

## **Environmental Information Regulations 2004 (EIR) Decision notice**

**Date:** 9 May 2017

**Public Authority:** Yorkshire Water Services Limited  
**Address:** Western House  
Halifax Road  
Bradford  
BD6 2SZ

### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to an alleged pollution incident, including the name of the company Yorkshire Water was prosecuting. Yorkshire Water provided some of the requested information, however it refused to provide the name of the company to be prosecuted on the basis that it did not constitute environmental information.
2. The Commissioner finds that within the context of the request, the name of the company does constitute environmental information. By failing to provide a response to the request within the time limits established by the Regulations Yorkshire Water has breached regulation 5(2).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Issue a response under the EIR.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

### **Request and response**

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5. Yorkshire Water had previously informed the complainant that it was prosecuting a company in connection with a water quality incident in the Thorne area of Doncaster. On 9 November 2016 the complainant telephoned Yorkshire Water in respect of this incident. He made the following request for information under the EIR for:
  1. the date in February 2016 that the court case is taking place;
  2. the name of the company Yorkshire Water is prosecuting; and
  3. the alleged offences
6. It is noted that a verbal request for information is a valid request for the purposes of regulation 5(2) of the EIR.
7. Yorkshire Water responded on 16 November 2016 and provided the information requested at points 1 and 3. However it withheld the name of the company to be prosecuted on the basis that disclosure would risk prejudicing the prosecution.
8. The complainant requested an internal review on the same day ie 16 November 2016. Yorkshire Water provided the outcome of that internal review on 14 December 2016. It now revised its position and argued that the name of the company involved did not constitute environmental information and that therefore Yorkshire Water was not under any obligation to provide it.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 16 December 2016 to complain about the way his request for information had been handled. He was particularly concerned that Yorkshire Water had originally argued that disclosing the information would prejudice Yorkshire Water's prosecution.
10. However because Yorkshire Water later argued that the name of the company was not in itself environmental information the Commissioner has to make a finding on that matter before any other issues can be addressed. This notice will focus only on that issue.
11. In terms of the actual breach which the notice will consider regulation 5(2) provides that a public authority should communicate the requested information within 20 working days of a request being received. Where a public authority wishes to refuse a request it should issue a refusal notice in compliance with regulation 14, again within 20 working days. In cases like this one where a public

authority has failed, or refused to provide a response the Commissioner will treat it as failure to comply with regulation 5(2). However the crux of the issue, ie whether Yorkshire Water is obliged to respond to the request, depends on the interpretation of the definition of environmental information provided by regulation 2(1)

12. This reasoning for the Commissioner's decision will therefore focus on whether the requested information is environmental information as defined by regulation 2(1).

## Reasons for decision

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### **Regulation 2(1) – definition of 'environmental information'**

13. Regulation 2(1) defines 'environmental information' as being 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 elements of the environment referred to in (b) and (c);

14. The wording of the request as set out in paragraph 5 above is taken from Yorkshire Water's letter of the 14 December 2016 informing the complainant of the outcome of the internal review. There is therefore no dispute over the nature of the request. The Commissioner is satisfied that on any objective reading of the request it is clearly seeking the name of the company to be prosecuted over the alleged water quality incident and it is also clear that Yorkshire Water understood this to be the case.
15. Providing the name of a company in response to such a request would inevitably disclose who Yorkshire Water believed to be responsible for the incident. Therefore it is information on a factor such as an emission, discharge and other releases into the environment which would, effect or be likely to effect the elements of the environment. On that basis the name of the company when considered within the context of the request falls within the definition of environmental information provided by regulation 2(1)(b).
16. The name of the company is also information on the Yorkshire Water's prosecution. That prosecution can be seen as a measure designed to protect the elements of the environment. This means the requested name is also brought under the definition of environmental information by regulation 2(1)(c).
17. When writing to Yorkshire Water to seeks its arguments in support of its position the Commissioner drew its attention to the Tribunal decision in Ofcom v ICO and T-Mobile [EA/2007/0078, 4 September 2007]. In that case the First Tier Tribunal considered the definition environmental information. In that case the applicant requested information about the location, ownership and technical attributes of mobile phone cellular base stations. Ofcom argued the names of mobile network operators were not environmental information as they did not constitute information about either the state of the elements of the environment, or the factors that may affect those elements. The Tribunal disagreed and commented that,

"the name of a person or organisation responsible for an installation that emits electromagnetic waves falls comfortably within the meaning of the words "any information...on....radiation". In our view it would create unacceptable artificiality to interpret those words as referring to the nature and effect of radiation, but not to its producer."
18. The Commissioner considers this decision supports her contention that the name of the organisation being held responsible for a pollution incident is itself information on that pollution incident. However Yorkshire Water has argued that it does not consider that

the name of the company is sufficiently integral to the associated environmental request. It has further argued that it is questionable whether parts 1) and 3) of the request are seeking information that satisfies the definition of environmental information.

19. The Commissioner rejects this argument. The information being sought by the three elements of the request is not in dispute. It is clearly understood by Yorkshire Water. The name of the company is an integral part of a valid information request seeking information on a specific water quality incident, which clearly falls to be considered under the EIR.
20. The Commissioner finds that Yorkshire Water has failed to provide a response a response to part 2) of the request in line with its obligations under the EIR. The Commissioner requires Yorkshire Water to issue a response under the EIR.

## Right of appeal

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21. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

22. 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.
23. 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** .....

**Rob Mechan**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**