

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 June 2016

Public Authority: Thames Water
Address: First West, Clearwater Court
Vastern Road
Reading
RG1 8DB

Decision (including any steps ordered)

1. The complainant requested information about incidents of sewage and flooding at a particular address. Thames Water initially withheld the information under regulation 13 of the EIR as it said the information was the personal data of third persons. It subsequently released the information to the complainant.
2. The Commissioner's decision is that Thames Water has contravened regulation 5(2) because it did not make the requested information available to the complainant within 20 working days.
3. The information has now been released and the Commissioner does not require Thames Water to take any steps.

Request and response

4. On 5 November 2015, the complainant wrote to Thames Water and requested information in the following terms:

"1. How many times you were called to incidents of Sewage and Flooding to Woodbourne Avenue, London SW16 between January 2015 and September 2015.

2. What the cause of the blockage / sewage was recorded as.

3. How many incidents resulted in a complaint."

5. Thames Water responded on 22 December 2015. It refused to provide the requested information which it said was the personal data of third persons. It did not refer to a specific regulation. Although its phrasing is not as clear as it could be, Thames Water did, however, refer to an internal review and advised the complainant to contact it if he had any questions regarding its response.
6. Following contact from the complainant on 23 December 2015, the Commissioner advised him to request an internal review from Thames Water, which the complainant did on 22 March 2016. Thames Water provided an internal review 19 April 2016. It released the information requested at part 1. Thames Water maintained its position that the information requested at part 2 and part 3 was third person personal data and clarified that it considered this information excepted from disclosure under regulation 13 of the EIR.
7. During the Commissioner's investigation, Thames Water reconsidered its response. On 3 June 2016, Thames Water released the information requested at part 2 and part 3, and clarified the response on 8 June 2016.

Scope of the case

8. The complainant initially contacted the Commissioner on 23 December 2015 because he was dissatisfied with Thames Water's application of regulation 13 to his request. Following receipt of the information, the complainant preferred not to withdraw his complaint but to progress to a decision notice. He considers that Thames Water has been evasive.
9. The Commissioner has focussed his investigation on Thames Water's compliance with regulation 5(2); that is, the length of time it took Thames Water to release the information the complainant had requested.

Reasons for decision

10. Regulation 5(2) of the EIR says that requested information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
11. In this case, the complainant submitted his request on 5 November 2015 but did not receive all the information he had requested until 3 June 2016, which is a clear breach of regulation 5(2).

Other matters

12. The Commissioner has noted the complainant's comment about Thames Water being evasive. Thames Water responded to the request on 22 December 2015, somewhat outside of the 20 day requirement. It responded to the internal review request promptly and finally released all the requested information on 3 June 2016. The Commissioner considers the final response to have been clear, but the complainant asked Thames Water to clarify the response, which it did.
13. Thames Water originally withheld the information as it considered the information to be the personal data of third persons. Given the subject of the request, the Commissioner does not consider Thames Water's application of regulation 13 to have been completely outlandish. That said, ideally a public authority will have carefully considered a request upon receipt and so be able to respond to it correctly at that stage. However, it is not unusual for a public authority to reconsider its response and amend its position; either at internal review or during an investigation by the Commissioner, as was the case here.
14. In this case Thames Water withdrew its reliance on regulation 13 and released the information. The Environmental Information Regulations have only applied to private companies such as Thames Water since March 2015. The Commissioner therefore does not consider it likely that Thames Water was being deliberately evasive and more likely that its incorrect application of regulation 13, on this occasion, was down to caution.

Right of appeal

15. 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

16. 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.
17. 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

Pamela Clements
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