

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

Decision notice

Date: 30 January 2023

Public Authority: South West Water
Address: Peninsula House
Rydon Lane
Exeter EX2 7HR

Decision

1. The Commissioner's decision is that South West Water is entitled to rely on regulation 12(5)(b) of the EIR, which concerns the course of justice, to withhold the requested information about discharges into the sea. It is not necessary for South West Water to take any steps.

Request and response

2. The complainant made the following information request to South West Water (SWW) on 8 November 2022:

"I would like to make an environmental information request for all data you hold on the quantity, frequency and type of discharges into the sea that South West Water has made in the last 10 years."
3. SWW's final position was to withhold the request information under regulation 12(5)(b) of the EIR.

Reasons for decision

4. This reasoning covers SWW's application of regulation 12(5)(b) of the EIR to the requested information.
5. Under regulation 12(5)(b) a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the course of justice, ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.
6. In its initial response to the complainant, SWW advised that there had been recent media reports and publications detailing that water industry regulators are currently undertaking an industry-wide investigation into the use of overflows. SWW said it was important that the regulators are given the opportunity to make their own assessment following their investigations. It also considered it important that the investigations are protected against the risk of any undue influence from outside sources that might be caused by releasing relevant information into the public domain.
7. SWW confirmed that as the information requested is directly relevant to the investigations it had referred to, it considered that the exception under regulation 12(5)(b) was engaged.
8. At internal review SWW explained that releasing the data could result in third parties carrying out their own analysis of whether or not SWW has complied with its permits in respect of the use of storm overflows. It said these analyses may or may not be accurate and could, for example, be the subject of media attention and/or political attention through lobbying MPs. This in turn could result in pressure being directly or indirectly applied by the public, interested parties, politicians and media outlets to the independent regulators who are responsible for enforcing compliance with environmental permits and regulation. This could result in an adverse effect on the course of justice with public opinion unduly influencing the outcome of a regulatory investigation. As such SWW considered that the adverse effect test was satisfied.
9. In a submission to the Commissioner, SWW referred to the Commissioner's decision in [IC-163737-D3Q3](#) from October 2022. That complaint concerned a request to Severn Trent Water for very similar information. Severn Trent Water had applied regulation 12(5)(b) to that information for the same reasons as SWW has given. The Commissioner found that Severn Trent Water was entitled to withhold the requested information.

10. The information requested in the two cases is similar. The investigations into sewage treatment works launched by the Environment Agency and Ofwat are also still ongoing. The Commissioner is therefore satisfied that, like Severn Trent Water, SWW is entitled to withhold the information requested in this case under 12(5)(b) of the EIR, for the reasons it has explained above. The Commissioner has gone on to consider the public interest.
11. SWW advised the complainant that it had concluded that it was not in the public interest for the information to be released, primarily as there is an alternative avenue of scrutiny on the use of storm overflows in the form of the ongoing regulatory investigations.
12. The Commissioner has considered the complainant's arguments for disclosure, which broadly concern transparency and reassurance for the public about when it is safe to swim in the sea. The concern about the state of seawater around England and Wales is a legitimate concern. However, as in the previous case, it is clear to the Commissioner that the balance of the public interests lies in maintaining the exception. Where an investigation is ongoing and where that investigation could lead to criminal charges, it cannot be in the public interest to potentially undermine that investigation by disclosing information that is relevant to it.

Right of appeal

13. 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

14. 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.
15. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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