

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

Decision notice

Date: 20 May 2024

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

Decision (including any steps ordered)

1. The Commissioner's decision is that the requested information about discharges at combined sewer overflows doesn't engage regulation 12(5)(b) of the EIR, which concerns the course of justice. The Commissioner also finds that Severn Trent Water Ltd has also incorrectly cited regulation 6(1)(b), which concerns form and format.
2. The Commissioner requires Severn Trent Water Ltd to take the following step to ensure compliance with the legislation:
 - Disclose the requested information.
3. Severn Trent Water Ltd must take this step within 30 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

4. The complainant made the following information request to Severn Trent Water Ltd (STW) on 5 September 2023:

“Please could you supply the start and stop times of each discharge recorded at your combined sewer overflows in 2022, and the dates of those discharges, under EIR laws...”
5. STW’s final position was that the requested information was excepted from disclosure under regulation 12(5)(b) of the EIR.
6. However, in its submission to the Commissioner STW has advised that, without prejudice to its position that regulation 12(5)(b) is engaged, if the Commissioner were to find that that exception wasn’t engaged, then regulation 6(1)(b) is engaged and the complainant should submit a request for the information to the Environment Agency (EA).

Reasons for decision

7. This reasoning covers STW’s reliance on regulation 12(5)(b) of the EIR to withhold the requested information. The Commissioner will also consider STW’s citing of regulation 6(1)(b).
8. Under regulation 12(5)(b) of the EIR a public authority may refuse to disclose information to the extent that its disclosure would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.
9. On 10 May 2024, the Commissioner made a decision about a request for the same information about discharges that was submitted to United Utilities – IC-278687-Q9S1¹. The current decision relies on the same reasoning and background.
10. STW had advised the complainant that the information was excepted from disclosure because the matter of discharges was subject to

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2024/4029577/ic-278687-q9s1.pdf>

regulatory investigations into the sector as a whole by the Environment Agency and Ofwat.

11. In its submission to him, STW has said that the requested 'event duration monitors' data could be relevant to the EA's investigation. This is because of its potential to provide insights on compliance with permit conditions "(when combined with other sources of information, to provide and complete picture)."
12. STW has also said that Ofwat and the EA are liaising and sharing findings in respect of their separate but related investigations.
13. In IC-278687-Q9S1, the Commissioner noted that the information requested here is data; it's not any analysis, commentary or deliberation that's come from the EA or Ofwat. Nor is it information that the regulators created during their investigations; it's purely factual information. In addition, the request covers all start and stop times; it doesn't ask STW to identify which relate to dry spillages.
14. In previous similar cases, the Commissioner had found regulation 12(5)(b) was engaged. However, since he handled those previous cases, new evidence has come to light. This includes a statement made by David Black, Ofwat's CEO, on 27 November 2023 at paragraph 33 of IC-278687-Q9S1, and the judgement of the appeal of the Commissioner's decision in IC-2069710F0G9, quoted at paragraph 40 of IC-278687-Q9S1.
15. The Commissioner has noted STW's arguments in its submission to him, however, as in the United Utilities case, he doesn't consider that STW has sufficiently demonstrated how disclosing the data would adversely affect either regulators' ability to conduct their investigations or STW's right to a fair trial.
16. The Commissioner therefore finds that STW has failed to demonstrate that the exception under regulation 12(5)(b) is engaged and that STW isn't entitled to rely on it. Since regulation 12(5)(b) isn't engaged, it's not necessary to consider the associated public interest test.

Procedural matters

17. STW has advised that it considers that under regulation 6(1)(b) of the EIR the complainant should request the information from the EA.
18. Regulation 6(1)(b) 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 the information is

already publicly available and easily accessible to the applicant in another form or format.

19. The Commissioner finds that regulation 6(1)(b) isn't relevant in this case. That's because at the time of the request in September 2023 the information wasn't publicly available (and still isn't) and wasn't easily accessible to the applicant.
20. If STW didn't hold the information but was aware that the EA did, regulation 9 of the EIR (which concerns advice and assistance) would place an obligation on STW to direct the complainant to the EA. However, STW **does** hold the information and whether or not the EA also holds it isn't a consideration here.

Right of appeal

21. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
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Water Lane
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