

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

Date: 23 July 2021

Public Authority: Welsh Water

Address: EnvironmentalInformationRequests@dwrcymru.com

Decision (including any steps ordered)

1. The complainant requested copies of plans of the sewers and mains for a particular location. Welsh Water informed the complainant that it could make the information available subject to a charge of £9.00 in accordance with regulation 8 of the EIR. The Commissioner has investigated and finds that the charge of £9 is reasonable and in accordance with regulation 8. The Commissioner does not require any steps to be taken.

Request and response

2. On 21 November 2019, following exchanges between the complainant and Welsh Water about the general principle of charging for provision of maps and plans, the complainant wrote to Welsh Water and requested information in the following terms:

"copies of plans all of the sewers and mains water system for Middleton Street Llandrindod Wells and also the cost of these plans on A4 paper as I am unable to visit your offices"

3. Welsh Water responded on 25 November 2019 and advised that the information requested could be provided on one A4 sheet of paper and the total cost would be £9.00. Welsh Water also confirmed that it had already completed an internal review on the issue of such charges on 7 November 2019 in response to a related issue raised by the complainant and it did not consider a further internal review to be appropriate.

Scope of the case

4. The complainant initially contacted the Commissioner on 10 August 2019 about his concerns about Welsh Water's charging regime. The Commissioner confirmed that, under the EIR, public authorities were able to levy a reasonable charge for provision of information. The Commissioner also advised the complainant that, in order to investigate the validity of any charge, he would need to make a formal request for information to Welsh Water. If he remained unhappy with the response and subsequent internal review, then the Commissioner could accept the case for investigation
5. The complainant subsequently submitted a request for information on 21 November 2019 and following receipt of a response to the request he contacted the Commissioner again on 25 November 2019 to complain about the way his request had been handled, specifically the charges which Welsh Water were requesting for provision of the information.
6. The scope of the Commissioner's investigation is to determine whether Welsh Water has complied with regulation 8 in respect of the charge of £9.00.

Reasons for decision

Is the information environmental?

7. The Commissioner has first considered whether the information requested is environmental in accordance with the definition given in regulation 2(1) of the EIR. Environmental information is defined within regulation 2(1) as:

"any information in written, visual, aural, electronic or any other material form on –

(c) measures (including administrative measures), such as policies, legislation, plans, programmes...and activities affecting or likely to affect the elements and factors referred to in (a) and (b)...".
8. The Commissioner considers that the term "any information...on" in the definition of environmental information contained in regulation 2 should be interpreted widely. It will usually include information concerning, about or relating to measures, activities and factors likely to affect the state of the elements of the environment. In other words information that would inform the public about the element, measure, etc under consideration and would therefore facilitate effective participation by the

public in environmental decision making is likely to be environmental information.

9. The Commissioner considers the request falls to be considered under the EIR. The requested information is information on a measure or plan as defined in regulation 2(1)(c) of the EIR which would or would be likely to affect elements of the environment outlined in regulation 2(1)(a).

Regulation 8 - Charging

10. Regulation 8(1) of the EIR allows a public authority to charge for making environmental information available, subject to the following conditions
 - Regulation 8(2) provides that no charge can be made to allow access to a public register or list of environmental information, or to examine the information at the place which the public authority makes available;
 - Regulation 8(3) requires that any charge must not exceed an amount which the public authority is satisfied is reasonable;
 - Regulation 8(4) requires that the public authority must notify the requestor of any sought advance payment of a charge within 20 working days after the date of receipt of the request; and
 - Regulation 8(8) requires the public authority to publish and make available to applicants a schedule of its charges and information on the circumstances in which a charge may be made or waived.
11. The Commissioner accepts that a charge can include the staff costs of locating, retrieving and extracting the requested information, as well as any disbursement costs. This follows the findings of the First-tier Tribunal (Information Rights) in *East Sussex County Council v Information Commissioner and Property Search Group* (EA/2013/0037) which found that the drafters of the original EU Directive 2003/4/EC (from which the EIR are derived) made a clear decision not to exclude the cost of staff time in searching for the environmental information when considering a reasonable amount for a charge. However any charge should be reasonable, and a requestor should not be disadvantaged by a public authority's poor records management.

What information has been requested?

12. The information which has been requested in this case is copies of plans of sewers and water mains for a particular location. Welsh Water has confirmed that the information can be provided on one sheet of A4 paper.

Regulation 8(2)

13. Whilst the Commissioner understands from Welsh Water that the requested information may have been available for inspection at its premises at the time of the request, the complainant expressed his preference to be provided with a copy of that information. Although under regulation 8(2) Welsh Water could not have charged for facilitating the in-situ examination of the requested information, the preference expressed by the complainant means that the question here is whether the charge was reasonable for provision of a copy of that information.

Regulation 8(3)

How has Welsh Water calculated the charge?

14. Welsh Water advised the Commissioner that the charge of £9.00 represents the average cost of responding to requests for copies of maps of water mains and sewage. It covers the cost of staff time taken in responding to requests
15. The charge is based on three elements as detailed below:
- a. £8.42 – represents the average time to comply with a request for a copy map. It includes the time spent locating, retrieving and extracting the information and providing it to the requestor. The cost has been calculated based on an average time of 20.2 minutes at £25.00 an hour. This estimate has been calculated by dividing the total time spent on responding to all requests for copy maps in a year (119,085 minutes) by the number of requests received (5,895).
 - b. £0.42 – reflects the time spent by Welsh Water's Legal team in supporting responses to requests for copy maps. This might involve providing advice on the application of exemptions under the EIR. This is calculated based on £25.00 an hour.
 - c. £0.10 – represents the cost of photocopying.
16. Welsh Water confirmed that the costs above (£8.94) has been rounded up to £9.00 and is based on the average time spent. In light of the number of requests it receives for copy maps, Welsh Water considers that it would be disproportionate for it to calculate the cost of meeting each request on a case by case basis. The costs of providing maps of its assets is on Welsh Water's website¹ and the charges are reviewed

¹ <https://developers.dwrcymru.com/en/applications/planning/locating-our-water-pipes-and-sewers>

annually. At the time of the complainant's request, in November 2019, the charge for a map was £9.00.

17. Welsh Water explained that its water and sewer asset information is held in a GIS (Geographic Information System) software system on Welsh Water's computer network and is overlaid on Ordnance Survey Maps for its operating system. If a map of a specific area is requested, the system is searched using an OS grid reference, postcode or road name to find that location. The system then may need to be configured to display the correct information, for example water mains only, sewers only, adjusting the scale of the map or area shown etc. Sometimes it is necessary to revert back to a requestor if the initial search shows a very large area which would result in providing a map with limited legibility. If a paper copy of a map is required, printing arrangements also need to be configured.

How has Welsh Water determined that the charge is reasonable

18. Welsh Water considers that levying a charge that is reflective of the average time in dealing with requests for copy maps to be reasonable and has the benefit of providing cost certainty to anyone requesting one. The cost of £9.00 is considered to be reasonable as it reflects Welsh Water's "*entitlement to charge for environmental information on the basis of our costs involved in supplying information in response to a request. This is based on a bottom-up review of our charges by reviewing actual time spent on responding to requests and materials used*".

The Commissioner's analysis

19. The Commissioner's guidance² on regulation 8 emphasises that public authorities should avoid routinely charging for environmental information, and additionally, should take account of the wider aims of the EIR. The guidance also notes the findings of the Court of Justice of the European Union ("CJEU") in the case of C-71/14 East Sussex County Council v Information Commissioner, in which the CJEU found that an applied charge must not have a deterrent effect on the right to obtain environmental information.
20. The Commissioner recognises that, if an applied charge does have a deterrent effect, this undermines the intended purpose of the EIR and the fundamental objectives that it is seeking to achieve in line with the Convention on Access to Information, Public Participation in the

² <https://ico.org.uk/for-organisations/foi-guidance/charging-for-information-under-the-eir/>

Decision-Making and Access to Justice in Environmental Matters (commonly known as the 'Aarhus Convention'), and the subsequent EU Directive 2003/4/EC.

21. The Commissioner's guidance also explains that the context of a request may affect the reasonableness of any charge. A reasonable charge in one context (for example for property search information requested as part of a commercial transaction), may differ from a reasonable charge in a different context (for example a public group seeking information about pollution in relation to environmental concerns).
22. In this case, the Commissioner does not consider that the charge of £9.00 represents a significant cost to a requestor. If it was, the Commissioner considers it unlikely that Welsh Water would receive so many requests each year for this type of information (nearly 6,000).
23. The Commissioner also considers that where individuals require maps of water assets associated with their property prior to commencing work, it is likely that they will only require one map at a cost of £9.00. If a developer needed copies of several maps before commencing a particular development, whilst the cost could potentially be much greater, the cost would then form part of a commercial transaction.
24. The subject matter of this request - a map of the water assets in a particular street - does not suggest that the information will have any wider public value beyond the complainant's own immediate interest.
25. Welsh Water has provided a clear explanation of the processes required to comply with the request and calculated an estimated time to handle requests of this nature. The EIR do not specify the rate at which staff time should be calculated. Although The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 20042 ("the FOIA fees regulations") do not apply to the EIR, the Commissioner's view is that it is reasonable for public authorities to use the rate specified in the FOIA fees regulations of £25.00 per hour as a starting point. In the circumstances of this case, this is the rate used by Welsh Water to calculate the charge.
26. Having considered all the factors above, the Commissioner is satisfied that the charge is reasonable and therefore complies with regulation 8(3).

Regulation 8(4)

27. In respect of regulation 8(4), Welsh Water notified the complainant within 20 working days of the charge. The Commissioner therefore accepts that this part of regulation 8 has been met.

Regulation 8(8)

28. In respect of regulation 8(8), Welsh Water has confirmed that the specific charge of £9 (currently £8) for providing copies of maps of its assets is published on its website:

<https://developers.dwrcymru.com/en/applications/planning/locating-our-water-pipes-and-sewers>

29. The Commissioner has reviewed the website and accepts that this part of regulation 8 has been met.

Right of appeal

30. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Ben Tomes
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