

[REDACTED]

From: EIR
Sent: 30 September 2024 10:33
To: [REDACTED]
Subject: [REDACTED]
Attachments: [REDACTED]

Dear [REDACTED]

Provision of requested information and refusal of request – manifestly unreasonable

Thank you for your request for information about all 15 minute flow to treatment and final effluent flow data for the year 2023 for all Anglian Water STWs and all individual start/stop times on all EDMs in 2023, which we received on 10 September 2024. Your request has been considered under the Environmental Information Regulations 2004.

I attach the start stop/stop times of EDMs in the Anglian Water region as requested.

We believe an exception applies to your request which justify our decision not to supply you with the information that you have requested. These are set out below.

Regulation 12(4)(b) Manifestly unreasonable

Regulation 12(4)(b) says that a public authority may refuse to comply with a request if the request for information is ‘manifestly unreasonable’.

The Information Commissioner has issued public guidance on the application of regulation 12(4)(b) (<https://ico.org.uk/media/for-organisations/documents/1615/manifestly-unreasonable-requests.pdf>). This guidance contains the Information 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 or burden of complying with the request would be too great. Anglian Water considers that circumstance 2) is applicable to this request.

The 2004 Regulations do not contain a limit at which the cost of complying with a request is considered to be too great. However, the Information Commissioner’s guidance suggests that public authorities may use the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 as an indication of what Parliament considers to be a reasonable charge for staff time.

The Data Protection (Appropriate Limit and Fees) Regulations 2004 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.

For the purposes of the 2004 Regulations, 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.

Additionally, the Information 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)."

The Information Commissioner has confirmed the use of the Data Protection (Appropriate Limit and Fees) Regulations 2004 is appropriate as a starting point under the 2004 Regulations, 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 the 2004 Regulations. Including:

- (a) the nature of the request and any wider value in the requested information being made publicly available;
- (b) the importance of any underlying issue to which the request relates, and the extent to which responding to the request would illuminate that issue;
- (c) 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; and
- (d) the context in which the request is made, which may include the burden of responding to other requests on the same subject from the same requester.

The information requested is time consuming to collate.

It is acknowledged that Anglian Water is a significant sized organisation, however, its primary role is the provision of drinking water and sewerage services to members of the public not providing information. To extract and collate the data would be time consuming. The request would inevitably distract the team members from delivering sewerage services.

Whilst it is difficult to fully assess the time estimate for complying with the request. It would take many hours. This would create a disproportionate burden on Anglian Water and its resources. The 15 minute data is not readily available and Anglian Water has over 1100 sewage treatment works, we estimate it would take about 10 minutes per site. This would equate to approximately 185 hours of work.

Regulation 12(4)(b) - The public interest test

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.

Whilst we acknowledge that information on flow to treatment and final effluent discharges could be viewed as of interest to the public (and there may be wider interest in the material), we conclude this does not outweigh the time which would be needed to comply which would in turn disrupt Anglian Water's ability to perform its core functions.

For the reasons given above we believe the cost of compliance is disproportionate to the public value of the request.

Regulation 9 Assistance

We want to be as open as possible in answering requests, and to help people obtain the information they are looking for. Unfortunately, in this case we are unable to supply the information that you have requested. Nevertheless, you

could, for example, ask for specific sewage treatment works so that we can consider whether it may be possible to respond to certain aspects of your request without incurring significant cost and diversion of resources from Anglian Water's other work.

The information supplied to you continues to be protected by the Copyright, Designs and Patents Act 1988. You are free to use it for your own purposes, including any non-commercial research you are doing, and for the purposes of news reporting. Any other re-use (for example, commercial publication) would require the permission of the copyright holder. It is important that this data is not published for security reasons.

If you are unhappy with the service you have received in relation to your request and wish to request an internal review, you should email EIR@anglianwater.co.uk or write to:

Legal Director, Anglian Water Services, Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon PE29 6XU

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

If you have any queries about this email, please contact me.

Yours sincerely

EIR Team

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Email EIR@anglianwater.co.uk