

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

Date: 26 November 2024

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

Decision (including any steps ordered)

1. The complainant has requested information relating to tanker operations. United Utilities disputed the requested information was environmental but stated, if it was, it wouldn't deal with the request because it was manifestly unreasonable under regulation 12(4)(b). Furthermore, it considered the requested information would be exempt under regulation 12(5)(a) (public safety).
2. The Commissioner's decision is that the request is for environmental information. Also the request isn't manifestly unreasonable and the requested information doesn't engage regulation 12(5)(a).
3. The Commissioner requires United Utilities 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 19 December 2023 the complainant made the following request for information under the EIR for:

“Please can I have a copy of all tanker operations in the Windermere catchment area from 2020 up until the present day. Can this include all substances transported by tankers from all wastewater works and pumping stations in the catchment.”
6. United Utilities responded on 18 January 2024. It refused to comply with the request because it didn't believe, according to regulation 2(1) of the EIR, that the requested information wasn't environmental. It also explained that, if it was environmental information, the requested information would be exempt under regulation 12(5)(a) (public safety) of the EIR.
7. The complainant requested an internal review on 19 January 2024, claiming the requested information was environmental.
8. United Utilities provided the outcome to its internal review on 18 March 2024. It upheld its previous positions.

Scope of the case

9. The complainant contacted the Commissioner on 19 March 2024 to complain about the way their request for information had been handled. Specifically, that United Utilities had failed to classify the requested information as environmental and failed to disclose it.
10. At investigation stage, United Utilities introduced a reliance on regulation 12(4)(b).
11. The Commissioner will first consider whether the requested information is environmental. Then, he will consider whether United Utilities was correct to withhold the information under the exceptions it has applied.
12. The Commissioner will consider regulation 12(4)(b) first. Depending on his findings, he may then go onto consider regulation 12(5)(a).

Reasons for decision

Is the requested information environmental?

13. 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);

14. United Utilities' position is that the requested information isn't environmental because:

"the data is operational in nature as it relates to the logistical details of the transportation process, rather than information about elements of the environment and factors that impact those elements (Regulation 2(1)(a) and (b) EIR).

We also consider that details of tanker operations are not "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" (Regulation 2(1)(c)) as the tankers are moving sludge between our sites and are not discharging into the environment – these are operational movements."

15. The complainant's position is that the information is environmental because:

"There are many reasons for the use of tankers within the industry...Flow management where networks are not coping with flow requiring tankering from points in the network to relieve flow and prevent backing up. "

16. The Commissioner understands that the request relates to both:

- the movement of tankers moving sludge waste (leftover material from wastewater treatment) between wastewater treatment works (wwtw); and
- The movement of tankers moving crude sewage (liquid, raw sewage (pre-treatment)) that can be moved from the network (sewers), wwtw and pumping stations (ps)

17. Both sludge waste and crude sewage are a byproduct of United Utilities work supplying water to the Northwest of England and managing wastewater pipes.

18. Both sludge waste and crude sewage are byproducts of United Utilities work. The Commissioner agrees with the complainant, tankers that move these substances to relieve networks to help with flow, and prevent overspill into the environment, fall within the definition of regulation 2(1)(c) which specifically cites 'measures or activities designed to protect those elements.'

19. Just because information is operational, or doesn't explicitly mention the environment or environmental matters; doesn't mean that it can't be environmental information. In this case United Utilities has, not for the first time, interpreted environmental information too narrowly and incorrectly.

Regulation 12(4)(b) – manifestly unreasonable

20. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose information if the request is manifestly unreasonable. It's subject to the public interest test.
21. When determining whether a request for information is manifestly unreasonable, a public authority should consider whether a request is likely to cause a disproportionate cost or burden, or an unjustified level of distress, disruption or irritation.
22. Whether a request will result in a disproportionate cost or burden being caused is case specific, and the EIR doesn't contain a limit at which the cost of complying with a request is considered to be too great. However, the Commissioner's guidance suggests that public authorities may use the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations") as a guidelines for such considerations.
23. The Fees Regulations outlines the limit for central government departments is £600; and all other public authorities (including United Utilities) is £450 or 18 hours work.
24. Also according to the Fees Regulations, only certain activities can be taken into account when considering whether the request would be too burdensome to comply with:
 - a) determining whether it holds the information
 - b) locating the information, or a document which may contain the information
 - c) retrieving the information, or a document which may contain the information; and
 - d) extracting the information from a document containing it.
25. Returning to paragraph 16, United Utilities has explained that the requested information for sludge waste (which is also being withheld under regulation 12(5)(a)) is readily available. However, the requested information for crude sewage isn't held 'in a manner which can be easily located, retrieved and extracted.'
26. If complying with one part of a request would impose a manifestly unreasonable burden on the public authority, the whole request can be refused under regulation 12(4)(b). Therefore, the Commissioner has sought to understand why the requested information for sludge waste is readily available but not for crude sewage.

27. United Utilities has explained that there is a specific system that's been built to capture, track and monitor sludge movement. This system is needed for three reasons:

- "Operationally - United Utilities needs to know how much sludge requires moving from each treatment works on a daily/weekly/monthly basis. This also allows us to plan and ensure we have adequate outlets to treat/thicken sludge;
- Regulatory - each treatment centre has a permit which allows us to carry out certain activities in regards to treatment. Certain sludges are not permitted to go to sites without the required permit, also there are certain restrictions on how much sludge we can import into a site dependant on the permit. As part of our regulatory commitments to the EA we need a way of tracking the journey of an export and ensure our compliance with the regulatory framework;
- Optimisation – Each additional tanker required costs the company £750 per day. To ensure that we are moving sludge in the most optimal way, we track not only the logistical information but also the sludge quality to drive efficiency."

28. United Utilities has explained that it is required to monitor sludge waste movement under the Urban Waste Water Treatment Directive, Environmental Permitting Regulations 2016, the Sludge (Use in Agriculture) Regulations 1989 and as part of its regulatory return for the Environment Agency. However, there's no legislative requirement for it to record crude sewage movement.

29. United Utilities has explained that, unlike sludge waste movement:

"crude sewage movement is a sub-task of other activities (i.e. clearing a blockage on the network). The blockage activity is easily reported, but not necessarily the sub-tasks, in this case crude sewage movement. Crude sewage removal is often undertaken as part of planned or reactive work."

30. So, whilst sludge waste movement is recorded on its own system, crude waste sewage is recorded on another system. However, this system primarily captures information 'related to the initial task raised (i.e. blockage on the network).' If there's a subsequent activity that occurs, e.g. the removal of crude sewage to clear the blockage and where the crude sewage should be taken to, this is captured manually via free text.

31. Returning to paragraph 24, the Commissioner must consider how long it would take for United Utilities to scrutinise the relevant system. United Utilities has explained it would need to:

“review each individual job to establish whether the particular task involved an element of moving raw sewage. An initial review of our corporate system has revealed 412 jobs for the requested time period for the Windermere catchment. This is only jobs in the sewerage network (not ps and wwtw).”

32. It's elaborated:

“Once identified, each specific job has to be reviewed to establish whether it involved a tanker movement and the start/end location. For the jobs identified so far, it has taken our team 5 hours to interrogate our corporate system to confirm the tanker movement data for the first 60 entries out of the 412. That means it would take approximately 20 hours to review 240 jobs out of the 412.”

33. By these calculations, it would take approximately 5 minutes per entry, and therefore approximately 35 hours to review all 412 jobs, in the Windermere catchment area from 2020 to present, for the sewerage network only.

34. This isn't, to the Commissioner, such a grossly oppressive burden in comparison to the public interest the request represents. However, the request covers the whole of the Windermere area, which includes not only the sewerage network but also ps and wwtw.

35. Originally, United Utilities didn't indicate how many jobs it had identified for the ps or wwtw sites that would fall within the scope of the request. So, the Commissioner went back and asked for this figure.

36. United Utilities explained that, across the 37 ps and wwtw sites in the area, there are 1072 jobs that occurred from the start of 2020 to the date that the request was made. Jobs are recorded in the corporate system in one of the following categories: alarm/telemetry order, inspection round order, proactive order, reactive order or DNM alert order on its system.

37. Again, United Utilities explained that crude sewage is moved via tankering but this isn't 'a specific job type in the system' and so therefore isn't reportable. In order to extrapolate the information the complainant is requesting for crude sewage, a manual review of all 1072 jobs would be required.

38. United Utilities explained that tankering activities can take place on the back of any job type (e.g. planned work, reactive work, alarms etc) and gave the following examples:

- Planned work – a planned inspection or desilt of a site may trigger some tanker operations in order to empty a chamber

- Reactive work – flooding issue occurs and tankering is required to remove the sewage
 - Alarm work – an alarm is received for a pump stopping, it may have been blocked and therefore the sewage needs to be tankered away in order to access the asset.
39. The Commissioner asked United Utilities to walk him through a specific example of a manual review, in order to gather the information requested for crude waste movement, for one single job. United Utilities chose a specific example for a location in its sewerage network.
 40. The manual review requires a separate search of another system, where users can search for a specific 'contact' or 'location.' In this case, it would be appropriate to search for each job via specific sewerage network, ps or wwtw, as per the request.
 41. Each location holds of 'appointments' (the equivalent of the job on the corporate system) that have occurred at that location, organised into categories. These categories include 'sewer cleaning', 'site clearing', 'cctv survey', 'working within chamber' and 'non-standard item.'
 42. In the sample location that United Utilities looked at, there were three 'non-standard items' appointments listed. It checked each, and no tankering was recorded in any of the free text descriptions.
 43. To reiterate, the request relates to tanker operations, which can occur as a result of any job. So, United Utilities then moved onto check each of the three 'sewer cleaning' appointments.
 44. The first 'sewer cleaning appointment' free text indicated that the detail of the job was held 'at contractor work closure level' which essentially means that the clean has been carried out by a third party contractor.
 45. This means United Utilities then needed to view each contractor work closure 'CWC' form which is attached to the appointment. On this specific job, there were two CWC forms, all of which record the detail of the clean that occurred via free text.
 46. Looking at the first form, United Utilities ascertained that:

"In this case, the notes stipulate in this work closure form that silt was removed from the network. This means the team will have had the suction in the sewer while back jetting, removing silt/debris and effluent. Unsure of volume as the team would not be able to confirm what amount is effluent and what amount is water the unit is using to clean."

47. Upon inspection, the second CWC form appeared to be a duplicate of the first.
48. United Utilities then needed to do the same for the other two 'sewer cleaning appointments' recorded at the location. Each appointment again required a manual review of another two CWC forms.
49. Again, from the free text of the CWC form, United Utilities can confirm if a tanker was used but it's explained it's not always possible to break down what is water and what is crude sewage and the amount of crude sewage moved. However, what is recorded is sufficient to fulfil the request.
50. United Utilities explained to the Commissioner that it's sampling exercise, which involved checking approximately six jobs or appointments (three cleaning and three non-standard items) recorded in the system, took one and a half hours, which is approximately 15 minutes per job.
51. The Commissioner acknowledges that the categories of jobs recorded on the system aren't specific enough to discount any, since tankers can be used in any type of job. However, presumably not all activities on the other system will need to be manually reviewed, for example, no tankers are going to be required to review cctv at a site.
52. Neither United Utilities nor the Commissioner has any way of determining just how many activities can be discounted without a manual trawl of the system. Looking at the example location United Utilities has studied, only one activity out of 16 related to cctv so the majority will need to be reviewed. However, out of 16 activities, six were cancelled, so its likely that there will be fewer activities to check than United Utilities anticipates.
53. The Commissioner has seen examples of how the systems work, and the attached CWC forms. He thinks an hour and a half is excessive, for the example given, compared to United Utilities' previous estimate. The Commissioner doesn't believe that United Utilities has sufficiently accounted for the variation in time that it took, to scrutinise some jobs as opposed to others (five minutes per job versus fifteen minutes per job), on the system.
54. The Commissioner notes the request is only asking for tanker operations, i.e. was a tanker used and if it transported crude sewage. That is all of the information United Utilities needs to extract to satisfy the request. It does not need to break this down further to identify volume of crude sewage versus volume of water as United Utilities has indicated.

55. Also, the Commissioner would also always be more inclined to accept an average that's based on a greater sampling exercise and a bigger dataset (412 jobs as opposed to six). For these reasons, the Commissioner thinks five minutes per job, in line with United Utilities explanation at paragraph 33, is more appropriate. This brings the total to 90 hours for the ps and wwtw, on top of the 35 hours estimated to review the jobs for the sewerage systems.
56. The Commissioner is therefore satisfied that, compliance with the request for the crude sewage information, would take somewhere in the region of 125 hours.
57. When considering whether a request is manifestly unreasonable under the EIR, a public authority must take into account all the circumstances including:
- the nature of the request and any wider value in the requested information being made publicly available;
 - the importance of any underlying issue to which the request relates, and the extent to which responding to the request would shed light on that issue;
 - the size of the public authority and the resources available to it, including the extent to which it would be distracted from delivering other services; and
 - the context in which the request is made, which may include the cost of responding to other requests on the same subject from the same requester.
58. The complainant has explained that tanker operations are a means of 'Flow management where networks are not coping with flow requiring, tankering from points in the network to relieve flow and prevent backing up.' The complainant wants to cross reference the tanker operations with evidence that, they believe, will help them attribute illegal spills, directly into Windermere, to the action of United Utilities.¹

¹ [United Utilities accused of illegally dumping sewage into Windermere for years | The Independent](#)

59. United Utilities has recently been accused of pumping between 143 million to 286 million litres of waste into Windermere between 2021 and 2023 at times when it was not permitted. This is the activity the complainant is concerned with.
60. The Commissioner can only consider the public interest as it stood at the point that United Utilities responded to the request, January 2024. At this time, there was a significant public interest in water companies, their conduct and effects on the environment.
61. The Commissioner considers this to be a borderline case. Based on the evidence provided, gathering the tanker operations for the last three years, for the Windermere catchment area, will impose a burden on United Utilities; one the Commissioner may in other cases accept to be too great. However, in this case there are undeniably significant and compelling public interest arguments in favour of that work being completed to enable the public to scrutinise how United Utilities operates, where its waste goes and to address the genuine and notable concerns that were in place at the time of the request over the dumping of sewage into Windermere.
62. There were further concerns that United Utilities knew it was illegally spilling waste into Windermere, and failed to self report such instances. An independent study by the BBC indicates that United Utilities failed to self report² most of the waste that it dumped into Windermere. In doing so, it saved approximately £2.5 million.
63. Whilst United Utilities retrospectively self-reported some of these spills, the complainant believes that the requested information will allow them to prove if the matter has been going on for longer, and was far more extensive, than previously known.
64. There are concerns that United Utilities has been using Windermere as an 'open sewer.'³ The requested information will reveal the extent of the issue, demonstrating just how much waste is coming out of each site in Windermere, and, to a certain extent, what's being done with it.
65. It is undeniable that compliance with the request would be burdensome. However, unlike section 12 under FOIA, when considering whether a request is manifestly unreasonable under the EIR, the serious purpose and value of the request must be taken into account. The Commissioner strongly believes that disclosure of the requested information would

² [Sewage illegally dumped into Windermere repeatedly over 3 years, BBC finds - BBC News](#)

³ [Sewage illegally dumped into Windermere repeatedly over 3 years, BBC finds - BBC News](#)

both increase the public's understanding of United Utilities actions and inform debate about whether accountability in this area is working effectively. If this information is required by either Ofwat or the Environment Agency in its investigations,⁴ it follows that it should also be available to the public to scrutinise.

66. The Commissioner is aware he is instructing United Utilities to undertake a significant amount of work – almost four weeks worth. However, the EIR deliberately, in contrast to FOIA, doesn't impose a ceiling in which a burden is too great. This is because the EIR is derived from the Aarhus convention, which exists to allow individuals to be informed about environmental matters. The EIR clearly deemed that there was no limit on how important this is, since no such limit exists within the regulations.
67. Whilst acknowledging the burden he's imposing upon United Utilities, the Commissioner considers that burden proportionate, when weighed against the potential wrongdoing and immense public interest the request represents, which is reinforced by the evidence already in the public domain highlighting real and serious concerns about these issues in the Windermere area.
68. Therefore, the request isn't manifestly unreasonable and United Utilities isn't entitled to rely upon regulation 12(4)(b) to refuse it.
69. The Commissioner will now go onto consider the application of regulation 12(5)(a).

Regulation 12(5)(a) – public safety

70. Regulation 12(5)(a) states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety.
71. The term public safety is not defined in the EIR but essentially it allows a public authority to withhold information if disclosure would result in hurt or injury to a member of the public.
72. When engaging an exception in regulation 12(5), a public authority must show that disclosure "would" have an adverse effect; i.e. that the adverse effect is more probable than not.

⁴ [Water companies could face legal action after investigation launched into sewage treatment works - Ofwat](#)

73. It's United Utilities position that:

"We remain concerned that providing details of tanker movements, would result in our tanker drivers (together with any third party contractors) being targeted during the course of their delivery routes and would also assist anyone intent on sabotaging the vehicles."

74. It's elaborated that:

"United Utilities have already experienced sabotage of its assets. On 08/03/2023 a sandbag filled with concrete was found inserted into the outfall pipe from our Near Sawrey WwTW going into Cunsey Beck. It was concluded that someone had deliberately sabotaged our outfall with malicious intent by filling the sandbag with concrete and attempting to mould it to our outfall pipe when it was placed inside manhole. As a result of this act the sandbag caused the final effluent to build up in the outfall pipe, hydraulically back up in the outfall network system and caused a minor underground flood event."

75. It's also cited the work of Save Windermere⁵ and its protest marches against United Utilities, as evidence that disclosure of the requested information would adversely affect public safety.

76. United Utilities has elaborated:

"Although it is not possible to determine how many people attended the march, as it is likely that there were a lot of tourists in the area at the time, but reports say around 1,000 people in attendance. In preparation and readiness for the event we ensured UU colleagues were in the area and working in case any issues arose from attendees, fortunately there were no reports to UU and we are unaware of any issues arising to our infrastructure as a result."

77. The Commissioner doesn't consider the above arguments sufficient to demonstrate a causal link between the withheld information and public safety, on the grounds that disclosure would be more likely than not to adversely affect public safety.

78. What's being requested is previous tanker activity, not future tanker activity. The Commissioner doesn't see how disclosure would indicate

⁵ [Lee Mack, Steve Coogan turn up for Save Windermere march | The Westmorland Gazette](#)).

where tankers are likely to be in the future to assist anyone in targeting these tankers.

79. Furthermore, whilst the Commissioner acknowledges the sabotage referred to within paragraph 74, this is an outfall pipe, not a tanker with a driver. The Commissioner notes the sabotage caused a minor underground event but no individual was targeted in the process and there doesn't appear to have been any impact, or potential consequences, to public safety.
80. Furthermore, United Utilities last argument about the Save Windermere campaign is flawed, since it acknowledges that no public safety concerns have occurred as a result of the groups activity.
81. United Utilities arguments are insufficient to demonstrate a causal link between the exception and the withheld information, especially when to engage an exception in regulation 12(5), a public authority must show that disclosure "would" have an adverse effect; i.e. that the adverse effect is more probable than not. Therefore, the exception isn't engaged.
82. Since the Commissioner has rejected all of United Utilities positions, it follows that the requested information must be disclosed.

Right of appeal

83. 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

84. 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.
85. 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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