

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

Decision notice

Date: 20 May 2024

Public Authority: Anglian Water Services Ltd
Address: Lancaster House, Lancaster Way
Ermine Business Park
Huntingdon
Cambridgeshire
PE29 6XU

Decision (including any steps ordered)

1. The Commissioner's decision is that the requested information about discharges at combined sewer overflows doesn't engage regulation 12(5)(b) of the EIR, which concerns the course of justice.
2. The Commissioner requires Anglian Water Services Ltd to take the following step to ensure compliance with the legislation:
 - Disclose the requested information.
3. Anglian Water Services Ltd must take this step within 30 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

4. The complainant made the following information request to Anglian Water Services Ltd (AWS) on 5 September 2023:

“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...”
5. AWS’s final position was that the requested information was excepted from disclosure under regulation 12(5)(b) of the EIR.

Reasons for decision

6. This reasoning covers AWS’s reliance on regulation 12(5)(b) of the EIR to withhold the requested information.
7. Under regulation 12(5)(b) of the EIR a public authority may refuse to disclose information to the extent that its disclosure 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.
8. On 10 May 2024, the Commissioner made a decision about a request for the same information about discharges that was submitted to United Utilities – IC-278687-Q9S1¹. The current decision relies on the same reasoning and background.
9. AWS had advised the complainant that the information was excepted from disclosure because the matter of discharges was subject to regulatory investigations by the Environment Agency and Ofwat.
10. In its submission to the Commissioner, AWS has advised that the Environment Agency (EA) is undertaking an investigation, referred to by the EA as ‘Operation Standard’, which commenced in November 2021 and is ongoing. AWS has noted that EA has criminal enforcement powers pursuant to Regulation 38 of the Environmental Permitting (England and

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2024/4029577/ic-278687-q9s1.pdf>

Wales) Regulations 2016 and Section 33 of Environmental Protection Act 1990.

11. AWS has noted that Ofwat is also carrying out an investigation into potential breaches of licence conditions and legislation. And separately, AWS has advised, a "class action" has been commenced in the Competition Appeals Tribunal by Professor Carolyn Roberts acting on behalf of Anglian customers.
12. In its submission AWS says that its consider that disclosing "raw" spill data is likely to prejudice the conduct of fair trial,

"as/when the EA commences enforcement proceedings against Anglian Water. It is our understanding that journalists ... will attempt to "marry up" spill data with weather data in order to reach conclusions regarding the occurrence of pollution events."
13. AWS has confirmed that the EA and Ofwat have requested the disputed and will use it to determine if the water companies have breached their permit conditions or breached the terms of the licence or the Water Industry Act and/or the Urban Waste Water Treatment Regulations, or all of these.
14. In IC-278687-Q9S1, the Commissioner noted that the information requested here is data; it's not any analysis, commentary or deliberation that's come from the EA or Ofwat. Nor is it information that the regulators created during their investigations; it's purely factual information. In addition, the request covers all start and stop times; it doesn't ask AWS to identify which relate to dry spillages.
15. In previous similar cases, the Commissioner had found regulation 12(5)(b) was engaged. However, since he handled those previous cases, new evidence has come to light. This includes a statement made by David Black, Ofwat's CEO, on 27 November 2023 at paragraph 33 of IC-278687-Q9S1, and the judgement of the appeal of the Commissioner's decision in IC-2069710F0G9, quoted at paragraph 40 of IC-278687-Q9S1.
16. The Commissioner has noted AWS's arguments in its submission to him, however, as in the United Utilities case, he doesn't consider that AWS has sufficiently demonstrated how disclosing the data would adversely affect either regulators' ability to conduct their investigations or AWS's right to a fair trial.
17. The Commissioner therefore finds that AWS has failed to demonstrate that the exception under regulation 12(5)(b) is engaged and that AWS isn't entitled to rely on it. Since regulation 12(5)(b) isn't engaged, it's not necessary to consider the associated public interest test.

Right of appeal

18. 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

19. 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.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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