

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 24 May 2024

Public Authority: Department for Environment Food and Rural Affairs (Defra)

Address: 4th Floor
2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information relating to meetings between a Minister and CEO's of various water companies. Defra provided some information on the administration of the meetings but withheld any information relating to the discussions that actually took place and any briefings given to the Minister beforehand under regulation 12(4)(e) as the information amounted to internal communications.
2. The Commissioner's decision is that the information has been correctly categorised as internal communications under regulation 12(4)(e). He finds that the public interest favours disclosure of some of the withheld information but that Defra has correctly withheld the background to the key questions in the briefing documents and the information in the read-outs of the meetings.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
 - Disclose the information in the factsheet and the objectives, top lines and key questions (minus the backgrounds) in the briefing documents

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 22 June 2023, the complainant wrote to Defra and requested information in the following terms:

"In the attached letter from 13 March 2023, obtained via FOI, minister Rebecca says: "I will be having 6 monthly meetings with the CEOs of those companies identified as 'lagging' by Ofwat."

Meetings to date took place on January 10th, February 22nd and March 28th 2023.

I also understand that secretary of state Therese Coffey had a meeting with water companies on April 4th 2023.

I am requesting the release of the information related to these meetings under FOI/EIR regulations. The information I am requesting includes agendas, minutes and notes from the meetings and communications about the meetings between Defra and the companies before and after the meetings."

6. Defra responded on 20 July 2023 disclosing some emails that detailed meeting arrangements with personal data redacted. For any other information held Defra considered the information was exempt under regulation 12(4)(e) EIR as the information amounted to internal communications.
7. The complainant requested an internal review of this decision on 24 July 2023, focusing on the decision to withhold information under regulation 12(4)(e).
8. Following an internal review Defra wrote to the complainant on 21 September 2023 upholding its position.

Scope of the case

9. The complainant contacted the Commissioner on 27 October 2023 to complain about the way their request for information had been handled.

10. The Commissioner considers that the scope of his investigation is to be to determine if Defra has correctly withheld the requested information under regulation 12(4)(e) EIR.

Reasons for decision

11. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications.
12. The complainant had argued that internal communications could not be communications between a government department and third parties.
13. Defra has provided the Commissioner with copies of the withheld information and explained the information it held only amounted to internal communications within Defra. The Commissioner has viewed the information and confirms that this is the case. The information is a series of briefings by Defra officials for the Minister ahead of the meetings, fact sheets and some "read-outs" following the meetings. From viewing the "read-outs" these appear to be informal minutes. This information has only been circulated internally within Defra.
14. The Commissioner is satisfied that the withheld information falls within the definition of internal communications and as regulation 12(4)(e) is a class based exception there is no need to consider the sensitivity of the information to engage the exception. The withheld information only needs to fall within the definition of internal communications. As such the Commissioner is satisfied regulation 12(4)(e) applies.

Public interest test

15. Defra recognises there is a public interest in information relating to meetings with water companies and that releasing such information helps with accountability and transparency in government. Defra also acknowledges water supply is a topical issue and releasing information on this would further public understanding of the issue.
16. The complainant did not raise any specific public interest arguments in support of the information being disclosed but the Commissioner also acknowledges water company performance has been a topical issue and there will be a public interest in seeing information that shows what conversations have taken place between water companies and Ministers on this issue.
17. Balanced against this, Defra has made it clear that at the time of the request, and still now, conversations on the performance of water

companies were ongoing. Defra argued that releasing the information would undermine effective government by discouraging frankness and candour in internal communications and that a safe space was needed to consider options and make decisions relating to water companies without fear that the advice given would end up in the public domain.

18. Defra has given the Commissioner specific examples of information in the briefings that is data that is not publicly known and is incomplete and shifting, and information on performance measures and tracking.
19. The Commissioner notes that the information that is being withheld is contained in three categories of documents – factsheets, briefings and notes of meetings. The information in each of these documents is different and the arguments as to where the public interest lies differ in each case. The Commissioner has therefore looked at each category of document separately starting with the factsheet.
20. The factsheet was provided along with the briefing to the Minister before the meeting with one specific water company. The content of this factsheet is factual, providing information on the company, their performance and any recent difficulties they have encountered. Defra is concerned that the accuracy of some of this information has not been verified. The Commissioner's consideration doesn't include issues of accuracy – Defra can provide a note explaining that some of the facts/figures have not been verified. The issue is whether disclosing the information in this factsheet would serve the public interest or not.
21. On this point, the Commissioner notes that much of the information is publicly known. The factsheet contains details on incidents and performance that is already known. There is some detail that may not be easily accessible to the public but releasing this information is likely to provide the public with an insight into the issues facing the water companies.
22. The Commissioner is aware that the issue of 'lagging' ie leakages by water companies and the knock-on effects of this on customers in terms of rising costs of bills is of high public interest. The regulator for water company performance, Ofwat, has investigated this issue and in September 2023 it confirmed that less than half of water companies were meeting their targets on leaks¹.

¹ [Water firms in England and Wales ordered to cut £114m from bills | Water industry | The Guardian](#)

23. There is clearly a public interest in the release of information that shows how quickly and effectively water companies are addressing these problems and disclosing the information in the factsheet would show that the government is fully aware of the issues. The factsheet does not contain opinion so it is difficult to see how disclosing it may impact on the 'safe space' that Defra argues is needed to allow for free and frank discussions and the continued candour of debate. Equally the information may not provide a significant insight into what Defra is doing to hold the water companies to account. However, there is a presumption in favour of disclosure inherent in EIR and as such, without any compelling arguments specific to the exception to justify withholding this information, the Commissioner finds that the information in the factsheet should be disclosed.
24. Turning next to the information in the briefings; these take a particular format and consist of a meeting objective, top lines/points to make and key questions to ask. Whilst Defra has taken a blanket approach to these briefings and considers all information in them should be withheld the Commissioner takes a different view.
25. As with the factsheet there is information in the briefings that is factual. The objective of the meeting and the top lines contain mostly factual information setting out the purpose of the meeting and the concerns with performance and incident management at each of the water companies. These sections show the stance taken by the Minister and demonstrate that the water companies are being asked to account for their actions and demonstrate improvements. This information is very much in the public interest as it shows that government are working to tackle issues which have affected the public in well-documented ways. The Commissioner accepts that some of the statements in the 'top lines' sections are forthright but he considers this gives an insight into the tone of the meetings without revealing any information that is not publicly known.
26. There is a stronger argument for withholding the information in other sections of the briefings. The remaining sections of the briefings are divided by topics and a series of questions is listed for each topic followed by a background section for the Minister to read in preparation for the meeting. The questions themselves, much like the objective and top lines sections, are based on specific incidents/performances and show the intended line of questioning that will be directed at the water companies. This information again would go some way to increasing public confidence that the water companies are being asked to answer for any failings.
27. However, the background sections that follow these questions are more candid in nature and do contain information that is not all publicly

known. Some of this information relates to systems the water companies have in place, other information is to do with internal investigations or specific complaints or proposed reparations. The Commissioner accepts that disclosing this information is much more likely to have the envisaged impact that Defra has argued. This information is much more revealing and there is a real risk that disclosing this may have an impact on the candour of the information presented going forwards. The meetings are taking place at a high level and there is frank and candid information included in the background sections to ensure the Minister is fully briefed and allow for meaningful discussions. The meetings are still ongoing; the information relates to an earlier set of meetings but they have continued on and are still taking place to date. The information is very much still 'live' and disclosure stands to have a real and significant impact on the candour of the information presented in this section, thus decreasing the productivity of the meetings going forwards. The meetings exist to allow the Minister to hold the water companies to account and to challenge them on their performance and the measures in place to improve. The Commissioner recognises there is a clear public interest in all of this information but at the appropriate time once the series of meetings has concluded and the process is not likely to be prejudiced.

28. The Commissioner is of the view that disclosing all information in the briefing except the background sections for each 'key question' would meet the public interest in understanding how the government is addressing water company performance and measuring performance and improvement without prejudicing the efficacy of the meetings going forwards by revealing the very candid and frank commentary that is contained in the background sections.
29. Finally, the Commissioner has looked at the notes from the meetings. Defra describes these as 'read-outs' and these take the format of a summary of the main points from the meetings. The language and tone of these is informal and is clearly intended to be a quick read of the main highlights. The read-outs contain an overview of the discussions and future plans to improve. Much as with the background section already discussed there is a much more obvious impact from the disclosure of this information as there is a real risk that these read-outs may become more formalised and less candid, thus reducing how useful they are.
30. Whilst the public interest in anything to do with the performance of water companies is significant, the Commissioner does not necessarily accept that the information in the read outs is of huge public interest as it is an informal note of some of the responses to the questions asked. The public interest in this case lies more in disclosing information that shows what the government is doing and how they are interacting with

the water companies and the Commissioner considers this information should be disclosed. The information in the read-outs and the background to the key questions is likely to affect the candour of future discussions and is less likely to add to the public debate. As such the Commissioner finds the public interest in this information is best served by maintaining the exception and withholding the information in the read-outs.

31. In conclusion, the Commissioner accepts the regulation 12(4)(e) is engaged in relation to all of the information in scope of the request but he considers the public interest favours disclosure in the case of the information in the fact sheet and the objective, top lines and key questions in the briefing documents. He does however accept that Defra has correctly balanced the public interest and withheld the information in the background to the key questions sections of the briefing documents and the information in the read outs.

Right of appeal

32. 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

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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