

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

Decision Notice

Date: 2 February 2015

Public Authority: Northern Ireland Water
Address: Westland House
40 Old Westland Road
Belfast
BT14 6TE

Decision (including any steps ordered)

1. The complainant has requested information relating to the recovery of costs of repair work on private land. Northern Ireland Water refused the request on the basis of regulation 12(4)(b) as it said the request was manifestly unreasonable. The Commissioner's decision is that Northern Ireland Water was entitled to rely on the exception at regulation 12(4)(b). No steps are required.

Request and response

2. On 15 May 2014 the complainant made the following request to NI Water (numbers added by the Commissioner for clarity):

"(1) Provide details of the total cost of work undertaken by Morrow and other contractors for NI Water in the last five financial years to terminate/repair leaks on private land.

(2) Provide details of all costs recovered by NI Water from private landlords/landowners in relation to repairs carried out by Morrow and other contractors on private land in the last five financial years."
3. NI Water responded on 23 May 2014 to refuse the request under regulation 12(4)(b) (manifestly unreasonable). NI Water provided details of its public interest considerations, and concluded that the public interest favoured maintaining the exception.

4. The complainant requested an internal review on 23 May 2014.
5. NI Water responded on 6 June 2014, upholding its refusal under regulation 12(4)(b) of the EIR.

Scope of the case

6. The complainant contacted the Commissioner on 15 July 2014 to complain about the way his request for information had been handled.

Reasons for decision

Regulation 12(4)(b): manifestly unreasonable request

7. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable. There is no definition of "manifestly unreasonable" under the EIR, but the Commissioner's opinion is that "manifestly" implies that a request should be obviously or clearly unreasonable.
8. In this case, NI Water considered the request to be manifestly unreasonable owing to the time it estimated would be required in order to collate the requested information.
9. Unlike the FOIA, the EIR do not have a provision where a request can be refused if the estimated cost of compliance would exceed a particular cost limit. However, the Commissioner considers that if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable, regulation 12(4)(b) will be engaged. The Commissioner thus considers section 12 of the FOIA to provide a useful benchmark or starting point for the investigation.
10. Section 12(1) of the FOIA provides that an authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit, known as the cost limit. Section 12 of the FOIA should be considered with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. Regulation 4(3) of the Fees Regulations states that in producing an estimate an authority may only take into account the time taken in:

- (a) determining whether it holds the information,

- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.

11. For NI Water the cost limit is £450 as set out in regulation 3(3). The regulations state that the cost limit must be calculated at the rate of £25 per hour, effectively giving a time limit of 18 hours. As noted above though, this is only useful as a starting point.

Estimate of the time required to collate the requested information

12. The complainant's request can be separated into two parts. The first seeks the total cost of external contractors repairing leaks on private land over the past five years. The second asks how much of these costs have been recovered by NI Water from the landowners or landlords.
13. NI Water confirmed to the Commissioner that it did not routinely collate information of the description specified in either part of the request, so it would need to undertake a number of searches to obtain the relevant information.
14. NI Water explained that each repair "job" generated a Work Order (WO) which was allocated a job code. Since November 2012 WOs had been linked to summary invoices from contractors, but records created before this time were not linked. In order to obtain information from records dating from November 2012, NI Water said it would need to undertake the following steps:
- i) Identify all the contractors involved in leakage repair
 - ii) Obtain a report to identify every repair work order (WO) associated with each contractor
 - iii) Review every repair WO to identify leakage repair on private property
 - iv) Link each private leakage repair to the relevant contractor invoice
 - v) Review the WO/invoice and collate private leakage repair costs
 - vi) Liaise with the relevant Field Manager and Rechargeables section to determine whether this work was recharged.
15. NI Water estimated that it would not take a significant amount of time to complete steps i) and ii), but that steps iii)-vi) would take approximately three minutes per WO. NI Water said that it held around 20,000 WOs for 2013/2014, which could be narrowed to 8500 WOs that were allocated job codes relating to repairs. There are a number of jobs codes relating to leakage repairs, but NI Water said that the most

commonly used job code was LDR003 "Internal Plumbing Repair". Therefore in theory NI Water could undertake a search for all LDR003 WOs. However, NI Water said that the type of job could change as a result of what is found when the leak is examined. Consequently the job code should be changed to reflect the actual issue, but this was not always the case, therefore NI Water considered it would need to check all 8500 WOs in order to identify those relating to leakage repairs on private land.

16. The Commissioner accepts as reasonable NI Water's estimate that it would take three minutes per WO to identify and extract the requested information. The Commissioner notes that the estimate of three minutes only applies to those WOs identified as relating to leakage repairs on private land. The WOs that did not relate to leakage repairs on private land would fall outside the scope of the request and would not need to be examined in such detail. NI Water did not suggest how many of the 8500 WOs might be expected to relate to repairs on private land. If, for example, 10% of the WOs related to such repairs, NI Water's estimate of 3 minutes per WO would equate to 42.5 hours. If 75% of the WOs related to such repairs, the estimate would increase to nearly 319 hours. Neither estimate includes the time required to check and rule out those WOs that do not relate to repairs on private land.
17. The Commissioner accepts that, as this is the only way NI Water can collate the requested information, it is likely to constitute a disproportionate burden and indicates that the request may be manifestly unreasonable. The estimate would far exceed the cost limit under section 12 of the FOIA, and the Commissioner notes that this only forms part of NI Water's estimate, since it relates only to records dating from November 2012 onwards.
18. NI Water further explained that before November 2012 WOs were not linked to invoices. Therefore NI Water would need to undertake the following steps in order to obtain relevant information:
 - i) Obtain a report of all invoices received for each relevant contractor for the period April 2009 to October 2012
 - ii) Extract from each invoice all "measure sheets" indicating work undertaken
 - iii) Check each measure sheet for details of any private leakage repairs
 - iv) If private leakage repair is identified on a measure sheet, review the associated WO to ascertain what work was undertaken
 - v) Liaise with the relevant Field Manager and Rechargeables Section to see if identified jobs were recharged to private landowners.

19. NI Water said it was difficult to quantify the number of relevant WOs, but indicated that step i) would identify around 3800 relevant invoices, which would comprise around 15,000 measure sheets.
20. The Commissioner accepts that it would take many hours to check 15,000 measure sheets. For example, an estimate of one minute per measure sheet would equate to 250 hours. The Commissioner accepts that this represents an unacceptable burden on a public authority, especially in the context of the time estimated to check the more recent records. The Commissioner is satisfied that such a burden is sufficient to render the first part of the complainant's request manifestly unreasonable. Consequently the Commissioner has not gone on to separately consider the second part of the request, and he is satisfied that regulation 12(4)(b) is engaged in respect of the entire request.

Public interest test

21. Regulation 12(4)(b) is a qualified exemption and is therefore subject to the public interest test at regulation 12(1)(b) which states that information can only be withheld if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.

Public interest arguments in favour of disclosing the information

22. NI Water accepted that there was an "obvious" public interest in demonstrating its policy on recovering costs wherever possible as it related to public funding. It would also demonstrate NI Water's commitment to transparency of their actions. NI Water confirmed that it would have been happy to collate and release the requested information, if to do so would not be disproportionately time consuming.
23. The complainant told the Commissioner that he expected NI Water to keep track of the cost of repairing leaks on private land as NI Water had the legal power to recover such costs from the landowner. As a public authority NI Water was expected to demonstrate value for money, therefore the complainant assumed that NI Water would seek to ensure that it recovered as much of these costs as possible. However it was impossible to ascertain how effective NI Water was at recovering such costs in the absence of any published information.
24. The Commissioner understands the complainant's position but cannot comment on NI Water's policy on recovering costs. Complaints or concerns about the way NI Water operates may be submitted to the Consumer Council for Northern Ireland. The Commissioner can only find whether or not a public authority handled a request in accordance with the requirements of the EIR. The question here is whether NI Water

should be required to deal with the administrative burden required to produce the requested information.

25. The Commissioner accepts that there is a strong public interest in NI Water disclosing information that would inform the public of the extent to which costs are recovered. The public is entitled to ask whether public authorities are making the best use of public money, and this includes ensuring that costs are recovered from third parties where appropriate. Disclosure of the requested information would also encourage NI Water to review its practices to ensure that it is making best use of the public money it receives.

Public interest arguments in favour of maintaining the exception

26. NI Water advised the Commissioner that it had dealt with a number of requests from the complainant in respect of an ongoing issue, which had placed a significant burden on its resources. NI Water expressed the view that:

"The nature of the request for the data is disproportionate to any public interest that would further add to the applicant's understanding of the issue... Consideration has therefore been given to the usefulness of the information as opposed to purely the cost of creation and collation".

27. The Commissioner would remind NI Water that the EIR is motive blind and an applicant's personal reasons for making a request are usually irrelevant to the decision making process. In any event, the Commissioner notes that the complainant's request was for general information, rather than information specifically relating to the complainant's situation. The Commissioner does not consider the complainant's previous requests to be relevant to this complaint.
28. The Commissioner does accept that burden (ie the time required to comply with the request) can be a relevant factor in balancing the public interest in relation to regulation 12(4)(b). The Commissioner is mindful that, even though the exception is engaged, the public interest may still lie in disclosing the requested information. However, if the Commissioner accepts burden as a reason to engage the exception, it will also be pertinent to the consideration of the public interest. Therefore the Commissioner has accepted NI Water's arguments with regard to the time required to deal with the request, as also relevant to the public interest.
29. The Commissioner recognises that there is a legitimate public interest in public authorities being able to focus on their core duties and not be unfairly distracted by burdensome information requests. The purpose of the EIR is to regulate public access to environmental information, but it

is not intended that this should cause a public authority administrative problems.

Balance of the public interest

30. The Commissioner is mindful of the presumption in favour of disclosure in regulation 12(2) and the concurrent duty to interpret the exceptions restrictively. The Commissioner considers that there is a legitimate public interest in the public being informed as to how effectively NI Water recovers costs from third parties, particularly in times of austerity and the focus on public sector efficiency.
31. In this case the Commissioner finds that, owing to the way NI Water holds and stores relevant information, collating the requested information would take so long as to create an excessive and unjustified burden on NI Water. The Commissioner accepts as reasonable the complainant's view that NI Water should maintain its records so as to be able to provide this type of information to the public. However, as it stands NI Water's records management does not facilitate collation of the requested information without expending substantial resources in terms of staff time. Accordingly the Commissioner finds that the public interest in maintaining the exception is sufficiently strong to outweigh the public interest in requiring NI Water to expend the time required to comply with the request.

Right of appeal

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: 0300 1234504
Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk
Website: 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 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

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