



**Information Commissioner's Office**  
Promoting public access to official information  
and protecting your personal information

Mr James Mullock  
Osborne Clarke  
South East Water Ltd  
2 Temple Back East  
Bristol  
Avon  
BS1 6EG

12 March 2010

**Case Reference Number FER0265082**

Dear Mr Mullock,

The Commissioner has received a number of complaints with regard to the responses received from various water utility companies to a series of requests, made under the Environmental Information Regulations 2004 (the EIR). The complainant, Mr Ibrahim Hasan of IBA Solicitors, made various requests, with differences depending on the company contacted, but in general the requests were as follows:

- 1. A copy of your asset mapping database (including the data recorded for the statutory Map of Waterworks but any excluding any Ordnance Survey data such as MasterMap, LandLine, etc.)*
- 2. Water and sewerage billing records*
- 3. A list of the addresses of properties subject to Boilding Over Agreements*
- 4. The Sewer Flooding Register*
- 5. The Water Pressure Register*
- 6. Water Quality Reports for each area within your region*
- 7. The Trade Effluent Register*

In order to consider the complaint, the Information Commissioner has found it necessary to determine whether water and sewerage utility companies are public authorities for the purposes of the Environmental Information Regulations 2004.



The Commissioner has previously issued Decision Notices in respect of *Sutton and East Surrey Water Plc*, case references FER0118853 and FER0162211, which found that the water utility company was subject to the EIR.

The Information Tribunal considered the meaning of "public administration" in relation to the case of *Network Rail Limited and the Information Commissioner* (EA/2006/0061 and EA/2006/0062)<sup>1</sup>. The Commissioner has, therefore, taken this decision into account when assessing whether these organisations fall within the scope of the EIR. The Commissioner has also considered the case of *Griffin v South West Water Services Limited [1995] IRLR 15*, referred to within the Network Rail decision.

After careful consideration and taking into account all the representations received from the information requesters and the recipients of the requests, the Commissioner's view is that water and sewerage companies (WASCs) and water only companies (WOCs) are not public authorities for the purposes of the EIR. The Commissioner's assessment is provided below.

The term 'public authority' is defined at regulation 2(2) of the EIR:

**Regulation 2(2)** provides that –

*'Subject to paragraph (3), "public authority" means –*

*(a) government departments;*

*(b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the Regulations in paragraph 6 of Schedule 1 to the Act, but excluding –*

*(i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or*

*(ii) any person designated by Order under section 5 of the Act;*

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*(c) any other body or other person, that carries out functions of public administration; or*

*(d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –*

*(i) has public responsibilities relating to the environment;*

*(ii) exercises functions of a public nature relating to the environment; or*

*(iii) provides public services relating to the environment.'*

It is generally accepted that WASCs and WOCs are not public authorities under regulation 2(2)(a) or 2(2)(b) and the Commissioner has confined his consideration to arguments in relation to regulations 2(2)(c) and 2(2)(d).

**Regulation 2(2)(c): any other body or other person, that carries out functions of public administration**

The EIR were made in response to an EC Directive, 2003/4/EC, which uses the term 'performing public administrative functions' in its definition of a public authority. The Aarhus Convention 1998, from which 2003/4/EC derives, makes reference to public authorities and the Aarhus Implementation Guide 2000 addresses definitions, including the definition of 'public authority' and 'public administrative function' at page 32:

*' "Public authority" also includes natural or legal persons that perform any public administrative function, that is, a function normally performed by governmental authorities as determined according to national law. What is considered a public function under national law may differ from country to country.'*



In the case of *Network Rail*, the Information Tribunal considered the description 'functions of public administration' at paragraphs 24-33 of its decision and concluded that 'public administration' is a more restrictive term than 'public function'. In consequence, while Network Rail might perform a public function (the Commissioner observes that this may also be extended to other public utility companies, including WOCs and WASCs), that public function is not such that it can be classed as 'public administration'. In reaching this view, the Tribunal was assisted by the judgment of Blackburne J. in *Griffin v South West Water Services Limited* [1995] IRLR 15 [paragraphs 122-123] which stated, at paragraph 123:

*" SWW is no more an 'administrative body' because it 'administers' a service (the supply of water and sewerage services) than is a company carrying on business, manufacturing and distributing sweets because such a company 'administers' that enterprise or is a firm of solicitors because it administers a service of supplying legal advice. I agree ... that SWW's primary function, as a supplier of water and provider of a sewerage service, is to be contrasted with administrative functions such as town planning, court administration and any of the myriad administrative functions of the civil service".*

The Commissioner also considered the judgment in *AB V South West Water Services Limited* [1993] QB 507 (CA) in which the Court of Appeal found that South West Water had not been exercising functions of an executive or governmental character when supplying water, but it had been carrying out a commercial operation.

The Commissioner is satisfied that the Information Tribunal ruling in *Network Rail* is applicable in the circumstances, particularly in light of the judgment of Blackburne J. in *Griffin v South West Water Services Limited*, and that, accordingly, WOCs and WASCs are not public authorities as defined by EIR 2(2)(c).

