

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

Date: 1 August 2024

Public Authority: Affinity Water Ltd
Address: Tamblin Way
Hatfield
AL10 9EZ

Decision (including any steps ordered)

1. The complainant has requested information about the use of chalk aquifers. The above public authority ("the public authority") relied on regulation 12(5)(a) of the EIR (national security or public safety) to withhold the requested information.
2. The Commissioner's decision is that the public authority has correctly relied on regulation 12(5)(a) of the EIR to withhold the information and the public interest favours maintaining the exception.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 5 March 2024 the complainant requested information of the following description:

"I am compiling an inventory of information on the chalk streams of England. Will you please let me have a list of boreholes which abstract water from a chalk aquifer in you area. Please include the EA permit number and name of the nearest village or town if this is not apparent from the name of the source."

5. On 19 March 2024, the public authority responded. It refused to provide the requested information. It relied on regulation 12(5)(a) of the EIR in order to do so – a position it upheld following an internal review.

Scope of the case

6. During the course of the investigation, the public authority disclosed, to the complainant, a list of its chalk boreholes, as well as a large scale map showing its groundwater abstraction points. For each borehole, it provided a four digit grid reference and a unique ID.
7. The Commissioner invited the complainant to withdraw, but the complainant declined to do so, arguing that the disclosed information fell short of what he had asked for.
8. The Commissioner considers that the scope of his investigation is to determine whether the public authority is entitled to rely on regulation 12(5)(a) of the EIR to withhold the requested information.

Reasons for decision

Regulation 12(5)(a) – national security and public safety

9. The information is environmental because it is information on a measure (the extraction of water from groundwater sources) likely to affect the elements of the environment (water).
10. Regulation 12(5)(a) allows a public authority to withhold information whose disclosure would adversely affect either national security or public safety.
11. The public authority explained to the Commissioner that it took steps to protect the location of its boreholes. Although each borehole must have a licence, key details would be removed from the published licence to avoid revealing exactly where that particular borehole was.
12. The public authority went on to note that it followed national guidance issued by DEFRA which discourages the release of information that would allow a particular borehole to be located to within an area smaller than a single square kilometre.
13. Boreholes are, the public authority explained, part of “critical national infrastructure” and that disclosing information about their exact location had the potential to:

"compromise water supplies, lead to vandalism and other forms of deliberate attacks with a significant impact on the public."

14. The complainant argued that the public authority was, in his view, exaggerating the potential threat. He noted that there had been no such terrorist attack on such a facility in the last 50 years and that a further one was unlikely.

The Commissioner's view

15. In the Commissioner's view, the exception is engaged. Just because there has been no major attack on such infrastructure in recent times does not mean that this information could be disclosed without increasing that risk.
16. Few boreholes are likely to have sophisticated security systems to protect them. Their security lies in the fact that their locations are only known to a small handful of people.
17. The Commissioner also notes that making more detailed information available (and thereby making it more likely that the boreholes will be located) will place the boreholes at greater risk of vandalism. Those who attack may not mean to cause mass damage or put the public at risk, but that could nevertheless be the effect of their actions.
18. The Commissioner is therefore satisfied that disclosure of the information would adversely affect national security and public safety.

Public interest test

19. Information that would adversely affect national security or public safety must still be disclosed unless the balance of the public interest favours disclosure.
20. The complainant has pointed out that the process of extracting water from chalk streams can have major effects on rivers. There is therefore a strong public interest in understanding where that is happening.
21. The Commissioner recognises that this is a valid interest, but is not persuaded that there is a pressing need to show exact locations. The public authority already makes some information available on its catchment area and the fresh information it has now disclosed to the complaint shows approximate sources alongside four-figure grid references (on a standard Ordnance Survey Map, one grid square equates to one square kilometre on the ground). The Commissioner considers that this is sufficient to satisfy the public interest.

22. Disclosing the withheld information would not add significantly to the information already out there, but it would risk compromising critical infrastructure and affecting public safety. The Commissioner recognises that, were an attack to take place, the consequences are likely to be severe.
23. The Commissioner has considered the EIR presumption in favour of disclosure, but he is not persuaded that this tips the balance in favour of disclosure in the circumstances of this case.
24. The Commissioner is therefore satisfied that the exception is engaged and that the balance of the public interest favours maintaining that exception.

Right of appeal

25. 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

26. 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.
27. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF