation 12(9) of the EIR. Regulation 12(9) prevents such information from being withheld under regulation 12(5)(e).
3. The Commissioner requires Anglian Water to take the following steps to ensure compliance with the legislation:
 - Disclose the information to which it has applied regulation 12(5)(e) of the EIR, with any personal data redacted appropriately.
4. Anglian 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 Act and may be dealt with as a contempt of court.

Request and response

5. The complainant made the following information request to Anglian Water on 12 July 2024:

“I will be most grateful if Anglian Water could provide me with a copy of its trade effluent consent register; which should include the receiving treatment works. I would also appreciate it if you could furnish me with the results from the routine sampling program from 2020 onwards. If data extraction is time consuming and unreasonable I am happy to limit the information to less than 4 hrs collation work if that assists in the dissemination process.”
6. Anglian Water disclosed extracts from its Trade Effluent Database (having applied a charge). It said that the data reflected the consents that were in effect as of 30 July 2024. Anglian Water applied the exception under regulation 12(5)(e) of the EIR to the remaining information the complainant had requested.
7. Anglian Water maintained its reliance on this exception following its internal review.

Reasons for decision

8. In their correspondence to Anglian Water and their complaint to the Commissioner, the complainant has referred to regulation 12(9) of the EIR and they dispute Anglian Water’s reliance on regulation 12(5)(e).
9. This reasoning therefore first covers whether the requested information can be considered to relate to emissions for the purpose of regulation 12(9). If necessary, it will also consider Anglian Water’s reliance on regulation 12(5)(e) to withhold the information.
10. Regulation 12(5)(e) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
11. However, under regulation 12(9), information that relates to emissions can’t be withheld under regulations 12(5)(d) to 12(5)(g), which therefore includes regulation 12(5)(e).
12. In this case, the information being withheld under regulation 12(5)(e) is information about trade effluent. Trade effluent, as Anglian Water

explains on its website and in guidance it has produced¹, is any effluent that is produced from a process or activity undertaken at premises that are used to carry out a trade or industry.

13. The Commissioner's guidance on emissions² states that emissions will generally be:
 - the by-product of an activity or process
 - that is added **(or potentially added)** to and affects the elements of the environment [the Commissioner's emphasis]; and
 - over which control is relinquished.
14. In its correspondence with the complainant and to the Commissioner, Anglian Water has disputed that the second and third legs (bullet points) of the above definition are met.
15. Regarding the second leg, Anglian Water has noted that trade effluent sampling relates to the discharges of flows into Anglian Water's sewerage network. It says that, in that respect, there's no interaction with the elements of the environment. Referencing the case of *Surrey Searches & Ors -v- Northumbrian Water & Ors* [2024] EWHC 1643 (Ch), Anglian Water has noted that one "golden thread" running through that judgment is whether the information has "environmental significance". Anglian Water has argued that trade effluent is designed to remain within its sewerage network until treated to a standard that can be discharged into the environment in accordance with its discharge permits. At that point, Anglian Water says, "it retains none of the characteristics whose information is sought."
16. Regarding the third leg, Anglian Water says it has considered what the Commissioner means in his guidance by "over which any control is relinquished" in this context. It says that control over the trade effluent is relinquished by the trader as it enters Anglian Water's sewerage network; but control is then taken up by Anglian Water within that network.

¹ <https://www.anglianwater.co.uk/SysSiteAssets/business/services/led225-trade-effluent-explained.pdf>

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/regulation-12-9-information-on-emissions/>

17. Anglian Water then notes the Commissioner's decision in FER0489827³ from 2013. This considered a request for 'field development plans' and other details relating to a specific licence to explore and develop petroleum reserves. The request was made to Department of Energy and Climate Change (DECC), which is responsible for allocating and administering such licences. DECC identified certain information such as that on 'flaring' as being on emissions. It therefore released that information.
18. Anglian Water has gone on to say that DECC withheld other information, however, under regulation 12(5)(e). The Commissioner accepted, in that case, that the information withheld under regulation 12(5)(e) concerned a controlled process by which gas was extracted to be used as a resource. Therefore, that process wasn't an emission. The Commissioner concluded that this information could be withheld under regulation 12(5)(e). When the case was appealed in EA/2014/0034, the Tribunal didn't disturb the Commissioner's finding on this point and upheld the decision notice.
19. Anglian Water says that, regarding gas extracted for use as a resource, just as with trade effluent, it is transferred from one means of control to another means of control. Anglian Water concluded that "over which control is relinquished" means effectively control is relinquished by everyone such that no-one remains in control. Anglian Water therefore considers that this leg of the test also isn't met.
20. The Commissioner considers each complaint on a case by case basis. Irrespective of any previous decision, he's satisfied that in this case, the withheld information relates to emissions. This is because trade effluent is:
 - the by-product of an activity (those undertaken at trade or industrial premises)
 - could potentially be added to and affect an element of the environment (water) via the sewerage network, for example through leaks or a release to cope with overflow in the network; and

³ https://ico.org.uk/media/action-weve-taken/decision-notices/2013/897734/fer_0489827.pdf

- is potentially outside the control of Anglian Water as it has the potential to affect the elements of the environment regardless of any mitigating steps Anglian Water takes to control it - as above through leaks or legal releases, for example.
21. For this reason, the Commissioner finds that regulation 12(9) is relevant to the withheld information and therefore the exception at regulation 12(5)(e) cannot be applied to withhold this information. As Anglian Water has put forward no other exception, it must disclose the information.

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