

Name

Water Company Name

Our reference: ICO/O/JE/L/MIS/0719

Date

Dear Chief Executive,

Transparency and trust go hand in hand. Being open and honest with customers and the communities we serve is fundamental to providing excellent service, and it allows us to focus on our strengths rather than our shortcomings.

Ongoing media coverage and increased concern around sewage discharges, alongside the reticence of water companies to release information about their practices, has dented public confidence. You have a role to play in addressing this and ensuring that openness is the default position for your organisation.

You also have an obligation in law to be transparent. Given recent tribunal case law and the ongoing pressures being faced by water companies over sewage pollution, I thought it would be useful to clarify the ICO's position on the disclosure of raw data relating to sewage overflows under the Environmental Information Regulations 2004 (EIR).

As you'll be aware, while water companies are not subject to the Freedom of Information Act 2000, you do have statutory duties under the EIR. This legislation requires you to both respond to requests for environmental information and to progressively make information available to the public proactively.

My office issued decision notices to six water companies in May 2024 requiring disclosure of start and stop times of discharges. These marked a move away from our previous position on similar cases, which we were already in the process of reviewing when we received the judgement in the tribunal case of Stephen Lavelle v The Information Commissioner & Ors [2024] UKFTT 343 (GRC). In that case, the tribunal ordered the disclosure of raw, factual data holding that the exception at 12(5)(b) of the EIR (course of justice exception) did not apply, despite there being an ongoing Environmental Agency and Ofwat Inquiry. It also re-stated the EIR's presumption in favour of disclosure of environmental information.

This case made clear that, simply because the information requested is directly relevant to an ongoing investigation, does not mean that disclosure would necessarily have an adverse effect on the course of justice, which would engage the regulation 12(5)(b) exception.

In light of our review of the evidence we have seen in our most recent investigations, the positive comments from Ofwat<sup>1</sup> about the disclosure of this type of information and the Lavelle case, there is clearly a strong case for this kind of information to be in the public domain. I also remind you of the presumption in favour of disclosure contained in the EIR, both in engaging the exception and in carrying out the public interest test. Any complaints to us in relation to individual requests will, of course, be considered on the particular facts and circumstances of each case without predetermination.

The legislation treats information about 'emissions', which includes discharges, as a special category of information in that a number of exceptions to disclosure cannot apply. This reflects the importance of providing this type of information to the public. In addition to providing timely and appropriate responses to requests for such environmental information, I strongly encourage you to proactively disclose appropriate information relating to sewage discharges on a regular, monthly basis. This proactive and timely publication of the information would not only provide this important information to the public more quickly and easily, but would also be more cost effective and efficient than dealing with the alternative of numerous responses to individual requests for the information.

My office is happy to discuss this further if that would be helpful.

I welcome a response confirming that you will now publish more information. This will lead to greater transparency and may foster more trust in water companies, especially at a time when the sector is facing pressure over its actions which impact the environment.

Yours sincerely



John Edwards  
**UK Information Commissioner**

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<sup>1</sup> [committees.parliament.uk/oralevidence/13888/pdf/](https://committees.parliament.uk/oralevidence/13888/pdf/)