

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

Decision notice

Date: 18 February 2020

Public Authority: Northumbrian Water Limited
Address: Abbey Road
Pity Me
Durham
DH1 5FJ

Decision (including any steps ordered)

1. The complainant requested information about the locations of flow rates relating to the Whitburn Steel sewage pumping station. Northumbrian Water Limited refused to disclose the information under regulation 12(4)(b) of the EIR (manifestly unreasonable request) and considered the public interest favoured maintaining the exception.
2. The Commissioner's decision is that Northumbrian Water Limited could rely on regulation 12(4)(b) to refuse to disclose the requested information and that the public interest favoured maintaining the exception.
3. The Commissioner does not require Northumbrian Water Limited to take any remedial steps.

Request and response

4. The complainant has long-standing concerns about pollution in the coastal waters of Whitburn, Seaham and Sunderland. On 5 August 2019, the complainant wrote to Northumbrian Water Limited (NWL) and requested information in the following terms:

"This is a complaint and also a request for information under the EIRs, requesting the information below that the EA [the Environment Agency] claim NWL hold..

"...I refer to your telephone conversation with [Redacted] at 13 June 2019 requesting exact locations for the flow rates detailed in the Whitburn Steel Station Pumping Station permit (Ref 2451207) at the following points:

- Seaburn: SU51, SU52, SU53, SU66, SU67*
 - Roker: SU65, SU70, SU71, SU72""*
5. NWL responded on 19 August 2019. It refused to disclose the requested information. It categorised it as 'manifestly unreasonable' under regulation 12(4)(b) of the EIR and said the public interest favoured maintaining the exception.
 6. Following an internal review NWL wrote to the complainant on 7 October 2019. It maintained its position that the request was manifestly unreasonable.

Scope of the case

7. The complainant contacted the Commissioner on 29 October 2019 to complain about the way his request for information had been handled.
 8. Given the wider circumstances, the Commissioner advised the complainant that she was likely to find that NWL could rely on regulation 12(4)(b) to refuse to disclose the information. The complainant preferred not to withdraw his complaint and for the matter to be concluded through a formal decision notice.
 9. The Commissioner's investigation has focussed on NWL's application of regulation 12(4)(b) to the request, and the associated public interest test.
 10. Given the background to the request and resulting complaint – which is discussed in the notice – the Commissioner did not consider it necessary to request a submission from NWL on this occasion. Had she needed further information from NWL however she would, of course, have approached NWL for this.
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Reasons for decision

11. Regulation 12(4)(b) of the EIR says that a public authority may refuse to disclose information to the extent that the request is 'manifestly unreasonable'. This exception can be used when a request is vexatious or when the cost of complying with a request would be too great. In this case, NWL considers the complainant's request to be vexatious (the equivalent of section 14(1) of the FOIA).
12. The Commissioner considers that the inclusion of 'manifestly' in regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under the exception, the information request must meet a more stringent test than simply being 'unreasonable'. 'Manifestly' means that there must be an obvious or tangible quality to the unreasonableness of complying with the request.
13. In line with her published guidance on manifestly unreasonable requests, the Commissioner considers whether the request itself is manifestly unreasonable rather than the individual submitting it. Sometimes, it will be patently obvious that a request is manifestly unreasonable. In cases where it is not so clear cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request. Public authorities may also consider the context and history of the request where relevant.
14. Where the exception is engaged it is subject to a public interest test under regulation 12(1)(b) to determine whether the information should be disclosed in spite of the exception applying.
15. In its internal review response to the complainant NWL referred to the Commissioner's decision in [FER0667011](#) dated 3 August 2017. That case concerned the complainant and NWL. The Commissioner decided that NWL could rely on regulation 12(4)(b) to refuse to disclose information, again about Whitburn Steel pumping station, that the complainant had requested.
16. In FER0667011 the Commissioner had referred to seven separate cases involving the complainant and his complaints against Defra, the Environment Agency and NWL; all of which broadly concerned the pumping station at Whitburn Steel. The earlier case involving NWL – [FS50598562](#) – was from February 2016. The Commissioner had upheld NWL's application of regulation 12(4)(b) on that occasion because she found that NWL had already provided the complainant with the

information he had requested. The complainant had appealed the Commissioner's decision in FS50598562 but the First-tier Tribunal (Information Rights) had dismissed his appeal.

17. In FS50598562 NWL had noted that the complainant had been corresponding with it about the Whitburn Steel sewage system for over twenty years – at the point of the current request it is therefore approximately 24 years. NWL had noted that at October 2015 it had received over 280 contacts from the complainant, excluding correspondence between solicitors and correspondence between NWL and other organisations involved in the complainant's many complaints.
18. In the internal review associated with FS50598562, NWL had referred to a Public Inquiry on the subject of Whitburn Steel pumping station that had taken place in 2001. It considered that its meetings [with the complainant], telephone calls, legal action and internal reviews followed by investigations by the Commissioner, and the Public Inquiry, which all spanned a period of 23 years at that point, and which concerned the same topic, demonstrated that it had done everything possible to advise and assist the complainant. NWL observed that much of the information and assistance it had given to him had been provided voluntarily, before the water industry was subject to the EIR.
19. Referring to the Commissioner's decision in a separate case - FER0230659 - which concerned the complainant and the Environment Agency, NWL had noted that the Commissioner had stated that, in considering regulation 12(4)(b), a relevant factor would be "*whether the complainant had already received a great deal of information on the subject of his request.*" NWL had confirmed that it considered that the complainant had already received vast amounts of information on the subject of Whitburn Steel pumping station, from it and from other public authorities.
20. In the FER0667011 decision NWL had also referred to paragraph 23 of her decision in FS50598562 in which the Commissioner had noted the length of time the complainant had been interacting with NWL and other public authorities. The Commissioner had considered this demonstrated an unreasonable persistence and an obsessive element running through the complainant's requests.
21. NWL went on to refer to the indicators of vexatiousness that are given in the Commissioner's related published guidance. It had discussed various of these in its internal review of its response to that earlier request and had provided further arguments for these indicators in its submission to the Commissioner. These arguments are detailed at length in FER0667011 and the Commissioner does not intend to duplicate them here. She is satisfied that the circumstances have not

changed in the interim period and that the current request meets the same criteria for vexatiousness: disproportionate burden and distraction; request designed to cause disruption or annoyance; harassment or distress to staff and obsessive nature of the request.

Commissioner's conclusion

22. Having considered all the circumstances of this case, and as in her decisions in FER0667011 and FS50598562, the Commissioner considers that the complainant continues to demonstrate an unreasonable persistence regarding his concern about Whitburn Steel pumping station. She considers that there remains an obsessive quality to his previous requests to other authorities, including NWL, and this most recent request to NWL. This is because of the length of time the complainant has been corresponding with NWL on this matter (over 24 years); the fact that the matter has been considered independently at a Public Inquiry; and the complainant's interaction with other public authorities on this matter under EIR.
37. The Commissioner considers that any serious purpose or value behind the complainant's request is further diminished by the fact that his previous related requests have already been answered. It therefore continues to be very difficult to justify NWL allocating any time to complying with the current request. This would effectively keep re-opened a topic that has been long since been independently concluded.
38. The Commissioner is satisfied that NWL has correctly applied regulation 12(4)(b) to the request in this case as the request can be categorised as manifestly unreasonable.

Public Interest Test

Public interest arguments in favour of disclosing the information

39. The complainant has provided the Commissioner with material which he considers supports his position that NWL should disclose the information he has requested. Some of this material post-dates the request, NWL's response and the review response; some of the material is from 2013 and does not have an obvious connection with the complainant's request. The Commissioner does not consider the material the complainant has sent to her makes a compelling or coherent case for disclosure at the time of the request.
40. In its internal review response, NWL referred to the decision in FER0667011, in which FS50598562 was also discussed. The Commissioner understands that its public interest arguments for the current case are the same as those discussed in FER0667011. NWL

acknowledged in that case that there is a strong public interest in the operation of the Whitburn Steel sewage pumping station, given the potential impacts on bathing water quality and public health. As the ICO had noted in the FS50598562 decision notice the subject matter "*has been deemed of significant public importance to be the subject of a Public Inquiry.*"

Public interest arguments in favour of maintaining the exception

41. In FER0667011 NWL said that over the years a great deal has been done to meet the above public interest. For example, the Public Inquiry in 2001 which lasted eleven days and focussed on the sewer network. A large amount of information was disclosed as part of this Inquiry in the form of a document bundle to all those attending. The Inquiry was conclusive, and the public interest in reopening a matter which was extensively discussed and concluded approximately 20 ago, at this point, appeared limited.
42. NWL referred to other, extensive, disclosures over the years under the EIR; these were disclosures of information into the public domain. It said there have also been several investigations by the Commissioner which further substantiated its view that these disclosures had contributed to informing the public interest.
43. NWL said it had also undertaken a large project at Whitburn in response to the results of the Public Inquiry. To inform the public, it had set up an online community portal at:

<https://nwlcommunityportal.co.uk/Projects/sunderland/Activity>
44. NWL had also run a customer hub at Roker Baths Road, where any member of the public could drop in to find out more about the project. Its Information Access Team had liaised with the project team to ensure that any more detailed requests for information could be handled in line with its obligations under the EIR. There had also been numerous mailings to households in the affected area to ensure that local residents were fully informed about the project and how they might be affected by the work.
45. NWL noted that the complainant's focus was on his business specifically, not the wider area. It said that, at the point of FER0667011, it had not received any other requests for information on this topic from anyone else that required a response under the EIR.

46. Finally, NWL referred to the Commissioner's decision in FER0557144 on this issue. That case concerned the complainant, Defra and Whitburn Steel pumping station. NWL noted that the Commissioner had taken account of the numerous requests the complainant had already made for information on this topic and had stated that the requests were diverting Defra, and other authorities, away from carrying out their overall statutory function, which was not in the public interest.

Balance of the public interest

47. The Commissioner has not been presented with any new evidence that has persuaded her that, at the time of the current request, there was a strong public interest in disclosing the requested information; she is satisfied that the public interest again favoured maintaining the exception.

Right of appeal

48. 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

49. 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.
50. 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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