

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

**Decision notice**

**Date:** 13 February 2017

**Public Authority:** Southern Water  
**Address:** Southern House  
Yeoman Road  
Worthing  
BN13 3NX

**Decision (including any steps ordered)**

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1. The complainant has requested the location of all wastewater treatment works (WTW's) in Southern Water's area, including addresses and grid references. Southern Water provided a list of names of WTW's and their postal towns but withheld the more specific location information on the basis of regulation 12(5)(a). Later in the investigation, Southern Water also sought to apply regulation 12(4)(b).
2. The Commissioner's decision is that the regulation 12(5)(a) is engaged and the public interest favours maintaining the exception. No steps are required of Southern Water.

**Request and response**

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3. On 25 April 2016, the complainant wrote to Southern Water and requested information in the following terms:

*"The information which we seek is the location of all sewage treatment works in your area with address and eastings/northings or grid references if available."*

4. Southern Water responded on 11 May 2016. It provided a list of Wastewater Treatment Works (WTWs) that it operated and knew about in the area but stated there may be other WTWs it was unaware of. Southern Water stated it did not disclose locations or addresses of its

assets as it would adversely affect public safety in relation to possible terrorist activity targeted at public infrastructures.

5. Following an internal review Southern Water wrote to the complainant on 25 May 2016. It stated that it upheld its position and this time cited regulation 12(5)(a) specifically. Southern Water did not treat this as an internal review response but the Commissioner considered this addressed the expression of dissatisfaction made by the complainant at the refusal of his request and the complaint was accepted for investigation.
6. In any event, during the Commissioner's investigation a further internal review response was sent to the complainant on 1 August 2016 upholding its use of the regulation 12(5)(a) exception and adding some further explanations for this.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 25 May 2016 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation, Southern Water also sought to introduce regulation 12(4)(b) and the Commissioner therefore considers the scope of her investigation to be determine if Southern Water has correctly applied the regulation 12(4)(b) or 12(5)(a) exception to withhold the locations and addresses of its WTWs and, if so, where the balance of the public interest lies.

### **Reasons for decision**

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#### **Regulation 12(5)(a) – international relations, defence, national security, public safety**

9. Regulation 12(5)(a) of the EIR sets out an exception to the duty to disclose environmental information where disclosure would adversely affect international relations, defence, national security or public safety.
10. Southern Water has explained to the Commissioner that it has applied the exception in regulation 12(5)(a) to withhold the locations and eastings/northings or grid references of all its sewage treatment works on the basis that disclosure of the locations to this level of detail (over and above the list of WTW's known about by Southern Water that had already been disclosed) could potentially lead to outcomes which could impact on national security and public safety.

11. The information in question is not currently in the public domain to the extent that there is a list of all of Southern Water's WTW's with locations and grid references publicly available. That being said, the locations of WTW's are not kept secret and more often than not WTW's are clearly signed outside their entrances.
12. Southern Water states that it's WTW's form part of the national water infrastructure. It points to the DEFRA guidance on the EIR which states at paragraph 7.5.2.3 that:

*"National security information might have a defence context but it could also extend more widely. For example, information about the national utility infrastructure could require protection for reasons of national security."*
13. Southern Water argues the information being withheld could be aggregated with information already known or in the public domain to determine how national utilities infrastructure relates to other critical infrastructure such as schools, hospitals and government departments as well as how services are provided to the general population. In support of this argument Southern Water has referenced an Information Tribunal decision<sup>1</sup> in which the Tribunal acknowledged the 'mosaic effect' is a legitimate argument where the disclosure of withheld information combined with other information in the public domain could assist in terrorist or other serious incidents.
14. Perhaps more analogous to this request is *Ofcom v IC & T-Mobile*<sup>2</sup> in which the Tribunal considered a request for the locations, ownership and technical attributes of mobile phone cellular base stations. The public authority in this case stated that much of the information was publicly available via a website which gave locations. However, the complainant specifically requested grid references which were withheld under regulation 12(5)(a). The Tribunal found that there was reason for concern about disclosure of grid references and in increase in criminal activities at base station sites as grid references provide a much greater degree of accuracy to locations.

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<sup>1</sup> *Burt v IC & Ministry of Defence (EA/2011/0004)*  
[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i574/20110920%20Decision%20\(Reviewed\)%20EA20110004.pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i574/20110920%20Decision%20(Reviewed)%20EA20110004.pdf)

<sup>2</sup> EA/2006/0078  
<http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i104/Ofcom.pdf>

15. However, to accept this argument in this case the Commissioner must be satisfied that providing information which gives a reasonably precise location for WTW's would be likely to result in increased criminal activity and therefore pose a risk to public safety or national security.
16. On this point, Southern Water has explained that low level crime at its sites is not at all uncommon and disclosing the withheld information would likely lead to an increase in such incidents. The Tribunal in the Ofcom case did accept that disclosure of phone mast locations could assist low level crime and the Commissioner accepts the arguments of Southern Water in this case as it has demonstrated that low level criminal activities do occur and it is reasonable to speculate that disclosing this information into the public domain may increase the risk of this happening. Following through on this argument, the Commissioner recognises that criminal activity at WTW's may adversely affect public safety as it could cause a risk to the water supply if the treatment process is interfered with.
17. The argument that disclosure might impact on national security also cannot be ignored, the UK National Threat Level has been set at "Severe" for quite some time, meaning a threat is likely. The withheld information does reveal a greater level of detail about a public infrastructure than is currently publicly available and it cannot be dismissed that this information could be of use to individuals wanting to commit acts of terrorism by targeting the water supply.
18. It is not clear how easy it would be for any willing individual to contaminate or interfere with the treated water at one of the WTW's. It is also not clear how anyone could identify which WTW supplied a particular hospital, school or government building so as to target it and Southern Water has not expanded on this point.
19. However, the Commissioner has previously considered a similar scenario in a decision notice<sup>3</sup> looking at a request for the exact locations of all fire hydrants used by West Midlands Fire Service. In that case, she found that disclosing exact locations could assist in an attack on the water supply and although the complainant would argue that the location of hydrants could be found out as they are clearly visible, disclosing a complete list of all exact locations would put additional information into the public domain than was previously available just from the visibility of the hydrants.

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<sup>3</sup> FS50585724

20. This is certainly a similar situation, WTWs locations may be known by members of local communities but putting a list of their locations with grid references into a list would provide more information into the public domain than is already available. That being said, there is still the issue of how plausible an attack might be. On this point, the Commissioner has taken account of the Information Tribunal's decision<sup>4</sup> when reviewing the aforementioned decision notice. The Information Tribunal placed particular emphasis on an article "Securing Our Water Supply, Protecting a Vulnerable Resource" which it considered provided "*significant indications of potential threats to the water supply system*".
21. On this basis, the Commissioner therefore concludes that an attack on the water supply infrastructure would be an issue of national security, the information requested could be used to assist in the planning of an attack and it is plausible, no matter how remotely, that an attack involving water contamination could occur. As such, she is satisfied that the exception as set out in regulation 12(5)(a) of the EIR has been correctly applied to the withheld information, and has now gone on to consider whether, in all the circumstances of the case, the public interest in maintaining the exception outweighs that in disclosure of the withheld information.

*Public interest arguments in favour of disclosing the withheld information*

22. Southern Water recognises there is a general public interest in transparency in relation to environmental information contributing to greater awareness of environmental factors, a free exchange of views, more effective participation in environmental decision-making and a better environment.
23. The complainant argues that other water companies have had no issues with disclosing the requested information in full therefore undermining the argument that disclosure would have an adverse effect on public safety and national security.
24. He also argues that as Southern Water has already supplied a list of locations, which the Commissioner notes includes the name of the WTW's with the name of the postal town; it cannot be argued that supplying a more precise location would endanger national security any more than the disclosure of the names and postal towns already would.

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[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1830/Mabbett,Andy%20\(EA.2015.0288\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1830/Mabbett,Andy%20(EA.2015.0288).pdf)

25. The complainant has explained that the information would be useful to those wanting to buy properties as they would be able to establish precisely how far properties are from the nearest WTW. This would be in the public interest for prospective buyers.

*Public interest arguments in favour of maintaining the exception*

26. Southern Water strongly argues that disclosing the information in an aggregated form that would aid or assist those who wish to do serious harm is inherently contrary to the public interest.
27. Southern Water also points to the Commissioner's own guidance on national security<sup>5</sup> which states at paragraph 36 that "*relatively mundane information about primarily civil infrastructure could also be of use to terrorists and therefore could attract the exception provided by regulation 12(5)(a).*"

*Balance of the public interest arguments*

28. The Commissioner considers that some weight must always be given to the general principle of achieving accountability and transparency through the disclosure of information.
29. Disclosure in this case would lead to greater transparency and would provide the public with an increased knowledge of the location of WTWs. This would be of some public interest as the information would then be readily available to interested individuals to search and analyse. There is likely to be a general public interest in this information as locations of major public infrastructure will generate some interest from prospective residents or home buyers, whether this is WTW's, mobile phone masts or gas works.
30. Balanced against this is the increased risk to national security. There is an inherent weight and significance of national security as a matter of fundamental public interest. In accepting the exception is engaged, the Commissioner is acknowledging there is a possibility the information in question could be used in an attack and to override the public interest in national security the public interest in disclosure would need to be high.
31. The Commissioner does accept there are arguments for disclosure in this case but the information would likely only be of interest to certain

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<sup>5</sup> [https://ico.org.uk/media/for-organisations/documents/1633/eir\\_international\\_relations\\_defence\\_national\\_security\\_public\\_safety.pdf](https://ico.org.uk/media/for-organisations/documents/1633/eir_international_relations_defence_national_security_public_safety.pdf)

groups and individuals and not to the wider public. She does not consider therefore that this is sufficient to outweigh the inherent public interest in preserving national security when it has been demonstrated and argued that there is a potential threat to the water supply if the information were to be disclosed.

32. On this basis, the Commissioner has found that the public interest arguments in favour of maintaining the exception outweigh those in favour of disclosure. She therefore considers that the exception set out in regulation 12(5)(a) does provide a basis for withholding the remaining information.

## Right of appeal

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33. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. 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.
35. 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** .....

**Pamela Clements**  
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