

① 14

Department for Environment, Food and Rural Affairs

Area 2A, Ergon House, Horseferry Road, London SW1P 2AL

Telephone 08459 33 55 77

Website www.defra.gov.uk



Mr Latimer – via email:

Robert@latimers.com

Our ref: RFI 4728

18 April 2012

Dear Mr Latimer

REQUEST FOR INFORMATION: WHITBURN SEWAGE COLLECTION SYSTEM

Thank you for your request for correspondence along with written proof from the EA to confirm the system was designed to spill at 4.5xDWF and for calculations that show the CSOs are spilling at 4.5xDWF which we received on 18 April. We are handling your request under the Environmental Information Regulations 2004 (EIRs).

As required by the legislation, we aim to answer your request within 20 working days from the date we received it (i.e. by 17 May). If for any reason we are unable to meet this deadline we will keep you fully informed of the reasons for this.

If you have any queries about this letter please contact me.

Yours sincerely

Ed Beard

Direct Line 020 7238 5323

Email Edmund.Beard@defra.gsi.gov.uk



Department for Environment, Food and Rural Affairs

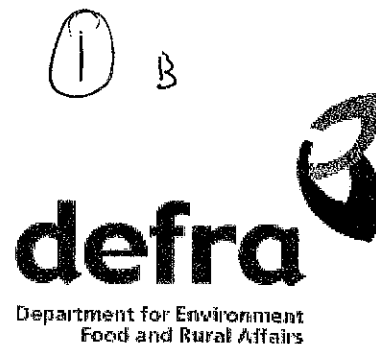
Area 2A, Ergon House, Horseferry Road, London SW1P

Telephone 020 7238 5323

Website www.defra.gov.uk

Mr Robert Latimer

Via email at Robert@latimers.com



Our ref: RFI 4728

17 May 2012

Dear Mr Latimer

REQUEST FOR INFORMATION: WHITBURN SEWAGE COLLECTION SYSTEM

Thank you for your request for correspondence along with written proof from the EA to confirm the system was designed to spill at 4.5xDWF and for calculations that show the CSOs are spilling at 4.5xDWF which we received on 18 April. As you know, we have handled your request under the Environmental Information Regulations 2004.

I enclose a copy of the information which can be disclosed:

- An email of 5 August 2004 from Bob Treacher of the Environment Agency to Hans Mudlamootoo of Defra.
- An email of 2 March 2010 from Dominic Shepherd of the Environment Agency to Ed Beard of Defra.
- An email of 25 July 2011 from Dominic Shepherd to Ed Beard.

In addition, there is further information on this issue which is already in your possession so we do not intend sending to you, namely:

- The Inspector's Report of the 2001 Public Inquiry regarding discharges from Whitburn Steel Pumping Station and Hendon Sewage Treatment Works, published on 25 February 2002, section 10.2.1.
- An email of 3 June 2004 from Dominic Shepherd to David (attached as a scan to your email of 11 February 2010 to Ed Beard and Ian Bennett of Defra).

Following careful consideration, we have decided not to disclose some of the information you have requested. This is because it falls under the following exceptions in the Environmental Information Regulations 2004:

Regulation 12(5)(a): the disclosure would adversely affect international relations, defence, national security or public safety. This exception applies to material relating to the conduct of Defra's defence of infraction proceedings currently before the Court of Justice of the European Union (ECJ) relating to the requirements of the



Urban Waste Water Treatment Directive in London and Whitburn. Disclosure of the pleadings submitted by the UK in its defence would adversely affect relations with the ECJ (to whom we owe a duty of confidentiality).

Regulation 12(5)(b): the disclosure would adversely affect the course of justice. This relates to any information relating to the conduct of Defra's defence of infraction proceedings currently before the ECJ relating to the requirements of the Urban Waste Water Treatment Directive in London and Whitburn. Disclosure of the UK's pleadings, including legally privileged information, before a judgment has been published would have an adverse affect on the course of justice by diminishing and placing in the public domain information reflecting legal advice given by lawyers to their client.

Regulation 12 (5)(d): the disclosure would adversely affect the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law. The rules and jurisprudence of the ECJ demonstrate that infraction proceedings are conducted in confidence. As above, in advance of judgment being handed down by the ECJ, the disclosure of the UK defence would adversely affect the confidentiality of the proceedings.

In applying the above exceptions we have had to balance the public interest in withholding the information against the public interest in disclosure.

We recognise that bearing in mind your long standing arguments about the environmental impacts of untreated waste water in Whitburn, there would be a strong public interest in the Whitburn area in the disclosure of information. On the other hand, there is a strong public interest in maintaining the above exceptions because infraction proceedings against the UK for breaches of the Urban Waste Water Directive have not yet concluded.

Disclosure of information forming part of the UK pleadings would prejudice our relations with the ECJ (to whom we owe a duty of confidentiality). The ECJ's procedural rules maintain the confidentiality of proceedings. Disclosure by the UK would undermine that confidentiality, affecting the UK's standing before the ECJ not only in the current case but in future. Disclosure would also adversely affect the course of justice. In particular, there is a strong public interest in maintaining the confidentiality of legally privileged information. Moreover, as noted in previous correspondence, both the ICO and the ECJ have recognised the need to maintain "the serenity of proceedings" to enable negotiated resolution (which remains possible until judgment is final) and to avoid unfairly influencing the parties' positions before the ECJ.

Finally, disclosure would undermine the confidentiality of the proceedings themselves. Infraction proceedings, including proceedings before the ECJ, are conducted on a confidential basis, which would be undermined by disclosure. Although aspects of the case have been made public in the hearing and the Attorney General's opinion, subjecting the content of pleadings to public debate before judgment is handed down undermines the ECJ's ability to deliberate free of public pressure and leads to wasted resources in defending potentially unnecessary criticism and challenges.

We believe therefore that in all the circumstances of the case, the public interest is served by maintaining the above exceptions and withholding this information.

Where your request concerns information forming part of the UK defence in the infraction proceedings, we will reconsider your request once the ECJ judgment has been published which we expect to take place some time this year.

I attach Annex A, which explains the copyright that applies to the information being released to you.

I also attach Annex B giving contact details should you be unhappy with the service you have received.


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

Yours sincerely

Ed Beard
Urban Waste Water Treatment Policy
Water Quality
Defra

Email edmund.beard@defra.gsi.gov.uk

Department for Environment, Food and Rural Affairs
Information Rights Team
Area 1B, Ergon House,
Horseferry Road
London SW1P 2AL


defra
Department for Environment
Food and Rural Affairs

Telephone: 08459 33 55 77
Email: accesstoinfo@defra.gsi.gov.uk
Website: www.defra.gov.uk

Mr Robert Latimer
(By email)

Our ref: RFI 4728
16 July 2012

Dear Mr Latimer

INTERNAL REVIEW: Whitburn Sewage Collection System

I am writing in response to your e-mail of 21 May 2012 in which you requested an internal review of Defra's handling of your request for information about the Whitburn Sewage Collection System.

In accordance with Defra's internal review procedures, your case has been reviewed by the Information Rights Team, in discussion with colleagues who handled your original request. We have considered your appeal, including where applicable arguments in favour of release, and reviewed the public interest arguments for and against disclosure and have concluded that the case has been properly handled under the Environmental Information Regulations (EIRs). I set out below a chronology and an explanation of our decision.

You contacted Defra on 18 April 2012 with your initial request which asked for information about correspondence along with written proof from the Environment Agency to confirm was designed to spill at 4.5xDWF and for calculations that show the CSOs are spilling at 4.5xDWF. Ed Beard of Defra's Urban Waste Water Policy Team responded on 17 May 2012 to explain that part of the information you requested was being disclosed and that two other documents were already in your possession. However, some of the information which pertained to the conduct of Defra's defence of infraction proceedings currently before the ECJ was withheld because it fell under the exceptions in regulations 12(5)(a), 12(5)(b) and 12(5)(d). These cover where disclosure would adversely affect international relations, defence, national security or public safety; the course of justice; and the confidentiality of proceedings. You responded on 21 May 2012 to request an internal review of this decision.

In applying all these exceptions Defra recognises that there is a genuine public interest in terms of public health and confidence in government. However, in this case that presumption in favour of disclosure has been outweighed until the

infraction proceedings against the UK have been concluded. As explained in Mr Beard's initial response, the ECJ's procedural rules maintain confidentiality and both the ICO and the ECJ have recognised the need to maintain the serenity of proceedings to enable negotiated resolution and avoid unfair influence.

Furthermore, we agree with his assessment that proceedings should be conducted on a confidential basis and that although some aspects of the case have been made public, disclosing the contents of pleadings would undermine the ECJ's ability to deliberate and involve it in defending potential criticism and challenges before its judgement is handed down.

Defra takes its commitment to openness and transparency very seriously and Mr Beard has released that part of the information within scope of your request that can be disclosed without prejudice to the infraction proceedings. These were three e-mails from officials at the Environment Agency to counterparts in Defra in August 2004, March 2010 and July 2011. Furthermore Mr Beard has stated that where your request does concern information that forms part of the UK's defence in the infraction proceedings, Defra will reconsider its position once the ECJ has published its judgement.

I hope this reply satisfactorily answers your concerns. However, if you remain dissatisfied, 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

<http://www.ico.gov.uk/complaints.aspx>

Yours sincerely,

By e-mail

Brendan Walsh
Head of Information Rights

① D

Department for Environment, Food and Rural Affairs

Area 2A, Ergon House, Horseferry Road, London. SW1P 2AL

Telephone 08459 33 55 77

Website www.defra.gov.uk



Mr Latimer
Shell Hill
Bents Road
Whitburn
Tyne & Wear
SR6 7NT

Our ref: RFI 5021

17 October 2012

Dear Mr Latimer

REQUEST FOR INFORMATION: DISCHARGE CONSENTS FOR WHITBURN

Thank you for your request for information which we received on 20 September regarding copies of the calculations 'showing how 4.5 DWF=129 l/s'. We are handling your request under the Environmental Information Regulations 2004 (EIRs).

This is very similar to the request you made on 18 April for the calculations that show the CSOs are spilling at 4.5xDWF to which we responded on 17 May. I enclose a copy of that response to which I have nothing to add. Our decision not to disclose certain information relating to the UK defence of the infraction proceedings has been upheld by the Information Commissioner's Office in a decision letter published on 30 July in response to an earlier request from you for this information (which you made on 14 December). As previously stated, we will reconsider your request after the ECJ judgment has been published on 18 October.

I attach at Annex A giving contact details should you be unhappy with the service you have received.

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

Yours sincerely

Ed Beard

Email Edmund.beard@defra.gsi.gov.uk



① E



Department
for Environment
Food & Rural Affairs

Area 2A Ergon House
Horseferry Road
London
SW1P 2AL

T: 08459 33 55 77
helpline@defra.gsi.gov.uk
www.defra.gov.uk

Mr Latimer
via – email
Robert@latimers.com

Our ref: RFI 5097
Date: 5 November 2012

Dear Mr Latimer

REQUEST FOR INFORMATION: WHITBURN SEWAGE COLLECTION SYSTEM

Thank you for your request for information provided to the Court of Justice of the European Union which I received on 29 October. I am handling your request under the Environmental Information Regulations 2004 (EIRs).

As required by the legislation, I aim to answer your request within 20 working days from the date I received it (i.e. by 26 November). If for any reason I am unable to meet this deadline I will keep you fully informed of the reasons for this.

I am sorry that I am unable to meet your deadline of 5 November and I am aware that we committed to review the release of the relevant information once the Court had published its Judgment. However, reviewing the information which falls within the scope of your request requires consideration and communication with a number of bodies and will require a little further time.

If you have any queries about this letter please contact me.

Yours sincerely

Ed Beard
Direct Line 020 7238 5323

Email Edmund.Beard@defra.gsi.gov.uk



INVESTORS
IN PEOPLE

① F



Department
for Environment
Food & Rural Affairs

Area 2A Ergon House
Horseferry Road
London
SW1P 2AL

T: 08459 33 55 77
helpline@defra.gsi.gov.uk
www.defra.gov.uk

Mr Latimer
By email

Date: 9 January 2013

Dear Mr Latimer

WHITBURN SEWERAGE SYSTEM

Thank you for your email of 7 January concerning the design and performance of the Whitburn system. I will limit my response to those points which are substantively new.

Information regarding the design of the collecting system in Whitburn and the modelling carried out to assess the pass forward flow from Whitburn is contained in the UK Defence document dated 13 September 2010. This was provided as part of my response to your EIR request. The relevant paragraphs are 63 to 67. The supporting modelling report is footnoted as Annex B11, report of MWH UK Ltd of September 2010 and was also provided as part of my response to your request. As explained in my letter to you of 20 February 2012, 4.5xDWF is used to describe the performance of the system as whole; there are different multiples of DWF at different points in the system.

As I have previously stated, if you wish to discuss the detail of this, you should approach the Environment Agency.

I have tried to respond in time for your meeting but I will respond to your point on the Aarhus Convention in due course.

Yours sincerely

Ed Beard
Direct Line 020 7238 5323
Email Edmund.Beard@defra.gsi.gov.uk



INVESTORS
IN PEOPLE

① G

Robert Latimer

From: Cooper, David L (ERG-WAQ) [David.Cooper2@defra.gsi.gov.uk]
Sent: 21 January 2013 17:26
To: Robert Latimer
Cc: Beard, Edmund (ERG-WAQ); Bennett, Ian (ERG-WAQ)
Subject: RE: Defra are withholding information

Dear Mr Latimer

Thank you for your email.

We have released the information to you under the EIR request, and its was the subject of previous correspondence from Mr Beard. We are not withholding the information.

Yours

David Cooper
Head of Water Quality
Defra

From: Robert Latimer [mailto:robert@latimers.com]
Sent: 21 January 2013 09:18
To: Cooper, David L (ERG-WAQ); Beard, Edmund (ERG-WAQ); Bennett, Ian (ERG-WAQ)
Subject: Defra are withholding information

Dear Mr Cooper

The last thing I want to do is to involve the Information Commissioner for that reason I ask again for you to provide the requested information and save us all time and trouble.

As you are aware I made a EIR request for information in September 2012, I requested Defra to provide copies of the Whitburn calculations showing $4.5XDWF = 129 \text{ l/s}$.

Mr Beard wrote back in October 2012 stating he would reconsider my request once the European Court of Justice Judgement had been published on the 18 October 2012.

Following the Judgement I again made a EIR request to Defra asking to be shown the calculations confirming $4.5XDWF = 129 \text{ l/s}$ - following 20 working days I was

informed that extra time would be required and I would be supplied the requested information on the 24 December 2012.

On the 24 December 2012 I received over 15,000 items of correspondence but did not received the information I had requested.

As you are aware I came direct to you as it was clear I was being fobbed off and although I had made my request under the Environment Information Regulations these regulations were being ignored as can be seen in your letter I enclose.

It is vital in the public interest that these calculations are provided as they will show what is spilling into the Whitburn Interceptor Tunnel is not complying with the discharge consent. I ask again that you provide this information by the end of today, after that time I will contact the ICO?

Regards

Bob Latimer

Department for Environment, Food and Rural Affairs (Defra)

This email and any attachments is intended for the named recipient only. If you have received it in error you have no authority to use, disclose, store or copy any of its contents and you should destroy it and inform the sender.

Whilst this email and associated attachments will have been checked for known viruses whilst within Defra systems we can accept no responsibility once it has left our systems.

Communications on Defra's computer systems may be monitored and/or recorded to secure the effective operation of the system and for other lawful purposes.

This email has been scanned by Netintelligence
<http://www.netintelligence.com/email>

① H



Department
for Environment
Food & Rural Affairs

Area 2A Ergon House
Horseferry Road
London
SW1P 2AL

T: 08459 33 55 77
helpline@defra.gsi.gov.uk
www.defra.gov.uk

Mr Latimer
By email

Date: 15 February 2013

Dear Mr Latimer

WHITBURN SEWERAGE SYSTEM

Thank you for your email of 10 February requesting a response to the outstanding point you raised in your earlier email of 7 January on the Aarhus Convention. I apologise for the delay in responding.

Our obligations under the Aarhus Convention with respect to access to information are subject to the requirements of the EU Environmental Information Directive (2003/4/EC), transposed nationally by the Environmental Information Regulations 2004. These Regulations provide that environmental information held by public authorities, including Defra, may be the subject of a request to make it publicly available, subject to certain exemptions. My decision in line with these exemptions not to disclose certain information relating to the UK defence of infraction proceedings while the proceedings were underway was upheld by the Information Commissioner's Office in a decision letter of 30 July 2012. Following the Court of Justice of the European Union's Judgment I reviewed this decision and provided you with all the relevant information. There is therefore nothing further to add on this point.

With regard to public participation duties under the Aarhus Convention, these are covered by EU legislation, including the Public Participation Directive (2003/35/EC), the Industrial Emissions Directive (2010/75/EU) and the Environmental Impact Assessment Directive (2011/92/EU), transposed nationally by legislation on planning, environmental impact assessments and environmental permitting. Applications or proposals may engage public consultation duties under this legislation. At this stage I am not aware of any proposals relating to the Whitburn sewerage system which engage these duties. Public consultation will take place in the appropriate manner when such proposals do arise.

I have nothing further to add on the points raised in your email of 10 February regarding dry weather flows in the Whitburn sewerage system on which we have corresponded with you on numerous occasions.

Yours sincerely

Ed Beard
Direct Line 020 7238 5323
Email Edmund.Beard@defra.gsi.gov.uk

