

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

Decision notice

Date: 9 June 2016

Public Authority: United Utilities Water Limited (United Utilities)
Address: Grasmere House First Floor
Lingley Mere Business Park
Lingley Green Avenue
Great Sankey
Warrington
WA5 3LP

Decision (including any steps ordered)

1. The complainant has requested information relating to the transfer of Manchester Corporation's waterworks undertaking at Lake Thirlmere to United Utilities. United Utilities provided the complainant with relevant title numbers which it said could be obtained from HM Land Registry (HMLR). It said that it did not hold any further information under regulation 12(4)(a) EIR. The complainant considers that United Utilities holds a scheme relevant to the above transfer dated 31 August 1989. United Utilities has confirmed that it does not hold such a scheme.
2. The Commissioner considers that United Utilities was correct to confirm that it does not hold a scheme relevant to the above transfer dated 31 August 1989 under regulation 12(4)(a) EIR.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 28 June 2015 the complainant requested information of the following description:

"The context of this request is the transfer (in one or more steps) of Manchester Corporation's waterworks undertaking at Lake Thirlmere to, in the ultimate, United Utilities Water Limited (or plc), formerly known as North West Water Limited; I am number 6 in the list of objectors at next November's Inquiry into United Utilities' section 38 Application to the Planning Inspectorate (COM 655).

I request copies of all environmental information relating to the above transfer(s), including (without prejudice to the generality of the foregoing) copies of any relevant order or scheme made under either of the Water Acts of 1973 or 1989."

5. Following this request, there was correspondence between United Utilities and the complainant as United Utilities were unclear as to what specific information the complainant was requesting.
6. On 7 August 2015, United Utilities wrote to the complainant to confirm that it was unable to comply with the request under regulation 12(4)(c) EIR as it was still not clear what information he was requesting.
7. The complainant requested an internal review on 12 September 2015. United Utilities sent the outcome of its internal review on 5 October 2015. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 13 August 2015 to complain about the way his request for information had been handled.
9. During the course of the Commissioner's investigation the complainant clarified that it was a scheme dated 31 August 1989 relating to the transfer which is the subject of the request which he wanted to obtain and considers is held by United Utilities. On this basis, United Utilities withdrew its application of regulation 12(4)(c) EIR but confirmed that it did not hold such a scheme under regulation 12(4)(a) EIR.
10. The Commissioner has considered whether United Utilities was correct to confirm that it does not hold such a scheme dated 31 August 1989 under regulation 12(4)(a) EIR.

Reasons for decision

11. Regulation 12(4) EIR states that, For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –
 - (a) it does not hold that information when an applicant's request is received".
12. United Utilities explained that the complainant's queries concern a now withdrawn planning application to put fencing around a portion of land which United Utilities own, but enjoys public access rights as a registered common. The fencing was in order to protect the woodland from grazing animals and vice versa.
13. It said that the complainant has referred to section 62 of the Manchester Corporation Waterworks Act 1879 (MCWA). United Utilities explained that this prevents access to land being restricted in any manner. United Utilities explained that its position has always been and remains that the (withdrawn) application does not alter the existing access through a series of styles.
14. United Utilities said that the complainant considers that it needs to demonstrate that ownership is conferred upon it, and that this will enable the complainant to show that, as owners, United Utilities are bound by section 62 MCWA. It explained that this contention is incorrect as if United Utilities are the owners, and this has never been denied by United Utilities nor was it an issue in the now defunct application, then it would inevitably be bound by section 62 MCWA. It argued that ownership is therefore completely irrelevant, as it accepts that it is subject to section 62 MCWA and this has never been in issue for United Utilities.
15. United Utilities went on to provide the following historical background:
 - Local councils were responsible for the supply of water and reception (through a system of sewers) and treatment of wastewater. Accordingly they previously owned or leased the land upon which their reservoirs/ apparatus were present.
 - Under the 1973 Water Act ownership of the properties and the functions of those Councils vested/transferred into the newly created North West Water Authority (NWWA).
 - Similarly, under the Water Act 1989, they transferred from NWWA to North West Water plc (NWW) when the industry became privatised.

[NWW plc amalgamated with Norweb to become United Utilities, of which United Utilities Water Ltd is one component].

16. It summarised that all the functions and property transferred because the respective Water Acts of 1973 and 1989 applied. It said that the complainant appears to suggest that as part of the transfer there is some sort of transfer scheme or order document, however United Utilities position is that transfer occurs because it is subject to those Acts. In other words because the law has declared so, ownership has transferred to United Utilities.
17. It provided the rationale behind this, it explained that an Act of Parliament and any supporting legislation declared transfer of ownership, so as to avoid the unnecessary burden of all the various Councils having to go through a conveyancing process to identify and transfer their assets, when this could simply be done by an Act of Parliament declaring so. Indeed all the various Councils handed over their deeds to what was then NWWA. It confirmed that the complainant is able to inspect these held in its safety vault should he wish to do so. However it confirmed that they are deeds of previous ownership, not a transfer scheme, and do not show transference of ownership.
18. It went on that similarly when it became NWW from the NWWA, there is no transfer scheme necessary for property remaining within the same organisation, but in a different guise.
19. It said that HMLR accepts this to be the case and has registered United Utilities title ("ownership").
20. It explained that all ownership of properties when transferred (i.e sold or leased out or inherited) have to be registered with HMLR. It said that many property owners (including United Utilities) didn't wait to transfer property, but voluntarily registered their ownership. It said that in order to be registered, the HMLR has to be satisfied that United Utilities are entitled to legal title (ownership) to those properties. It explained that HMLR was satisfied from both the Epitome of Title and that United Utilities were bound by the 1973 and 1989 Acts. However it explained that an Epitome of Title is not the same thing as a Transfer Scheme or order, which is the information that has been requested.
21. It confirmed that the property vesting in NWWA from the various councils took place by virtue of the above referred 1973 Act and from NWWA to NWW in 1989 by virtue of the above referred 1989 Act. In other words there was no transfer scheme necessary to move assets belonging to its previous guise as NWWA, to NWW, then to United Utilities, as the legislation provided for this. Neither indeed was there a transfer scheme necessary to move property ownership from the

Councils to NWWA, as these were provided for as a matter of the 1973 Act. Transfer schemes would only exist to the extent that property is being transferred out of ownership. Land was transferred from Manchester Corporation (Council) and other Councils to NWWA by the operation of the 1973 Act, and then subsequently by the 1989 Act.

22. It concluded therefore that there is no reason to search for something that cannot or does not need to exist. However it explained that notwithstanding the above, pursuant to an entirely different reason unconnected with EIR, United Utilities had previously enquired as to the existence and whereabouts of any such document, and have had this confirmed as not being in its possession. It said that this enquiry was previously made by one of its current Legal Managers (head of Property Legal Section), who has been in the employ of United Utilities for at least 25 years.
23. In addition, and pursuant to the request, it has spoken to the member of staff in its Property Services department responsible for all of United Utilities' deeds. The member of staff in question has been in the employ of both the NWWA prior to privatisation, and then of NWW. It has been confirmed that no 1989 transfer scheme document relating to the transfer of property from NWWA to NWW has been located or exists.
24. It said that had a transfer scheme been created circa 1989, United Utilities did not at that time possess the necessary technology to be able to scan/ digitise any such document and an electronic search would not have been relevant and therefore it confirmed that this would not be held in a digitised format. It also confirmed that any such documents had not been retrospectively scanned.
25. The Commissioner considers that United Utilities has provided significant details to explain why a transfer document dated 31 August 1989 would not exist. It has explained that such a document was not necessary to pass ownership of the waterworks undertaking at Lake Thirlmere. It has also said that if such a document did exist it would not have any issue in providing it as United Utilities accepts ownership in this case. On the balance of probabilities, the Commissioner therefore considers that a transfer scheme dated 31 August 1989 is not held by United Utilities.

Right of appeal

26. 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

27. 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.
28. 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

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF