

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

**Decision notice**

**Date:** 3 December 2015

**Public Authority:** Yorkshire Water Ltd

**Address:** Western House  
Halifax Road  
Bradford  
West Yorkshire  
BD6 2SZ

**Decision (including any steps ordered)**

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1. The complainant has requested access to databases listing properties at risk of low water pressure (DG2) and properties at risk of internal sewer flooding (DG5). Yorkshire Water Ltd applied the exception at regulation 13(1) EIR to the DG2 and DG5. The Commissioner's decision is that Yorkshire Water Ltd has correctly withheld the requested information under the exception for personal data at regulation 13. It did not however provide its response within the statutory time for compliance, it therefore breached regulation 5(2) EIR. The Commissioner does not require any steps to be taken.

**Request and response**

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2. On 26 February 2015, the complainant made the following request for information:

"I would like to visit your office and inspect your DG2 Register, free of charge, to ascertain whether [specified address] is at risk of receiving poor water pressure or flow. Please would you let me know where and when I can access this information."

"I would like to visit your office and inspect your DG5 Register, free of charge, to ascertain whether [specified address] is at risk of internal

flooding due to overloaded public sewers. Please would you let me know where and when I can access this information."

3. Yorkshire Water Ltd responded on 24 April 2015. It said that the low pressure information (DG2 register) is not 'environmental information' for the purpose of the EIR but if it was environmental information, regulation 13 EIR would apply. It also said that regulation 13 EIR applied to the overloaded sewer information (DG5 register).
4. The complainant requested an internal review of that decision on 21 May 2015.
5. Yorkshire Water Ltd provided an internal review on 16 July 2015. It upheld its original position.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 22 July 2015 to complain about the way his request for information had been handled.
7. In its response to the Commissioner, Yorkshire Water Ltd did not maintain that information in the DG2 database is not environmental information based upon the Commissioner's decision in case reference FER0588641. It said that regulation 13 applied to the request for the DG2 and DG5 databases.
8. Whilst the complainant has confirmed that he wants to obtain low pressure and flooding information in relation to a particular address, he has specified that he wants to inspect the whole DG2 and DG5 register to access this information. The Commissioner has therefore considered whether regulation 13 applies to both the DG2 and DG5 databases.

### **Reasons for decision**

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#### **Regulation 13(1) – Third party personal data**

9. This exception provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 ('DPA').

#### **Is the withheld information personal data?**

10. Personal data is defined by the DPA as any information relating to a living and identifiable individual. Information will relate to a person if it is about them, linked to them, has some biographical significance for

them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.

11. The withheld information in the DG2 database is information on the risk of low water pressure at specific addresses.
12. The withheld information in the DG5 database is information on the risk of internal sewer flooding at specific addresses.
13. The complainant does not consider that the requested information is personal data. He considers that if the information he is requesting was personal data, Yorkshire Water Ltd would not be able to sell it in the form of a Con29DW Search.
14. Yorkshire Water Ltd has explained that the primary purpose of the DG2 and DG5 databases is to identify properties at risk so that it can offer remedial services or preventative measures for low pressure and internal sewer flooding to customers living at the properties in the databases. It quoted the following section of the Commissioner's guidance 'Determining what is personal data'<sup>1</sup>:

"Information about a house is often linked to an owner or resident and consequently the data about the house will be personal data about that individual."

15. It said that the address information can easily be linked to the person living at the property and that the information is used by Yorkshire Water Ltd to make decisions that affect customers living at the properties.
16. The Commissioner is satisfied that the withheld information is personal data as defined in the DPA as it is generally possible to link an address to the identifiable occupants of that property and the information informs or influences actions or decisions which affect an individual.

### **Would disclosure breach the Data Protection Principles?**

17. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner has taken into

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf>

account the nature of the information, the reasonable expectations of the data subject, the potential consequences of disclosure and balanced the rights and freedoms of the data subject with the legitimate public interest in disclosing the information.

### **Nature of the information and reasonable expectations**

18. Yorkshire Water Ltd said that in considering whether or not to disclose the requested information under the EIR, it took into account of the fact that answers to the question about sewer flooding and low water pressure are routinely given in official CON29DW reports (the drainage and water enquiry which forms part of a standard property search). It explained that applicants for CON29DW information pay a fee for it and while applicants do not need to justify the reasons for obtaining an official search report, the existence of a fee deters speculative accessing of the data and there would be no such deterrent if this information was effectively released to the public under EIR. It took into account that the disclosure would be to the general public rather than a particular individual and that the request is asking for all of the information in the databases rather than just the 'yes' or 'no' answers that are required for the CON29DW.
19. Yorkshire Water said that its customers have no expectation that it will publicly disclose personal data about them as a significant number of customers opt out of their information being used for any other purposes than billing.
20. In this case, the Commissioner is satisfied that the data subjects would have a reasonable expectation of confidentiality and privacy in relation to the requested information.

### **Consequences of disclosure**

21. In order to assess the impact of the consequences of disclosure, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the data subjects.
22. Yorkshire Water Ltd said that if the DG2/DG5 database is made public it is likely that it will be used by third parties in ways that affect its customers and gave the example that insurance companies are likely to use the information to help set higher insurance premiums in affected areas. It said it also may affect property prices, lenders willingness to lend or re-mortgage and the ability to sell properties.
23. The Commissioner considers that disclosure in this case has the potential to cause damage and distress which could take the form of increased insurance premiums, possible reduced house prices and ability to sell/mortgage properties.

### **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

24. The complainant requires this information to produce Con29DW searches on behalf of the public who wish to purchase properties. The complainant has said that his instructions come from persons with a legitimate reason to request the information. He explained that Yorkshire Water Ltd provide the requested information in their Con29DW and he requires the information for the same purpose. He said that Yorkshire Water Ltd would provide him with the information if he was to pay for it.
25. The Commissioner considers that there is a significant difference in providing information in response to a specific enquiry relating to a specific address and providing complete databases as requested in this case. He considers that the interest in obtaining the complete databases in this case is a private and commercial interest of the complainant and considers that the interest in obtaining information to complete the CON29DW enquiry is met by the property search offered by Yorkshire Water Ltd. The Commissioner does not consider it necessary to release personal data that could cause damage and distress in the form of increased insurance premiums, possible denial of insurance or rejected claims along with possible reduced house prices.

### **Conclusion on analysis of fairness**

26. Taking all of the above into account, the Commissioner concludes that it would be unfair to the individuals concerned to release their personal data. Disclosure would not have been within the reasonable expectations of the individuals and the loss of privacy could cause unwarranted damage and distress. He acknowledges that there is a legitimate interest in obtaining information in order to complete the CON29DW enquiry but this interest is met by Yorkshire Water Ltd's property search. Therefore he does not consider that any legitimate interests in disclosure outweigh the individuals' reasonable expectations and right to privacy.
27. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question. The Commissioner has therefore decided that Yorkshire Water Ltd was entitled to withhold the information under the exception at regulation 13(1) EIR.

**Regulation 5(2)**

28. Regulation 5(2) EIR states that "Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request."
29. In this case, Yorkshire Water Ltd did not respond within the statutory time for compliance. It therefore breached regulation 5(2) in its handling of this request.

## Right of appeal

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30. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. 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.
32. 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 .....**

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