



guardians of drinking water quality

DRINKING WATER INSPECTORATE

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Our ref: RFI 7032
Date: 16/12/2014

Dear [REDACTED]

REQUEST FOR INFORMATION: DWI files relating to three prosecutions of a water company

Thank you for your request for information, the initial letter was received on the 29 October and a request for clarification sent to you on 5 November. Your response providing clarification was received by the Drinking Water Inspectorate on 19 November. As you know, we have handled your request under the Freedom of Information Act 2000 (FOIA).

Your request sought preliminary investigative files and all associated laboratory water sample testing reports for three prosecutions bought by the Drinking Water Inspectorate. The three cases are detailed below:-

Date of incident	Date of Court Case	Company	Court	Incident
Sept 2011	13.09.12	Severn Trent Water	Chesterfield Magistrate's Court	Melbourne WTW Leicestershire/Derbyshire
Sept 2011	13.09.12	Severn Trent Water	Chesterfield Magistrate's Court	Ogston WTW Chesterfield
21 Nov 2013	20.01.14	Severn Trent Water	Coventry Magistrate's Court	Broadway Worcestershire

Following careful consideration, we have decided that, although the exemptions under sections 30(1), information gathered for the purpose of prosecution, and 42(1), legal professional privilege, apply to the information held, it is in the public interest to disclose the event assessment letters

relating to the above prosecutions, which provide full details of the DWI's assessment and conclusions arising from the events.

In addition, you sought advice on obtaining hard copies of files held by the Magistrate's Courts and we have also made enquiries on your behalf in relation to this information. We have been sent copies of the summons and opening statements (which also indicate the charges and the details of the cases) for all three prosecutions, which we will also provide to you. Please note that the collecting of the information held by the Magistrate's Court in response to this request was outside of the requirements of the FOIA, and was carried out to assist you. Some of the information contained in these documents has subsequently been redacted, and a further explanation of this is provided below.

The remainder of the information requested is being withheld as it falls under section 30(1) of the FOIA, which relates to information gathered for the purpose of prosecution, section 42(1), which relates to legal professional privilege, and in relation to the information from the Magistrate's Court, section 24, which relates to national security, and section 40(2), which relates to third party personal data.

Section 30(1), information gathered for the purpose of prosecution

This exemption applies to all of the information held, as it was all gathered for the purpose of the prosecutions which the Inspectorate is under a duty to investigate. In applying this exemption we have had to balance the public interest in maintaining the exemption against the public interest in disclosure.

We recognise that there is a public interest in the disclosure of information concerning prosecutions brought by the Drinking Water Inspectorate so it is clear that the Inspectorate is carrying out its duty correctly and in the interests of transparency. Also there is public interest in knowing that the DWI is relying on sound legal advice.

On the other hand, there is a strong public interest in maintaining the exemption because the public interest has been served by taking forward the prosecution, in a Magistrate's Court which was successful. It is counter to the public interest to release information provided to the Inspectorate in confidence in support of prosecutions as this may dissuade individuals from providing information in the future if there is a loss of confidence in the process, thus reducing the ability for the Inspectorate to secure evidence for future prosecutions weakening its ability to successfully prosecute.

Therefore, we have concluded that in all the circumstances of the case, the information should be withheld.

Section 42(1), legal professional privilege

This exemption applies to the files held by the solicitor, and as they relate to actual prosecutions they fall under the litigation privilege type of legal

professional privilege. In applying this exemption we have had to balance the public interest in maintaining the exemption against the public interest in disclosure.

We have outlined the public interest in disclosure of the information held above, and these arguments also apply to the files held by the solicitor and so I have not repeated them here.

On the other hand, there is a strong public interest in withholding the information because it would undermine the Drinking Water Inspectorate's ability to seek independent legal advice if the advice was held up to public scrutiny, which in turn could potentially lower the quality of the decision making process. It is important to safeguard openness in all communications between government and legal advisors to ensure access to full and frank legal advice, which in turn is fundamental to ensure that DWI take clear and well thought out decisions when building a case for prosecution. Confidential legal advice also allows for frankness between a legal advisor and their client which serves the wider administration of justice.

Therefore, we have concluded that in all the circumstances of the case, the information should be withheld.

Section 24, national security

This exemption applies to the summons and opening statements and event assessment letters for the three prosecutions, as they contain information relating to operational arrangements for the water supplies to members of the public. In applying this exemption we have had to balance the public interest in maintaining the exemption against the public interest in disclosure.

We recognise that there is a public interest in the disclosure of information on the measures in place to protect public water supplies from interference. It is important that members of the public can be confident that they are supplied with a clean and safe water supply.

On the other hand, there is a strong public interest in maintaining the exemption because there is greater public interest in protecting information relating to the operational arrangements of public water supplies so it cannot be used by those with mal-intent. Interference with the public water supply could potentially lead to contamination of the water supply and/or a reduced service - either of which could drastically affect the health of members of the public. Consequently, because the water supply is such a vital resource the public need to have confidence that their supply is protected.

Therefore, we have concluded that in all the circumstances of the case, the information should be withheld.

Section 40(2), third party personal data

This exemption applies to the following personal data contained in the summons, opening statements and event assessment letters for all three prosecutions – the information being withheld is the names and addresses of consumers who provided witness statements, names or roles of company employees who provided statements and the name and address of the legal advisor to the DWI.

Section 40(2) of the FOIA provides that personal data relating to third parties is exempt information if disclosure would breach the Data Protection Act 1998 (DPA).

We consider that disclosure of this information is likely to breach the first data protection principle in Schedule 1 to the DPA, which relates to the fair and lawful processing of personal data, in two ways. First, disclosure would not constitute 'fair' processing of the personal data, second, disclosure would not satisfy any of the conditions for data processing set out in Schedule 2 to the DPA. Therefore, we have concluded that this information is exempt from disclosure under section 40(2) of the FOIA.

In keeping with the spirit and effect of the FOIA, and in keeping with the government's Transparency Agenda, all information is assumed to be releasable to the public unless exempt. Therefore, the information released to you will now be published on www.dwi.defra.gov.uk together with any related information that will provide a key to its wider context. Please note that this will not include your personal data.

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 the address below.

Yours sincerely,



Principal Inspector

Enc :

Event Assessment letter – Melbourne water treatment works event
Event Assessment letter – Ogston water treatment works event
Event Assessment letter – Broadway event

Summons – for Melbourne and Ogston events
Summons – for Broadway event

Opening statement – for Melbourne and Ogston events
Opening statement – for Broadway event

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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Copyright in other documents may rest with a third party. For information about obtaining permission from a third party see the Intellectual Property Office's website.

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 under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Mike Kaye, Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: requestforinfo@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, section 50 of the FOIA and regulation 18 of the EIRs gives you 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