

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

**Decision notice**

**Date:** 11 February 2016

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

**Decision (including any steps ordered)**

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1. The complainant made a request to Northumbrian Water for information relating to the Whitburn system. Northumbrian Water refused to comply with parts a-f of the request as it considers this to be manifestly unreasonable under regulation 12(4)(b) EIR. It refused to provide the information relevant to part g of the request under regulation 12(4)(d) EIR which applies to material which is still in the course of completion, to unfinished documents or to incomplete data. The complainant asked Northumbrian Water to conduct an internal review only in relation to parts a-d and f of his request. Northumbrian Water upheld its application of regulation 12(4)(b) EIR to parts a-d and f of the request.
2. The Commissioner's decision is that Northumbrian Water has correctly applied regulation 12(4)(b) to parts a-d and f of the request.
3. The Commissioner requires no steps to be taken.

**Request and response**

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4. On 14 June 2015 the complainant requested information of the following description:
  - a. *Copies of all information that shows the Whitburn system was designed to spill at 4.5xDWF?*

- b. Copies of all information that shows the Whitburn system was designed to spill at 6xDWF?*
  - c. Copies of all information showing how the figure of 10,800 cu meters [sic] was arrived at?*
  - d. The discharge consent gives a flow rate at what level each CSOs can spill into the interceptor tunnel. It is my contention that these calculations are based on 6XDWF as I believe I have shown above. If as it is claimed by the EA that 4.5xDWF is the spill rate from the CSOs please supply all information including the calculations showing how the figures shown in the consent were arrived at?*
  - e. Please provide all calculations that were used to obtain the consent including that the Whitburn pumping station was designed to spill at approximately 20 times per year?*
  - f. Please would you provide a copy of the correspondence showing where you informed the Environment Agency the Whitburn system was spill [sic] at 4.5xDWF?*
  - g. We understand from Defra that NWL have put forward a scheme to correct the Whitburn system – please under the EIR supply a copy of this proposal?*
5. On 9 July 2015 Northumbrian Water responded. It refused to disclose the requested information at (a)-(f) under regulation 12(4)(b) EIR as it said it was manifestly unreasonable. It refused to disclose the information requested at (g) under regulation 12(4)(d), being a request relating to material which is still in the course of completion, to unfinished documents or to incomplete data.
  6. The complainant requested an internal review on 9 July 2015. The complainant asked Northumbrian Water to conduct an internal review only in relation to parts a-d and f of his request. Northumbrian Water sent the outcome of its internal review on 26 August 2015. Northumbrian Water upheld its application of regulation 12(4)(b) EIR to parts a-d and f of the request.

## **Scope of the case**

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7. The complainant contacted the Commissioner 24 September 2015 to complain about the way his requests for information had been handled.

8. The Commissioner has considered whether Northumbrian Water correctly applied regulations 12(4)(b) EIR to parts a-d and f of the request.

## **Background to request**

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9. Northumbrian Water explained that since 1992, the complainant has raised concerns about the Whitburn sewerage system with various different authorities, including the Environment Agency, Defra and Northumbrian Water. It explained that over the years, Northumbrian Water has received 282 contacts from the complainant, excluding correspondence with external solicitors either acting on its behalf or on behalf of the complainant or numerous pieces of correspondence between Northumbrian Water and other authorities dealing with the complaints.
10. It said that this cumulated in a Public Inquiry in 2001, lasting 11 days, regarding the frequency of spills from Whitburn storage and pumping systems (the Whitburn System). It said that the complainant did attend the Public Inquiry. It said that a significant amount of information was provided to those attending the Inquiry in the form of an Inquiry bundle (a copy of which was provided to the Commissioner). It explained that it considers that the meetings, telephone calls, legal action and full Public Inquiry over the last 23 years demonstrate that everything possible has been done to answer the complainant's concerns and he has been provided with a significant amount of information relating to the Whitburn System. It explained that the information requested at a-f of the request is contained in the Inquiry bundle. It explained that this is the backdrop as to why it applied regulation 12(4)(b) to parts a-d and f of the request.

## **Reasons for decision**

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11. Regulation 12(4)(b) provides that a public authority may refuse to disclose information to the extent that - the request for information is manifestly unreasonable. In this case Northumbrian Water considers that parts a-f of the request are manifestly unreasonable because they are vexatious. The Commissioner therefore considers such cases as he would when section 14(1) is applied under FOIA.

12. The Commissioner's guidance<sup>1</sup> on the application of section 14(1) FOIA and for vexatious requests under regulation 12(4)(b) EIR, refers to an Upper Tribunal decision<sup>2</sup> which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
13. The guidance suggests that the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.
14. Northumbrian Water explained that the ICO has issued four previous Decision Notices for this complainant where the requests have related to the Whitburn System. In relation to case reference FER0439690 (2012)<sup>3</sup> and FER0494509 (2013)<sup>4</sup>, the requests were made to Defra, in relation to the former the Commissioner found that regulation 12(5)(a) had been applied correctly to withhold the requested information and in relation to the latter the Commissioner found that the information requested was not held. However in relation to FER0230659 (2009)<sup>5</sup> and FER0473714 (2013)<sup>6</sup>, the requests were made to the Environment Agency and the Commissioner upheld the application of regulation 12(4)(b) in both cases.

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<sup>1</sup>[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

<sup>2</sup> *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013)

<sup>3</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2012/738138/fer\\_0439690.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2012/738138/fer_0439690.pdf)

<sup>4</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2013/907338/fer\\_0494509.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2013/907338/fer_0494509.pdf)

<sup>5</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2009/457198/fer\\_0230659.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2009/457198/fer_0230659.pdf)

<sup>6</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2013/824574/fer\\_0473714.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2013/824574/fer_0473714.pdf)

15. Northumbrian Water explained that this demonstrates the complainant's unreasonable persistence in relation to this matter as it highlights the frequency and length that this has already been discussed with other authorities as well as Northumbrian Water and the number of parallel and overlapping requests made to other public authorities.
16. It went on, for example, that in case reference FER0230659, it was highlighted that after the complainant had been advised that "no further purpose would be served by continuing to correspond...on [the] matter, he contacted the public authority a further 89 times" regarding the issue (paragraph 37 of the Decision Notice). It said that the Commissioner also noted that the complainant was "attempting to get the public authority to re-open discussions...which had already been addressed by the Public Inquiry, an investigation by the Parliamentary Ombudsman and in numerous exchanges of correspondence between the Public Authority and the complainant" (paragraph 40 of the Decision Notice). It explained that the Commissioner went on to say that, "the complainant's obvious intention to re-open long since concluded discussions is also a relevant factor when considering if the request is obsessive" (paragraph 41 of the Decision Notice). It said that at paragraph 9 of the Decision Notice for case reference FER0473714, the Commissioner noted, "dry weather flow for the Whitburn part of the system was discussed extensively at the Public Inquiry in 2001, which the complainant attended." Northumbrian Water explained that it considers that this demonstrates that the complainant has been unreasonably persistent with his previous requests to other public authorities and that this current request to Northumbrian Water is another attempt to reopen an issue which has already been addressed at great length and for which discussions have been concluded.
17. Northumbrian Water went on that all information relevant to parts a-f of the request has already been provided to the complainant through the Public Inquiry. It said that despite the complainant being told this in case reference FER0230659, he has not moderated his behaviour and continues to make requests on this matter to various authorities. At paragraph 44 of case reference FER023659, the Commissioner noted that he considers that this is further evidence of the obsessive nature of the complainant's request.
18. Northumbrian Water said that in FER0230659, the ICO concluded that the request was manifestly unreasonable because it was vexatious. It said that the requester had been in correspondence with the Environment Agency for over three years in relation to the same issue. It was considered, given the extent of communications, that there was little value or purpose in the request and even if the authority responded to the request, it would be unlikely to satisfy the requestor. It highlighted that in FER0473714, the Commissioner noted that, "given

[the complainant's] history of making repeated requests, complying with this request is likely to lead to him making future requests for information." Northumbrian Water confirmed that it has been in correspondence with the complainant on this topic for over 20 years, and answering parts a-f of the request would do little to satisfy him or bring resolution to the matter.

19. Northumbrian Water went on that from 1992 onwards, the complainant has frequently corresponded with it on this matter which has meant it has spent a significant amount of time dealing with this over the years. It said that it considers its dealings with the complainant has imposed a significant burden upon Northumbrian Water in the past, and it anticipates, should this be allowed to continue, it will cause an ongoing burden. I said that the ongoing correspondence has involved a number of different personnel across the business.
20. In terms of specific costs in this case, Northumbrian Water has explained that Bond Dickinson (previously Dickinson Dees) dealt with this matter on behalf of Northumbrian Water. It has confirmed that the costs of retrieval and copying of the information requested at a-f of the request would under normal circumstances come to just over £2,000. It said that as the complainant has already been provided with this information at the Public Inquiry, this cost could not be justified. It confirmed that in this case, because of the complaint to the ICO, Bond Dickinson had provided Northumbrian Water with the information free of charge. Even so it explained that the files would need to be reviewed to retrieve the specific information being requested at a-d and f of the request. It said that this would take a great deal of time and would require input from both internal and external experts. It reiterated again that this information has already been provided at the Public Inquiry and goes over questions already answered which would not justify the time this would take.
21. The Commissioner accepts that Northumbrian Water has been engaged in significant correspondence with the complainant, relating to the Whitburn System for over 20 years. Most notably this resulted in a Public Inquiry in 2001. Northumbrian Water has not referenced any other EIR requests, but this is because it has only recently been recognised that Water Companies are covered by the EIRs. Therefore the Commissioner only has correspondence outside of the EIRs to consider. The Commissioner does however consider that the complainant's previous requests to other public authorities under the EIRs, is a reliable indicator as to how the complainant is likely to interact with Northumbrian Water using the EIRs.
22. The Commissioner acknowledges that the guidance states that to show unreasonable persistence, the public authority must demonstrate that

the requester is attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny.

23. The Commissioner considers that given the length of time the complainant has been corresponding with Northumbrian Water on this matter, the fact that it has been considered independently at a Public Inquiry and the complainants interaction with other public authorities on this matter under EIR, the complainant does demonstrate an unreasonable persistence and that there is also an obsessive nature running through the previous requests made to other authorities and this most recent request to Northumbrian Water.
24. Northumbrian Water has not commented as to whether it considers there is any serious purpose or value behind the request. The Commissioner considers that the subject matter is clearly of significant importance to the complainant, however any serious purpose or value behind it is diminished by the fact that the complainant's requests at a-f have already been answered and therefore it is very difficult to justify any time implications in retrieving and providing this information again, let alone reopening a topic which has been long since independently concluded.
25. The Commissioner does therefore consider that regulation 12(4)(b) has been correctly engaged by Northumbrian Water, he has therefore gone on to consider the public interest test.

### **Public interest test**

#### **Public interest in favour of disclosure**

26. The Commissioner considers that there is a public interest in disclosure of information which relates to a matter which has been the subject of a Public Inquiry. By its very nature, it has been deemed of significant public importance to be the subject of a Public Inquiry.

#### **Public interest in favour of maintaining the exception**

27. Any public interest in disclosure is diminished by the fact that the complainant was furnished with the information requested at a-f of the request at the Inquiry and that these questions have already been answered. There is very little justification on imposing an unreasonable burden on Northumbrian Water, in terms of the opening up of what is likely to be continued and ongoing dialogue on a previously concluded matter and to a lesser extent the direct burden of completing the work involved in this case.

**Balance of the public interest**

28. On balance, the Commissioner considers that it is clear in this case, the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exception.



## Right of appeal

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29. 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)

30. 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.
31. 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**  
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