**First-tier Tribunal**
**(General Regulatory Chamber)**
**Information Rights**

**Appeal Reference: EA/2017/0195**

*ON APPEAL FROM:*
**The Information Commissioner's Decision Notice No: FER0667011**
**Dated: 3 August 2017**

*Appellant:* *Robert Latimer*

*Respondent:* *The Information Commissioner*

*Heard at:* *Newcastle*

*Date of Hearing: 13 February 2018*

**Before**

**Chris Hughes**

**Judge**

and

**Gareth Jones and Malcolm Clarke**

**Tribunal Members**

*Date of Decision: 23 February 2018*

*Attendances:*
For the Appellant: in person

For the Respondent: did not appear

*Subject matter:*
Environmental Information Regulations

# DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 3 August 2017 and dismisses the appeal.

# REASONS FOR DECISION

## *Introduction*

1. Mr Latimer was informed of Northumbrian Water Ltd's (NWL) construction plans for the sewage discharge at Whitburn in 1992. He has been deeply concerned about the levels of sewage discharged (which was in excess of the level he had been led to expect) since it became operational. Over the intervening years he has argued vociferously against it, had many meetings with NWL, made representations to a public inquiry and the European Commission. He has corresponded extensively with NWL, the Environment Agency (EA) and the Department for the Environment Food and Rural Affairs (DEFRA). There have been infraction proceedings in the European Court of Justice and as a result of those proceedings there has been further investment in the system which was due to finish in December 2017.

2. On 20 November 2016 he wrote a detailed email to NWL (extending to 4 pages of an appendix to the decision notice from the Information Commissioner (ICO) which is the subject of this appeal) seeking information. It appeared to contain 6 different requests for information, but in reality they were all requests for copies of consents, phrased in slightly different ways. Having considered the request for information under the Environmental Information Regulations (EIR) NWL responded on 19 December 2016 refusing the request and relying on the exception to its duty to disclose the information in Regulation 12(4)(b) which provides that *"a public authority may refuse to disclose information to the extent that the request for information is manifestly unreasonable."*

3. In response to his request for a review of the decision NWL wrote to him on 20 January 2017 reaffirming its decision. In that letter NWL, listed a number of decisions by the ICO upholding DEFRA, EA and NWL decisions not to provide

information to Mr Latimer and set out an account of the history of contact between NWL and Mr Latimer. NWL stated: - "*it is reasonable that NWL feel that the meetings, telephone calls, letter, legal action and internal reviews following ICO investigations, and a full Public Inquiry, which all span over 23 years on the same topic, demonstrate that everything possible has already been done to advise and assist you.*"

4. NWL gave extensive details of why it considered that the request was vexatious and a burden on NWL diverting resources to make available information which was already available which could be better devoted to other activities. In applying the public interest test NWL considered that the extensive disclosures of information and public scrutiny which had already occurred meant that the exception was properly applied.

5. Mr Latimer complained to the ICO who, in her decision notice reviewed and accepted the broad thrust of NWL's evidence and arguments and upheld NWL's refusal.

## *The appeal to the Tribunal*

6. In his extensive and discursive grounds of appeal Mr Latimer argued that the ICO was "*covering up for another government department's incompetence*". He explored in detail his account of the underlying issues concerning the circumstances in which the system would discharge sewage, the calculations relating to the operation of the system, he argued that NWL lied, he alleged serious criminal conduct "*they even bought over my solicitor*".

7. He criticised the ICO for agreeing with a previous decision of the tribunal with respect to Mr Latimer's concerns which had pointed to the role of the UK Government and the European Commission in resolving the issues at Whitburn. In doing so he placed reliance on article 1 of the Aarhus Convention which provides: -"*In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well being, each party shall guarantee the right of access to information, public participation in decision-making and access to justice on environmental matters in accordance with provisions of this Convention.*" He argued that the ICO was denying him that right.

His requests *"are not manifestly unreasonable by virtue of being vexatious but more it shows without doubt the public interest does not favour maintaining the exception."* t

8. In responding to the appeal, the ICO identified five grounds advanced by Mr Latimer – cover up by the ICO, that the cost of compliance with the request was not relevant, the request was not manifestly unreasonable because there were inconsistencies in material released to the public by various sources, the requestor not the request had been considered unreasonable, there was public interest in disclosure. She rejected the claim of cover up, had not relied on the cost of compliance, noted that the inconsistencies had been exhaustively covered in correspondence and NWL had provided all the information it held, the decision that the request was manifestly unreasonable had been made in accordance with the approach set out in *Dransfield* . With respect to public interest she considered that, in the light of the information already provided, *"there can be little value in NWL repeatedly providing the same information to the Appellant as it has previously."*

## *The oral proceedings*

9. The tribunal took Mr Latimer through the request for information which gave rise to the decision of the ICO. After consideration he accepted that the second paragraph of the request (which referred to the outcome of a previous request for information) was not a repeat of the request for that information. He agreed that the information he sought in the email (which was asked for a number of times in slightly different ways) was for the formal consent to discharge sewage effluent: -

   *"…I am waiting to see where in the discharge consent it allows for this to happen and I believe is the reason you are stalling…*

   *I ask provide the consent that allows the CSOs to spill at that rate? Please show us also where it is consented that the urban waste water can enter the interceptor tunnel without snowfall and/or snowmelt?..*

   *We request that NWL provide the part of the discharge consent that allows the CSOs to operate at this level?..*

*But again provide us with the copy of the consent that allows such a discharge to take place?*

*Please provide us with a copy of the consent allowing waste water (against storm water) to be discharged?*

*I ask please provide the section of the report or the consent that allows a discharge to be made to create as much storage capacity as possible on the whim a predicted storm might arrive?.*

10. Mr Latimer agreed that he had been provided with copies of the consent in the past. He acknowledged that he had been told that there were no other consents; however Mr Latimer argued that: - "*There has to be another consent or [NWL]is operating illegally".* Although he agreed that he had been told by the EA that this was the only consent *"Why should I believe the Environment Agency?".* He argued by analogy that "*If I've got a tv I should have it licensed.*" Since he considered that the current consent which was publicly available did not cover the way the installation actually operated *"they are not using it as its intended to be used"* he concluded that NWL was concealing the existence of documents.

11. The tribunal explained to Mr Latimer that the EIR was concerned with one pillar of the Aarhus Convention, the provision of information, and that the other pillars of the convention, the right to participate in environmental decision-making and access to justice in environmental matters did not fall within EIR and so could not be investigated by the ICO and then appealed to the Information Rights Jurisdiction of the General Regulatory Chamber.

## *Consideration*

12. Mr Latimer's requests all related to the provision of consents for discharges, since he appears to to believe that discharges have been made for which no consents existed. NWL assert that he has been provided with all the consents which existed, and that repeatedly requesting the same information is manifestly unreasonable. The Tribunal finds no reason to believe that NWL have concealed the existence of further consents, since it would have no reason to do so, quite the contrary if such consents legitimised its discharges

13. EIR requires public bodies to provide recorded environmental information. Over decades Mr Latimer has sought and often been provided with environmental information on this system by NWL, EA, DEFRA and the European Commission (under its environmental information regime). He remains dissatisfied. On this occasion he sent a discursive argument to NWL challenging the operation of this installation. To the extent that it was a request for recorded information that information had already been repeatedly put in the public domain and provided to him. Mr Latimer is seeking to use EIR to provide a solution to an environmental problem as he understands it. That is a burden too great for EIR to carry. He is asking for information he already has, in the circumstances that is manifestly unreasonable. He is using a statutory right for a purpose other than the purpose of obtaining recorded information, in the circumstances that is manifestly unreasonable. In her decision notice the ICO fully and fairly set out the disproportionate burden on NWL imposed by these requests and the lack of public interest in such requests given the plethora of information already in the public domain. For the reasons amply set out in her decision notice these requests are manifestly unreasonable.

14. The tribunal reminds Mr.Latimer that it has neither the knowledge nor the jurisdiction to make a judgement on whether NWL has managed the local sewerage system legally or competently. His criticisms in that regard may or may not be well-founded. Our jurisdiction is limited to deciding whether his repeated requests for information he already has are manifestly unreasonable, and we find that they are.

15. The tribunal is satisfied that the decision of the ICO is correct in law and dismisses the appeal.

Judge Hughes
Date: 23 February 2018

Promulgated date: 27 February 2018