

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

**Date:** 26 July 2024

**Public Authority:** United Utilities Water Limited  
**Address:** Haweswater House  
Lingley Mere Business Park  
Lingley Green Avenue  
Great Sankey  
Warrington  
WA5 3LP

**Decision (including any steps ordered)**

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1. The complainant has requested ammonia spot sampling data. United Utilities ("the public authority") refused the request, citing regulation 12(4)(e) (internal communications).
2. The Commissioner's decision is that the withheld information engages regulation 12(4)(e) but the public interest favours disclosure.
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 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

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5. On 9 January 2024 the complainant made the following request for information under the EIR:

“Please can I place a request under EIR for all non regulatory ammonia spot sampling completed at Near Sawrey wastewater treatment works from 2020 to the present data.”
6. The public authority responded on 6 February 2024, refusing to provide the requested information under regulation 12(4)(e) (internal communications).
7. The complainant requested an internal review on 7 February 2024.
8. The public authority provided the outcome to its internal review on 27 March 2024. It upheld its previous position.

## Scope of the case

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9. The complainant contacted the Commissioner on 17 April 2024 to complain about the way their request for information had been handled.
10. The Commissioner considers the scope of his investigation is to determine whether the public authority has correctly withheld the requested information under regulation 12(4)(e).
11. According to the public authority’s own effluent information pack<sup>1</sup>, ‘ammonia can cause unsafe sewer atmospheres and toxicity problems in watercourses as it is highly toxic to aquatic animals. For this reason it is classified as dangerous for the environment’.
12. The Commissioner is satisfied that the requested information is environmental, in line with regulation 2(1)(a), (b) and (c) of the EIR because it’s about the level of toxins found in a specific wastewater treatment works.

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<sup>1</sup> [Trade effluent information leaflet \(unitedutilities.com\)](https://www.unitedutilities.com)

## Reasons for decision

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13. Regulation 12(4)(e) states that information is exempt from disclosure if it involves 'the disclosure of internal communications'. It's a class-based exception, meaning there is no need to consider the sensitivity of the information to engage the exception. If information represents an internal communication, the exception will apply.
14. For the purposes of the exception, the concept of a communication is broad and includes any information an individual intends to communicate to another. Internal is self-explanatory, any such communication needs to remain in the public authority. Once it's been disseminated outside the public authority, the communication ceases to be internal.
15. The public authority has explained:

"Non-regulatory ammonia sampling, as within the request, refers to data that is taken for internal monitoring purposes, usually by operational personnel that are not subject to the same level of training and sampling quality assurance of our regulatory samples that are undertaken. This is usually taken utilising a non-quality assured sampling process due to the data only being used for internal monitoring purposes that are not completed to the same degree of accuracy as regulatory samples."
16. So, the public authority has a duty to report specific data to the Environment Agency as the regulator. But that isn't the information that's being requested here, what's being requested is the ammonia sampling that's conducted for internal monitoring purposes.
17. The Commissioner is satisfied the requested information is information that would only be known to the public authority and is designed to monitor, and communicate, the level of ammonia in the water at the wastewater treatment works.
18. The Commissioner acknowledges that in this case the communication originates from a process, not an individual. Whether ammonia sampling is carried out by a machine or a member of the operations team, this process was implemented with the intention of communicating ammonia data within the public authority. Once this data is recorded, it's then communicated internally. It's an internal communication and so the exception is engaged. Therefore the Commissioner will go on to consider where the balance of the public interest lies.

## Public interest test

### Factors in favour of disclosure

19. The public authority has identified the public interest 'in the openness, transparency and accountability of how statutory undertakers generally, and in relation to this case, undertake decision making.'
20. The public authority has also cited the importance of promoting the public's understanding of environmental matters.
21. Finally, it's identified that 'the public should have the ability to hold public authorities to account for the way they manage environmental services.'
22. The Commissioner agrees with all the above principles, which are fundamental to the EIR. There is also always a presumption in favour of disclosure under the EIR.
23. There is an increasing scrutiny on water companies in general, in light of ongoing investigations into water companies. The Environment Agency<sup>2</sup> 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 Evidence Act 1984 and Ofwat<sup>3</sup> is conducting an investigation into compliance with the Water Industry Act 1991.
24. Furthermore, the Commissioner notes that Near Sawrey Wastewater Treatment Works discharges into Cunsey Beck, which flows from Esthwaite Water to Windermere and is in a Site of Special Scientific Interest (SSSI) and there have been concerns about its water quality<sup>4</sup>.
25. Specifically, there have been concerns about the levels of toxins within Cunsey Beck, which has been attributed to incidents of significant fish deaths.<sup>5</sup>

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<sup>2</sup> [Update on Environment Agency investigation – Creating a better place \(blog.gov.uk\)](#)

<sup>3</sup> [Investigation into sewage treatment works - Ofwat](#)

<sup>4</sup> [Watchdog criticised over Lake District sewage spill permit - BBC News](#)

<sup>5</sup> [Watchdog criticised over Lake District sewage spill permit - BBC News](#)

## Factors in favour of maintaining the exception

26. The public authority is concerned that disclosure would undermine the 'safe space' required for it to debate live issues, manage operations and reach decisions away from distraction and external interference.

27. It's also expressed concern that:

"Disclosure of internal communications relating to this matter would inhibit authorities in engaging in free and frank discussions during future decision making regarding site operations, and that loss of frankness and candour leads to poorer decision making – known as the chilling effect. This has the potential to have a negative impact on site management. In our submission, it cannot be in the public interest to require these internal communications to be disclosed as to do so would inhibit the operation of the business."

28. As discussed in paragraph 15, the public authority believes that the public interest in the information has been met by alternative means:

"There are clear statutory controls relating to the collection and analysis of other data types which gives an accurate indication of water quality and this data is reported for regulatory requirements in order to meet statutory controls. This data can be accessed by the public on the Environment Agency's website.<sup>6</sup>"

29. Finally, the public authority is concerned with the accuracy of the requested data:

"As the data is not collected in accordance with a specific standard or collected in a specific format, there is no assurance of the accuracy of the data. Whilst we acknowledge there is public interest in disclosing information, which is an indicator of water quality, disclosing data which is unverified and unassured will negatively impact public confidence regarding the way in which water companies operate their assets, as the data may well indicate a problem with water quality that does not in fact exist."

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<sup>6</sup> <https://environment.data.gov.uk/water-quality/view/landing>

## **Balance of the public interest**

30. The Commissioner has determined that, in this instance, the public interest lies in disclosure.
31. The public authority provides information to the Environment Agency which gives an accurate indication of water quality and the Commissioner accepts this information is publicly available. However, that doesn't mean the requested information is without value.
32. Ultimately, if the ammonia sampling data is accurate enough to be used for operational purposes, i.e. to indicate whether the wastewater treatment works is operating efficiently, and to indicate the level of toxins present in the water, there is a public interest in this information.
33. Arguments about the accuracy of data, and whether information disclosed would be misunderstood by the public, carry little weight when considering the public interest. The EIR covers information held by public authorities, regardless of its accuracy. Furthermore, the public authority can easily explain the difference between the requested information and the regulatory data it provides to the Environment Agency if it wants to.
34. The Commissioner disagrees with the public authority when it describes the requested information as inaccurate; it's raw, factual data which measures ammonia levels at different points.
35. Also, the regulatory data reports on water quality widely across the UK. Whilst it is possible to break this down regionally, the regulatory data doesn't meet the public interest in this information specifically. There is a specific interest here in ammonia levels at the specific site, especially when concerns have been raised about the Environment Agency's approval of the site in the first place.<sup>7</sup>
36. Returning to the public authority's concerns at paragraph 26, the Commissioner considers the scrutiny of water companies, and the public interest in this request, is justified and this is being echoed by regulators.
37. On 27 November 2023, David Black, CEO of Ofwat, told the public affairs committee<sup>8</sup> that he would encourage water companies to be open and transparent about their environmental performance. On 15 July

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<sup>7</sup> [Watchdog criticised over Lake District sewage spill permit - BBC News](#)

<sup>8</sup> [committees.parliament.uk/oralevidence/13888/pdf/](#)

2024, John Edwards, the Information Commissioner, wrote an open letter to the CEOs of all water companies<sup>9</sup>, calling on them to be as transparent with their customers as possible.

38. The Commissioner is satisfied that disclosure in this case would meet a significant public interest, both about water companies in general and in this specific case. Therefore the information must be disclosed.

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<sup>9</sup> [Information Commissioner calls for water companies to be crystal clear with public over sewage pollution | ICO](#)

## **Right of appeal**

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39. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. 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.
41. 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**