

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

Date: 13 May 2022

Public Authority: Anglian Water Services Ltd

Address: Lancaster House
Lancaster Way
Huntingdon
Cambridgeshire
PE29 6XU

Decision (including any steps ordered)

1. The complainant requested data relating to a water source. Anglian Water Services Ltd ("Anglian Water") provided some information but the complainant considers that more is held.
2. The Commissioner's decision is that Anglian Water has, on the balance of probabilities, disclosed to the complainant, all the information it holds and has therefore complied with its duty under Regulation 5(1) of the EIR. Anglian Water breached Regulation 10 of the EIR in its handling of this request.
3. The Commissioner does not require further steps.

Request and response

4. On 6 May 2021 the complainant requested information of the following description:

"I would like to make a Freedom of Information and Environmental Information request for all information, reports, data, and groundwater modelling (ground water source to the aquifer, flow path from the source to the boreholes, quantity of through-flow during pumping and pump tests) that has been undertaken to assess and

that has been made to update the licenced abstraction for the public water supply from Gowers Farm, Bunwell, Norfolk.”

5. On 2 June 2021, Anglian Water responded. It provided some information.
6. The complainant requested an internal review on 3 June 2021 as he did not consider that the data provided was the data he had requested. Anglian Water sent the outcome of its internal review on 16 July 2021. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 29 July 2021 to complain about the way his request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether Anglian Water holds any further information within the scope of the request.

Reasons for decision

Is the requested information environmental?

9. 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);
10. As it is information relating to water sources, the Commissioner believes that the requested information is likely to be information on a measure affecting the elements of the environment (namely, water). For procedural reasons, he has therefore assessed this case under the EIR.

Regulation 5(1) – Held/Not held

11. Regulation 5(1) states that:

"a public authority that holds environmental information shall make it available on request."

12. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.
13. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

The complainant's position

14. The complainant explained to the Commissioner that Anglian Water's statement that it held no further information:

"would be impossible under the Water Framework Directive and other legislation since the company must operate in a responsible manner and know what impacts its abstractions are having on the environment and sustainability of the groundwater source, in the process of abstracting up to 2.5 million litres per day."

Anglian Water's position

15. Having reviewed its position, Anglian Water explained to the Commissioner that it remained satisfied that it had disclosed all the information it held that fell within the scope of the request.
16. When asked to set out the searches that it had undertaken, Anglian Water explained that:

"We searched both our source technical file and our licensing file for Bunwell in our electronic records and our paper records. Due to the age of the Bunwell Source and it being licenced prior to the privatisation of Anglian Water (in 1989), the documentation used to support any licence application is not held by Anglian Water. We have been able to find and disclose what we believe to be paper copies of the test pumping data and analysis from 1983 that may have supported any licence application at the time.

"Anglian Water does not carry out groundwater modelling - that would be carried out through the regional model held by the Environment Agency. Model runs are usually only carried out when a licence is being reviewed by the Environment Agency. We have no licence applications on file for Bunwell since the licence was issued in 1981 (and updated in 1983 when the second borehole was added), as a result it seems unlikely that groundwater modelling has been carried out historically for this source. If it had been we would expect to see some reference to it in the files, and we found nothing.

"We disclosed the limited information found.

"Our Abstraction Licensing Manager searched our electronic records. She also searched our paper records. We consulted our Water Resources Environment Manager and our Regional Water Resources Manager. As indicated above pre-privatisation documentation may now be held by the Environment Agency."

17. When the Commissioner asked Anglian Water whether it had any statutory requirements or business need to hold information of this type (specifically mentioning the Water Framework Directive), Anglian Water responded to say that:

"Business records such as abstraction records are kept for as long as they are relevant and useful to the business. We have supplied historic paper records from the 1970s/1980s and electronic abstraction records from 2000. There is no indication that any records have been destroyed.

"Abstraction records are obtained, recorded and collated in order to make returns to the Environment Agency. There is a statutory or permit requirement to keep records for 6 years. We keep historic abstraction licence application information where it is relevant and useful to the business. Our practice is to keep abstraction records in perpetuity.

"There is a requirement to report abstraction records to the Environment Agency. We hold abstraction returns and have supplied them to the complainant. We do not hold other data relating to the Water Framework Directive in respect of the Bunwell source."

The Commissioner's view

18. The Commissioner considers that, on the balance of probabilities, Anglian Water does not hold any further information beyond that which it has already provided.
19. The searches that Anglian Water has described appear adequate, relevant and likely to have identified all the information that it held.
20. Anglian Water has explained the information that it is required by the Water Framework Directive to hold and it appears to have already provided this information to the complainant. It has further explained that groundwater modelling is carried out by the Environment Agency.
21. The Commissioner considers that Anglian Water has provided a plausible explanation as to why it does not hold the requested information and explained the steps it has nevertheless taken to assure itself that it does not hold it. In the absence of any contrary evidence, the Commissioner can only conclude that it is more likely than not that Anglian Water holds no further information.

Procedural Matters

22. Regulation 10(1) of the EIR states that:

“Where a public authority that receives a request for environmental information does not hold the information requested but believes that another public authority or a Scottish public authority holds the information, the public authority shall either—

- (a) transfer the request to the other public authority or Scottish public authority; or
- (b) supply the applicant with the name and address of that authority,”

23. The Commissioner does not encourage public authorities to transfer information requests, especially without the explicit consent of the requester – who may not wish to have their personal data transferred to another authority. However, where a public authority believes that another public authority holds relevant information and it does not transfer the request, it must inform the requester of the name and address of that public authority.

24. Anglian Water did inform the complainant that it believed the Environment Agency might hold some relevant information. However, it did not advise the complainant of how the Environment Agency might be contacted. The Commissioner therefore finds that Anglian Water breached Regulation 10 in responding to the request.

25. As the Commissioner does not consider that the complainant would have difficulty locating the contact details for the Environment Agency, he considers that it would be disproportionate to order Anglian Water to take any remedial steps.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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