

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 18 December 2017

Public Authority: Severn Trent Water
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 street works started in 2016.
2. The Commissioner's decision is that Severn Trent Water (STW) has correctly applied regulation 12(4)(b) (manifestly unreasonable) to the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 23 January 2017, the complainant wrote to STW and requested information in the following terms:

Can you please provide a list of all streetworks (carried out by Severn Trent) that started in 2016, which lasted in excess of two months, along with the dates of the works? Please ensure this data has the street name and the location.

5. On 24 January 2017 STW requested further clarification from the complainant who responded the following day stating:

"This question is related to the entirety of the Severn Trent network.

This question is in relation to streetworks. This would be any works where Severn Trent have inspected, maintained, adjusted, repaired or altered any relevant pipe which is in, under or over any street."

6. STW responded on 25 January 2017 and stated that it was unable to answer the question as it did not fall under the EIR. The complainant requested an internal review on 27 January 2017.
7. In further correspondence between the complainant and STW, the complainant maintained that the request was still 'live' as STW had not issued an appropriate refusal notice in line with the EIR. This issue is dealt with under 'Other matters' and the end of this decision notice.
8. STW responded on 24 February 2017 and provided a spreadsheet of information it considered fell within the scope of the request.
9. The complainant wrote to STW again on 27 February 2017 stating that the information provided did not answer her request as she was seeking the location of the works along with dates, whereas STW had provided project numbers and the dates.
10. STW acknowledged the correspondence on 7 March 2017 and advised that a further response would be provided within 20 working days.
11. On 22 March 2017 the complainant requested an internal review, which appears to be due to the lack of response.
12. On 27 March 2017 STW provided a further response and stated:

"STW has already carried out an internal review of your original request and the outcome of this review was provided to you on 24 February 2017. We are not required to carry out any further internal reviews under the EIR and if you are unhappy with the outcome of the internal review, you may raise it with the Information Commissioner's Office.

Nevertheless, we are prepared to disclose the additional information you have requested voluntarily – but we do not consider that we are required to do so under the EIR. I therefore attach a spreadsheet detailing Severn Trent Street Works started in 2016 which lasted in excess of two months with a location".

13. The complainant responded the same day stating:

"I am disappointed that, having asked for the location, you have chosen to simply provide a location. The information you have provided does not allow me to locate the actual works."

14. In the meantime it appears that the complainant requested the information again on 7 March 2017. STW responded the following day stating that the information did not fall under the EIR. The complainant requested an internal review stating:

"The rejection is not in line with EIR and is therefore incorrect. Even then, the information does correctly fall under EIR.

A full history of my FOI request and all correspondence is available on the Internet at this address:

<https://www.whatdotheyknow.com/request/s...>"

15. On 6 April 2017 the complainant wrote to STW again as she had not received any response.
16. The Commissioner contacted STW on 26 April 2017 advising that it should provide a response. STW replied and stated that it considered that the request was manifestly unreasonable as it had responded to the request of 23 January 2017, and also provided an internal review. Furthermore, it had provided the data on 27 March 2017. STW provided the Commissioner with a copy of the request of 23 January 2017.

Scope of the case

17. The complainant contacted the Commissioner on 11 April 2017 to complain about the way her request for information had been handled.
18. The Commissioner considers the scope of this case is to determine if STW has correctly cited regulation 12(4)(b) and has complied with its responsibilities under the EIR.

Reasons for decision

Is this environmental information?

19. Environmental information is defined in regulation 2(1) of the EIR as follows: "environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form 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) and (b) 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);
20. Clearly the information requested is environmental information and in correspondence with the Commissioner, STW acknowledged this and explained that there had been a training issue with its customer service staff, which has now been resolved.

Regulation 12(4)(b) – manifestly unreasonable request

21. Regulation 12(4)(b) says that a public authority may refuse to comply with a request if the request for information is 'manifestly unreasonable'.
22. The Commissioner has issued public guidance on the application of regulation 12(4)(b)¹. This guidance contains the Commissioner's definition of the regulation, which is taken to apply in circumstances where either the request is 1) vexatious, or 2) where the cost of

¹ <https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>

complying with the request would be too great. In this case, STW considers that circumstance 2) is applicable.

23. The EIR does not contain a limit at which the cost of complying with a request is considered to be too great. However, the Commissioner's guidance suggests that public authorities may use the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations") as an indication of what Parliament considers to be a reasonable charge for staff time.
24. The Regulations stipulate that a cost estimate must be reasonable in the circumstances of the case. The limit given for local government is £450 or 18 hours work. Included within the limit the authority can consider the time taken to:
 - (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.
25. For the purposes of the EIR, a public authority may use this hourly charge in determining the cost of compliance. However, the public authority is then expected to consider the proportionality of the cost against the public value of the request before concluding whether the request is manifestly unreasonable.
26. Additionally the Commissioner's guidance on regulation 12(4)(b) states that the cost of considering exempt information can be taken into account:

"Under FOIA the cost of considering whether information is exempt cannot be taken into account under section 12 (the appropriate costs limit) but can be taken into account under section 14(1) (vexatious requests). This is because section 12 limits the activities that can be taken into account when deciding if the appropriate limit would be exceeded. This is not an issue under the EIR. The costs of considering if information is exempt can be taken into account as relevant arguments under regulation 12(4)(b)."
27. The Commissioner agrees with the use of the Regulations as a starting point under EIR, but also notes that all of the circumstances of the case must be taken into account to determine whether a request can be

deemed manifestly unreasonable on the grounds of cost under EIR.
Including:

- the nature of the request and any wider value in the requested information being made publicly available;
 - the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue;
 - the size of the public authority and the resources available to it, including the extent to which the public authority would be distracted from delivering other services.
28. In its submission to the Commissioner STW explained that the original request asked for 'all streetworks (carried out by Severn Trent Water) that started in 2016, which lasted in excess of two months, along with the dates of the works'. This information was provided by STW following an internal review. The complainant subsequently asked for the exact location of each of these works.
29. STW argued that the information relates to a 12 month period and consists of 108 individual lines of data, each relating to an instance of works. To provide the location information requested, it would have to review each line of data in order to ascertain the exact location of the works.
30. It further explained that this review would require it to liaise with several departments across the business to find the requested information.
31. STW stated that the information already provided to the complainant is recorded centrally by its Traffic Management team but is only based on highways notice information and so does not contain details of the exact works location. This would need to be obtained from the individual teams dealing with the works. There are several operational departments within the business which could be responsible for works, such as Requisitions and Diversions section, Developer Services or the frontline Operations team.
32. The Commissioner sought further clarification with regard to what one line of data referred to. STW explained the 'line of data' refers to the spreadsheet of information that was provided to the complainant following its internal review of the request earlier this year.
33. The spreadsheet contains over 100 lines of data and each line of data relates to an instance of street works. The line of data contains a reference number for the works and the dates of those works. In order

to identify the exact location of each of these works as now requested by the complainant would take approximately 20 minutes per line liaising with several departments across the business to find the exact location for the street works for each line of data.

34. For each line of data, STW would need to:
 - identify the relevant operational team;
 - locate the records of works data;
 - review the records of works data with the operational team to ascertain the exact works location; and
 - update the data line in the spreadsheet with the location information.
35. It is not simply a case of reviewing the line of data but an extensive review of records across several business teams in order to locate the further information requested.
36. STW further emphasised that it did respond to the original request and provide the information originally requested following the internal review. The complainant has then subsequently requested further information and it is this provision of additional information that would require the further work and it is on this basis that it considers it to be manifestly unreasonable based on the amount of work required.
37. For each line of data, STW would need to work with the Traffic Management team to identify the relevant operational department, then locate the records of works data and review this with the operational team to ascertain the exact works location and then update the data line with the location information. STW estimated that this exercise would take a minimum of 20 minutes per line of data.
38. Therefore to obtain the further information would take at least 36 hours (based on 20 minutes per data line and 108 lines of data). Using the suggested figure of £25 per hour for staff time, this would cost £900 which is in excess of the appropriate limits contained in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
39. The complainant argued that the suggestion that it would take several hours is baseless, the systems are in place to allow this information to be provided quickly and easily. The complainant also advised that she had made several requests of several Water Companies and they certainly do not take hours. The complainant accepted that it might take perhaps 15 minutes to run a suitable search on a database or spreadsheet.

40. The Commissioner has considered STW's and the complainant's submissions and recognises that a significant volume of recorded information is held that would fall within the parameters of the complainant's request. The Commissioner notes that STW has already responded to the initial request of 23 January 2017.
41. The complainant has argued that other water companies have systems in place that have allowed the information to be provided quickly and easily and considers that a new spreadsheet could be produced in minutes. However, the Commissioner has no knowledge of what systems STW uses or whether they are the same as the other water companies referred to. It is not within the Commissioner's remit to determine what systems should be in place or how a public authority chooses to use them, and she can only consider the systems STW have in place.
42. It is therefore reasonable for the Commissioner to consider that compliance with the request (as stated originally or as widened after further clarification), would consume significant public resources and place a substantial burden on STW.
43. On this basis the Commissioner accepts that the request is manifestly unreasonable within the meaning of regulation 12(4)(b).

The public interest test

44. Regulation 12(4)(b) is subject to the public interest test set out in regulation 12(1)(b). This specifies that a public authority may only rely on an exception if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure.
45. STW argued it has already responded to the original request and provided the information requested. The additional information now sought does not further the public interest beyond what has already been provided.
46. The request relates to information on street works carried out in 2016. This means that the further information requested is now at least 12 months old and, for works carried out early in 2016, almost 2 years old. The public interest in the release of information which is not current is significantly diminished when weighed against the cost of compliance, particularly.
47. It is apparent when STW is carrying out street works in a particular location as there will be clear signage at the location. The public interest is not furthered by providing this information as it is already in the public domain when the works are being carried out.

48. The complainant has not presented any arguments with regard to the public interest.
49. The Commissioner recognises the inherent importance of accountability and transparency within public authorities, and the necessity of a public authority bearing some costs when complying with a request for information. However, in considering the public interest test for this matter, the Commissioner must assess whether the cost of compliance is disproportionate to the public value of the request.
50. The Commissioner has also considered if there is a serious purpose behind the request and acknowledges that the complainant clearly has an interest in the information being disclosed. However, the request appears to be solely for the purpose of the complainant to pursue private interests. The complainant has not presented any arguments to indicate any wider public interest.
51. Having considered the relevant factors in this matter, the Commissioner has concluded that the cost of compliance with the request is disproportionate to the public value of the request and the public interest favours the maintenance of the exception. The Commissioner has decided that STW was correct to reach the conclusion that the requests were manifestly unreasonable and was able to apply Regulation 12(4)(b) to the information.

Other matters

52. STW advised the Commissioner that it would be prepared to provide the requested information if the complainant would meet the cost, as described above.
53. Although the Commissioner would generally expect a public authority to issue a 'fees notice' directly to the complainant, given the protracted nature of this case, the Commissioner agreed that she would include this in her decision notice.
54. In correspondence with STW, the complainant stated on several occasions that its response was not in line with EIR requirements. Although it would be best practice to issue a refusal notice in line with the EIR, if a public authority doesn't consider that the information requested falls under that legislation then there is no requirement to comply with it.

Right of appeal

55. 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

56. 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.
57. 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

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