

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 24 November 2016

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

Decision (including any steps ordered)

1. The complainant made a request for information relating to the wastewater treatment works at Davyhulme. United Utilities refused to comply with the request as it considers it to be manifestly unreasonable under regulation 12(4)(b) EIR. It also applied regulation 12(5)(b) EIR. During the course of the Commissioner's investigation United Utilities voluntarily disclosed some of the requested information to the complainant, this was information that it had also disclosed to the complainant within the context of ongoing legal proceedings. It did however uphold its application of regulation 12(4)(b) and 12(5)(b) EIR.
2. The Commissioner's decision is that United Utilities has correctly applied regulation 12(4)(b) EIR to the request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 18 November 2015 the complainant made the following request for information:

Activity generating type of environmental information requested	Environmental information requested	Date range required
1. Pollution incidents	Details of all recorded and reported pollution incidents to Manchester Ship Canal linked to Davyhulme WwTW	2004 to 2015 inclusive
2. Recording/returning WwTW's Population Equivalent values	Changes to Population Equivalent (PE) values for Davyhulme WwTW	PE values for each year from 1991 to 2015 inclusive
3. Compliance Monitoring	Operational and regulatory sampling data for discharges to the Manchester Ship Canal from Davyhulme WwTW	2004 to 2015 inclusive
4. Compliance Monitoring	Operations and regulatory sampling data for discharges to the Manchester Ship Canal for the stormwater discharges made at Davyhulme WwTW	2004 to 2015 inclusive
5. Tankering of wastewater	Details of the volumes and load records for all wastes and wastewater tankered into Davyhulme WwTW	2004 to 2015 inclusive
6. Maintenance of assets	Details of (1) the number and duration of sewer pumping failures within the sewerage network to Davyhulme WwTW and (2) the causes of failure.	2004 to 2015 inclusive
7. Maintenance of assets	Details of (1) the number and duration of sewer collapses and blockages within the sewerage network to Davyhulme WwTW and (2) the causes of these incidents	2004 to 2015 inclusive
8. Maintenance of assets	Details of the number and duration of sewerage treatment works process failures as recorded on the U UW maintenance system for Davyhulme WwTW	2004 to 2015 inclusive

5. United Utilities responded on 19 January 2016 and stated that the information requested at parts 6, 7 and 8 did not fall under the EIR. It cited regulation 12(4)(b) EIR with regard to the remaining requested information.
6. In the complainant's request for review, the requests at parts 6 and 7 were revised. At the end of point 1 within part 6 and 7 of the request, the complainant added the following wording: 'and where the effect

would be a discharge from an overflow outfall into the MSC [Manchester Ship Canal]'. United Utilities provided an internal review on 5 April 2016. It said that it would proceed on the basis that parts 6, 7 and 8 of the request were covered by EIR. It upheld its application of regulation 12(4)(b) EIR and in addition cited regulation 12(5)(b) EIR.

Scope of the case

7. The complainant contacted the Commissioner on 3 May 2016 to complain about the way his requests for information had been handled.
8. During the course of the Commissioner's investigation United Utilities voluntarily disclosed some of the requested information to the complainant, this was information that it had also disclosed to the complainant within the context of ongoing legal proceedings.
9. The Commissioner has considered whether United Utilities correctly applied regulations 12(4)(b) or 12(5)(b) EIR in this case.

Reasons for decision

10. The Commissioner has considered the application of regulation 12(4)(b) EIR in the first instance as United Utilities has not collated all of the requested information as it considers that it would be manifestly unreasonable to do so.
11. Regulation 12(4)(b) provides that a public authority may refuse to disclose information to the extent that - the request for information is manifestly unreasonable. In this case United Utilities considers that the request is manifestly unreasonable because of the time and cost implications of compliance.
12. United Utilities considers that the exception under Regulation 12(4)(b) of the EIR applies in respect of the requests. It said that the requests include numerous categories of information and a vast amount of data, one of the requests extends back over 24 years (i.e. from 1991 to 2015), the other 7 requests extend back over 11 years (i.e. from 2004 to 2015).
13. United Utilities has therefore considered how these requests, which are specified to relate to these periods, might be refined but it has been unable to see how they could be.
14. In terms of the time it would take United Utilities to carry out the exercise of seeking to locate, retrieve, assess for relevance and collate the information sought by the eight requests for information for these

periods of time, it said that this would be significantly in excess of 18 hours.

15. United Utilities has referred to the cost limit set out under the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as a starting point to assess the reasonableness of this request. Whilst these Regulations do not apply under EIR, United Utilities has highlighted that the Commissioner has recognised in her Guidance that "...we take these regulations to give a clear indication of what Parliament considered to be a reasonable charge for staff time."
16. The regulations stipulate that a cost estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request - 24 hours work for central government departments; 18 hours work for all other public authorities. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.
17. The Commissioner is satisfied that it is reasonable to use the Regulations as a starting point under EIR, but all of the circumstances of the case must be taken into account to determine whether a request can be deemed manifestly unreasonable on the grounds of cost under EIR.
18. Based on the scope of the request, United Utilities has estimated that the resources required to provide the data would involve:
 - approximately seven to nine data analysts;
 - approximately 85 hours on retrieval of data across multiple sources and systems,
 - accessing several databases and potentially accessing archived records; and
 - the collation of what United Utilities estimates to be over 10,000 paper based records. It said given the scale of this endeavour, it is very difficult to estimate the exact resource allocation required for this exercise.

19. It went on that the above work would provide the raw data. However, to correctly interpret and gain a clear understanding of that data, United Utilities would then need to provide additional explanations of the codes, classification/categorisations and terminology used and the criteria under which they are used. Documenting such explanations of the contents of database extracts, which in some instances contain as many as 120 fields, would potentially require several more hours of work per extract. Releasing data into the public domain without providing this contextual information supplied by United Utilities Subject Matter Experts (SME) would at best, greatly diminish the value of the release to the public and at worst, involve the disclosure of data that is incomplete and misleading.
20. United Utilities said that as all the requests relate to the same or similar information and the requests have been received within 60 days of each other, it considers that it is entitled to aggregate the time and costs of dealing with each individual request.
21. Furthermore, it said that in *Dransfield v Information Commissioner and Devon County Council* [2015] EWCA Civ 454 (14 May 2015); the Court of Appeal upheld the Upper Tribunal's decision that a public authority could take into account the costs of compliance with a request for the purposes of determining whether a request was manifestly unreasonable, if those costs were too high. In this case United Utilities considers that it is clear that the time and costs involved in United Utilities responding to the requests would be manifestly unreasonable.
22. The Commissioner has considered the requests, made on the same day, within the same correspondence and for the same or similar information, together. She has therefore considered whether, taken together, the requests are manifestly unreasonable. Given the fact that parts 1 and 3-8 of the request span an 11 year time frame and part 2 of the request spans a 24 year time frame and the requests cover numerous categories of information, this is going to incorporate a vast amount of data. United Utilities has estimated that this is likely to cover over 10,000 paper based records.
23. Given the extremely wide time frame of the requests, the numerous categories of information covered and the number of records that would need to be searched to collate the required information, the Commissioner considers that it would be manifestly unreasonable to comply with the requests without going on to consider United Utilities' arguments relating to the need to provide contextual information alongside any disclosure. The Commissioner has not therefore gone on to consider this part of United Utilities' submission any further.

24. As the Commissioner does consider that regulation 12(4)(b) EIR has been correctly engaged by United Utilities, she has therefore gone on to consider the public interest test.

Public interest test

Public interest in favour of disclosure

25. United Utilities recognised that there is a legitimate public interest in being transparent with information about the environment to which the public has access.
26. However it said that the request for information was made in the context of a private asset which the requester owns, and to which the public at large has little (if any) access. It argued that this is therefore not in the wider public interest.
27. Under Part 31.16 of the Civil Procedure Rules, United Utilities has made pre-action disclosure of certain specific categories of information within the scope of the request where appropriate. It said therefore, the fact that some information has been provided goes some way to meeting the wider public interest in this case.

Public interest in favour of maintaining the exception

28. It said however that there is a strong public interest in maintaining the exception due to the unreasonable burden that compliance with these requests in their entirety would place on United Utilities.

Balance of the public interest

29. The complainant has requested this information from United Utilities on this case because of an ongoing legal dispute. The private interests of the complainant are not the same as the wider public interest. That is not to say that there is no public interest in disclosure of the requested information, there is a general public interest in being transparent with information about the environment
30. The Commissioner is also aware that United Utilities has made some limited disclosure under EIR because some information had to be provided anyway within the context of ongoing legal proceedings. This does go some way to meeting any wider public interest in disclosure.
31. However there is a strong public interest in not placing a manifestly unreasonable burden upon public authorities and in this case due to the wide time frames of the requests, the numerous categories of information covered and the number of records that would need to be searched to collate the required information, it would be manifestly unreasonable to comply with it.

32. On balance, the Commissioner considers that in this case, the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exception.
33. As the Commissioner considers that regulation 12(4)(b) EIR was correctly engaged in this case, she has not gone on to consider the application of regulation 12(5)(b) EIR any further.

Right of appeal

34. 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:

GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

35. 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.
36. 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

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF