

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

**Date:** 5 April 2023

**Public Authority:** Severn Trent Water Ltd  
**Address:** Severn Trent Centre  
2 St John's Street  
Coventry  
CV1 2LZ

**Decision (including any steps ordered)**

---

1. The complainant has requested information relating to a sewage treatment works. The above public authority ("the public authority") provided some information, relied on regulation 12(5)(b) of the EIR (course of justice) to withhold some and refused to provide the remainder on the basis that it was not environmental information.
2. The Commissioner's decision is that the public authority has correctly relied on regulation 12(5)(b) of the EIR to withhold information within the scope of elements [3], [4] and [5] and the balance of the public interest favours maintaining the exception. In respect of element [6], the Commissioner considers that the information is environmental and therefore the public authority has failed to comply with its obligations under the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Either provide the information it holds within the scope of element [6] of the request or issue a refusal notice that complies with regulation 14 of the EIR.
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 21 July 2022, the complainant wrote to the public authority and requested information in the following terms:

"We would be grateful if you could provide the following information in relation to the wastewater treatment works at Diglis (Worcester Sewage Treatment Works, Bromwich Road, Worcester, Worcestershire)

- "[1] Please could you confirm the capacity of the storm tanks at Worcester Sewage Treatment Works
- "[2] Please could you confirm when the capacity of the storm tanks at the works was last increased, if at all?
- "[3] Please could you provide records of EDM start and stop data for the works from beginning of 2022 to date?
- "[4] Please could you provide records of the flow rate measurements at the settled storm tank separating weir from beginning of 2022 to date?
- "[5] Please could you provide records of the daily dry weather flow for the works from beginning of 2022 to date?
- "[6] Please could you provide a copy of the documented maintenance programme and record of all non-routine actions undertaken from beginning of 2022 to date?
- "[7] Please could you provide the results of samples taken by yourselves of storm sewage at grid reference SO8430 5352 and final effluent at SO 8449 5340 from beginning of 2022 to date? For those samples, please could you provide the day and time when the samples were taken?
- "[8] Please could you provide a list of the companies that hold consents to discharge trade effluent into the system served by Worcester Sewage Treatment Works?"

6. The public authority responded on 17 August 2022. It provided information within the scope of elements [1], [2], [7] and [8]. It withheld the information within the scope of elements [3], [4] and [5], relying on regulation 12(5)(b) of the EIR in order to do so. It refused to provide the information within the scope of element [6] as it did not consider this to be environmental information. It upheld this stance following an internal review.

## Scope of the case

---

7. At the outset of the investigation, the Commissioner wrote to the public authority setting out his provisional view that the information within the scope of element [6] was environmental. In order to speed up the process of investigation, he asked the public authority to provide him with a copy of the information falling within the scope of that element. He also asked for full and final submissions in support of any exceptions it would wish to rely upon in the event that the information were deemed to be environmental, so that in those circumstances he could proceed immediately to consideration of whether the information was subject to an exception.
8. The public authority argued that, in the event the Commissioner found that the information within the scope of element [6] were environmental, it would wish to rely on both regulation 12(5)(b) and 12(5)(e) of the EIR in order to withhold it. It provided submissions in support of both exceptions but refused to provide a copy of the withheld information itself, as it maintained that the information was not environmental.

## Reasons for decision

---

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

9. It is agreed by all parties that the information falling within the scope of elements [3], [4] and [5] is environmental information.
10. Regulation 12(5)(b) of the EIR allows a public authority to withhold information whose disclosure would adversely affect a criminal investigation or the ability of a person to receive a fair trial.
11. The public authority noted that the Commissioner had previously issued two decisions on very similar data in which he had agreed that the exception was engaged.<sup>1</sup>

---

<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4022404/ico-163737-d3q3.pdf> and <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4023920/ico-206971-f9g9.pdf>

12. The complainant argued that these arguments did not apply to the requested data because the timeframe began after the Environment Agency and Ofwat had announced their investigation.
13. The public authority explained that, whilst the data related to a later time period, that did not prevent use of the data for the purpose of the investigations – either as a separate matter in its own right or as a comparator to the data already under consideration:

“As far as we are aware, there are no time limits on the investigations. There is nothing that limits the ability of Ofwat or the Environment Agency to request further data from periods outside 2020 and enforce against any non-compliance identified as part of these ongoing investigations, or to use the wider data set to draw conclusions about compliance in respect of long term trends. We have already seen South West Water added to Ofwat’s previous five enforcement cases last year as a result of heightened concerns about its environmental performance in 2021 across a number of metrics, which suggests that any water company could become a focus of enforcement as a result of recent performance and data. Following the Environment Agency’s routine requests to Severn Trent Water to provide data from subsequent years (i.e. after 2020), we have received written and verbal confirmation from the Environment Agency that data provided by Severn Trent Water relating to periods outside 2020 will be passed on to the Environment Agency’s investigation team and is therefore relevant to the ongoing investigation.”

14. In the circumstances, the Commissioner is persuaded that the requested information is relevant to the investigations being conducted and therefore he accepts that regulation 12(5)(b) of the EIR is engaged – for the same reasons as set out in paragraphs 6 to 10 of decision notice IC-206971-F9G9.

### **Public interest test**

15. In this case, the Commissioner is satisfied that the public interest in disclosure of this information, whilst considerable, is better met by allowing the designated regulatory bodies to carry out their work and reach a fair and balanced conclusion.
16. The Commissioner has also considered the presumption in favour of disclosure but is not persuaded that this is sufficient to tip the balance of the public interest in favour of disclosure. Therefore the exception is engaged and the balance of the public interest favours maintaining that exception.

## **Element [6] – environmental information**

17. 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);
18. In *Department for Business, Energy and Industrial Strategy v Information Commissioner and Henney* [2017] EWCA 844, the Court of Appeal stressed the importance of identifying whether information, which was not obviously related to the elements of the environment, was nevertheless “on” an environmental measure – that is, a measure likely to affect the elements of the environment. The focus should be on the measure itself, rather than the information. The Court went on to say that, in order to determine whether information is “on” a particular measure, it was important to bear in mind the aim of the Aarhus Convention (on access to information for the purpose of participation in environmental decision-making), from which the EIR derive and to take a purposive approach – that is, to consider the purpose for which the

information was created, the purpose for which it was held and whether it had a direct purpose in understanding environmental decision making.

19. The public authority argued that the information was not environmental information because:

“The maintenance programme and records of non-routine actions taken for Severn Trent’s assets are not information “on”, and the treatment of wastewater [sic] and maintenance actions on equipment do not themselves have any effect, on the state of elements of the environment such as water... the maintenance programme and highly detailed requested records on maintenance actions taken would also not inform the public about matters affecting the environment or enable them to participate in decision-making, a key part of the 2003 Directive and the Aarhus Convention on which it is based.”

20. In the Commissioner’s view, the information is environmental because it is information on a measure that has an environmental impact: namely the effective management of sewage and wastewater.
21. The request sought information about a particular treatment works. Treatment works are responsible for processing sewage and wastewater such that the water can be safely returned to natural watercourses, with as many harmful pollutants removed (and safely disposed of) as possible.
22. How effectively a particular treatment works is at processing wastewater and sewage will be affected by the standard to which it is maintained. If all necessary upgrades are carried out promptly and if equipment is regularly inspected, that works is much less likely to spill harmful pollutants into the surrounding environment than a plant that is poorly maintained. Having access to the inspection records would enable the public to make informed decisions about how effectively the works was processing sewage or wastewater and, if (hypothetically, as the Commissioner has not seen the information) maintenance were poor, the public would be able to hold the public authority to account.
23. Furthermore, the Commissioner notes that the public authority argued that, if the information were considered to be environmental information, it would rely on regulation 12(5)(b) – for the same reasons as it had done to withhold the information within the scope of elements [3], [4] and [5]. Whilst the Commissioner notes that this reliance was without prejudice to the public authority’s primary stance that the information was not environmental, it is difficult to see why information which the public authority wishes to claim is not relevant to the effective management of sewage and wastewater is nevertheless relevant to an investigation into the effective management of sewage and wastewater.

24. The Commissioner therefore considers that the information would help the public to better understand the effectiveness of a measure which has an environmental impact. It is thus environmental information.
25. Given that the Commissioner has not accepted the public authority's position in respect of element [6], he must next consider whether it is appropriate in the circumstances to order remedial steps.
26. The Commissioner notes that the public authority has provided a detailed explanation of why it considers that regulation 12(5)(e) of the EIR would apply if the information were deemed environmental, but that submission is of limited use if it cannot be compared to the actual information being withheld. Despite explicit instructions to do so, the public authority has not provided copies of the withheld information.
27. Nor does the Commissioner consider that the information falling within the scope of element [6] is sufficiently similar to elements [3], [4] and [5] or to the information covered by his previous decisions such that it would obviously be covered by regulation 12(5)(b) of the EIR. Or that, if it were covered, the public interest would not favour disclosure. Each case must turn on its own individual facts and the Commissioner cannot determine whether the same arguments would apply to this information without having seen a copy.
28. The Commissioner is thus unable to reach a firm conclusion as to whether the information in question does or does not engage an EIR exception. He is therefore left with little choice but to order the public authority to issue a fresh response to this element of the request in accordance with its obligations under the EIR. The complainant will then have a fresh opportunity to complain to the Commissioner if she wishes to dispute the extent of the information held, or any exceptions the public authority chooses to rely on.

## Right of appeal

---

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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.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 .....**

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