

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

**Decision notice**

**Date:** 3 August 2017

**Public Authority:** Northumbrian Water Limited

**Address:** Abbey Road  
Pity Me  
Durham  
DH1 5FJ

**Decision (including any steps ordered)**

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1. The complainant has requested information about discharge consents relating to the Whitburn sewage system. Northumbrian Water has refused to comply with the requests under regulation 12(4)(b) of the EIR (manifestly unreasonable requests) and considers the public interest favours maintaining the exception.
2. The Commissioner's decision is that the requests are manifestly unreasonable by virtue of being vexatious, and that the public interest favours maintaining the exception.
3. The Commissioner does not require the public authority to take any steps.

## **Request and response**

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4. On 20 November 2016, the complainant wrote to Northumbrian Water and, in the wider correspondence, submitted six requests at paragraphs 7 and 8. Given its combined length, the correspondence and requests are reproduced in an Appendix to this notice.
5. Northumbrian Water responded on 19 December 2016. It refused to comply with the requests. It categorised them as 'manifestly unreasonable' under regulation 12(4)(b) of the EIR and said the public interest favoured maintaining the exception.
6. Following an internal review Northumbrian Water wrote to the complainant on 20 January 2017. It maintained its position that the requests are manifestly unreasonable.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 8 February 2017 to complain about the way his requests for information had been handled.
8. The Commissioner's investigation has focussed on Northumbrian Water's application of regulation 12(4)(b) to the requests, and the associated public interest test.

## **Reasons for decision**

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9. Regulation 12(4)(b) of the EIR says that a public authority may refuse to disclose information if the request is 'manifestly unreasonable'. This exception can be used when a request is vexatious or when the cost of complying with a request would be too great. In this case, Northumbrian Water considers the complainant's requests to be vexatious requests (the equivalent of section 14(1) of the FOIA) and has also suggested that the cost of complying with the requests also make them manifestly unreasonable (the equivalent of section 12(1)).
10. The Commissioner considers that the inclusion of 'manifestly' in regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under the exception, the information request must meet a more stringent test than simply being 'unreasonable'. 'Manifestly' means that there must be an obvious or tangible quality to the unreasonableness of complying with the request.

11. In line with her published guidance on vexatious requests, the Commissioner considers 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.
12. 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.
13. The Commissioner has noted that the internal review that Northumbrian Water provided to the complainant contains a great deal of information regarding its decision not to comply with his requests. The Commissioner has first considered whether the complainant's requests can be categorised as vexatious requests.
14. Northumbrian Water's internal review discusses a number of points, which are summarised below.
15. Northumbrian Water referred to the Commissioner's previous decisions in seven separate cases involving the complainant and his complaints against Defra, the Environment Agency and, in February 2016, Northumbrian Water; all of which appear broadly to concern Whitburn sewage system. In the case involving Northumbrian Water – FS50598562 – the Commissioner upheld Northumbrian Water's application of regulation 12(4)(b) because it had already provided the complainant with the information he had requested.
16. Northumbrian Water noted that the complainant has been corresponding with it about the Whitburn sewage system for over twenty years. It noted that at October 2015 it had received over 280 contacts from the complainant, excluding correspondence between solicitors and correspondence between Northumbrian Water and other organisations involved in the complainant's many complaints.
17. In its review, Northumbrian Water referred to a Public Inquiry on the subject of Whitburn sewage system that had taken place in 2001.
18. Northumbrian Water considered that its meetings [with the complainant], telephone calls, legal action and internal reviews followed by investigations by the Commissioner, and the Public Inquiry, which all

span a period of 23 years and which concern the same topic, demonstrate that it had done everything possible to advise and assist the complainant. It observed that much of the information and assistance it had given to him were provided voluntarily, before the water industry was subject to the EIR.

19. Referring to the Commissioner's decision in FER0230659 concerning the complainant and the Environment Agency, Northumbrian Water noted that the Commissioner had stated that, in considering regulation 12(4)(b), a relevant factor will be "whether the complainant had already received a great deal of information on the subject of his request." Northumbrian Water confirmed that it considered that the complainant has already received vast amounts of information on the subject of Whitburn sewage system, from it and from other public authorities.
20. Northumbrian Water also referred to paragraph 23 of her decision in FS50598562 in which the Commissioner noted the length of time the complainant has been interacting with Northumbrian Water and other public authorities. The Commissioner considered this demonstrated an unreasonable persistence and an obsessive element running through the complainant's requests.
21. Northumbrian Water went on to refer to the indicators of vexatiousness that are given in her related guidance. It discussed various of these in the internal review and has provided further arguments for these indicators in its submission to the Commissioner, as follows:
22. **Disproportionate burden and distraction:** Northumbrian Water acknowledged that the requests that are the subject of this notice would not create a significant burden in terms of expense and distraction. However, it says that it is necessary to consider the wider context of the long history of correspondence on the topic of Whitburn sewage system with Northumbrian Water and other authorities, stretching back over twenty years.
23. Northumbrian Water has told the Commissioner that it has a very small team, which handles all EIR requests. Due to the nature and complexity of the complainant's requests, the responses required involve numerous individuals around the business. It says that some responses require advice from experts working on the Whitburn project, which takes some of their time away from delivering the project itself.
24. Due to the length and detail of some of the complainant's requests they impact on the time available to spend on other requests for information. Also, when corresponding with Northumbrian Water, the complainant copies in numerous other organisations; this adds further time and effort into responding to him as Northumbrian Water also needs to

correspond with those third parties to let them know that the request is being handled.

25. In paragraph 34 of FER0557144 (which concerns the complainant and Defra) the Commissioner took account of the numerous requests the complainant had already made on the topic of Whitburn sewage system, stating that this was diverting the public authorities from carrying out their overall statutory function, which was not in the public interest. Northumbrian Water argues that this applies equally in this case.
26. Given the extensive correspondence Northumbrian Water has received from the complainant about Whitburn sewage system over the past twenty years, Northumbrian Water argues that it is reasonable to assume that it will continue to receive more requests from him on the same topic. It says that it is its experience that answering his requests does little to satisfy the complainant, or bring any resolution to the matter. Northumbrian Water has noted that, in FS50598562 (paragraph 21) and another decision involving the Environment Agency - FER0473714 (paragraph 15) - the Commissioner agreed.
27. **Request designed to cause disruption or annoyance:**  
Northumbrian Water says that, reviewing the six requests at paragraph 7 and 8 of his correspondence of 20 November 2016, it can be seen that the complainant repeated his request for a copy of the discharge consent multiple times in this one piece of correspondence (questions 7(i) and (ii), and 8(i), (ii), and (iii)). Northumbrian Water says that, leaving aside the fact that he made the same request five times, the document requested is one that he already holds. Northumbrian Water says this is confirmed by the Appendix of the ICO's decision in FER0473714 in which the complainant himself says that he was given the discharge consent in question by a member of Defra staff in 2009.
28. Northumbrian Water argues that since the complainant already has a copy of the document he has requested, there can be no benefit to either him or to the public in supplying it again.
29. Aside from the requests for a copy of the consent, in his request of 20 November, Northumbrian Water notes that the complainant has also requested a copy of the Inspector's report from the Public Inquiry at paragraph 8(iv). Northumbrian Water says that the complainant was present as a registered objector at the Public Inquiry and would have received a bundle of documents (the 'Inquiry Bundle') which included a copy of the Inspector's report. As with the consent, Northumbrian Water argues there can be no benefit to the complainant or to the public in supplying it once again. It appears to Northumbrian Water therefore, that the complainant's only purpose in requesting this is to cause it annoyance or disruption.

30. Northumbrian Water has also considered the complainant's past behaviour. It says he has refused invitations to public meetings whilst asking to be included in meetings closed to the public. Despite being informed that all requests for information should be directed to its Information Access Team, the complainant continues to send in requests outside of its advised route. Whilst Northumbrian Water says it accepts requests for information received into any part of its business, it considers the complainant's refusal to send in his correspondence via the advised route shows an unwillingness to cooperate with Northumbrian Water to aid it in responding to his requests. In Northumbrian Water's view, this all shows that the complainant intends to cause it disruption and annoyance.
31. **Harassment or distress to staff:** Northumbrian Water says it understands that there is a significant amount of overlap between a request 'harassing' a public authority and a request 'designed to cause disruption or annoyance'. It feels that the context of the complainant's most recent request; that is, the long history of correspondence from him, means that his most recent request must be seen in context, and does have the effect of harassing Northumbrian Water and its staff. It says that these are only the most recent requests in a correspondence dating back over twenty years.
32. Throughout the correspondence, Northumbrian Water says that the complainant has made unsubstantiated accusations against Northumbrian Water and its staff, and has continued to challenge it for alleged wrongdoing without any cogent basis for doing so. Some of the allegations are discussed in the internal review.
33. Given the lengthy letters that the complainant sends, Northumbrian Water says it is required to read through them with care in order to identify which part constitutes a request for information under the EIR, and whether any request is for new information or has already been raised and answered. It has told the Commissioner that in December 2016 it received another request from the complainant on the same topic, at a time when he was waiting for the results of our internal review. Northumbrian Water argues that this all contributes to the feeling of harassment experienced by its staff.
34. **Obsessive nature of request:** Northumbrian Water has repeated the internal review arguments at paragraphs 16 to 20 of this notice. It has repeated that the topic on which the complainant is requesting information is one that has long since been concluded through the 2001 Public Inquiry. It seems to Northumbrian Water that there is no longer any proper justification for his requests.

## Commissioner's conclusion

35. The Commissioner recognises that the subject matter of the requests is quite clearly of significant importance to the complainant and she has noted the material he has sent to her to support his complaint. The Commissioner cannot, however, consider the accuracy (or otherwise) of information a public authority may have provided to a complainant in the past. Her focus must be on whether an authority provided an appropriate response to a request submitted under the EIR or, as in this case, whether a request is manifestly unreasonable.
36. Having considered all the circumstances of this case, and as in her decision in FS50598562, the Commissioner considers that the complainant continues to demonstrate an unreasonable persistence regarding his concerns about Whitburn sewage system, and that there remains an obsessive quality to his previous requests to other authorities and these most recent requests to Northumbrian Water. This is because of the length of time the complainant has been corresponding with Northumbrian Water on this matter (over 20 years); the fact that the matter has been considered independently at a Public Inquiry; and the complainant's interaction with other public authorities on this matter under EIR.
37. The Commissioner considers that any serious purpose or value behind the complainant's requests is further diminished by the fact that they have already been answered. It is therefore very difficult to justify Northumbrian Water allocating any time to complying with the requests. This would effectively keep re-opened a topic that has been long since been independently concluded.
38. The Commissioner is satisfied that Northumbrian Water has correctly applied regulation 12(4)(b) to the requests in this case as the requests can be categorised as manifestly unreasonable. As the Commissioner has found the requests to be manifestly unreasonable by virtue of vexatiousness, it has not been necessary to consider whether the requests are manifestly unreasonable on grounds of cost. She has gone on to consider the public interest test.

## Public Interest Test

### *Public interest arguments in favour of disclosing the information*

39. Northumbrian Water acknowledges that there is a strong public interest in the operation of the Whitburn sewerage system, given the potential impacts on bathing water quality and public health. As the ICO noted in decision notice FS50598562 (paragraph 26), the subject matter "has

been deemed of significant public importance to be the subject of a Public Inquiry."

*Public interest arguments in favour of maintaining the exception*

40. As stated above, Northumbrian Water has said there is a significant public interest in information about the Whitburn sewer network, indeed, about any sewer network. However, Northumbrian Water also says that over the years a great deal has been done to meet this public interest. For example, the Public Inquiry in 2001 which lasted eleven days and focussed on the sewer network. A large amount of information was disclosed as part of this Inquiry in the form of a document bundle to all those attending. The Inquiry was conclusive, and the public interest in reopening a matter which was extensively discussed and concluded sixteen years ago appears somewhat limited.
41. Northumbrian Water has referred to other, extensive, disclosures over the years under the Environmental Information Regulations; these are disclosures of information into the public domain. It says there have also been several ICO investigations, which further substantiate its view that these disclosures have contributed to informing the public interest.
42. More recently, Northumbrian Water says it has undertaken a large project at Whitburn in response to the results of the Public Inquiry. To inform the public, it has set up an online community portal at:  
  
<https://nwlcommunityportal.co.uk/Projects/sunderland/Activity>
43. Northumbrian Water says it has also run a customer hub at Roker Baths Road, where any member of the public could drop in to find out more about the project. Its Information Access Team liaised with the project team to ensure that any more detailed requests for information could be handled in line with its obligations under the Environmental Information Regulations. There were also numerous mailings to households in the affected area to ensure that local residents were fully informed about the project and how they might be affected by the work.
44. Northumbrian Water has noted that the complainant's focus is on his business specifically, not the wider area. It says it has not received any other requests for information on this topic requiring a response under the Environmental Information Regulations.
45. Referring to the Commissioner's decision in FER0557144 on this issue, Northumbrian Water has noted that the Commissioner took account of the numerous requests already made for information on this topic and stated (paragraph 34) that they are diverting the public authorities concerned away from carrying out their overall statutory function, which was not in the public interest.



*Balance of the public interest*

46. On balance, the Commissioner considers that it is clear in this case that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exception.

## Right of appeal

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47. 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](mailto:GRC@hmcts.gsi.gov.uk)

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

48. 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.

49. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Appendix

"I have to say would it not have been easier to have just provided the information, saving us all time and money, I have to say you certainly laboured the point about an internal review whatever it was.

1. It is important that the real background to this situation is explained, particularly as you seem not to practice what Northumbrian Water preaches – ***“Keeping our customers informed”***

2. I want to bring you back to NWL’s email dated 26 August 2016 under the heading, when it was stated: - ***“Your request for item (g) was refused on the ground that NWL is currently working on a proposal for Whitburn but, as this is a ongoing project, disclosure is prohibited under Regulation 12(4)(d), being a request relating to material which is still in the course of completion, to unfinished documents or to incomplete data. The public interest test applies equally to Regulation 12(4)(d) and was applied and determined by NWL in the same way”*** - ***“Your request for an internal review”*** – ***“As you specifically exclude items (e) and (g) from the scope of your review...”*** Although a very dangerous thing to do, I took NWL at their word, the statements above confirm I requested the information over 1 year ago.

3. Next is a copy of the storm return data 1<sup>st</sup> April 2010 to 31 March 2011 (1<sup>st</sup> April to the 17 may 2010) The information on the top of this page shows exactly why NWL are refusing to supply the requested information as this data confirms that Whitburn system is operating illegally and not complying with the discharge consent – ***“In accordance with the consent condition, the Whitburn Steel return pumps are available to operate every day to pump any waters collected in the Whitburn interceptor tunnel forward to Hendon system”*** – 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.

4. Discharge consent issued following the 2001 public inquiry Conditions 4. 5. And 9 show the statement above is flawed but more it shows why so much sewage is coming ashore.

5. Next is the notes dated January 1999 NWL provided to all who participated in the 2001 public inquiry in support of the current application that still stands. It is important to remind NWL what they told the Inquiry: -

***“The dry weather flow calculations provided in support of the 13 August 1992 application remain valid. The combined sewer settings have been checked and agree with the Formula A calculations submitted also: - I refer to Whitburn as the example DWF – 19l/s and Formula A 129l/s”*** – It is very important to remind NWL this is not only what the public were told but also the Inquiry.

6. EA letter dated 13 December 1999 paragraph 5 confirms what NWL were claiming Whitburn 19l/s – Formula A (nominal 6XDWF 129l/s).

7. Page 1112 paragraph 71 provided by the European Commission showing the UK ***“When the amount of collected urban waste water exceeds 4.5 times dry weather flow, the CSOs at the pumping stations operate”*** – This statement is again intended to mislead it is not permitted or consented that the CSOs spill at this level and for that reason 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 rainfall and/or snowmelt?

8. ***“The excess waste water flows to the storm sewage interceptor tunnel to be stored (up to 7000cu metres). When flows in the collecting system subside i.e. below 4.5XDWF, the stored water is returned to the main collecting system for pumping forward for secondary treatment and ultraviolet disinfection at Hendon waste water treatment works”*** – Once again this statement shows the Whitburn system is not complying with the consent - first when the level reaches 7,000 cu metres a discharge is made to sea – this can only take place if the liquid entering the tunnel from the CSOs exceeds 6XDWF and this is due to rainfall and/or snowmelt, authorities response to the EC 2006 reasoned opinion, where it states: - ***“The Whitburn part of the system operates in the following way”***

***i) “Urban waste water collected from the Whitburn area flows by gravity in the collecting system to the pumping stations (Whitburn Bents, Seaburn and Roker). All collected urban waste water up to 4.5 times dry weather flow is pumped forward for***

***treatment at Hendon waste water treatment works for full treatment and ultraviolet disinfection. Up to this volume the CSOs do not operate***

This statement is not correct worse is the flawed data suggesting that up to 4.5XDWF the CSOs do not operate this statement beggars belief. As can be seen by the European Court Judgement they were taken in by these incorrect calculations for this reason we request that NWL provide the part of the discharge consent that allows the CSOs to operate at this level?

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

*iii)* ***“If the operational storage capacity (7,000 cu metres) of the interceptor tunnel is exceeded, then excess waste water is screened (through 6mm mesh) and then pumped to sea through the 1.2km long sea outfall. The length of the outfall has been designed so as to minimise the effect of discharges on the receiving waters”***

– Once again this type of discharge is not consented the discharge must consist of storm water not waste water as the only treatment is by screens and it is possible that these are easily overtopped. A discharge of this kind cannot and could not meet the Urban Waste Water Directive yet in the case of Whitburn it has long been made. Please provide us with a copy of the consent allowing waste water (against storm water) to be discharged?

*iv)* ***“This is normal procedure except where severe weather is predicted. In such situations, the volume in the interceptor tunnel may be pumped to sea until the volume reduces to 2000 cu metres to create as much storage capacity as possible to attenuate the predicted storm. This 2000cu metre threshold was determined following a public inquiry in October 2001. My authorities understand that a copy of the Inspector’s report of the inquiry dated 25 February 2002 has been provided to the Commission. This is an operational decision to minimise the risk to the bathing waters of the high level overflows in the tunnel (1 in 5 year overflows) operating”***

– This was the very situation that called for the public inquiry in the first place where discharges

were being made almost every day even when there was no rainfall. As you can see the reference is being made regard the Inspector's report, 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? It is interesting the reference to the Inspectors report because I would also like to make a reference to it where he states in paragraph 16.5.1.8. ***"The shortcomings were identified in a 1993 technical report which recommended that the model should be changed before being used for design purposes otherwise it was likely to significantly underestimate CSO spillage and storage requirements. However construction of the tunnel had already started and NWL rejected the recommendation"*** – Time has shown and continues to be shown that no truer words could have been spoken, sadly nothing has been learnt and history is about to repeat itself with the public being defrauded into having to pay for another white elephant that has failed to be assessed correctly. The discharges being made from Whitbrun are normal occurrences the suggestion that there might be a possible storm so we empty the tunnel is ludicrous from a system that offers no treatment other than screening does not comply with the UWWTD.

I await your response within 20 working days as paragraphs 7 and 8 are new requests, if you want to continue to play games then play them to yourself but we the public want to move on before being flooded even in more sewerage because what is being proposed is not going to work..."