

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

Date: 12 January 2017

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 information from United Utilities Water Limited (UUWL) on cryptosporidium contamination of water. UUWL initially refused the request under regulation 12(5)(b) and then later 12(4)(c) as it considered it to be formulated in too general a manner. During the Commissioner's investigation the regulation 12(4)(b) exception was also considered.
2. The Commissioner's decision is that regulation 12(4)(b) has been correctly applied and that the balance of the public interest favours maintaining the exception. However, she also finds UUWL has not met its obligations under regulation 9(2) in providing sufficient advice and assistance to the complainant.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide assistance to the complainant on how to reduce the scope of the request so that it is no longer manifestly unreasonable.
4. The public authority must take these steps within 35 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 7 September 2015, the complainant wrote to United Utilities Water Limited (UUWL) and requested information in the following terms:
 - "1. Please provide copies of all guidance issued to staff and contractors on preventing cryptosporidium contamination in water supplies (prior to the last outbreak). Please state the date this guidance was last reviewed.*
 - 2. Please provide copies of all guidance issued to staff and contractors on responding to cryptosporidium contamination in water supplies (prior to the last outbreak). Please state the date this guidance was last reviewed.*
 - 3. Please provide copies of all contingency plans put in place to deal with cryptosporidium contamination in water supplies (prior to the last outbreak). Please state the date these plans were last reviewed."*
6. UUWL responded on 5 October 2015 to ask for an extension for responding. Following this extension, UUWL provided its response on 2 November 2015. It stated it had considered each part of the request individually and as the cryptosporidium incident was the subject of an investigation by the Drinking Water Inspectorate (DWI) the information was being withheld under the exception at regulation 12(5)(b) of the EIR.
7. Following an internal review UUWL wrote to the complainant on 10 December 2015. It stated that it acknowledged a more detailed public interest test should have been provided however on reviewing this request now considered there were additional grounds for refusing the request.
8. UUWL explained that having looked at the wording of the request it now considered that "all guidance" issued to staff and contractors would not fall within the definition of environmental information. Furthermore, "guidance issued to staff or contractors" on internal procedures to prevent or respond to contamination within the water is not information about an element of the environment or a factor of it. Therefore, UUWL concluded it was not obliged to respond to the request under the EIR.

9. That being said, UUWL explained that in the event the information was environmental it would be withheld on the basis of regulation 12(4)(c) – that the request was formulated in too general a manner. UUWL argued that the range of documents covered by the request was so large that it would not be reasonably practicable to even try and assist in narrowing the scope of the request or seeking clarity on the exact intention of the request.
10. Finally, as an alternative, UUWL also still sought to rely on regulation 12(5)(b) of the EIR in the event the information was environmental and the request considered to be formulated appropriately.

Scope of the case

11. The complainant contacted the Commissioner on 23 December 2015 to complain about the way his request for information had been handled. Specifically, the complainant did not agree that the requested information was not environmental information but did accept that the request may have been too general and if advice and assistance was offered then the complainant was happy to narrow the request.
12. The Commissioner considers the scope of her investigation to be firstly to determine whether the request was formulated in too general a manner and if not, whether the information is environmental and should be disclosed or excluded from disclosure on the basis of either regulation 12(5)(b) or 12(4)(b) as an alternative to 12(4)(c).

Reasons for decision

Is the information environmental information and is the request formulated in too general a manner under regulation 12(4)(c)?

13. In the circumstances of this case the Commissioner has taken the step to consider the use of regulation 12(4)(c) first before determining if the information is environmental. This is because UUWL stated it was unable to provide the withheld information due to the size and breadth of the request, citing regulation 12(4)(c) of the EIR. The Commissioner will only make a decision on whether information is environmental without having viewed the information, in exceptional circumstances and she did not consider this to apply here.
14. Regulation 12(4)(c) of the EIR states that:

"(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9."

15. The Commissioner's view is that this exception only relates to requests for information that are too vague, unclear or non-specific. She distinguishes this from requests that might be considered 'too big' or relating to extensive amounts of information, which may be covered by regulation 12(4)(b) of the EIR – manifestly unreasonable.
16. In this case, the Commissioner notes that UUWL did not ask the complainant to clarify, explain or narrow their request. The Commissioner did ask UUWL to explain to her why it considered the request was formulated in too general a manner.
17. In responding to the complainant during the internal review, UUWL had stated that guidance on preventing contamination covers everything from company induction and industry water hygiene card training through to licenced operator training, mains hygiene practices, treatment and distribution, sampling programmes, water safety plans etc. UUWL concluded that the request was therefore too general and the range of documents so large it would not be reasonable to try and assist in narrowing the scope of the request. In the event the information was environmental, UUWL argued it would not be an efficient use of its resources to seek clarity from the requester about what information was requested and then to respond.
18. The Commissioner asked UUWL some further questions around this issue and UUWL explained that its entire operation is geared towards providing clean, safe, contamination-free water. Therefore the request potentially touches upon most areas of its operation. UUWL stated that it did consider if the request would therefore be manifestly unreasonable as to locate, retrieve and collate the relevant information would not be practicable but concluded that the breadth of the request was such that UUWL would not even be able to identify all types of information the request would cover.
19. UUWL has also explained that it considered the duty to provide advice and assistance under regulation 9 of the EIR but did not consider it could realistically confine the scope of the request as it would run the risk of missing another aspect which could be construed as guidance on contamination prevention, reaction or planning.
20. The Commissioner stresses that, to the best of her knowledge, at no stage did UUWL seek to discuss the scope of the request with the

complainant. There was seemingly no attempt to determine what information the complainant was looking to obtain and how widely the request should be interpreted. Had UUWL offered advice and assistance to the complainant this may have become more apparent and the Commissioner believes there was advice and assistance which could have been offered to the complainant even if this was simply UUWL asking the complainant to focus on specific business areas or providing some broad categories of information, such as training documents, which could be searched within.

21. Regardless of this, the Commissioner does not accept that the request can be viewed as formulated in too general a manner based on the arguments presented by UUWL. It seems that UUWL simply believes that if the request is interpreted in its broadest sense then the volume of documents containing relevant information is too vast to be reasonable. However, the Commissioner would go as far as to say that the request is very clear to understand, even if it is taken at its broadest and UUWL had to search every department and operational area for documents containing relevant information, what is being sought would still be searchable.
22. The arguments presented by UUWL are quite clearly arguments relating to regulation 12(4)(b) – that complying with the request would be manifestly unreasonable, rather than that the request is unclear or ambiguous. The Commissioner therefore finds that regulation 12(4)(c) is not engaged.
23. The Commissioner, having advised UUWL of this, next sought to establish if the information would be environmental information. As UUWL maintains its position that the scope of the request is such that locating and collating the information would be unreasonably burdensome, the Commissioner asked UUWL to provide a sample of the types of documents it holds which might contain relevant information.
24. UUWL provided some sample documents including a procedure for responding to positive cryptosporidium detection in a water sample, another document on responding to detections, documents on water quality infringements and a broader incident management procedure which contains many scenarios only one of which is relating to water contamination by bacteria.
25. Regulation 2(1)(c) states that environmental information is:
"any information in any material form on:
 - a. 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) and (b) as well as measures or activities designed to protect those elements;”

26. UUWL accepts that information on the contamination of water relates both to an element of the environment and a factor affecting it. However, it argues that guidance issued to a person does not directly touch upon the state of that element, nor is it information about a factor (such as contamination) affecting the state or condition of that element. UUWL goes on to argue that guidance to personnel (staff or contractors) does not appear to be an administrative measure, policy, plan or programme within the definition of a “measure” at regulation 2(1)(c).
27. The Commissioner considers as a general point that the term “measure” is broad enough to cover staff guidance and contingency plans but this is not the same as saying that the measures (guidance and plans) in question are ones effecting, likely to effect, or designed to protect the state of the elements of the environment. This will depend on the content of the guidance and plans and therefore viewing the information within the scope of the request is essential. The Commissioner viewed the sample provided by UUWL but had some concerns about whether the documents contained information which would be considered guidance to personnel. As such she considered it important to revert back to the complainant to establish definitively what information the request was hoping to illicit.
28. The Commissioner therefore wrote to the complainant to explain that UUWL considered it did not hold specific guidance that it issued to staff and contractors on preventing and responding to cryptosporidium contamination or contingency plans to deal with contamination but that most of the information it held contained information which may fall within the request as the treatment and prevention of contamination of the water supply by any biological or chemical parameter is fundamental to UUWL’s work.
29. The Commissioner is of the view that the scope of the request, based on the above, is important as if the request was intended to illicit information in the form of specific ‘guidance’ documents handed out to contractors and staff then it would seem the information is not held by UUWL. However, a broader interpretation of the request would suggest that the information could be contained in a vast number of documents, some of which have been provided as a sample to the Commissioner. In the event that the wider interpretation of the request as a request for any information which may be considered advice to staff or contractors is the correct interpretation then the Commissioner will need to consider whether the information is environmental and whether UUWL can rely on the regulation 12(4)(b) or 12(5)(b) exceptions.

30. The complainant confirmed that the request was intended to seek specific guidance documentation from UUWL not to ask for any information which may be considered "guidance". The Commissioner is of the view that if this confirmation of the scope of the request had been sought by UUWL when the request was first made this would have led to a much more coherent complaint investigation by UUWL. That being said, although UUWL states that specific guidance documents are not held, it would be incorrect to state on this basis that the information is not held.
31. The documents requested are not held in the specific way they are referred to by the complainant in the request but a request is for information not documents and from the sample documents provided to the Commissioner it is clear that some of the documents do contain information which could be considered as advice to contractors or staff on how to respond in the event of contamination. Whilst some of this information is how UUWL would respond internally, there are details of sampling processes on water sources and all of the information fundamentally is about clearing up the contamination and thus is a measure affecting an element of the environment. The Commissioner acknowledges that not all information in these documents is environmental when viewed in isolation but she considers that when considered in context and as a whole it does constitute a measure affecting an element.
32. Having reached a point where she is satisfied the sample information is environmental information and where the scope of the request has been established, the Commission has next gone on to consider the arguments presented by UUWL that it would be manifestly unreasonable to comply with the request.

Is the request manifestly unreasonable?

33. 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 it would be manifestly unreasonable because of the time and cost implications of compliance.
34. As previously touched upon, UUWL has considered how the request could be refined but it has been unable to see how it could be done. In terms of the time it would take UUWL to carry out the exercise of seeking to locate, retrieve, assess for relevance and collate the information sought it said that this would be significantly in excess of 18 hours.
35. UUWL has referred to the cost limit set out under the Freedom of Information and Data Protection (Appropriate Limit and Fees)

Regulations 2004 as a starting point to assess the reasonableness of this request. Whilst these Regulations do not apply under EIR, the Commissioner has recognised in her Guidance that "...we take these regulations to give a clear indication of what Parliament considered to be a reasonable charge for staff time."

36. The regulations stipulate that a cost estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request - 24 hours work for central government departments; 18 hours work for all other public authorities.
37. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.
38. The Commissioner is satisfied that it is reasonable to use the Regulations as a starting point under EIR, but all of the circumstances of the case must be taken into account to determine whether a request can be deemed manifestly unreasonable on the grounds of cost under EIR.
39. UUWL acknowledges the first step it would have to take would be to determine whether any of the documents it holds contain information specific to cryptosporidium but whilst it would take some time to do this, UUWL is unable to attach a value to the time taken to do this.
40. However, UUWL has attempted to quantify the scope of documents that the request could cover and in doing so has focused on its Quality Assurance (QA) aspect of its operations as the most likely, but not the only, area to hold documents with relevant information.
41. Based on analysis of just QA documents held in September 2015, UUWL identified 4174 site-specific instructions (SSIs), 156 standard operating procedures (SOPs) and 252 network documents which may contain information on cryptosporidium and specifically advice to staff and contractors on prevention and treatment of contaminations as well as information which could be considered contingency plans. UUWL did a key word search of its QA drive using the term 'cryptosporidium and

found that of the 4174 SSIs 93 contained the specific word. That is not to say that the other documents would not also contain relevant information and the Commissioner accepts that general information on bacterial outbreaks will also fall within the scope of the request as well as information specific to cryptosporidium outbreaks as general information will also be relevant to cryptosporidium.

42. In addition to this, UUWL also concentrated some of its search efforts on documents related to the treatment works where the cryptosporidium outbreak recently took place. This was used as a separate search term and produced 71 documents. Similarly 1419 documents were identified that could contain information which may be contingency planning for bacterial contaminations.
43. UUWL has attempted to estimate the time it would take to review each of the documents to identify information within the scope of the request and to extract and collate this. UUWL has stated that the documents vary in length and the Commissioner acknowledges this is supported by the sample documents she has viewed, so UUWL has sampled some documents of variable length i.e. those which would require substantial reading and those which can be skimmed over quickly to establish an average time required to review each document. UUWL has estimate it would take, on average, four minutes per document to open, read, extract and collate any relevant information. This would need to be done to each of the documents identified by UUWL which may contain relevant information including all of the 4171 SSIs, clearly exceeding the cost limit.
44. The Commissioner has considered the arguments presented by UUWL and does accept there is a variable amount of information in each document so an average estimate for the time needed is reasonable. She is somewhat sceptical that this would be four minutes per document and that all 4171 SSIs would contain information within the scope of the request but nevertheless she accepts the arguments of UUWL that the documents would at least need to be read to make this decision. Therefore, even if the time needed to review each document was significantly lower, even only one minute, the time taken to review these documents to locate, extract and collate relevant information would far exceed the cost limit and this is also taking into account that this would only be for documents found in UUWLs QA operations.
45. As the Commissioner does consider that regulation 12(4)(b) EIR has been correctly engaged by UUWL on the basis of the time and cost involved in responding, she has therefore gone on to consider the public interest test.

Public interest test

46. The Commissioner notes that the Drinking Water Inspectorate (DWI) was in the process of investigating the cryptosporidium contamination at the time of the request. As such UUWL were cooperating with the investigation and providing information to the DWI to assist in its findings. UUWL was of the view that disclosing any information which may also have been provided to the DWI would be prejudicial to the ongoing investigation and that information would be shared by the DWI in its final report at the appropriate time.
47. The Commissioner recognises there is a legitimate public interest in transparency with information about the environment and, specifically in this case, with information which may shed some light on the processes and procedures UUWL has in place for dealing with contaminations, particularly in light of the media interest in the cryptosporidium outbreak.
48. However there is a strong public interest in not placing a manifestly unreasonable burden upon public authorities and in this case due to the volume of documents and records that would need to be searched to collate the required information, it would be manifestly unreasonable to comply with it.
49. On balance, the Commissioner considers that in this case, the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exception.
50. As the Commissioner considers that regulation 12(4)(b) EIR was correctly engaged in this case, she has not gone on to consider the application of regulation 12(5)(b) any further.

Regulation 9

51. Under Regulation 9(2) of the EIR a public authority must do the following:
 - (2) *Where a public authority decides that an applicant has formulated a request in too general a manner, it shall –*
 - (a) *ask the applicant as soon as possible and in any event no later than 20 working days after the date of the receipt of the request, to provide more particulars in relation to the request; and*
 - (b) *assist the applicant in providing these particulars.*
52. The Commissioner views this as an obligation for public authorities to help requesters reduce the scope of manifestly unreasonable requests,

where those requests have been refused because the burden of compliance is too great.

53. UUWL has repeatedly stated, both in relation to its insistence the request was formulated too generally and that it was manifestly unreasonable, that it was not possible to offer any advice and assistance to narrow the request. In one of its responses to the Commissioner, UUWL stated:

"However as indicated above, guidance on preventing water contamination pervades every aspect of our entire water supply operation. We have identified a few categories above, but by no means consider this to be the exhaustive list. We do not consider it would have been realistic to try and confine the scope of the request more definitively, as that potentially runs the risk of missing another aspect which could be construed as guidance on contamination prevention, reaction, and planning for the same. Thus we do not consider it reasonably practicable for us to be expected to have been able to afford advice and assistance to the requester under Paragraph 9 of the Code of Practice, as the request was too broad in scope to be able to be capable of being confined, without missing every aspect of the request."

54. The Commissioner believes that this demonstrates UUWL have not fully understood the purpose of offering advice and assistance and that it is entirely possible that the request could have been narrowed. As UUWL itself points out it is possible to identify categories of information and to identify business areas to focus any searches on. Additionally it seems that establishing what the complainant was seeking at the outset could have eliminated a good deal of confusion and allowed for the request to be refined from the beginning.
55. The Commissioner notes that UUWL believes that any information which could be identified would be exempt from disclosure on the basis of regulation 12(5)(b) but this cannot be used as a basis for not offering advice or assistance as the validity of using this exception cannot be determined without the information being identified.
56. The Commissioner therefore concludes that UUWL has not met its obligations to provide advice and assistance in relation to this request and she now asks UUWL to inform the complainant on how to reduce the scope of the request so that it is no longer manifestly unreasonable.

Right of appeal

57. 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

58. 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.
59. 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

Jill Hulley
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