

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 May 2024

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

Decision (including any steps ordered)

1. The complainant has requested information about discharges from South West Water Limited. South West Water Limited (“the public authority”) refused to provide the requested information, citing regulation 12(5)(b) (the course of justice and inquiries exception).
2. The Commissioner’s decision is that the withheld information doesn’t engage regulation 12(5)(b). Therefore, the public authority isn’t entitled to withhold it.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the requested information.
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 5 September 2023 the complainant made the following request:

“Please could you supply the start and stop times of each discharge recorded at your combined sewer overflows in 2022, and the dates of those discharges, under EIR laws...”
6. The public authority responded on 22 September 2023. It refused to comply with the request, citing regulation 12(5)(b).
7. The complainant requested an internal review on 27 September 2023.
8. The public authority provided the outcome to its internal review on 14 November 2023. It upheld your previous position.

Background

9. The complainant has made identical requests to United Utilities¹, Yorkshire Water Services, Anglian Water, Severn Trent Water and Northumbrian Water. All of these complaints have been considered by the Commissioner.
10. These requests relate to dry spillage, where water companies discharge sewage into rivers and seas when it's not raining. This leads to higher concentrations of sewage in waterways.
11. Water companies are allowed to release sewage into rivers and seas, in order to prevent pipe systems becoming overwhelmed, but only in periods of heavy or prolonged rain, in order to dilute the sewage.
12. There have been several claims² brought against water companies over alleged dry spillage, which is illegal under environmental laws.
13. There are two bodies currently investigating these allegations. The Environment Agency is conducting a criminal investigation into breaches under the Environment Act 1995, The Environmental Permitting (England and Wales) Regulations 2016 and the Police and Criminal

¹ [ic-278687-q9s1.pdf \(ico.org.uk\)](#)

² [Public could receive hundreds of millions as water firms face sewage lawsuit | Water industry | The Guardian](#)

Evidence Act 1984 and Ofwat is conducting an investigation into compliance with the Water Industry Act 1991.

14. The definition of 'environmental information' under the EIR, is laid out in regulation 2(1) and includes:

'(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).'

15. The Commissioner is satisfied that the requested information relates to discharges and so is environmental according to regulation 2(1)(b).

Scope of the case

16. The complainant disputes the public authority's application of regulation 12(5)(b).
17. The Commissioner will therefore consider whether the public authority is entitled to withhold the requested information under regulation 12(5)(b).

Reasons for decision

Regulation 12(5)(b) - The course of justice and inquiries exception

18. Regulation 12(5)(b) of the EIR exempts information from disclosure if doing so would adversely affect the course of justice, the 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.
19. The withheld information is the start and stop times, and the duration, of each discharge recorded in 2022. The Commissioner has seen the withheld information and notes it also contains the site from which the discharge was made. The public authority is withholding this information because its relevant to both the Environment Agency and Ofwat's investigations (referred to in paragraph 13).
20. As previously discussed, the complainant has submitted six complaints to the Commissioner, including this one, about how their request to

water companies have been handled. The complainant made identical requests in each instance.

21. The public authority believes that the requested information should continue to be withheld because it's relevant to ongoing investigations and, if disclosed, could lead to third parties carrying out their own analysis of SWW and permit compliance, that these analyses may not be accurate and could in turn cause undue media and/or political attention. This attention is likely to result in pressure being put on the Environment Agency and/or Ofwat which in turn is likely to result in an adverse effect on the course of justice.'
22. The Commissioner has already considered, and published, his decision in response to the United Utilities complaint.³ Paragraphs 21-42 of this decision reject the above arguments and outline in detail why the Commissioner has decided that the withheld information doesn't engage regulation 12(5)(b).
23. The Commissioner doesn't intend to replicate this detailed analysis here and he doesn't need to – since the public authority hasn't offered any new arguments.
24. Since the Commissioner has determined that the exception isn't engaged, the public authority isn't entitled to rely upon it and the requested information must be disclosed.

³ [ic-278687-q9s1.pdf \(ico.org.uk\)](#)

Right of appeal

25. 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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF