

Freedom of Information/EIR Refusal

Centre City Tower, 7 Hill Street, Birmingham B5 4UA
21 Bloomsbury Street, London WC1B 3HF

By email

21 December 2016

Freedom of Information Act–Request For Information- Refusal Notice

Reference: FOI 139112016

Dear 

Thank you for your email in which you request:

I would like to receive copies of any correspondence received by or sent from OFWAT, and notes from any meetings, conference calls or other discussions, on the subject of the potential purchase of Dee Valley Water Group plc and its affiliated companies.

This includes:

- **Information relating to the above subject exchanged between OFWAT and Severn Trent Water Limited.**
- **Information relating to the above subject exchanged between OFWAT and Ancala Partners.**
- **Information relating to the above subject exchanged between OFWAT and other bodies involved in regulating the Water Industry.**
- **Information relating to the above subject exchanged between OFWAT and any other organisation or government department/agency where discussions have taken place relating to the ownership of Dee Valley Water. This would include any correspondence, notes of meetings etc., with any other potential purchaser of Dee Valley Water other than those mentioned above.**
- **Information relating to the above subject exchanged between the other parties listed or described above where the circulation has included OFWAT.**

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Ofwat confirms it does hold the information requested, however I can confirm that the information you requested is being withheld as exempt from disclosure under one or more applicable exemptions in the Freedom of Information Act 2000.

The main exemption applied is s44 Prohibitions on Disclosure. s44 states that **“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it (a) is prohibited by or under any enactment”**

This exemption applies for two reasons:

1. The information Ofwat holds has been obtained pursuant to our functions under the Water Industry Act 1991 (“WIA91”) Section 206 of the WIA91 prohibits the disclosure, without consent, of information with respect to any particular business that has been obtained by virtue of any of the provisions of the WIA91 and relates to affairs of any particular existing business or living individual.
2. Some of the information Ofwat holds has been obtained pursuant to the special merger process applicable to the anticipated acquisition by Severn Trent Plc of Dee Valley Group plc. This information is protected by Part 9 of the Enterprise Act 2002 (the “EA02”). This information has been disclosed to Ofwat under section 241(1) of the EA02t. Section 241(2) of the Act states that such information must not be further disclosed by a person to whom it is so disclosed. It is a criminal offence under section 245 of the Act to onward disclose information unlawfully.

Ofwat therefore considers this exemption engaged. As s44 is an absolute exemption it is not subject to the Public Interest Test (PIT).

In addition to the s44 exemption Ofwat considers that other exemptions will apply in respect of the information requested.

Section 41- Information provided in confidence

Section 41 states that **“Information is exempt information if –
(a) it was obtained by the public authority from any other person (including another public authority), and,**

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(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

Ofwat has considered the information in its possession and the purposes for which this information has been obtained and considers, that in this instance, if Ofwat were to disclose any information held, that any relevant party could take legal action against Ofwat. Ofwat therefore considers this exemption engaged. As an absolute exemption s41 is not subject to any PIT.

Section 43- Commercial Interests

Section 43(2) states: **"Information is exempt information if its disclosure under this Act would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it)".**

Ofwat considers the information held in relation to the acquisition of Dee Valley Group plc is commercially sensitive and that Ofwat has obtained information in order to perform our regulatory functions. The proposed acquisition of Dee Valley Group plc is currently the subject of competing offers and some information held by Ofwat is of a price sensitive nature. Ofwat considers that information has been disclosed to Ofwat in the course of commercial activities, within a competitive environment and that disclosure may have real harm in affecting current or potential future acquisitions of or involving water companies.

Ofwat recognises that whilst such acquisitions are in the public interest, as a respected regulator Ofwat feels that any disclosure may subsequently damage this reputation by affecting the trust our stakeholders place in us. It is important that water companies and investors in water companies can approach Ofwat about their plans and disclose information to us so that we can act in the interest of the customer. Furthermore, it may affect Ofwat's own reputation in any future commercial transactions.

Section 42- Legal Privilege

Section 42 states **"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be**

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maintained in legal proceedings is exempt information.”

Ofwat considers that some of the information held is also subject to Legal Professional Privilege. As the proposed acquisition Dee Valley Water Group plc is currently live, Ofwat considers that any legal advice applicable to any parties or the proposed acquisition continues to be relevant and as such is not disclosable or subject to any waiver of privilege.

We therefore deem this exemption engaged. S42 is a qualified exemption and as such is subject to a PIT. Ofwat considers that the PIT applied above (s43) also applies in this instance.

For your information the Competition and Markets Authority (CMA) will publish its decision in relation to the potential Severn Trent acquisition, together with the Opinion that Ofwat is required to provide to the CMA.

If you wish to discuss any of the above please contact me. Please remember to quote the reference number above in any future communications.

Once an FOI request is answered, it is considered to be in the public domain. To promote transparency, Ofwat may publish the response and any material released on our website in the [FOI disclosure section](#). Any personal information in the letter will be removed before publishing.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of the decision, please contact:

Programme and Project Management Office
Ofwat
Centre City Tower
7 Hill Street
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mailbox@ofwat.gsi.gov.uk

If you are not happy with the outcome of that review you can ask the Information Commissioner's Office to consider your complaint. Generally, the ICO will not make a decision unless you have exhausted Ofwat's complaints procedure. The ICO can be contacted at:

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<https://ico.org.uk/>

or

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

Yours sincerely,

Christine Manise
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Ofwat
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