

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

**Date:** 13 May 2022

**Public Authority:** Northumbrian Water Ltd  
**Address:** Northumbria House  
Abbey Road  
Pity Me  
Durham  
DH1 5FJ

**Decision (including any steps ordered)**

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1. The complainant requested data about Sewage Treatment Works (STWs). Northumbrian Water Ltd declined to provide the information and relied on Regulation 6(1)(b) of the EIR as it said that the information was publicly available from the Environment Agency.
2. The Commissioner's decision is that the information in question is both publicly available and easily accessible. Northumbrian Water Ltd was therefore entitled to rely on Regulation 6(1)(b) of the EIR to not provide the information.
3. The Commissioner does not require further steps.

**Request and response**

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4. On 29 May 2021, the complainant wrote to Northumbrian Water Ltd and requested information in the following terms:

"I wonder could you possible supply me with three different sets of data for Northumbrian Water owned STWs.

- "1) Please supply PE figures per STW from period AR 10 through to AR21.

- "2) Please supply current permitted minimum storm tank capacities, Cm<sup>3</sup>, for all STWs utilising storm tanks to deal with excess stormflows.
- "3) Please supply Minimum FFT settings, l/s, for all STWs utilising storm tanks to deal with excess storm flows."
5. Northumbrian Water Ltd responded to the request on 4 June 2021. It refused to provide the information and relied on Regulation 6(1)(b) of the EIR in order to do so.
6. The complainant sought an internal review on the same day. Northumbrian Water Ltd completed its internal review on 22 June 2021. It upheld its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 24 July 2021 to complain about the way his request for information had been handled.
8. The Commissioner wrote to the complainant on 12 April 2022, setting out his preliminary view of the complaint. He noted that there was no dispute that the information in question was publicly available and he also considered that the information was "easily accessible" within the meaning of the legislation.
9. The complainant did not accept the Commissioner's view and asked for a decision notice.
10. As the issues involved are straightforward and as Northumbrian Water Ltd's position has been set out clearly in its responses, the Commissioner did not seek a formal submission from the company – although he did ask if there was anything it wished to add. No response was received.
11. The Commissioner considers that the scope of his investigation is to determine whether the information is both publicly available and easily accessible.

### **Reasons for decision**

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#### **Is the requested information environmental?**

12. Regulation 2(1) of the EIR defines environmental information as being information on:

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
  - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
  - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a)...as well as measures or activities designed to protect those elements;
13. As it is information relating to the capacity of Northumbrian Water Ltd to cope with excess rainwater, the Commissioner believes that the requested information is likely to be information on a "measure" affecting both the elements of the environment (namely, water) directly and on factors (namely, wastewater and sewage) which may in turn affect the elements of the environment. For procedural reasons, he has therefore assessed this case under the EIR.

**Regulation 6(1)(b) – publicly available and easily accessible**

14. Regulation 6(1) of the EIR states that:

"Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless—

- (a) it is reasonable for it to make the information available in another form or format; or
  - (b) the information is already publicly available and easily accessible to the applicant in another form or format."
15. Northumbrian Water Ltd stated that the information in question was both publicly available and easily accessible to the complainant in another form or format. It noted that the particular data the complainant was seeking would be contained in the various permits it was required to seek from the Environment Agency in order to discharge polluting liquids into or onto either the ground or watercourses.
16. As the Environment Agency publishes a searchable register of all the permits that it has granted and will provide an individual with copies of

each permit on request, Northumbrian Water Ltd argued that the information in question was both publicly available and easily accessible.

17. The complainant disputed that the information was "easily" accessible to him. He noted that he had provisionally identified some 111 permits that the Environment Agency had granted to Northumbrian Water Ltd and he estimated that extracting the information that he was interested in would take him around 26 hours to complete. Conversely, he argued, Northumbrian Water Ltd would have this data much more easily to hand and could provide it to him without having to complete such a process.
18. In addition, the complainant argued that the information was not all available to him as the Environment Agency's published register only contained the most recent documentation for each permit. He noted that, where the Environment Agency had agreed some form of variation of the permit (especially where the variation did not relate to the particular data he was seeking) the most recent version might not contain the data he was seeking – necessitating a further request to the Environment Agency for older versions of the permit.
19. Finally the complainant noted that several other water companies had supplied the requested information to him without issue.

### **The Commissioner's view**

20. The Commissioner considers that the information is publicly available and easily accessible within the meaning of the EIR.
21. The EIR should always be read in the context of the EU Directive and the Aarhus convention – from which the EIR derive. Both the Directive and the Convention that preceded it refer to the need to promote access to environmental information – so that it can be used to encourage public participation in environmental decision-making.
22. In the Commissioner's view, Regulation 6(1)(b) should be understood in the context of Regulation 4 of the EIR which places an obligation upon all public authorities to make progressively available as much of the environmental information they hold as possible.
23. The EIR place an obligation upon public authorities, but they also provide public authorities with some protection. Where environmental information has already been made available, public authorities can shield themselves from some of the burden of responding to requests – either because would-be requesters have already found the information for themselves or because the public authority can, when a request has been made, simply point to the information already available. Therefore Regulation 6(1)(b) exists in part to protect public authorities from having to re-provide the same information continually – it also acts as

an extra incentive for public authorities to make the environmental information available in the first place.

24. Even if the Commissioner were to accept that the complainant's estimate of the time required to extract the information was accurate, it does not follow that the information is not easily accessible. The complainant can access the information by simply opening up each permit. The time required is not expended on accessing the information, but on choosing which information he wishes to access, extracting the particular piece of environmental information that is of interest to him and converting that information into a format that is convenient for him to re-use.
25. The EIR do not concern the right to re-use the environmental information or the ease with which that can be done. They only concern the right of access to the information in the first place.
26. Whilst the complainant will need access to a large number of permits to extract all the information he is interested in, given that the Environment Agency is willing to provide any individual permit, it should not be a difficult undertaking to agree a timescale for all the permits to be provided (as opposed to requesting them altogether and expecting an immediate response).
27. There is no evidence to support the complainant's assertion that Northumbrian Water Ltd does actually have the requested information already available in the format he seeks. Even if it were the case, Regulation 6(1)(b) would still apply. Just because the information may be more easily accessible to the public authority than to the requester does not mean it is not still easily accessible to the requester.
28. The Commissioner accepts that there may be some instances where an additional request might need to be made for a particular site because the most recent documentation does not include the requested information. However, the complainant has not explained why earlier versions would be any more difficult to obtain than the current ones.
29. Whilst section 21 of FOIA is not a direct equivalent of Regulation 6(1)(b) of the EIR, the Commissioner draws support for his approach from the ruling of the First Tier Tribunal in *Benson v Information Commissioner EA/2011/0120*, where the Tribunal stated that:

"In reaching this conclusion [that the information was reasonably accessible], the Tribunal notes that the information requested was not said by the Appellant to be difficult for him to find on the website, merely that it was spread across a number of web pages so that he found it inconvenient to harvest and re-use the information. The

Tribunal finds that this is not a relevant consideration in relation to the question of whether the information requested was 'reasonably accessible' to the Appellant in this case."

30. The complainant is clearly aware of the Environment Agency's website and of the process involved in requesting a permit. No technical reasons appear to prevent him from accessing the information and he has not provided any health or other grounds that would make it more difficult for him to access the information than any other person.
31. Given the above and that the Environment Agency does not charge an unreasonable fee for access to the information, the Commissioner is satisfied that the information is both publicly available and easily accessible to the complainant. As such, Northumbrian Water Ltd was entitled to rely on Regulation 6(1)(b) to refuse to provide the information.

## Right of appeal

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32. 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)

33. 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.
34. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**