

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

**Date:** 16 May 2022

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

**Decision (including any steps ordered)**

---

1. The complainant requested data relating to the operation of a Sewage Treatment Works. Northumbrian Water Ltd relied on Regulation 8 of the EIR and stated that it would only provide the information for a fee of £75.
2. The Commissioner's decision is that Northumbrian Water Ltd has sought to levy an unreasonable charge for environmental information and has therefore breached Regulation 8 of the EIR.
3. The Commissioner requires Northumbrian Water Ltd to take the following steps to ensure compliance with the legislation.
  - Either provide the information to the complainant or issue a refusal notice that complies with Regulation 14 of the EIR.
4. Northumbrian Water Ltd must take these steps within 35 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

---

5. On 21 April 2021 the complainant requested information of the following description:

“With respect to the Hendon Sewage Treatment Works I request ...

“[1] All MCERTS 15-min effluent data from 1/1/2015 to the present

“[2] All TDV (total daily volume) data supplied to the EA from 1/1/2015 to the present

“[3] All flow to treatment data (FFT) for 1/1/2015 to the present

“Please supply this information in spreadsheet format.”

6. On 7 May 2021, Northumbrian Water Ltd responded. It stated that it was only willing to provide the requested information for an upfront fee of £75 – although it stated that this fee would be partially refunded if the actual cost incurred turned out to be less than £75.
7. The complainant asked his MP for assistance and she wrote to Northumbrian Water Ltd on 21 June 2021 requesting that the fee be waived. Northumbrian Water Ltd refused to waive the fee.
8. The complainant then formally requested an internal review on 20 July 2021. Northumbrian Water Ltd responded on 28 July 2021. It refused to carry out an internal review as it did not consider that it was required by the EIR to do so, because the request had been made more than 40 working days after the charging notice was sent.

## Scope of the case

---

9. The complainant contacted the Commissioner on 28 July 2021 to complain about the way his request for information had been handled. He was unhappy that Northumbrian Water Ltd had refused to carry out an internal review.
10. Although the Commissioner is not obliged to accept complaints where the public authority has not carried out an internal review, he decided to exercise his discretion in this case and accept the complaint anyway. Charging for environmental information is a controversial matter and Northumbrian Water Ltd had been given the opportunity to carry out an internal review – but declined to do so.

11. As requiring Northumbrian Water Ltd to carry out an internal review now would serve no useful purpose (and, as the Commissioner will go onto explain, the EIR did not oblige a review to be carried out in these circumstances), the Commissioner has instead focused his investigation on the charge that Northumbrian Water Ltd wished to impose.

## **Reasons for decision**

---

### **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;
  - (d) reports on the implementation of environmental legislation;
  - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
  - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
13. Although he has not seen the requested information, as it is information relating to the treatment of wastewater the Commissioner believes that the requested information is likely to be information on factors (ie.

waste) affecting the elements of the environment (namely, water). For procedural reasons, he has therefore assessed this case under the EIR.

### **Regulation 8 – charging for environmental information**

14. Regulation 8(1) allows a public authority to charge for making environmental information available, subject to the following conditions:
  - Regulation 8(2) provides that no charge can be made to allow access to a public register or list of environmental information, or to examine the information at the place which the public authority makes available;
  - Regulation 8(3) requires that any charge must not exceed an amount which the public authority is satisfied is reasonable;
15. Where a public authority does choose to levy charges, Regulation 8(8) requires that the public authority should make available a schedule of charges and details of the circumstances in which those charges might be waived.

### **Northumbrian Water Ltd's position**

16. Northumbrian Water Ltd explained to the Commissioner that, having reviewed the charge again, it was satisfied that £75 was reasonable.
17. It explained that it had made preliminary enquiries of its Waste Water Quality and Compliance team, who had advised that it would take ten minutes to locate and extract a year's worth of data for each of the elements of the request. As the request had three elements and each element sought six years' worth of data, Northumbrian Water Ltd had calculated that responding to the request would take 180 minutes or three hours. Using the £25 per hour figure used to quantify staff time in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Fees Regulations), Northumbrian Water Ltd had therefore concluded that a fee of £75 (three hours of staff time at £25 per hour) was reasonable.
18. Northumbrian Water Ltd explained that the information was not information that it did, or was required to, make publicly available.
19. Although Northumbrian Water Ltd recognised that there was some public interest in the information, it noted that it had engaged with the Whitburn Neighbourhood Forum (on whose behalf the request had been submitted) on this subject for a number of years. Between 2015 and 2022, it noted that it had received 20 requests from individuals connected to the Forum and therefore the public value of the latest information request was lower.

20. Northumbrian Water Ltd also drew attention to the issues that it had previously had with one particular member of the Forum – noting that the Commissioner had issued three previous decision notices finding that the requests were manifestly unreasonable because of the unreasonable manner in which the requestor had pursued the matter. It needed to protect its resources against continuing to deal with requests for which, it argued, there was a limited public interest – in the context of the history of its engagement.
21. When the Commissioner pointed out that the Forum was a small campaign group, raising an issue of public interest, Northumbrian Water Ltd responded to say that it considered EIR requests to be applicant-blind.
22. Finally, in regards to its charging policy more generally, Northumbrian Water Ltd stated that:

“Northumbrian Water has a detailed policy on charging for environmental information and this is clearly set out at <https://www.nwl.co.uk/services/environmental-information>. We refer requesters to this in all our contacts.

“The fee charging is based on ICO guidance and Decision Notices and cases...

“...We have looked through our response statistics in order to confirm that there is no routine charging having a deterrent effect (Reg. 8).

“Since the decision in Fish Legal v ICO in 2015 which held that statutory water companies were subject to EIR, Northumbrian Water has responded to EIR requests. Since January 2019, we have answered 370 requests. Of these 370 requests, a fee request has been made in only 15 cases. 253 individuals have received EIR responses during this period, and only five of the 253 requesters were asked for a fee. We have had seven requests from groups who have identified themselves as such. Of these, all were provided with an EIR response and only one group out of the seven was asked for a fee.

“These figures show that Northumbrian Water does not routinely charge for EIR information, rather, that it charges in very few cases. We follow the ICO Guidance on Regulation 8, that is, to avoid routinely charging for environmental information.”

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

23. The Commissioner does not consider that £75 is a reasonable charge in the circumstances of this case.

24. The Commissioner's guidance on Regulation 8 emphasises that public authorities should avoid routinely charging for environmental information, and additionally, should take account of the wider aims of the EIR.<sup>1</sup> The guidance also notes the findings of the Court of Justice of the European Union in *East Sussex County Council v Information Commissioner* [C-71/14], in which the Court found that an applied charge must not have a deterrent effect on the right to obtain environmental information.
25. The Commissioner recognises that, if an applied charge does have a deterrent effect, this undermines the intended purpose of the EIR and the fundamental objectives that it is seeking to achieve as set out in the Convention of Access to Information, Public Participation in the Decision-Making and Access to Justice in Environmental Matters (commonly known as the 'Aarhus Convention'), and the subsequent EU Directive 2003/4/EC.
26. The Commissioner's guidance also explains that the context of a request may affect the reasonableness of any charge. A reasonable charge in one context (e.g. for property search information requested as part of a commercial transaction), may differ from a reasonable charge in another context (e.g. a public group seeking information about pollution in relation to environment concerns).
27. In this case, the Commissioner notes that the issue of sewage discharge in the Whitburn area resulted in the UK being found to be in breach of its obligations under the Waste Water Directive in 2012.<sup>2</sup> Whilst the Commissioner accepts that remedial steps may have been taken since that date, there will be a heightened and ongoing public interest in information relating to sewage discharge in the area.
28. The EIR do not specify the rate at which staff time should be calculated. Although the Fees Regulations do not apply to the EIR, the Commissioner's view is that it is reasonable for public authorities to use the given rate of £25 per hour as a starting point. This is the exact rate charged by Northumbrian Water Ltd.
29. In the context of this case, the Commissioner must consider whether that charge is reasonable. In addressing this, the Commissioner notes

---

<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/charging-for-information-under-the-eir/>

<sup>2</sup> See *Commission v UK* [Case C-301/10] (Court of Justice of the European Union)

that it is useful to refer again to the Fees Regulations, in which Parliament set an “appropriate limit” for the costs that a public authority should be expected to bear. That appropriate limit, which is £450 for public authorities other than government departments, can be seen as an indication of what Parliament intended would be a reasonable cost to expect such authorities to incur when responding to an information request under FOIA. In this case, the charge of £75 is significantly within the appropriate limit that would apply to an information request under FOIA.<sup>3</sup>

30. The Commissioner notes that the complainant represents a small local campaign group without access to large financial resources. Whilst £75 might be a modest sum to a commercial enterprise, to a small local organisation it is considerable – especially given the implication by Northumbrian Water Ltd that further requests on the topic (which is obviously a key priority for the Forum) will also be subject to a charge.
31. The Commissioner has found Northumbrian Water Ltd’s submissions to be somewhat contradictory. On the one hand it has been keen to emphasise how rarely it applies charges, but on the other hand it publishes a schedule of charges which indicates that, unless the information is already published, a charge will be levied for access.<sup>4</sup> Equally, Northumbrian Water Ltd has been keen to point out its past dealings with the Forum whilst at the same time, claiming that it deals with requests on an applicant-blind basis.
32. Contrary to Northumbrian Water Ltd’s assertions, on the available evidence, the Commissioner considers that not only is a charge of £75 likely to have a deterrent effect but that this effect is the reason a charge has been levied in the first place.
33. The statistics Northumbrian Water Ltd has provided demonstrate that the company only levies a fee in a small handful of cases. No explanation has been provided as to why fees were charged on these occasions or what criteria are used to assess when to charge a fee. The published schedule of charges is equally silent on the matter, beyond noting that some information is already available for free. Whilst the

---

<sup>3</sup> The Commissioner notes that Northumbrian Water Ltd is not subject to FOIA, but nonetheless considers the comparison apt when determining whether or not any given charge is reasonable.

<sup>4</sup> [https://www.nwl.co.uk/globalassets/corporate/about-us-pdfs/how\\_much\\_does\\_a\\_request\\_cost.pdf](https://www.nwl.co.uk/globalassets/corporate/about-us-pdfs/how_much_does_a_request_cost.pdf)

Commissioner recognises that charges are rarely levied, the lack of published criteria for when charges will and won't be levied indicates to the Commissioner that charges are being applied selectively.

34. Furthermore, the Commissioner considers that Northumbrian Water Ltd's submission indicates that its fee is based on its past dealings on the subject of Whitburn sewage in general and with the Forum in particular. That would suggest that the charge being levied is aimed at reducing the number of requests it is required to comply with, which relate to the issue of sewage in Whitburn, by making such requests more expensive – that would amount to a deterrent effect. Furthermore it would suggest that one individual may receive a charge for requesting information that another requestor, seeking the same or similar information would not. The Commissioner cannot regard such a situation as fair.
35. It is open to Northumbrian Water Ltd to rely on Regulation 12(4)(b) of the EIR to refuse requests on this topic if it believes that the requests are manifestly unreasonable – either because of the burden they would impose or because the requests, when seen in context, would be vexatious. Equally, given the obvious interest in this topic, it may wish to consider making more of its data publicly available so as to avoid the burden of future requests.
36. However, the Commissioner is not satisfied that Northumbrian Water Ltd has levied a reasonable charge in this instance – or that its schedule of charges properly sets out when it will charge for information and when it won't. He therefore finds that Northumbrian Water Ltd breached Regulation 8 of the EIR when responding to this request and is therefore not entitled to levy a charge for making the requested information available.



## Other matters

---

37. Regulation 11 allows a requestor to ask a public authority for a reconsideration (internal review) if they feel that their request has not been responded to in accordance with the EIR. Regulation 11(2) states that such representations:
- “shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with [the EIR].”
38. Northumbrian Water Ltd was correct in law when it informed the complainant that it was not obliged to carry out an internal review – as the request for review was not submitted until 50 working days after the Fees Notice was issued. However, nothing in Regulation 11 would have prevented the company from carrying out a review and, in the Commissioner’s view, it would have been best practice to have carried one out in these circumstances.
39. Charging for environmental information is a controversial area of the law and one which was likely to result in a complaint to the Commissioner. It would therefore have been wise for Northumbrian Water Ltd to have reviewed its stance when asked. Whilst it may not have avoided a complaint in this particular case, attempting to conserve resources in the short run can prove costly further down the line.
40. Secondly, the Commissioner recognises that the complainant in this case sought to involve his Member of Parliament. Whilst MPs have no formal role in the EIR process (and the Commissioner notes that Northumbrian Water Ltd did set out its internal review procedure in its Fees Notice), the Commissioner does not consider that the complainant should be unfairly penalised for engaging in the democratic process.

## Right of appeal

---

41. 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)

42. 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.
43. 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**