

Data & Facts - Gaps: The Law, Makers & Breakers

This is a start in terms of learning where the power lies and where laws are being broken by those who have power to help us improve a key element of our quality of life: healthy and safe places to thrive.

Environmental Protection Act

- **Environmental Protection Act Part II** is almost unenforceable and unfit for conservation and restoration purposes, which explains some of the campaigns now happening to strengthen regulatory powers against the polluters. The **Environment Agency** (England) can **downgrade pollution events** from Category 2 or 3 to Cat. 4's, which involve no enforcement actions. Minimising the significance of a pollution incident is a **disturbingly commonplace practice and often happens without the public understanding how the benchmarking process works (or doesn't).**

Water Resources Act

- **The Water Resources Act**, 1991 may mean that your local river has been designated as a **Water Protection Zone**. It is worth checking this out with your local authority, because this legislation obliges companies in the locality to apply for consent where certain substances are used or stored at specific sites anywhere within the designated area, such as local industrial estates. Water regulators will also have responsibilities here. However, sadly, such protective designations do not guarantee business best practices in pollution prevention. It is down to the public knowing these protections exist, being the eyes and nose on the ground and knowing where to take their concerns.

- Is it enough for people to have to go online when they witness potentially serious pollution incidents, or to form **river watch groups**? Do you have any idea about any legal protections for your local watercourses? Chances are that you don't, because the regulators do not see it as their role to pro-actively engage the very people who are likely to blow the whistle when businesses systems fail, resulting in catastrophes. In the words of one regulatory officer, **Elizabeth Felton**, NRW Environment Team Leader for Wrexham: "Pollution incidents from industrial estates can happen every day because of spills, accidents, negligence, or vandalism....Such incidents can then put human health at risk and devastate wildlife habitats on rivers..."

Freedom of Information Act (Fol)

- In terms of the **Freedom of Information Act**, letters from the public, seeking information from **local authorities responsible for remediation of pollution sources** can result in only partial information sharing, buck passing, legal loopholes or downright misrepresentation. Being aware of what the organisational pitfalls you might face can all feel demotivating, but it's helpful to know what holes in the system you are navigating to keep records for any subsequent legal proceedings your campaign group might take up. Forewarned is forearmed.
- Here are some of the common Fol pitfalls:
 - Lack of funding for thorough investigation by NGOs, local authorities or regulators.
 - deprioritisation of environmental obligations,
 - limits to Environmental Information Regulations 2004 (EIR - see below)
 - poor oversight of engineering contractors,
 - lack of adequate staff training and incompetence,
 - scientific illiteracy,
 - lost records,
 - historical memory loss as staff retire and leave
 - deliberate obfuscation due to fear of repercussions and fall out of disclosure (also: more than my jobsworth / arse covering).
 - Misuse of **Re-Use of Public Sector Information Regulations** (see section below)

Environmental Information Regulations

- **Environmental Information Regulations 2004 (EIR)** contain **exemptions** to the public's rights to access information held by some public bodies, including local authorities. For example: **[1]Exception 12(5)(d)** states: "Confidentiality of proceedings where confidentiality is provided by law". One particular Fol rejection case involving Spelthorne Council to be aware of is as follows: **12(5)(d)** states: "**(5) a public authority may refuse to disclose information** to the extent that its disclosure would adversely affect –
(d) "the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;" This legalese was deployed by Spelthorne Council in

response to a 2024 FoI request. Here, the confidentiality obligation cited refers to outcomes of a **Coroner's Court**, which by law can impose confidentiality instructions on a local authority impacted by their proceedings.

Re-Use of Public Sector Information Regulations

- A further constraint imposed by local authorities on sharing information with the public comes under **Re-Use of Public Sector Information Regulations**. Shocking as it may seem, a local authority may say that information shared with you under your FoI request is solely "**for your personal use**". It is important, therefore when asking for information from a local authority that you also **seek permission to share with interested parties** ; name them if you can. Alternately, use the [WhatDoTheyKnow.com](https://www.whatdotheyknow.com) website for FoI requests; this limits institutional divide and rule tactics.
- The following response has been made to someone making a FoI request: "Any re-use of this information will be subject to the **Re-Use of Public Sector Information Regulations (2015) and authorisation from the Council** will be required. In the event of any re-use, the information must be reproduced accurately and not used in a misleading manner." This is a difficult pill to swallow if someone becomes seriously ill or dies through water contamination. If anyone can share effective rebuttals the [Dirty Water team](#) would love to hear from you.

Bathing Water Regulations 2013

- **Defra's designated 'bathing water' status** is an opaque application process. While the designation does require closer monitoring by the authorities when achieved, the idea is deeply flawed. See:
 - ['The Great Washout: The Futility of Bathing Water Status'](#)
 - Public applications [generally result in a rejection](#).
 - You cannot trust [a Blue Flag bathing beach safety categorisation](#), even those beaches with apparent '[excellent](#)' rating. Raw sewage contamination is still a risk, especially after heavy rain.
 - The government refused to provide the Guardian newspaper with a list of the rivers and coastal areas [where bathing water status had been turned down since January 2022](#). Campaigners have attacked the lack of transparency around this process. **Freedom of Information requests** to find out why an application for a local river has been turned down have been refused by DEFRA.
 - The bathing water application process also minimises the number of local people who may use local waters, because the application asks for number of bathers using the water, but does not include boaters such as paddleboarders & kayakers, let

alone dog walkers and paddlers.

- Signs on-site, warning bathers of hazards can be risible at best, and virtually invisible at worst! Be sure to share the worst 'box-ticking' examples on our [Dirty Water Live Content](#) Telegram chat.

Lack of Regulatory Powers

- **Regulatory bodies** can be toothless. For example, [data suggests the Environment Agency is failing to monitor water firms in England](#). Similar criticisms are made of **Natural Resources Wales** and other regulatory bodies and departments of government.
- Scotland's water is **not privatised**, but pollution management, accountability and transparency still persist. Find out more at [Scotland Sewage Dumps 2023](#)

The point here is that power to withhold information or limit its uses means that pollution of our waterways continues. Fragmentation of responsibilities between faceless bureaucrats and boardroom members make our push for clear waters an upstream struggle... Those very agencies we rely on or water companies we pay to endanger our lives seem to be getting away with ... well... even murder... If you don't know how bad abuse of the law by those who hold it can get, just read [Zane's story...](#)
