

## **Environmental Information Regulations 2004 (EIR)**

### **Decision notice**

**Date:** 4 July 2017

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information on the transfer of water from one reservoir to another. Originally the water company refused the entire request under regulation 12(5)(b) – adverse affect on the course of justice. However during the Commissioner’s investigation it revised its position. Although it continued to withhold some information under 12(5)(b) it did disclose other information or inform the complainant that the information was not held by citing regulation 12(4)(a).
2. The Commissioner’s decision regulation 12(5)(b) is not engaged in respect of the information to which it is still being applied. In failing to provide other information within the statutory time limits the water company breached regulation 5(2) and by failing to inform the complainant that the remaining information was not held by serving a refusal notice citing regulation 12(4)(a) within the statutory time limit the water company breached regulation 14(2).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the information which has been withheld under regulation 12(5)(b) i.e. that which was requested at parts 3 and 6 of the request.

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

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On 23 March 2016 Fish Legal requested information of the following description:

"1. Please refer to paragraph 10 of our first letter to you today for context. We consider that as a drinking water supplier from Audenshaw Reservoir, UU will keep detailed records of the volumes and speeds (or durations) of water transfers. Please confirm, regarding the water transfers:

- a. The volume of water transferred;
- b. The mean and average speeds at which the water was transferred;
- c. How long the transfer took in total;
- d. If the transfer was not carried out 24 hours a day, seven days a week, please specify the dates and times during which the transfer took place so that a total transfer time can be easily calculated.

2. Please refer to paragraph 12 of our first letter to you today for context and enclose a copy of the lease between UU and MCC referred to.

3. Please refer to paragraph 14 of our first letter to you today for context and supply all sampling records of samples taken from the donor and donee waters and any 'intermediate' waters, including BHAC's fishery, for 5 years prior to the water transfers and all samples taken since, making clear the location of all sampling points within the information provided.

4. Please refer to paragraph 22 of our first letter to you today for context regarding your assertion that the EA has not confirmed that UU's movement of water was incorrect and supply any information held by UU which confirms this.

5. Representatives of UU at a site meeting with representatives of BHAC on 30 July 2015 confirmed that some or all of the need for the water transfers related to a request from a sailing club based at Lower Gorton Reservoir for a higher water level for the purpose of launching boats within Lower Gorton Reservoir. Please confirm whether this was

the sole reason for those transfers (and if not, please confirm what the other reasons were) and supply information including (but not necessarily limited to) correspondence, meeting and telephone notes which relate to the request from the sailing club or other information which records the reason(s) for the September 2014 water transfers.

6. Please supply records of water transfers between Audenshaw Reservoir and Gorton Upper and Lower Reservoirs (and any other transfers which involved water passing through BHAC's fishery) for 5 years prior to May 2014, including all sampling records over the same period which included (but are not limited to) water temperature, pH, volume of water transferred and the speed of water transferred (alternatively the timescale over which each transfer took place)."
5. The complainant represents a local angling club which alleges its fishery has been damaged as a result of the water transfer. The request was accompanied by another letter which detailed these losses and is described by the water company as being a letter of claim, i.e. a formal letter intimating a claim for damages before court proceedings are issued.
  6. On 5 July 2016 United Utilities responded to the request. It withheld the requested information under the exception provided by regulation 12(5)(b) – adverse effect to the course of justice.
  7. The complainant requested an internal review on 25 August 2016. United Utilities sent Fish Legal the outcome of its internal review on 20 October 2016. It upheld its original position.
  8. During the course of the Commissioner's investigation the water company advised her that in a letter concerning the claim for damages dated 4 November 2016, it had already advised the complainant that as it did not operate flowmeters at the site, it did not hold the information requested in parts 1(a) to (c) of the request and, in respect of part 4 of the request it advised the complainant that there had not been any action or contact with the Environment Agency. It also claimed that it had provided the complainant with the information requested in parts 1(d), 2 and 5 as enclosures to the 4 November letter. It therefore argued that the only outstanding issues related to its refusal of parts 3 and 6 of the request.
  9. During the course of the Commissioner's investigation the water company did revise its position and towards the conclusion of the investigation it released additional information in respect of parts 1(a) and (b), and part 4 of the request. It also advised the complainant that it did not hold the information requested in part 5 and therefore cited the exception provided by regulation 12(4)(a) in respect of that part of the request. The water company continued to maintain that the

information requested in parts 3 and 6 of the request were protected by the exception provided by regulation 12(5)(b) – course of justice.

## Scope of the case

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10. The complainant contacted the Commissioner 11 January 2017 to complain about the way his request for information had been handled.
  11. At the time he initially raised his concerns all the information had been withheld under regular 12(5)(b) which he argued was not engaged. As the investigation continued the water company revised its position, claiming that it had in effect dealt with parts 1, 2, 4 and 5 of the request. Although the complainant accepts that he has received the leases sought at part 2 of the request, he was not satisfied that the water company had complied with its obligations in respect of the remaining elements of the request. He did not accept that the information requested at part 1 was either not held, or that he could have been expected to recognise that the disclosures made on the 4 November 2016 were in response to the request. Nor was he satisfied that he could have been expected to interpret the letter of 4 November 2016 as addressing the issue raised in part 4 of the request, or that the water company had provided any response in respect of part 5 of the request other than its initial refusal under regulation 12(5)(b). He also maintained his position that the information requested at parts 3 and 6 of the request were exempt under regulation 12(5)(b). The Commissioner has some sympathy with this view particularly as only two weeks earlier he had received the outcome of the internal review in which the water company continued to refuse the request in its entirety.
  12. With the exception of part 2, the Commissioner has considered the water company's handling of each element of the request. Where relevant she has looked at whether the requested information is held and, if so, whether the information has been provided. Where information has been provided, or where the complainant has been advised it is not held, she has considered whether the statutory time limits were complied with. In the case of parts 3 and 6 of the request the Commissioner has considered whether the water company is entitled to withhold the requested information under regulation 12(5)(b).
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## Reasons for decision

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### Part 1(a) to (d) of the request

13. Part 1(a) to (c) of the request was for information on the volume of water transferred, the speed of transfer, how long the transfer took. Part (d) was based on the premise that the transfer might not have been completed all in one go and asked for the dates and times over which the transfer took place so that the total time taken to complete the transfer could be calculated.
14. This information was initially withheld under regulation 12(5)(b) course of justice, a decision that was upheld at the internal review stage. During the course of the Commissioner's investigation the water company said that when dealing with the prospective litigation in respect to alleged damage suffered by the complainant's client, it had written to the complainant on 4 November 2016. In that letter the water company advised the complainant that there were no flowmeters to measure the water transfer speeds. It argues that by doing so it effectively informed the complainant that no information was held in respect of requests 1(a) to (c).
15. Under the EIR regime where a public authority is relying on a claim that it does not hold the requested information it is required to issue the person making the request with a refusal notice citing the exception provided by regulation 12(4)(a) – information is not held. By failing to serve a refusal notice citing the exception provided by regulation 12(4)(a) the water company has breached regulation 14(1). However as the water company has revised its position in respect of this element of the request the Commissioner does not require the water company to take any further action in relation to that breach.
16. The water company also provided the complainant with photocopies of diary entries which show that the valves were opened sometime on Monday 15 September 2014 and had been closed by 11:15 on Saturday 20 September 2014. It considers this should have been recognised by the complainant as a response to part (d) of the request 1. However from the submissions provided to the Commissioner by the water company it is understood that the water transfer was completed as one continuous action. The relevant valves were opened on the Monday and closed the following Saturday without any interruptions. Therefore circumstances envisaged by request 1(d) did not arise and this element of the request falls away. However the diary entries would in effect answer part (c) of request 1.

17. The Commissioner has been provided with a copy of the 4 November 2016 letter. Its focus is on the claim for damages which accompanied the information request. It does not make any specific reference to the information request and simply lists the documents that were disclosed with that letter without making any reference to which elements of the request they were intended to answer. It is understandable therefore that the complainant did not appreciate the relevance of this information. Nevertheless the water company did ultimately provide the information requested at 1(c).
18. However, under regulation 5(2), where a public authority is obliged to provide the requested information, it is required to do so within 20 working days of the request being received. The request was received on the 23 March 2016 and the information requested at part 1(c) was not provided until 4 November 2016. This is a clear breach of regulation 5(2). As the information has now been provided the Commissioner does not require any further action to be taken, but the water company should be aware that the Commissioner does monitor late compliance with requests and where a pattern of poor performance is identified she may consider whether any more formal action is appropriate.
19. The Commissioner has gone on to consider whether the water company is correct when it says it does not hold the information requested at parts 1(a) and (b) of the request.

#### **Part 1(a) and (b) - information held**

20. At the outset of the Commissioner's investigation the water company still maintained that it did not hold any information on the volume of water transferred or the rate at which it was transferred. When considering whether information is held the Commissioner's approach is that a public authority will hold information if the basic building blocks of the requested information are held. Her position is set out in her guidance 'Determining whether information is held'. During the investigation it became apparent that although the water company did not hold a record of the of the volume that had been transferred, it did hold the basic building blocks from which this value could be easily calculated and that as the period over the which the transfer took place was known, the rate of the transfer could then also be calculated.
21. The water transfer was carried out to raise the water level in Gorton Lower Reservoir. To achieve this water had to be taken from a complex of three reservoirs (Audenshaw Reservoirs 1,2 and 3) which then flowed into Gorton Upper Reservoir where the local angling club's fishery was located, and from there into its ultimate destination, Gorton Lower Reservoir. The information held by the water company consisted of water level readings taken for the relevant reservoirs. The actual measurements relate to the how far below the top water level the water

is. This is measured in meters. So a measurement of '0 meter' would indicate that the reservoir was full. These measurements are held for each of the three Audenshaw Reservoirs, Gorton Upper Reservoir and Gorton Lower Reservoir. The measurements record the levels the day before the transfer commenced and the day after it was completed. The records show a drop in the water level of the Audenshaw Reservoir complex, no overall change in the level at Gorton Upper Reservoir and a rise in the level at Gorton Reservoir. As there is no change in the overall level of water in Gorton Upper Reservoir it follows that the all the water from the Audenshaw Reservoirs flowed through it and then into Gorton Lower Reservoir. The amount of water that entered the lower reservoir must therefore equate to the water that flowed through the upper reservoir. As the water company knows the surface area of Gorton Lower Reservoir in square meters this can be multiplied by the increase in the water level to calculate volume of water transferred into Gorton Lower Reservoir in cubic meters, which in turn equates to the amount of water transferred that flowed through Gorton Upper Reservoir.

22. To obtain the rate of flow the total volume transferred through Gorton Upper Reservoir can then be divided by the number of days over which the transfer took place (as revealed by the diary entries). The Commissioner considers these calculations to very simple ones which a public authority should be expected to make in order to provide the requested information and the Commissioner is therefore satisfied that the water company does hold the information sought in parts 1(a) and (b).
23. Although these figures may not be very accurate they do represent the information held by the water company and therefore constitute the information falling within the scope of the request.
24. The complainant has suggested that he would expect the water company to hold detailed measurements of water flows and the Commissioner has explored this with the water company.
25. The complex of the three Audenshaw reservoirs is at the top of the valley with Gorton Upper Reservoir below it and Gorton Lower Reservoir still lower down the valley. The three Audenshaw reservoirs are all part of the system that supplies water to consumers. Water is transferred directly from there to the local water works without going through the Gorton reservoirs. There is a flow meter at the water works measuring the amount of water entering the works from the Audenshaw reservoirs. Both the Gorton Reservoirs are not operational; they are not used to feed the water supply to the water works. The water company has explained that because these reservoirs are not operational there is no business need to measure the flow rate of water either into, or out of them. The only measurements that are recorded are those relating to how far below the top water level the water is. It is these records, which

are taken three times a week and recorded on what the water company has referred to as the Operational Management System, that the water company has used to calculate the amount of water transferred from the Audenshaw reservoirs, through Gorton Upper Reservoir and then into Gorton Lower Reservoir. Similar measurements of the level of water in the Audenshaw Reservoirs are also kept.

26. In light of the above the Commissioner is satisfied that the information used by the water company to calculate the amount of water transferred is the most accurate available to it.
27. During the course of the Commissioner's investigation, on 23 June 2017, the water company provided the complainant with the relevant diary entries showing when the valves were opened and closed. These were fresh copies of the information originally provided on 4 November 2016 as set out in paragraph 16 above. This time though it was accompanied by the water level measurements described in paragraph 21 and the information on the surface area for Gorton Lower Reservoir. It also included its calculation of the volume of water that had entered Gorton Lower Reservoir which equates to amount of water transferred through Gorton Upper Reservoir. Therefore the Commissioner is satisfied that the water company has now complied with requests 1(a) and (b).
28. Under regulation 5(2) a public authority is required to provide the requested information within 20 working days of receipt of the request. The request was made on 23 March 2016 and the information was not fully disclosed until 4 November 2016. This is well outside the 20 working days. Therefore the water company has breached regulation 5(2).

### **Parts 3 and 6 of the request**

29. Part 3 of the request sought records of specific water samples for the relevant reservoirs for the five years prior to the September 2014 transfer, together with the records of all such samples taken since the transfer. Part 6 of the request sought records of all water transfers between the reservoirs for the five years prior to the September 2014 transfer together with records of all water samples for the same period. The water company has refused both parts 3 and 6 under regulation 12(5)(b) – the course of justice.

### **Regulation 12(5)(b) – course of justice**

30. So far as is relevant, regulation 12(5)(b) of the EIR states that a public authority may refuse a request if its disclosure would adversely affect the course of justice.
31. The term 'course of justice' is interpreted as having a very wide application and the Commissioner accepts that it is capable of including



information on civil and criminal proceedings. However the exception will only be engaged where the public authority can demonstrate that disclosing the requested information 'would' have an adverse effect on those proceedings. This is a high threshold. The term 'would' means that it is more probable than not, ie a more than 50% chance that the adverse effect would occur if the information were disclosed. If there is a less than 50% chance of the adverse effect occurring, then the exception is not engaged.

32. The letter containing the request accompanied the letter of claim which alleged the water company's transfer of water between reservoirs had led to a number of fish being killed and so damaged the fishery operated by a local angling club represented by the complainant. That letter includes a schedule of the losses which the angling club claims it suffered as a result of the water company's actions and seeks compensation. The water company therefore believes there is a realistic prospect of litigation and it is this anticipated legal action which the water company considers would be adversely affected by disclosing the requested information.
33. In broad terms, it is the water company's argument that the complainant is attempting to circumvent the Civil Procedure Rules (CPR). The CPR form a framework governing the conduct and procedures which parties to litigation are required to follow. Amongst other things they govern what information each party is required to disclose to the other. Where one party wishes to have sight of information prior to it actually issuing court proceedings it is required to make an application to the courts for pre-action disclosure under rule 31 of the CPR. Although the Courts have discretion in respect of what disclosures they may order, any pre-action disclosures are usually limited to only those documents necessary to deal with the case.
34. The water company has cited a number of cases in support of its application of regulation 12(5)(b). These include *Smith v Secretary of State for Energy and Climate Change* [2013] EWCA Civ 1585 and *First Gulf Bank v Wachovia Bank national Association* [2005] EWHC 2827 (Comm). It has argued that these establish that once certain criteria is satisfied a Judge has discretion as to what pre-action disclosures are desirable, but that that discretion is unlikely to be used to order pre-action disclosure where the applicant already has enough material to initiate litigation. The Commissioner does not contest this is the case.
35. The water company has also quoted from *Parker v CS Structured Credit Fund Ltd* [2003] 1 WLR 1680. At paragraph 27 Gabriel Moss (sitting as Deputy High Court Judge) says:

"... Even assuming that the disclosure that is sought will inevitably be relevant on some issue or other at some stage or other, later in the

litigation, it is difficult to see how it can be sought at present, given the lack of any credible evidence of impropriety, and therefore the lack of any credible evidence which makes such disclosure urgent. On that basis alone it seems to me that the claimant has not made out a case for the court to exercise its undoubted powers and discretion to bring forward disclosure, even on the assumption that such disclosure will inevitably have to be given. Even if that were wrong, it seems to me that it is not correct to say that such disclosure will be completely harmless to the defendants. Bringing forward general disclosure would disrupt the smooth operation of the CPR in the light of the stage that the proceedings have now reached." (Underlining added by the water company as emphasis)

36. Having read the quote in the context of the full judgement the Commissioner considers the findings to be very specific to that case and the stage those particular proceedings had reached. By the time the application for disclosure was made legal proceedings had been instigated and a case management conference was being arranged. The Court considered that if disclosure was now considered urgent the appropriate procedure would be for the case management conference to be brought forward. The defendant objected to this on the basis that it would not allow him reasonable time to prepare and would therefore be unfair. The Commissioner would not accept this case sets a precedent that early disclosures are inherently unfair.
37. The water company also considers the request is an attempt to obtain additional information beyond that which a party would be entitled to under the CPR rules for pre-action disclosure. The water company believes this would undermine the integrity of, and confidence in, that regime, thereby adversely affecting the course of justice.
38. Furthermore the water company has argued that in respect of both parts 3 and 6 of the request the information provided to the Commissioner had to be compiled from its records and was not contained in a pre-existing document at the time of the request. It is not therefore information which would have been available to the complainant under the normal CPR.
39. In support of its arguments the water company has also referred to the Tribunal's decision in *Archer v Information Commissioner and Salisbury District Council* (EA/2006/0037) and the Commissioner's decision regarding a request made to the Department of the Environment (Northern Ireland), ((DoE (NI))), case reference FS50396004. The Commissioner finds that in both of these cases the circumstances giving rise to the decision were markedly different to those in which the current request was made. In *Archer* an internal report had been requested from the Council which set out the Council's options for pursuing various planning enforcement issues. The information included

legal advice that would have been protected by legal professional privilege. The Tribunal found that the issues to which the legal advice related were still live and that the legal advice engaged the exception. It is also notable that in Archer the request had been made for information held by the Council in its role as regulator of the planning system. In the DoE (NI) case the request again related to information the public authority held in its capacity as a regulator. This time the information was on pollution incidents held as a result of investigations by the Department.

40. In the present case the information is not being held by the water company in respect of any regulatory functions it may have and therefore there is no risk that any regulatory function or inquiry could be prejudiced as was the case in Archer and DoE(NI). Instead the information is held in connection with the water company's normal management and operation of its network of reservoirs.
41. It is also important to recognise that requests are 'applicant blind', that is, upon receipt of a request made under the EIR a public authority is not entitled to take account of the applicant's motives for seeking the information. Nevertheless a disclosure under the EIR is considered to be one to the world at large, which would include any potential litigant such as the complainant. Therefore the Commissioner considers it is relevant to consider whether making the requested information available to the complainant would adversely affect the prospective legal action.
42. The Commissioner recognises the importance of the Civil Procedure Rules in respect of disclosures for the purpose of litigation. The rules allow someone to gain access to information for the limited purposes of either deciding whether to instigate legal action or pursuing legal action. Often such information is required from organisations which are not public authorities. It is also possible that information may be obtained under the Civil Procedure Rules which would not be available under the EIR due to the operation of exceptions. It is fully accepted that it is for the Courts to determine what information is required for these purposes.
43. However the water company has not satisfied the Commissioner that the operation of the EIR interferes with the discretion exercised by the Courts when deciding what information it would be appropriate to disclose under the CPR. The information that has been withheld is that which any member of the public may be prompted to seek if they suspected fish had been killed as the result of actions taken by the water company. If the information supported their suspicions the recipient would then be in a position to hold the public authority to account for its actions by whatever means were appropriate. The potential for an applicant to use information obtained through an EIR request in this way should not be justification for refusing a request, or

trying to limit the disclosure to that which would be available through the CPR.

44. Despite requests being applicant blind it would seem from the water company's submission that its approach has focussed on the fact that in this case the information would be going straight to a potential claimant. It is not clear that it would have refused a similar request had it been made from someone without a financial interest in the fishery allegedly damaged by the transfer and who was therefore in a position to pursue legal action for compensation. It would seem odd if someone with a direct interest in the incident to which the request relates would have less rights of access than someone else.
45. As previously stated the Commissioner fully recognises the importance of the Courts in considering disclosures under the CPR. However, the CPR and the disclosure rules within them serve a particular purpose. That purpose is to facilitate legal proceedings and this is the Court's focus when deciding whether to order pre-action disclosure. There are also conditions which need to be satisfied before a Court will consider ordering pre-action disclosure, for example it has to be likely that both the party seeking the information and party from whom the information is sought would be involved in any legal proceedings that followed. This inevitably narrows the range of information and the circumstances in which information can be obtained the CPR.
46. The fact that the EIR do not contain such restrictions does not in any way interfere with the Court exercising its discretion to order disclosure within the parameters established by the CPR. Nor do the EIR in any way undermine the CPR, which can provide a means of access to information that would not be available to the public through the EIR.
47. Therefore the Commissioner is not satisfied that disclosing, to the public, information relating to a matter which is likely to be the subject of litigation necessarily has any effect on the course of justice. Certainly the water company has failed to persuade the Commissioner that any affect would be an adverse one. The Commissioner finds that the exception is not engaged. United Utilities is required to disclose the information requested in parts 3 and 6 of the request which it has withheld under regulation 12(5)(b).

#### **Part 4 of the request**

48. Part 4 of the request sought information in respect of the Environment Agency's opinion on the water transfer. The request is rather difficult to understand and the water company has argued that it is not a valid request for information. However when the context in which the request was made is understood the matter becomes clearer. The request refers to the letter of claim which accompanied it. The letter of claim referred

in turn referred to a letter from the water company's solicitor to the complainant's client dated 26 August 2015. The complainant has provided the Commissioner with a copy of that letter. Within that letter it states that,

"I am advised that at present the Environment Agency has not confirmed that United Utilities completed the water transfer incorrectly."

49. The Commissioner is satisfied that in effect, part 4 of the request seeks any information which confirms the statement quoted is an accurate reflection of the Environment Agency's position.
50. Along with the rest of the request, part 5 was originally refused under regulation 12(5)(b) – course of justice, on the basis that disclosing the requested information would interfere with the CPR. During the Commissioner's investigation the water company changed its position and claimed that in fact the information was not held.
51. As well as the a copy of the 26 August 2015 letter the complainant provided the Commissioner with a copy of an earlier one from the water company, dated 14 July 2015, which refers to a meeting between itself the environment Agency and the angling club. That meeting took place on 30 July 2015.
52. The water company explained that the only contact it had had with the Environment Agency which touched on the water transfers was the meeting of the 30 July 2015. It explained that the meeting was not called solely to consider the water transfer. The water company has spoken to the members of staff who attended the meeting, apart from one who has since left the organisation. All attendees from the water company described the meeting as being an informal one and that no minutes were taken or produced.
53. It has however provided the Commissioner with an email. It is an internal email from a manager to one of the water company's solicitors. Having viewed this email the Commissioner is satisfied that this document informed the statement made in the letter of 26 August 2015.
54. The water company has stated categorically it does not hold any additional correspondence from the Environment Agency which relate to the water transfer in any way, apart from emails setting up the 30 July meeting. In support of its position the water company has explained that it had no reason to involve the Environment Agency in respect of the water transfer. There is no statutory obligation to seek the Environment Agency's permission to transfer water from one reservoir to another. Consent is only required when water is being discharged into the river system. If there had been an issue around pollution the Environment Agency would have taken a formal interest in the transfer.

However although it is alleged that the transfer damaged the angling club's fishery, it is understood that the allegation is based on the amount of water transferred and the rate of transfer at which it was transferred rather than there being any suggestion that this was result of contaminates being introduced into the water. Therefore the water company argued there would be no need for the Environment Agency to write formally to the water company in respect to the incident.

55. In light of the above the Commissioner is satisfied that the email identified above contains the only piece of recorded information that falls within the scope of part 4 of the request. It should be noted that the email also contains other information that does not fall within the scope of the request.
56. On the 23 June 2017 the water company provided the complainant with an extract from that email which contained the relevant statement. Therefore the Commissioner is satisfied that it has now complied with that part 4 of the request.
57. However the request was made on 23 March 2016 and the information was not provided until 23 June 2017. This is clearly a breach of regulation 5(2).

#### **Part 5 of the request**

58. Part 5 of the request sought information relating to the reasons for water transfer, whether this was solely to accommodate a sailing club based on Gorton Lower Reservoir and for any communications between the sailing club and the water company requesting the transfer. Again this was initially refused under regulation 12(5)(b), together with the other elements of the request. However during the course of the investigation the water company advised the Commissioner that in fact no records of the request by the sailing club were held. On the 23 June 2017 the water company informed the complainant that this was the case and explained that the request had been an informal verbal request made by a member of the sailing club to its officers while they were carrying out a visual inspection of Gorton Lower Reservoir. The Commissioner accepts that it is plausible that an amateur organisation such as a sailing club would make such requests in this way.
59. Under the EIR where information is not held a public authority is required to apply the exception provided by regulation 12(4)(a) which states that a public authority may refuse a request to the extent that it does not hold the information. When writing to the complainant on the 23 June 2017 the water company did cite regulation 12(4)(a) as required.
60. However under regulation 14(2), where a public authority is relying on an exception to refuse a request it must inform the applicant within 20

working days of their request being received. The request was received on 23 March 2016 and the water company did not issue an appropriate refusal notice until 23 June 2017. This is clearly a breach of regulation 14(2).

## Right of appeal

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61. 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)

62. 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.

63. 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 .....

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