

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 10 October 2022

Public Authority: Southern Water Services Ltd
Address: Southern House
Yeoman Road
Worthing
West Sussex
BN13 3NX

Decision (including any steps ordered)

1. The complainant has requested information about rateable values. Southern Water Services Ltd (trading as "Southern Water") declined to deal with the request under the EIR as it did not consider the requested information to be environmental.
2. The Commissioner's decision is that some of the requested information is not environmental information and therefore Southern Water was not required to deal with this part of the request under the EIR. The remaining information is environmental information, but it is also the personal data of third parties and thus exempt from disclosure under Regulation 13 of the EIR.
3. The Commissioner does not require any remedial steps.

Request and response

4. On 11 October 2021, the complainant wrote to Southern Water and requested information in the following terms:

"Please could I request a file containing address of all domestic hereditaments in your area, the latest assessed rateable value (if any), and the date the rateable value refers to. If possible, please could you also include the date or year (if any) at which a water meter was installed."
5. Southern Water responded on 15 October 2021. It stated that:

"We can confirm that Southern Water does hold information of the type you have requested, although it has been considered that the information referred to is not environmental information as set out under regulation 2(1).

With regards to your request for address lists and rateable [sic] values, Southern Water considers the information not to be environmental under the Environmental Information Regulations 2(1) and thus we will not be providing you with this information.

With regards to your request for meter installation dates at specific addresses, we would consider this to be personal data and thus as per regulation 12(3) and 13 we will not be providing you with this information."

6. Following an internal review Southern Water wrote to the complainant on 15 November 2021. It stated that:

"As to a file containing address of all domestic hereditaments in Southern Water's area and the latest assessed rateable value (if any), I agree with the original decision that this is not Environmental Information as envisaged or provided for by the EIRs 2004. I note what you say that you may be able to use the information as one factor to try to estimate consumption of water, but that would not determine the information as Environmental Information.

It is a common misconception that applicants for environmental information are entitled to receive all of the information they ask for as the EIRs 2004 set out a number of instances where it is entirely proper and legitimate to withhold information pursuant to those Regulations. These instances are contained in Regulations 12 and 13 of the EIR's 2004.

One such provision is in Regulation 12(3) where the request for information is manifestly unreasonable [sic]. It would be manifestly unreasonable to expect Southern Water to provide you with a file containing addresses of all domestic hereditaments in Southern Water's area and the latest assessed rateable value (if any)...

As to information including the date and year (if any) at which a water meter was installed at all domestic hereditaments in Southern Water's area, even if it were possible to extract such data, and to do so in a way that would be reliable, such data would necessarily be revealing of personal information of the owners and /or occupiers of domestic properties. In this instance Southern Water is entitled to rely upon the exception contained in Regulation 13 of the EIRs 2004.

Further, in accordance with Regulation 12(3), it would be manifestly unreasonable [sic] to expect Southern Water to provide you with a file

containing address of all domestic hereditaments in Southern Water's area and information including the date and year (if any) at which a water meter was installed at all of those properties.

We consider that the public interest in maintaining the exceptions referred to above is extremely weighty. The public interest in having such a file of information as you are seeking is very low."

Scope of the case

7. The complainant contacted the Commissioner on 23 November 2021 to complain about the way his request for information had been handled.
8. As Southern Water had cited Regulation 13 (third party personal data) as an exception from disclosure and also appeared to wish to rely on a claim that the request was manifestly unreasonable (albeit that it had failed to cite the correct subsection for this exception – Regulation 12(4)(b) of the EIR), the Commissioner asked Southern Water to explain why it considered that either or both of these exceptions would apply.
9. Southern Water responded to the Commissioner on 26 September 2022. It now stated that its "primary position" was that none of the information was environmental. However it also explained that it considered that the information would in any case be exempt for disclosure by virtue of Regulation 13(1) of the EIR.
10. Southern Water is not a public authority for the purposes of FOIA, but case law has established that water and sewerage providers are public authorities for the purposes of the EIR. Therefore Southern Water is only obliged to respond to this request inasmuch as it seeks environmental information.
11. The Commissioner considers that his first task is to determine whether any of the requested information is environmental. Given that Southern Water has provided submissions in respect of Regulation 13, he considers it would be appropriate to go on to determine whether this exception is engaged in the event that any of the information is deemed to be environmental.

Reasons for decision

Is the requested information environmental?

12. Regulation 2(1) of the EIR defines environmental information as being information on:
- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) 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)...as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);
13. The correct approach to determining whether information is, or is not, environmental was set out by the Court of Appeal in *DBEIS v Information Commissioner & Henney* [2017] EWCA Civ 844.
14. The Court of Appeal ruled that, when determining whether a particular piece of information was or was not environmental, it was first necessary to determine what measure the information could be said to be "on". If the information was on a measure affecting or likely to affect the elements of the environment, it would be environmental information – even if the actual information itself had no immediate environmental connection.

15. In this case, the Commissioner considers that the supply of water to domestic properties is a measure that affects or is likely to affect the elements of the environment – namely water. Southern Water must manage the natural resource (water) to ensure that there is sufficient water to meet the needs of its customers.
16. Households can be charged for the supply of fresh water in one of two ways: either they can have a water meter which measures the actual amount of water consumed for the purposes of billing or, if they do not have a water meter, the water company will estimate a charge based on the rateable value of the property.
17. The Commissioner is satisfied that information relating to rateable value is not information on the supply of water.
18. Generally speaking, larger homes will have larger rateable values. They are also, on average, likely to use more water than smaller homes. However this is not an absolute rule: a family of four, living in a two bedroom flat may still use more water than an elderly couple, living in a large property in a desirable area, even though the rateable value of their property is much lower.
19. However, rateable value is only partially determined by size – it is also determined by the location of the property. Therefore two identically-sized properties in two separate locations can have two different rateable values.
20. Therefore the Commissioner does not consider that the rateable value is information “on” the supply of water. It does not indicate likely consumption with any degree of precision.
21. However, the Commissioner notes that identifying the date at which a water meter was fitted is a proxy for identifying properties which do, or do not, have water meters – and this information **is** information on the supply of water.
22. There is a body of evidence which suggests that metered households consume less water.¹ By linking customers’ bills more closely to their actual consumption, water meters make customers more aware of how much water they are using and provide them with an incentive to cut consumption so as to reduce bills. Indeed some water companies already tout reduced consumption or effective management of water

¹ See for example: <https://www.southampton.ac.uk/news/2019/12/water-meter-consumption.page>; <https://www.moneysavingexpert.com/utilities/cut-water-bills/>; and <https://www.theguardian.com/money/2009/dec/08/water-meters-help-cut-useage>

resources (as opposed to just the size of water bills) as an incentive for customers to switch.² The next generation of smart meters (equivalent to those being rolled out in the energy sector) is designed to help water companies identify leaks more quickly – as well as provide even more information to customers about their water usage.³

23. Southern Water argued that information about water meters was not environmental because it only related to the manner in which customers were billed for their consumption not the supply of water itself. The Commissioner disagrees. There is a clear link between the manner in which a household is billed and the incentive that household has to minimise its water usage. Billing affects consumption and consumption in turn affects the way in which Southern Water must manage its resources to meet demand.
24. The Commissioner considers that identifying domestic properties that do and do not have water meters installed is information on the supply of water to domestic properties, as it will help customers understand what they are being billed for and how bills are calculated. Billing is an integral part of the supply process.
25. The Commissioner therefore considers this information to be environmental.

Regulation 13 – third party personal data

26. Regulation 13 of the EIR allows a public authority to withhold information that is the personal data of third parties and whose disclosure would otherwise breach data protection law. Specifically, there must be a lawful basis, under data protection law, for the information to be disclosed.
27. The information in question is identifiable as it includes a list of domestic addresses. Those addresses could be linked, via the electoral register, to the occupiers of each property and disclosure would reveal whether each set of occupiers did or did not have a water meter.
28. The Commissioner is therefore satisfied that the withheld information can be linked to identifiable individuals and that disclosure would reveal something about those individuals not already in the public domain. It is

² See for example: <https://www.thameswater-savewatersavemoney.co.uk/water-meters/>; <https://seswater.uk.engagementhq.com/what-happens-when-your-meters-fitted/widgets/18647/faqs>; or <https://www.castlewater.co.uk/help-support/water-meter>

³ <https://www.thameswater.co.uk/help/water-meters/getting-a-water-meter>

therefore their personal data and Southern Water would need a specific lawful basis on which to publish the information.

29. There is no indication that any of the individuals have given their consent to processing in this manner, therefore the Commissioner considers that the only way that disclosure could be lawful would be if it were necessary in order to pursue a legitimate interest.
30. The complainant argued that there was a legitimate interest in disclosing all of the information that he had sought as it would enable customers to compare their rateable value to nearby properties and check whether it was correct. He also noted that it would allow individuals to check whether they might be better off with a water meter.
31. The Commissioner has already determined that information on rateable value is not environmental information and does not fall to be disclosed. He therefore does not consider that disclosure of the environmental information identified in this case would be capable of satisfying either of the legitimate interests the complainant has identified.
32. However the Commissioner recognises that there may be some broader value to disclosure of this information as it would help the wider public to understand how widespread meter usage is and how effective meters are at managing consumption. Whilst he accepts that this would be a legitimate interest, he does not consider that disclosure is necessary to satisfy it.
33. In order for publication to the world at large (which is what disclosure under EIR requires) to be deemed "necessary," the public authority must demonstrate that this is a proportionate means of achieving a legitimate aim. If the same aim can be achieved by an alternative means which is less intrusive, disclosure will not be necessary as the legitimate aim can be achieved in a way that requires less intrusion into the data subject's privacy.
34. In this case, the Commissioner is satisfied that any concerns about meter usage can be raised with the industry regulator Ofwat – which can then demand data on the specific homes that do or do not have meters. Southern Water can also publish aggregated statistics on the number of houses that do and do not have meters which allows for scrutiny without linking the data to individuals. This does not require the publication of the granular detail contained within the withheld information.
35. Disclosure is therefore not necessary and so would be unlawful. As disclosure would contravene data protection law, Southern Water would be entitled to rely on Regulation 13 of the EIR to withhold the information.

Other matters

36. The Commissioner considers that Southern Water should be clear, when responding to requests for information, which of the requested information it considers to be environmental information and which it does not. It is particularly important to make this delineation in cases where some of the information is **not** environmental **and** it wishes to apply an exception to the information it considers to **be** environmental.
37. Southern Water's original refusal notice appeared to be clear: information on rateable values **was not** environmental information. Information on metering **was** environmental information, but was exempt under Regulation 13. However, its internal review was confusing in that now appeared to be relying on an exception to withhold information on rateable values – confusion accentuated by the incorrect citation of the exception. To add further confusion, Southern Water's submission to the Commissioner argued that **none** of the withheld information was environmental without explicitly confirming whether or not this represented a change of stance from that set out in its internal review.
38. There is nothing to prevent a public authority that is only obliged to respond to EIR requests from pointing out that particular information **would be likely to be** exempt under an EIR exception, even if it were environmental. However, in such cases the public authority should make clear that this is not the reason the information is not being provided: in such cases the information need not be provided because it is not environmental information and therefore the public authority has no obligation under the EIR to provide it.

Right of appeal

39. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

40. 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.

41. 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

Roger Cawthorne
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