

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

Date: 26 June 2024

Public Authority: United Utilities Water Limited
Address: Haweswater House
Lingley Mere Business Park
Lingley Green Avenue
Great Sankey
Warrington
WA5 3LP

Decision (including any steps ordered)

1. The complainant has requested transmissivity data. United Utilities refused to comply with the request, on the basis that it's not environmental information.
2. The Commissioner's decision is that the requested information is environmental information under regulation 2(1) and so the public authority is obliged to deal with the request. The Commissioner has also found a procedural breach under regulation 5.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Either disclose the information it holds within the scope the request or issue a refusal notice that complies with regulation 14 of the EIR.
4. The public authority must take these steps 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

5. On 15 January 2024 the complainant wrote to United Utilities and requested information in the following terms:

“Can I place a request under EIR for all data collected by the UV transmissivity monitors at Windermere WwTW, Ambleside WwTW and Near Sawrey WwTW. Please can this be from 2018 to the current date.”
6. United Utilities responded on 12 February 2024, applying a 20 working day extension (for dealing with particularly complex or voluminous requests) under regulation 7(1) of the EIR.
7. It provided its substantive response on 21 March 2024, stating that the requested information wasn't environmental information, in accordance with regulation 2(1) of the EIR.
8. The complainant requested an internal review on 13 March 2024.
9. United Utilities provided the outcome to its internal review on 8 May 2024. It upheld its previous position.

Scope of the case

10. The complainant contacted the Commissioner on 21 May 2024 to complain about the way their request for information had been handled.
11. The complainant disputes United Utilities position that the requested information isn't environmental.
12. The Commissioner considers the scope of his investigation to be to determine whether the requested information is environmental.

Reasons for decision

Is the requested information environmental?

13. It's important to establish whether the requested information is environmental information because the United Utilities, as a water and wastewater service provider, has an obligation to comply with requests for environmental information, under the EIR, but not non-environmental information, under FOIA.
14. If the requested information isn't environmental, the Commissioner doesn't have any power to investigate how the request has been

handled or to compel United Utilities to take any action in relation to the request.

15. 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)";

16. In its refusal notice, United Utilities argued that:

"Information about our transmissivity data is operational in its nature, as it acts as an operational control and a data point for efficiency rather than information about elements or the environment and factors that impact those elements."

17. The complainant has argued:

"transmissivity data is relevant to how the site is performing and the impact it is having on the environment... Transmissivity will determine the turbidity i.e. the suspended solid concentration of effluent which not only is applicable to demonstrating numerical permit compliance

but also to allow the assessment of the impact on environmental health.”

18. Just because information is numerical, or operational, doesn't mean that it can't be environmental information. The request relates to wastewater treatment works at Windermere, Ambleside and Near Sawrey. Regulation 2(1)(a) specifically states that environmental information is information on the state of the elements 'such as water.'
19. The website for Windermere Wastewater Treatment Works¹ describes the center as 'working to protect and improve Windermere's water quality.'
20. As the complainant has pointed out, the efficacy of how a wastewater treatment work operates falls under regulation 2(1)(c) of the EIR, which concerns activities, measures and programmes likely to affect the elements and factors of the environment, as well as measures and activities designed to protect those elements.
21. The Commissioner is satisfied that information that relates to the efficacy and operating of wastewater treatment works falls under the definition of 'environmental information' in accordance with regulation 2(1)(a) and 2(1)(c) of the EIR.
22. If, as the complainant has suggested, there is a direct link between the information being requested and the levels of pollution being discharged from the wastewater treatment works in question, the information would also be environmental under regulation 2(1)(b).
23. Since United Utilities is obliged to deal with requests received under the EIR, the Commissioner is ordering the steps outlined in paragraph 3 of this notice.

Procedural matters

24. Regulation 5 of the EIR states that environmental information shall be made available as soon as possible and no later than 20 working days after receipt of the request if it's not subject to an exception.
 25. In failing to handle the request under the Environmental Information Regulations as it should have done, the Commissioner has found a procedural breach of regulation 5 of the EIR.
-

¹ [Lake Windermere Water Treatment Plant Tours \(uuhub.co.uk\)](http://uuhub.co.uk)

Right of appeal

26. 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

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF