

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

Annex A

Copyright

The information supplied to you continues to be protected by copyright. You are free to use it for your own purposes, including for private study and non-commercial research, and for any other purpose authorised by an exception in current copyright law. Documents (except photographs) can be also used in the UK without requiring permission for the purposes of news reporting. Any other re-use, for example commercial publication, would require the permission of the copyright holder.

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Annex B

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision within 40 working days of the date of this letter. Please write to Brendan Walsh, Head of Defra's Information Rights Team at Area1B, Ergon House, Horseferry Road, London, SW1P 2AL, (email: informationrights@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

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. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

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