

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

Date: 28 July 2023

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

Decision (including any steps ordered)

1. The complainant has requested data relating to sewage spills. Northumbrian Water Limited (NWL) relied on regulation 12(5)(b) of the EIR (course of justice and inquiries) to withhold the information.
2. The Commissioner's decision is that the public authority has correctly relied on regulation 12(5)(b) of the EIR to withhold the information and the balance of the public interest favours maintaining the exception.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 3 February 2023 the complainant wrote to NWL and requested information in the following terms:

"1) Currently Northumbrian Water submits the total number of spills from each of your storm overflow and the total number of hours spilling to the Environment Agency on an annual basis (calendar years) which is publicly available. We are looking for more detail on

each of these spills. So, for each spill reported in 2022 (calendar year), please could you provide the following information:

<i>Storm overflow name</i>	<i>Location ID/Permit number</i>	<i>Spill start date and time</i>	<i>Spill stop date and time</i>	<i>Total hours spilling (duration of spill)</i>	<i>Reason for spill</i>
<i>E.g. Kemble</i>	<i>XX</i>	<i>24th February 10:18</i>	<i>25th February 09:20</i>	<i>23</i>	
<i>E.g. Kemble</i>	<i>XX</i>	<i>2nd March 12:01</i>	<i>2nd March 16:19</i>	<i>16</i>	
<i>E.g. Kemble</i>	<i>XX</i>	<i>5th June 15:38</i>	<i>8th June 10:23</i>	<i>67</i>	

2) Of those spills from your storm overflows that occurred in 2022 how many did you report as dry spills (total number and share of total spills), utilising the Environment Agency definition of a dry day as "A dry day is a day when rainfall does not exceed 0.25mm" from this guidance Water companies: environmental permits for storm overflows and emergency overflows - GOV.UK (www.gov.uk)..."

5. NWL responded on 2 March 2023 and refused to provide the information, citing regulation 12(5)(b) of the EIR.
6. On 24 April 2023 the complainant asked for an internal review.
7. NWL provided an internal review on 2 June 2023 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 12 July 2023 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of this case is NWL's application of regulation 12(5)(b) of the EIR to the requested information.

Reasons for decision

Is the requested information environmental?

10. Regulation 2(1) of the EIR defines environmental information as being information 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)...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);
11. As it is information relating to the management of wastewater, the Commissioner believes that the requested information is information on factors affecting the elements of the environment and falls under the EIR.

Regulation 12(5)(b) – course of justice

12. Regulation 12(5)(b) of the EIR allows a public authority to withhold information the disclosure of which would adversely affect the course of justice or the ability of a public authority to conduct a formal inquiry.
13. The Commissioner notes that there are ongoing inquiries, by both the water regulator Ofwat and the Environment Agency into the performance of water companies. In previous decision notices (see paragraph 16), he has accepted that disclosure of data relevant to those

inquiries would adversely affect their ability to reach a swift, thorough and fair conclusion.

14. The complainant explained that whilst they appreciated that the requested information "is relevant to the Investigation", they were not satisfied that it "would have the adverse effect outlined" or "been satisfied by the water company that the Investigation will receive the type of granular information" requested. The complainant's view is that this is "already a well-publicised problem" and that pressure and lobbying are "already a possibility".
15. NWL provided detailed argument to the complainant in its internal review, explaining that release could have an adverse effect and that this reasoning had been accepted by the Commissioner in [IC-206971-F9G9](#).
16. The Commissioner accepts that the exception is engaged for the same reasons as set out in decision notices [IC-233573-N8Y8](#), [IC-230605-Q2W0](#), [IC-191914-H6X8](#), [IC-218612-B1J7](#), [IC-206971-F9G9](#), and [IC-163737-D3Q3](#).

Public interest test

17. The complainant's view is that transparency is necessary and that there is a "significant" public interest "to provide reassurance for the public about when it is safe to swim in the sea and rivers". They highlight the length of time the Investigation might take whilst "the public are still interacting with the waterways creating a potential health risk".
18. NWL pointed to the Commissioner's decision in [IC-206971-F9G9](#) as precedent for the public interest favouring non-disclosure.
19. As set out in [IC-233573-N8Y8](#) the Commissioner recognises that there is a considerable public interest in the disclosure of information relating to sewage spills.
20. However, for the same reasons as set out in that decision notice and , the decision notices listed in paragraph 16 the Commissioner considers that the balance of the public interest favours maintaining the exception.
21. The Commissioner's decision has been informed by the presumption in favour of disclosure but he does not consider that this affects the public interest balance that has been struck.

Right of appeal

22. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

23. 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.
24. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF