

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

Decision notice

Date: 10 November 2015

Public Authority: Severn Trent Water Ltd
Address: Severn Trent Centre
2 St John's Street
Coventry
CV1 2LZ

Decision (including any steps ordered)

1. The complainant has requested information about works carried out around his property. Severn Trent Water Ltd (STW) has told the complainant that it does not hold the information he has requested and that, if it did hold it, it would refuse to comply with the request under regulation 12(4)(b) because it is manifestly unreasonable.
2. The Commissioner's decision is that STW is not correct when it says it does not hold any of the requested information. On the balance of probabilities, he is prepared to accept that STW does not hold the majority of the information and has fulfilled its obligations under regulation 5(1) of the EIR with respect to this information.
3. He has decided, however, that STW does hold a little relevant information but that it is not obliged to comply with this part of the request in line with the provision under regulation 12(4)(b). The public interest favours maintaining the exception.
4. The Commissioner does not require STW to take any steps.

Request and response

5. On 22 May, the complainant wrote to STW and requested information in the following terms:

"I would like you to conduct a review of all work that has been carried out around this property since 2002 and supply all details under the Freedom of Information Act.

1. *Full details of the removal of all the sewerage works and copy of notice that was served prior to 2002 that covers the disconnection from the sewerage works.*
2. *All notices served in 2004 to do with any installations on my property in 2005 and all technical details concerning any installations carried out by ST Water under section 101a Connection to Public Sewers 1991 Waters Act.*
3. *Consultation details between Severn Trent Water and the property owners of South Bank that are required by the Waters Act on private land.*
4. *Once again I remind you that I am still awaiting your 2004 Code of Practice that you have never served and failed to provide on all requests.*

All of the above information which is covered by the Freedom of Information Act, you have failed to supply on request"

6. STW responded on 4 August. It denied holding the requested information. STW told the complainant that, if it was available, it would refuse to comply with the request under regulation 12(4)(b) because it is manifestly unreasonable.
7. Through correspondence with the Commissioner on 17 and 18 September, STW effectively undertook an internal review in which it maintained its position – that it does not hold the requested information.

Scope of the case

8. The complainant contacted the Commissioner on 9 June to complain about the way his request for information had been handled.
9. The Commissioner has focussed his investigation on whether or not STW holds information within the scope of the request and, if it does, whether the exception under regulation 12(4)(b) can be applied to it.

Reasons for decision

Is the requested information environmental information?

10. Information is 'environmental information' and must be considered for

disclosure under the terms of the EIR rather than the FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.

11. The Commissioner considers the information in this case can be classed as environmental information, as defined in regulation 2(1)(c) of the EIR. This says that any information on measures such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements or factors of the environment listed in regulation 2(a) will be environmental information. Two of the elements listed under 2(a) are water and land.
12. The request is for information relating to the installation of a sewer. The Commissioner is therefore satisfied that, as the request is for information concerning the use of water and land, it falls under the EIR.

Regulation 5 – duty to make available environmental information on request

13. Regulation 5(1) of the EIR says that a public authority that holds environmental information must make it available on request.
14. STW has provided the Commissioner with background to this case. It says that in December 2004, STW gave notice to the complainant of its intention to install a sewer. Part of the sewer would be within the boundary of his property, pursuant to STW's powers under sections 159, 168 and Schedule 6 of the Water Industry Act 1991. The sewer was installed in 2005.
15. In July 2009, the complainant commenced proceedings against STW in the Lands Tribunal, seeking compensation for alleged damage to his land caused by installation of the sewer. These proceedings were settled by mutual agreement in July 2010.
16. In October 2010, the complainant raised a further complaint with Ofwat, the water industry regulator, alleging that STW had failed to consult him in relation to the installation of the sewer. Ofwat directed STW to pay the complainant compensation in respect of this complaint.
17. STW says that, following the resolution of the Lands Tribunal and the Ofwat complaint, the complainant has continued to complain to STW about the sewer. In June 2013, STW had to issue court proceedings to obtain an injunction against the complainant to prevent him from blocking and/or damaging the sewer. The injunction remains in force.
18. In response to the Commissioner's investigation, STW says that it has carried out a further detailed review of the request and its response. It has reviewed the matter with the business departments involved in the

original proceedings and complaints, and also with the solicitors who dealt with the Lands Tribunal proceedings on behalf of STW.

19. Following the review, STW confirmed to the Commissioner the following:

- [1] The previous proceedings did not involve any issue regarding removal of a sewerage works in 2002 and STW does not hold any information relating to this. It says that, in any case, it would not serve a notice on a third party in respect of the closing of a works.
- [2] Notice in relation to the works was served on the complainant on 8 December 2004. STW says that the complainant already holds a copy of this notice as its solicitors have confirmed that the notice was attached to the Lands Tribunal state of case which STW served on the complainant in October 2009. STW says that no other notices have been served on the complainant.
- [3]& [4] In its original response to the request, STW said that the compensation awarded to the complainant previously was on the basis that STW was not able to provide evidence of the consultation and notice service. Having reviewed this with the solicitors who dealt with the proceedings, STW has confirmed that the claim related to financial losses and the failure to consult the complainant regarding the works.
- Although the Lands Tribunal proceedings did not reach the formal disclosure stage, the business departments carried out a search for documentation at the time of the proceedings. This included technical details concerning the installation, consultation details and codes of practice. STW was unable to locate this information at that time. The solicitors have reviewed their files in the course of the review of this complaint and have again confirmed that this information is not held.
- Ofwat made a specific finding against STW that it had failed to adequately consult the complainant about the works, on the basis that STW was unable to produce evidence that it had consulted the complainant, as it did not hold this information then, and does not hold it now.

20. The Commissioner must determine whether STW holds the information sought by the complainant. He has made this determination by applying the civil test of the balance of probabilities. This is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held in cases which it has considered in the past.

21. Applying the civil test of the balance of probability, and in the absence of any evidence to the contrary, the Commissioner has decided that STW does not hold the majority of the information that the complainant has requested. He notes however, that STW does appear to hold some information, namely the 2004 notice. Whilst STW says that the complainant would already have a copy of this notice it should have identified that this information was held and confirmed with the complainant that he did already hold this information.
22. However, STW says that if it were to hold relevant information it would be entitled to refuse to disclose it under regulation 12(4)(b).

Regulation 12(4)(b) – manifestly unreasonable request

23. Regulation 12(4)(b) says that a public authority may refuse to disclose environmental information if the request is 'manifestly unreasonable'. There is no definition of manifestly unreasonable under the EIR, but the Commissioner's opinion is that 'manifestly' implies that a request should be obviously or clearly unreasonable.
24. Where the exception is engaged it is subject to a public interest test under regulation 12(1)(b) to determine whether the information should be disclosed in spite of the exception applying.
25. The exception applies where a request is either vexatious, or would be imposing a cost or burden on the authority to such an extent that it would neither be reasonable, nor in the public interest for it to comply with the request. STW considers that the complainant's request is vexatious.
26. In line with his published guidance on vexatious requests, the Commissioner has considered whether the request itself is manifestly unreasonable rather than the individual submitting it. Sometimes, it will be patently obvious that a request is manifestly unreasonable. In cases where it is not so clear cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request. Public authorities may also take into account the context and history of the request where relevant.
27. STW's position that the complainant's request for this information (the 2004 notice) is manifestly unreasonable is based on the following:
 - The complainant already has in his possession the 2004 notice.

- The complainant has already been through the Lands Tribunal proceedings and the Ofwat complaints procedure. He has been compensated for the fact that STW did not adequately consult him (which accounts for the fact that some of the other information he has requested is not held).
 - The request – which includes the request for the 2004 notice – is an attempt to re-open matters that have already been addressed through two different forums: the Tribunal and through the complaint to Ofwat.
28. The Commissioner has considered the background to the requests and STW's submission. He has also considered the correspondence he has had with the complainant regarding this complaint.
29. The Commissioner has seen a copy of the 2004 notice and notes that it is addressed to the complainant and is dated 8 December 2004. He agrees with STW that the request for this particular information appears to be a continuation of a complaint regarding the installation of a sewer some 10 years ago. It appears to the Commissioner, however, that this matter has already been adequately addressed by the Tribunal and Ofwat. He is therefore minded to agree that the complainant's request for the 2004 notice is manifestly unreasonable under section 12(4)(b) because the complainant was originally provided with the notice in 2004, and it was provided to him again as part of the Tribunal proceedings in 2009.

Public interest test

30. The Commissioner has gone on to consider whether the balance of the public interest in maintaining the exception outweighs the public interest in complying with the request.
31. The Commissioner will always give weight to factors which favour disclosing information that would increase the public's understanding of actions public authorities take and of the processes by which they make their decisions. Such disclosure of information increases public authorities' transparency and accountability.
32. In this case, the Commissioner considers that the Land Tribunal and Ofcom complaint, both concluded, have gone some way in satisfying any public interest in this matter.
33. In the Commissioner's opinion there is little or no public value to be had by asking STW to spend further time or expense in responding to this aspect of the complainant's wider request, which, as the evidence suggests, is unlikely to conclude his on-going complaint against STW about the installation of the sewer. The public interest in protecting

public resources and protecting the integrity of the EIR, ensuring that it is used responsibly, far outweighs any public interest in responding to this request.

34. Taking all of the above into consideration, the Commissioner has decided that STW has properly applied regulation 12(4)(b) of the EIR to the information that it holds that falls within the scope of the complainant's request, and that the public interest favours maintaining this exception.

Right of appeal

35. 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: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. 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.
37. 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

Pamela Clements
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