

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

**Date:** 17 October 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)**

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1. The complainant has requested data relating to specific wastewater treatment works ('wwtw') and pumping stations ('ps'). United Utilities ("the public authority") refused to comply with two parts of the request, on the grounds that it wasn't environmental information being requested or by citing regulation 12(4)(b) (manifestly unreasonable).
2. The Commissioner's decision is that the information being requested is environmental in accordance with regulation 2(1) and the public authority has inappropriately applied regulation 12(4)(b). In failing to disclose all non-exempt information within the statutory timeframe, the public authority has breached regulation 5(2) of the EIR.
3. The Commissioner requires the public authority 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

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5. On 29 March 2024 the complainant wrote to the public authority and requested information in the following terms:

“Please can I request for the year of 2023;

- All 15-minute Final Effluent flow data
- All individual spill start-stop times as recorded by EDM within the study period
- All telemetry data exchanges between STW and your waste operating control centre within the study period
- Dates of visits to the works by operating staff within the study period
- Copies of operator log book entries within the study period.

Can this data be from Hawkshead pumping station, Ambleside wwtw, Grasmere wwtw, Near Sawrey wwtw, Glebe Road pumping station and Elterwater pumping station.’

6. The public authority responded on 2 July 2024 and its position was as follows:

- It disclosed the 15 minute start-stop time data for all sites except Glebe Road, which it withheld under regulation 12(5)(b) (course of justice and inquiries);
- It confirmed that the dates of visits to the works and copies of operator log book entries weren't environmental information under regulation 2(1) of the EIR and so it wasn't obligated to disclose the information;
- It explained that all other parts of the request were still under review.

7. On 3 July 2024 the complainant requested an internal review. They disputed the public authority's application of regulation 12(5)(b) and that the dates of visits and operator books weren't environmental information.

8. On 30 July 2024 the public authority provided a further response, where it disclosed all 15 minute start-stop time data, this time including for Glebe Road. It refused to provide the telemetry data requested, citing regulation 12(4)(b) (manifestly unreasonable). It asked the complainant to refine their request in relation to this aspect of their request.

9. On 2 August 2024, the complainant confirmed:

“In relation to the telemetry data within this request, to compromise on this, can I be provided the data for 2023 for Glebe Road PS, Hawkshead PS and Near Sawrey wwtw.”

10. The public authority provided the outcome to its internal review on 28 August 2024 – upholding its decision to refuse the remainder of this request under regulation 12(4)(b).

## **Scope of the case**

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11. The complainant contacted the Commissioner on 2 August 2024 to complain about the way their request for information had been handled. They had concerns about the timeliness of the public authority’s handling of the request and its refusal to provide information because it either classed it as non environmental information or because it would be manifestly unreasonable to do so.

12. The scope of the Commissioner’s investigation is to determine:

- Whether the dates of visits to the works and copies of operator log book entries are environmental information under regulation 2(1) of the EIR; and
- Whether the public authority was correct to refuse to provide the outstanding information in relation to this request, the telemetry data, under regulation 12(4)(b).

## **Reasons for decision**

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### **Is the requested information environmental?**

13. It’s important to establish whether information being requested from United Utilities is environmental because United Utilities, as a water and waste water service provider, has an obligation to comply with requests for environmental information, under the EIR, but not non-environmental information, under FOIA.

14. If the requested information isn’t environmental, the Commissioner doesn’t have any power to investigate how the request has been handled, or compel United Utilities to take any steps. Incorrectly classifying information as non-environmental denies individuals access to important environmental information about how United Utilities works and the effect its work has on the environment.

15. 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);
16. In their internal review request, the complainant argued that 'the dates of visits to the works by operating staff and copies of operator logbook entries...are, in fact, activities that are likely to affect the stated elements.'
17. In its refusal, the public authority explained:
- "These types of maintenance data are operational in nature as it relates to the internal working of pieces of mechanical, electrical or civil equipment, rather than providing information about elements of the environment and the factors that impact those elements."
18. The interpretation of 'environmental information', for the purposes of the EIR, is meant to be interpreted broadly. Public authorities are meant to look at the 'bigger picture' and consider the information that's being requested alongside the context of the request itself and not

immediately assume information isn't environmental because it doesn't explicitly mention environmental matters.

19. The Commissioner agrees with the complainant, the requested information is environmental in line with regulation 2(1)(c) of the EIR. The request is looking at the performance of specific wastewater treatment works and pumping stations. As the public authority has acknowledged, visits to these sites will be done for operational purposes, either to check the site is running appropriately or because it isn't.
20. The public authority is correct when it says the requested information relates to the 'internal working of pieces of mechanical, electrical or civil equipment.' However, it's failed to acknowledge that this equipment is part of a wastewater treatment work or pumping station, which manage waste and pump back into the environment.
21. With this in mind, the Commissioner is satisfied the dates of visits to the works by operating staff and copies of operator logbook entries are a measure (including an administrative measure) or activity affecting or likely to affect the environment.
22. This means the public authority was obligated to deal with the request. The Commissioner notes the public authority hasn't cited any other exception in relation to this information, including regulation 12(4)(b). Therefore, it follows that the information must be disclosed.

### **Regulation 12(4)(b)**

23. Regulation 12(4)(b) of the EIR states:

'A public authority may refuse to disclose information to the extent that  
- (b) the request for information is manifestly unreasonable;'

24. The Commissioner considers that a request can be manifestly unreasonable for two reasons: firstly, if the request is vexatious and secondly where compliance with the request would incur an unreasonable burden on the public authority both in terms of costs and the diversion of resources.
25. The public authority is relying on the second theme in this instance, and it's considered this request as manifestly unreasonable alongside seven other requests of the complainant's, submitted between 22 July 2024 and 21 August 2024.
26. The public authority's position is, between 7 June 2024 and 22 July 2024, it complied with five requests of the complainant's and:

"We have already spent in excess of 18 hours complying with the completed 5 requests in the last 60 working days. Therefore, when aggregated together the cost of complying with the outstanding 8 requests would be manifestly unreasonable."

27. The public authority has taken the burden of the five requests it dealt with between June and July, and added it to the burden of complying with the seven requests it received between July and August.

28. The public authority has explained:

"Within the outstanding requests, we expect there to be a minimum of 47 different data extractions required and we expect it will take a minimum of 44 hours to respond to these requests."

29. The public authority has explained that it's aggregated the burden of complying with all of the requests and it can do so because 'all of the requests (both completed and outstanding) are for similar information in that they seek common datasets such as flow and spill data and telemetry data.'

30. There is no specific provision for the aggregation 'of substantially similar' requests under the EIR, like there is under FOIA. The Commissioner considers that there may be occasions where it is permissible to consider a number of EIR requests together when deciding if they are manifestly unreasonable because of cost or burden, and within that whether compliance with more than one request would impose a significant burden on the same team. However, strictly speaking there's no ability to aggregate requests for 'substantially similar information' under the EIR.

31. The Commissioner must consider whether compliance with the request of 29 March 2024, then later refined on 2 August 2024, would be manifestly unreasonable to deal with. As part of this deliberation, the Commissioner will take into account the burden already imposed on the public authority in dealing with previous requests of the complainant's.

32. In this instance, the Commissioner considers it relevant that the request was originally made on 29 March 2024. Under regulation 5(2) (duty to make environmental information available upon request) of the EIR, public authorities must inform the requester whether it holds the requested information and, if so, communicate that information, if not exempt, 'as soon as possible, and no later than 20 working days after the date of receipt of the request.'

33. This timeframe of 20 working days can be extended to 40 working days, if the request is particularly voluminous or complex.

34. According to the Commissioner's calculations (and taking into account bank holidays), the last day for the public authority to have complied with the timescales outlined with the EIR, and provide its response to this request, would have been 30 May 2024. The public authority didn't rely upon regulation 12(4)(b) until 30 July 2024.
35. Had the public authority provided its response to this request within the statutory timeframe, the complainant would have been in possession of the telemetry data before they went on to make their requests in June and July. The Commissioner doesn't consider it fair to take into account the burden of dealing with any requests that were submitted after the public authority had already failed, within the statutory timeframe, to provide the complainant with the information they originally requested on 29 March 2024, especially since the complainant has refined the request as advised.
36. Furthermore, looking at the calculation that the public authority has provided (paragraph 28), it appears that the average of complying with each request (or, in this case, remainder of the request) would take approximately 6.3 hours. Returning to the question of whether the public authority was entitled to rely upon regulation 12(4)(b) in the way that it has, the Commissioner doesn't consider this represents an unreasonable burden, when weighed against the public interest that the request represents and the fact that it was partially refused two months after the statutory deadline to fully comply with the request had passed.
37. In this instance, the Commissioner isn't satisfied that regulation 12(4)(b) has been relied upon appropriately, and therefore the public authority isn't entitled to rely upon it. The Commissioner notes the public authority hasn't cited any other exception in relation to this information. Therefore, it follows that the information the complainant requested in their refined request must be disclosed.

## **Procedural matters**

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38. Regulation 5(2) of the EIR states that all non-exempt information must be communicated to the requestor within twenty working days of receipt of the request. The public authority failed to do so in this instance and so breached regulation 5(2).

## **Right of appeal**

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39. 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)

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**SK9 5AF**