

Telephone 020 7238 5323

Website www.defra.gov.uk

Mr Robert Latimer

Via email at Robert@latimers.com

Our ref: RFI 4442

16 January 2012

Dear Mr Latimer

REQUEST FOR INFORMATION: SEWAGE LITTER ON WHITBURN BEACHES

Thank you for your request for information about correspondence, statements, records, reports, memos emails etc which Defra used to defend the Whitburn infraction case, which we received on 14 December. You also repeated this request in your email of 12 January. We have handled your request under the Environmental Information Regulations 2004 (EIRs).

Following careful consideration, we have decided that the information you have requested should not be disclosed. 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 relating to the requirements of the Urban Waste Water Treatment Directive in London and Whitburn. Disclosure of information in the UK defence (which in turn would expose elements of the Commission's case) could adversely affect relations with the European Commission and the Court of Justice (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 Court of Justice of the European Union relating to the requirements of the Urban Waste Water Treatment Directive in London and Whitburn. Disclosure of legally privileged information before a judgment has been published would have an adverse affect on the proper conduct of court proceedings by placing in the public domain the 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. As above, in advance of judgment being handed down by the

Court of Justice of the European Union case, the disclosure of the UK defence (which would also reveal the detail of the Commission's case) could 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. There is also interest in favour of disclosure given that you maintain that there is an environmental impact close to your business. In addition, there is public interest in the disclosure of any information relating to Whitburn bathing waters, for users both in Whitburn and beyond.

On the other hand, there is a public interest in withholding the information 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 could prejudice our relations with the European Commission and the Court of Justice (to whom we owe a duty of confidentiality). We believe therefore that in all the circumstances of the case, the public interest is served by withholding this information.

We will reconsider your request for environmental information relating to Whitburn once the Court of European Justice judgment has been published which we expect to take place later this year.

I attach an annex 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

Via email
Ed Beard

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

Annex A

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