

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 3 February 2022

Public Authority: Thames Water Utilities Ltd
Address: Clearwater Court
Vastern Road
Reading
RG1 8DB

Decision (including any steps ordered)

1. The complainant has requested copies of correspondence from Thames Water Utilities Ltd (Thames Water) relating to a particular planning application. Thames Water initially refused to provide the information it held, citing regulation 12(5)(e) – commercial confidentiality. After the Commissioner had begun his investigation, Thames Water withdrew its reliance on that exception and relied instead upon regulation 12(4)(d). That too was later withdrawn in favour of regulation 12(5)(f) – interests of the information provider. It also cited regulation 13 concerning third party personal data it had withheld. Some information was disclosed over the course of the investigation when it was located by Thames Water. The Commissioner has also considered whether Thames Water holds any further information.
2. The Commissioner's decision is that Thames Water cited regulation 12(5)(f) inappropriately and that the exception is not engaged. He has decided that Thames Water has cited regulation 13 inappropriately concerning the majority of the personal data it sought to withhold. He has also concluded that, on the balance of probability, Thames Water does not hold any further recorded information within the scope of the request. The Commissioner finds that Thames Water did not comply with its obligation under regulation 5(2)(time limit for compliance) of the EIR

as it did not provide the additional information to the complainant within the statutory time limit of 20 working days.

3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the whole pre-planning enquiry application form, dated 18 March 2020, with appropriate redaction for personal contact details only.
 - Disclose the whole Thames Water advice following the pre-planning, dated 15 May 2020, with appropriate redaction for any personal contact details of the Thames Water employee.
 - Disclose the whole of the Notice of Consent (7 July 2020) with the exception of the signature at the end.
 - Disclose the redacted name on the 106 application but not the personal telephone number and signature.
 - Disclose the redacted name of the individual on the letter above the 20 May 2020 email. Disclose the name and job role of the employee of Thames Water in the same letter.
 - Disclose the 20 May 2020 email but redact the personal email address and telephone number of the individual who sent the email.
4. The public authority must take these steps within 35 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

5. On 13 February 2021 the complainant made the following request for information under FOIA –

“[redacted] Please provide COPIES of any information relating to the proposed foul and/or surface water discharge from the above development into the public foul sewer. This should include but not be restricted to the following:

- any that relates to pre-planning or connection applications etc by the owner/developer,
- any that relates to consultation by the

approved inspector [redacted], and
-- any that relates to consultation by the local planning authority or lead local flood authority.

NB the requested information is NOT restricted to correspondence which would have been from a 'planning application perspective'. The information requested concerns property development AND planning information. This is information that relates to measures affecting the elements of the environment and is thus environmental information as defined by Regulation 2(1) of the EIR...

By regulation 12(2), the authority must apply a presumption in favour of disclosure, in both engaging exceptions and carrying out the public interest test. The information provided should be redacted ONLY as required by legislation. Please note, I do not challenge the withholding of any personal names, email addresses and/or telephone numbers etc that the information might contain."

6. Thames Water responded on 12 March 2021 and refused to provide the requested information citing regulation 12(5)(e) – commercial confidentiality.
7. On 21 March 2021 the complainant made a review request, stating that Thames Water had not explained why it had cited this exception, that it had not conducted a public interest test, and that it had not applied the presumption in favour of disclosure (Regulation 12(2)).
8. Thames Water provided an internal review on 26 April 2021 in which it maintained its original position.
9. On 30 April 2021 the complainant told Thames Water that the review had not answered all his questions.
10. Thames Water responded on 5 May 2021, however the complainant replied on 6 May 2021 to say that his questions had still not been answered.

Scope of the case

11. The complainant contacted the Commissioner on 13 May 2021 to complain about the way his request for information had been handled and the fact that Thames Water had refused to provide the information he had requested.

12. On 11 November 2021, Thames Water responded to the Commissioner's investigation letter by stating that it had not cited the correct exception and should have cited regulation 12(4)(d) – material in the course of completion and that the citing of regulation 12(5)(e) had been incorrect. Thames Water explained to the Commissioner, and in a later email to the complainant, that it had located further information consisting of the following that fell within the scope of the request:

- Application to connect to the foul sewer from the developer and supporting evidence - dated 19 May 2020.
- Thames Water approval – notice of consent to indirectly connect to the public sewer - dated 7 July 2020.
- Email correspondence between Developer Services and [redacted name] during November 2020 raising concerns over the development at [redacted address].

However, part of the application to connect to the foul sewer was missing.

13. The Commissioner telephoned Thames Water on 15 December 2021 where it was confirmed that it was no longer citing regulation 12(5)(e). When asked about the change to regulation 12(4)(d), Thames Water stated that it was considering changing the exception to regulation 12(5)(f). Thames Water confirmed that the withheld documents had been withheld in their entirety. None of the new information that had been located had yet been released to the complainant. Thames Water explained its position that it was likely that the complainant was already in possession of the emails which formed part of the scope as they contained his own personal data.

14. On 16 December 2021, Thames Water copied the Commissioner into an email send to the complainant where some recently located incomplete information was disclosed and confirmed that it was relying on regulation 12(5)(f) to withhold the remaining information.

15. In light of these changes, the Commissioner wrote again to Thames Water on 21 December 2021 in order to obtain further arguments regarding the new exception being cited. As the complainant was not satisfied with the missing pages from the disclosure made on 16 December 2021, the Commissioner also asked questions designed to establish whether Thames Water had identified all the information it held within the scope of the request.

16. Thames Water responded on 7 January 2022 with further argument. In this email it confirmed that it was now relying on regulation 12(5)(f) – interests of the information provider - for the pre-planning information

for the development and any supporting emails. Thames Water also cited regulation 13 for the personal data of a third party. In the same email Thames Water explained that, having conducted further searches, it had located the missing pages of the application to connect to the foul sewer.

17. On 13 January 2022 Thames Water wrote to the complainant and explained that it had located the missing pages from the application to connect to the foul sewer and was disclosing that information, along with payment details for the 106 application form.
18. Although the complainant had stated in his request that he did not require personal data, he later queried the extent of the redactions and the basis of withholding names he considered to be in the public domain. Therefore the Commissioner extended the investigation to include the withholding of personal data and wrote to Thames Water on 17 January 2022 with further questions.
19. In view of the above, the Commissioner considers the scope of this case to be Thames Water's citing of regulation 12(5)(f) – interests of the information provider, regulation 13 – third party personal data to the withheld/redacted information and whether Thames Water holds any further information than it has already provided or withheld. The Commissioner will also consider any procedural matters that have occurred.

Reasons for decision

Is the information environmental information for the purposes of the EIR?

20. Regulation 2(1) of the EIR defines environmental information as any information in any material form 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) and (b) 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)'

21. The requested information relates to an application by a developer to drain a property of foul water. This is clearly an environmental measure that will affect the elements of the environment referred to in (a) and (b) and therefore falls under regulation 2(1)(c) of the EIR.

Regulation 12(5)(f) – interests of the person who provided the information to the public authority

22. Regulation 12(5)(f) clearly sets out a number of criteria which must be met for this exception to be engaged, namely:

(i) the person was not under any legal obligation to supply that information to any public authority;

(ii) the person supplying the information did not supply it in circumstances in which the public authority is entitled, apart from under the EIR, to disclose it; and

(iii) the person supplying the information has not consented to its disclosure.

23. The Commissioner's guidance¹ explains that its purpose is to protect the voluntary supply to public authorities of information that might not

¹ [eir_voluntary_supply_of_information_regulation.pdf \(ico.org.uk\)](http://ico.org.uk/eir_voluntary_supply_of_information_regulation.pdf)

otherwise be made available to them. In such circumstances a public authority may refuse disclosure when it would adversely affect the interests of the information provider. The wording of the exception makes it clear that the adverse effect has to be to the person or organisation providing the information rather than to the public authority that holds the information. As with all the exceptions in regulation 12(5), the threshold necessary to justify non-disclosure, because of adverse effect, is a high one. The effect must be on the interests of the person who voluntarily provided the information and it must be adverse.

24. To engage the exception, as recognised by the Information Tribunal, a four stage test has to be considered:

- Was the person under, or could they have been put under, any legal obligation to supply the information to the public authority?
- Did the person supply the information in circumstances where the recipient public authority, or any other public authority, was entitled to disclose it apart from under the EIR?
- Has the person supplying the information consented to its disclosure?
- Would disclosure adversely affect the interests of the person who provided the information to the public authority?

25. Thames Water confirmed to the complainant the information it was withholding under this exception as follows:

- Application for pre-planning advice submitted by a consultant - dated 18th March 2020.
- Thames Water advice following the pre-planning - dated 15th May 2020

This information has been provided to the Commissioner. He has also considered the redacted information that was provided to him:

- The 106 application.
- The notice of consent, dated 7 July 2020.
- A letter to the applicant (undated), above an email from 20 May 2020.

The complainant's view

26. The complainant contended that,

- "TW have **not** demonstrated **what** adverse effects would be caused to those who provided the information, **or** that those adverse effects would be significant rather than trivial **and** that the harm is more likely than not to happen.
 - Even if they can show that the exception is engaged, TW have **not** shown how the public interest in maintaining the exception would outweigh that in disclosure."
27. He questioned whether proper consultation had taken place and the relevant checks made by all parties in order that existing problems caused by flooding are not exacerbated.

Thames Water's view

28. Thames Water listed the criteria that apply to this exception and the reasons why it had met the criteria:
- The applicant was not under any legal obligation to supply the pre-planning information to Thames Water. They did so on a voluntary basis to consult with it about the proposed development plans.
 - Thames Water has no obligation to disclose the pre-planning information other than to the applicant making the pre-planning request for advice.
 - Consent to disclose is not requested by Thames Water therefore it does not exist.
29. It added that until 'full' planning applications are received (where the development meets the criteria of more than 10 dwellings or 1 hectare) any information is voluntary and the applicant is not obliged to share it with Thames Water. It may be subject to change and may not accurately reflect the full application.
30. Thames Water wants to encourage those creating plans to develop an area within its region to engage with it early on in the planning of the development. This benefits the developer as it avoids delays, provides fast answers concerning capacity, provides planning evidence in support of a planning application and is free of charge. Thames Water then lists the adverse effects that would be caused by making pre-planning applications public:
- The information could be speculative and subject to change.
 - Information could show intention to purchase land/property and therefore have commercial implications for the developer.

- Releasing information prematurely could cause unnecessary concern by the local community, in particular that of the residents.

The Commissioner's view

31. The Commissioner agrees that Thames Water has met the first three criteria for this exception to be engaged - the provider of the information was not under any legal obligation to do so; Thames Water was not entitled to disclose it except under EIR; and consent had not been given by the provider. The Commissioner notes that consent was not sought, however, Thames Water states that consent is not requested for the reasons it has given.
32. The public authority must be able to explain the causal link between disclosure and the adverse effect, as well as why it would occur. It is not necessary to consult the information provider if the public authority has enough knowledge and experience of the circumstances of the case. In all cases, however the onus will be on the public authority to demonstrate how disclosure of the requested information would lead to the adverse effect based on the circumstances at the time of the request.
33. As with all the exceptions in regulation 12(5), the threshold necessary to justify non-disclosure, because of adverse effect, is high. The effect must be on the interests of the person who voluntarily provided the information and it must be adverse. Thames Water has not been able to make the link to the adverse effect that would be caused by releasing this information. It has implied the causal link between disclosure and the adverse effect by arguing that the application is speculative and may change. Once disclosed, the pre-planning shows that the developer has the intention to purchase land/property which has commercial implications for the developer but does not specify exactly what these are. Finally, it states that releasing information could cause unnecessary concern in the local community and particularly to local residents. As the exception is not about those who may be affected by the information provided, the possible implication is that local residents may then raise objections to the information provider. However, it would appear in this instance that this would no longer have been relevant by the time the request was made. In any case, in the Commissioner's view, none of these links have been made with sufficient clarity.
34. For these reasons, the Commissioner does not consider that the exception is engaged and he has not gone on to consider the public interest for that reason.

Regulation 5(1) – general right of access to information held by public authorities

35. Under regulation 5(1) public authorities have a general duty to make environmental information available when it is requested.
36. Thames Water explained that it had originally carried out searches based on the categories of the information requested. This was information regarding both pre-planning enquiries and planning applications. The search carried out by the Developer Services Department involved information contained in three different systems. The first system is 'DTS' which holds information about all the developments where it has received contact from either the developer directly or from another public authority, in this case the local planning authority for Croydon area, that is Croydon Council. Thames Water explains that records can be searched using the full property address name. The search returned the details that pre-planning information had been received and that a response had been sent to the developer.
37. The second system is 'GIS' which it describes as an "electronic mapping system". This allows the Developer Services Department to search for information via maps. The search would highlight properties/locations where planning applications had been received. The search involves using the individual reference number generated by DTS which are unique to a property. After identification, a visual search is undertaken by the agent, for example, is the location correct? does the property match? Thames Water says that it shows where development enquiries have been received by highlighting the property using hatching.
38. The third system is called 'CRM' (Central Relationship Management) where correspondence between customers and developers is logged. Thames Water explains that the system can be searched in different ways - by property address; name of customer/developer/contractor; company correspondence address; contact details.
39. When 'CRM' was searched again in response to the Commissioner's investigation some further information was located – the missing pages from the application. It also explained that the first four pages contain guidance information for the person completing the application form. The remaining pages are completed by the applicant. This information was released to the complainant. Thames Water acknowledged that its searches had been inadequate and apologised.
40. In answer to the Commissioner's questions, Thames Water confirmed that all its searches were electronic because any staff consultation details regarding the development would be attached to the property as

notes in the systems outlined above. The relevant management staff from the Developer Services Department were involved. All Thames Water's systems are networked resources and therefore electronic. All its archived records are electronic and access is controlled from a job role perspective. In line with its DP policy and processes, no information should be stored locally on a personal computer. It has a retention period of 7 years (in line with Ofwat policies) so no information should have been deleted or destroyed. Information (mandatory or not) is used to inform future work and network capacity but there are no statutory requirements to retain the requested information.

41. The complainant wrote to the Commissioner on 31 January 2022 noting that Thames Water Development Control had commented on the 'live' planning application on 22 January 2022. From this, he argued that there was clearly ongoing correspondence between Thames Water and the council. However, the Commissioner is unsure what bearing it has on what information is held falling within the scope of this request.
42. The Commissioner can understand the complainant's reluctance to accept that he has now received all the information to which he is entitled. Clearly that was not the case before the Commissioner began his investigation. However, given the fact that further information has been located and disclosed, on the balance of probability, he is prepared to accept that there is no further information held to which the complainant is entitled that has not been provided by Thames Water.

Regulation 13 – third party personal data

43. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in regulation 13(2A), 13(2B) or 13(3A) is satisfied.
44. In this case the relevant condition is contained in regulation 13(2A)(a)². This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
45. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection

² As amended by Schedule 19 Paragraph 307(3) DPA 2018.

Act 2018 ('DPA'). If it is not personal data then regulation 13 of the EIR cannot apply.

46. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

47. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

48. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

49. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

50. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

51. Thames Water has redacted the following:

1) Applicants' details

2) Thames Water employees' details

52. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the applicants' personal data and employee personal data and consists of names, contact details, signatures and an email which contains some limited personal comment from an applicant. She is satisfied that this information both relates to and identifies the applicants and the employees. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

53. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the EIR. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

54. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

55. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

56. In the case of an EIR request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

57. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

58. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" lawful bases for processing listed in the Article applies.

59. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"³.

³ Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, regulation 13(6) EIR (as amended by Schedule 19 Paragraph 307(7) DPA provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

60. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the EIR, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
 - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
61. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

62. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.
63. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
64. The complainant contends that some of the redacted personal data is already in the public domain as part of planning applications etc. His view is that those who signed off the note of consent have responsible and public facing roles corresponding with developers and/or members of the public in relation to capacity checks and sewer connections. He remains of the view that a "good deal" of the personal data should be disclosed. He believes that Thames Water is withholding information because he has raised "valid concerns about correct process not being followed" and that it would be an embarrassment to release it.
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65. Thames Water argues that there is no requirement on it to find out what is already in the public domain. It believes that reasonable steps were taken to inform itself about disclosure and is of the view that the right decision was taken.
66. Thames Water does not accept that it has a legitimate interest to share the applicants' personal data. It was provided to Thames Water to progress the application. At no point had consent been collected and the individual/s have not been informed that their personal data would be released to anyone who requests it. On balance, it has found in favour of the interests of the applicant, their rights and freedoms.

Is disclosure necessary?

67. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.
68. Thames Water states that it cannot see what benefit there would be to the complainant to have this data. The complainant argues that a "good deal" of the personal data of applicants and Thames Water employees should be disclosed to him. He stresses that he has valid concerns and that withholding the information is for the reason that it "may cause 'embarrassment' to the developer (and/or their consultants) and/or to TW themselves".
69. The Commissioner therefore considers that the disclosure of the names is necessary for the legitimate interest of the complainant (and other interested members of the public) in order that they can see who has made the application. He considers the disclosure of the employee names is necessary for accountability for any advice they gave in relation to the application, although he recognises that the advice is on behalf of Thames Water. The Commissioner does not consider it necessary to disclose personal contact details or signatures as this is not a legitimate interest.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

70. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the

information would be disclosed to the public under the EIR in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

71. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
72. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
73. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
74. The Commissioner's guidance⁴ states that, although an employee may regard the disclosure of personal information about them as an intrusion into their privacy, often this may not be a persuasive factor on its own, particularly if the information is about their public role rather than their private life. This implies that the employee has some responsibility for explaining the policies or actions of the organisation.
75. Thames Water has reconsidered its redactions of employee personal data and has agreed that it could have adopted an alternative approach. It initially did not consider this information necessary for the purposes of the request and it does not consider the employees to be senior but they are public facing and it could reasonably be anticipated that this personal data could be shared and that it would consider this approach going forward.
76. The Commissioner has also considered the applicants' personal data and his view is that their role is professional, they are representatives of their companies and their names are in the public domain. He does not

⁴ [Requests for personal data about public authority employees \(ico.org.uk\)](https://ico.org.uk)

accept that the disclosure of their personal data would be beyond their reasonable expectations when dealing professionally with a public authority. The fact that Thames Water has released one of the company names in the information it has released, means that one of the individuals whose name has been redacted is clearly linked with that company and in the public domain.

77. Based on the above factors, the Commissioner has determined that there is sufficient legitimate interest to outweigh the fundamental rights and freedoms of the applicants. The Commissioner therefore considers that there is an Article 6 basis for processing and so the disclosure of this personal data information would be lawful, with the exception of personal contact details or signatures.
78. As to Thames Water employees whose names and job roles have been redacted from information that was provided to the complainant or are contained in the information that was withheld, his view is that the role of the employees as the public face of Thames Water for the applications concerned means that the processing is necessary for the interests of the complainant regarding this FOI request in view of his expressed concerns or any other individual making the same request. The Commissioner is also aware that one of the employees' names is in the public domain in their professional capacity. Both are client-facing. The Commissioner therefore considers that there is an Article 6 basis for processing this personal data and so the disclosure of the information would be lawful with the exception of personal contact details or signatures.

Fairness and transparency

79. Even though it has been demonstrated that disclosure of the requested information under the EIR would be lawful, it is still necessary to show that disclosure would be fair and transparent under the principle (a).
80. In relation to fairness, the Commissioner considers that if the disclosure passes the legitimate interest test for lawful processing, it is highly likely that disclosure will be fair for the same reasons.
81. The requirement for transparency is met because as a public authority, Thames Water is subject to the EIR.

The Commissioner's view

82. In this instance, the Commissioner has decided that Thames Water has failed to demonstrate that the exception at regulation 13(1) is engaged, except where it relates to personal contact details and signatures.

Procedural matters

Regulation 5(2)

83. Under regulation 5(2) of the EIR the information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
84. The complainant submitted his request to Thames Water on 13 February 2021. He did not receive some of the information to which he was entitled until 11 November 2021 and received further information on 13 January 2022. The Commissioner therefore finds that Thames Water has contravened regulation 5(2).

Other matters

85. The Commissioner has recently issued a recent decision notice where he has itemised problems with Thames Water's handling of that particular information request, [IC-103882-P4Y9](#). This is a related complaint which exemplifies some of the same issues.
86. It is clear from the history that Thames Water's handling of this request was not ideal. The exceptions on which it relied to withhold some of the information were changed several times and further information was found due to the inadequacy of the search that was made at the outset. The complainant has had to be single-minded in trying to obtain the information within the scope of his request. It is unsurprising that the complainant is dubious that he has received the information he sought or that Thames Water has located it all. However, Thames Water has acknowledged many of these failings and has engaged well with the Commissioner, although the investigation has been protracted due to the scope having to be extended as exceptions changed and further information emerged. The Commissioner has issued guidance⁵ on the EIR and expects Thames Water to improve its processing of information requests, in particular the appropriateness of the exceptions it cites and the thoroughness of its searches.

⁵ [Guide to the Environmental Information Regulations | ICO](#)

Right of appeal

87. 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

88. 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.
89. 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

Janine Gregory
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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SK9 5AF