

Freedom of Information Act 2000 (Section 50) and the Environmental Information Regulations 2004

Decision Notice

14 February 2008

Public Authority: East Lindsey District Council
Address: Tedder Hall
Manby Park
Louth
Lincolnshire
LN11 8UP

Complainant: Mr Richard Osmond
Address: Wharncliffe House
Fen Lane
Conisholme
Louth
LN11 7NU

Summary

The complainant was in dispute with the Council about a proposal to site a wind farm in the locality. He contacted the Commissioner to ask for assistance in obtaining a copy of some legal advice received by the Council, having been told that it was confidential. He also wanted copies of any correspondence surrounding the advice. After the Commissioner's intervention the Council provided the legal advice and copies of all the surrounding correspondence it said it held. The complainant considered that the Council held further information. The Commissioner was satisfied that the Council had searched thoroughly for all the information which was covered by the request and that it had supplied this to the complainant. He concluded that on the balance of probabilities no other material was held, although the Council had failed to communicate this in its Refusal Notice, thereby breaching regulation 14(1) of the EIR. The Council also failed to provide an adequate Refusal Notice within 20 working days, thereby breaching regulation 14(2) and (3). The Commissioner also considered the Council had breached regulation 5(2) by failing to provide the information it did hold with 20 working days. He concluded that the Council had wrongly applied the exception at regulation 12(5)(b) by claiming that the legal advice was excepted from disclosure.

The Commissioner's Role

1. The Environmental Information Regulations (the "EIR") were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR

shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

The Request

2. The complainant, who chaired a Parish Meeting, was involved in an ongoing dispute with the Council about its proposal to site a wind farm in the locality. The initial application had been allowed, however the Council subsequently took the decision to suspend the project, due to concerns about procedural irregularities.
3. It was apparent from the correspondence the complainant supplied that he was in regular email contact with the Council and had met with Council representatives about the matter on more than one occasion.
4. On 6 July 2005 the complainant emailed the Council the following request:

"1...I would be grateful if I could receive copies of any letters, e mails or other forms of communications from the Council (both officers and councillors) regarding and surrounding the Conisholme wind farm from the date of refusal in November to the current date..."

"2...May I also request a copy of the legal response given from our (ELDC) lawyers regarding the landscape assessment."
5. The complainant emailed the Council again on 26 July 2005, to ask for a response. There is no record of a response having been received.
6. On 9 August 2005 he wrote to his MP, asking him to intervene, stating:

"I would be most grateful if you could ask for a full copy of the legal advice received by ELDC..."
7. No copy of the MP's letter to the Council is held, however, on 23 September 2005, the Council replied to the MP, stating:

"As to the legal advice, I have no intention of reversing what would be the usual practice of not disclosing legal advice".
8. On 12 October 2005 the complainant wrote to his MP, reiterating his desire to see a copy of the external legal advice received by the Council. He commented:

"I have now been trying to get a photocopy of this legal advice now for three months, what I have received is ELDC's opinion on the legal opinion. I already know that."

9. No copy of the MP's letter to the Council of 17 October 2005 is held, however the Council's response to him of 28 October 2005 made no further reference to the complainant's request for information.
10. On 4 November the complainant submitted a formal complaint to the Council about its failure to respond to his request for information. On 5 November 2005 he sent a further email chasing a copy of the legal advice and asking for the name of the legal firm that had supplied it.
11. On 7 November 2005 the Council responded by email to the complainant regarding his complaint:

"You have been in correspondence with a number of Officers on this matter and you have consistently been advised that this legal advice is confidential and the Council is not obliged to disclose it."
12. This is the first written response to the request for information that the Commissioner has had sight of and so he has taken it to be the Refusal Notice. The email did not identify which exception under the EIR the Council was relying upon to withhold the information, nor did it set out the complainant's appeal rights.
13. On 10 November the complainant sent a chaser email requesting a response to his email of 5 November 2005. The Council replied the same day, referring him to its email of 7 November 2005 (the Refusal Notice).
14. The Council sent an email on 11 November 2005, confirming that its reply of 7 November 2005 completed its consideration of the complaint about the way the request had been handled.

The Investigation

Scope of the case

15. On 16 November 2005, having exhausted the Council's complaints procedure, the complainant contacted the Commissioner. The complainant asked the Commissioner to help him obtain a copy of a specific piece of legal advice received by the Council, and any correspondence surrounding it. He clarified that he was not seeking access to the Council's own opinion on the advice, but rather the advice itself.
16. The Commissioner therefore considered that the request for access to the legal advice and any connected background material, held by the Council between 1 November 2004 and 6 July 2005, should be the focus of his investigation.
17. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Regulation 5 of the EIR.

Chronology

18. On 7 December 2005 the Commissioner wrote to the complainant confirming receipt of the complaint and explaining that due to the volume of complaints under consideration his complaint would not be investigated immediately. The Commissioner also wrote to the Council on the same date, advising it similarly. The Commissioner continued to update the complainant on the caseload situation until his case was allocated in September 2006.
19. On 26 September 2006 the Commissioner wrote to the Council setting out details of the complaint against it and asking for a copy of the information that it had withheld, together with other background information about its handling of the matter.
20. On 23 October 2006 the Council telephoned the Commissioner to explain that the officials who had originally dealt with the complainant's request had moved on. As a consequence, it was experiencing some difficulty in locating information about how the request had been dealt with and why the decision to withhold information had been made. The Council requested a further seven days to gather the information before responding.
21. On 9 November 2006 the Commissioner telephoned the Council to ask for a response to the letter of 16 October 2006. The Council explained it was still experiencing difficulties locating information about its handling of the request. The Commissioner agreed to supply copies of correspondence to and from the Council, as supplied by the complainant, and this information was sent to the Council on the same day, with a request that a response be supplied within ten days.
22. On 24 November 2006 the Council responded, enclosing copies of all the information it had located which it considered were covered by the complainant's request. The Council admitted that it had failed to follow correct procedures for handling information requests. It admitted that its Information Management Section did not hold records of the request or any responses made to the complainant. The employees who would have dealt with the request at the time it was received had since left the Council. The Council claimed that it had now circulated the correct procedure for request handling to the pertinent employees and that it intended to report details of the incident before its Management Team.
23. The Council enclosed a copy of the legal advice it had received from an external solicitor. It maintained that the advice was exempt under regulation 12(5)(b) of the EIR by virtue of the fact that it was subject to legal professional privilege, and that the Council was likely to be involved in litigation with the complainant. The Council stated that the legal advice had not been disclosed to any third parties. It conceded that it had not considered the public interest in reaching the decision to withhold the information at the time the complainant requested it, however it offered no further clarification of its view on where the public interest lay.

24. The Council also enclosed copies of all the background information it said it held which was covered by the complainant's request, from November 2005 to the current date (although the information supplied both pre- and post-dated the timeframe given in the Council's letter).
25. The bulk of the information comprised correspondence between the Council and the complainant. There was also a great deal of irrelevant information (for example the Council's FOI/DPA training material) and also a lot of material which fell outside the timeframe specified by the complainant in his request (November 2004 to 6 July 2005).
26. The only non-correspondence items which were supplied, were a letter and response to another campaigner, a letter from the Council's legal advisers, a press release and a consultation letter on the proposals, addressed to a Council official.
27. The Council commented that it could see no justification in the EIR for withholding any of this information.
28. The Commissioner wrote to the Council on 5 December 2006, commenting that some information supplied seemed irrelevant to the request, and did not fall within the timeframe specified in the request. The Commissioner also advised the Council to review the documents it intended to release with a view to redacting third party personal data, before supplying them to the complainant.
29. The Commissioner also asked for more information about the legal advice and for confirmation that the search for background information about the wind farm project had not been treated as a subject access request by the complainant, given that much of the information provided appeared to originate from him or be addressed to him.
30. The Council telephoned the Commissioner on 7 December 2006, explaining that there would be a delay in responding on the specific points about the legal advice. The Council also clarified that it held no other background information pertinent to the complainant's requests.
31. The Commissioner subsequently attempted to contact the Council by telephone on several occasions to ask for a response. No response was received until 19 February 2007 when the Council responded in writing. It again confirmed that it had supplied all of the background information that it held about the wind farm project. With regard to the legal advice, it maintained that there had been no public statement about it, but admitted that two protestors (who the Commissioner took to be the complainant and an individual known to the complainant) had been advised about it.
32. On 5 March 2007 the Commissioner asked for a copy of any letters sent to the protestors about the legal advice, or clarification of what they were told if they were informed verbally.

33. The Council replied on the 23 March 2007, explaining that the protestors were verbally advised in a meeting on 23 June 2005 that the Council had sought legal advice, the outcome of which would determine whether a new landscape assessment would be conducted. The protestors were subsequently informed at a further meeting that the landscape assessment would need to be conducted again.
34. The Council commented that there were no recorded minutes of these meetings and that the details had been recalled from memory by the officials involved.
35. The Council also wrote to the complainant on 23 March 2007 informing him that he would be sent copies of the background information surrounding the wind farm once the Commissioner's investigation of his complaint had concluded. It notified him of the exception that it had relied upon to withhold the legal advice and explained that it was awaiting the Commissioner's decision on whether the exception had been applied correctly.
36. The Commissioner wrote to the Council on 3 April 2007, instructing it to release the legal advice to the complainant, on the grounds that the Council had waived its right to claim the information as privileged because it had disclosed significant information about the nature and implications of the advice to the protestors.
37. The Council telephoned the Commissioner on 11 April 2007, confirming that it would release the legal advice and also the background correspondence once this had been redacted to remove any personal data.
38. The Council telephoned the Commissioner on 19 April 2007, and advised that the legal advice had been provided to the complainant. It explained that the background information would take longer to provide, due to the work involved in redacting the personal data. The Commissioner told the Council to prioritise the work and provide it to the complainant within 15 working days.
39. On 23 April 2007, the Commissioner wrote to the complainant, asking him to confirm receipt of the legal advice. He also explained that the Council had agreed to release the background information and asked if the complainant would, on receipt, advise whether it satisfied his request of 6 July 2005.
40. The complainant wrote to the Commissioner on 24 April 2007, confirming receipt of the legal advice received by the Council, but expressing concern that he had not been sent a copy of the legal opinion of the Council's in-house lawyers. He claimed to have been verbally informed by an individual at the Council that "all this information had been lost in the system".
41. The complainant wrote to the Commissioner on 17 May 2007, confirming that he had received some background information from the Council but expressing concern that other relevant material had been withheld. By way of explanation, he enclosed a copy of a letter which had been included in the bundle he received. It had on it a handwritten note to the effect that the addressee had been emailed,

- inviting him to a meeting. The complainant claimed that no corresponding email was included in the background bundle and that this must be evidence that not everything the Council held had been supplied. He also explained that he had expected the Council would hold information documenting its deliberations on Counsel's advice. He explained that he had recently been told by the Council that no further information was held and that he had now asked to be allowed to view the Council's files on the wind farm application in situ (which he was permitted to do on 19 June 2007).
42. The Commissioner telephoned the Council on 19 June 2007. The Council confirmed that the background information had been sent to the complainant on or around 17 May 2007 and agreed to forward copies to the Commissioner. The Council commented that it could not be totally sure that further information was not held, but was confident that it had done all it could possibly do to locate and supply the information sought by the complainant. The Council indicated it would be happy for the Commissioner to come to its offices and conduct a search to verify this.
 43. The complainant emailed again on 2 July 2007, alleging that three specific items of information which he knew the Council held, had been withheld from inspection when he visited the offices to view the file.
 44. On 6 July 2007, the Council emailed the complainant, countering that the three specified items had been supplied to him during the visit. The complainant replied on 10 July 2007, seemingly conceding that the information had been supplied during his visit.
 45. The complainant wrote to the Commissioner again on 9 July 2007, reiterating his concerns about information having been withheld and alleging this was part of a deliberate attempt to block access to information to which he was entitled and which may be instrumental to an investigation by the Local Government Ombudsman.
 46. After internal discussions, the Commissioner concluded that there was insufficient evidence to merit mounting an investigation into whether an offence under Regulation 19 of the EIR had been committed by the Council.
 47. The Council held a meeting with the complainant on 19 July 2007. The complainant claimed, in an email of 20 July 2007, that the Council admitted that it had not followed proper procedures when overseeing the wind farm planning application. He also claimed that it was appointing a consultant to examine its hard drives to look for further information about the application.
 48. On 23 July 2007 the complainant forwarded an email from the Council, which explained that it had appointed an external lawyer to conduct a critical review of its handling of the Conisholme wind farm application, with a view to identifying any errors or failures to follow correct procedure. The Council's email explained that the complainant was welcome to view all the documentation that was being turned over to the external lawyer and also to contribute any material he himself held which might be pertinent to the review.

49. On 11 September the Council emailed the Commissioner to advise that it had submitted all the information it held on the Conisholme wind farm application to external lawyers, based in Leeds. It explained that the complainant had made several fresh requests for information which it felt it was unable to comply with in full until the files were returned.
50. On 24 September 2007 the Commissioner emailed the Council to ask whether it held a record of its own legal opinion on the legal advice it received and if so, whether this had ever been supplied to the complainant. The Commissioner also asked for the Council's comments on the complainant's claim that it must hold more comprehensive records on the wind farm application.
51. On 1 October 2007 the Council emailed the Commissioner. It stated that it had sent the complainant a copy of its own legal opinion on "recent site development", although it did not state when this was sent or enclose a copy. It outlined the extensive searches that had been conducted and stated that it was satisfied that it had supplied copies of all the information it held which was covered by the complainant's request.
52. The Council explained that in addition to the searches that it had conducted on-site, it had asked the external lawyer to go through the files turned over to it for review, with a view to identifying whether any of it related to the complainant's request, which had not already been supplied. It had also asked the legal representative of the Landscape Capacity Surveyor for the project, for information it held on the matter and this too had been submitted to the external lawyer for scrutiny. It claimed that the lawyer had reviewed all the material and that there was nothing fresh in it relating to the complainant's request.
53. The Council said it had invited the complainant to view the files that had been turned over to the external lawyer, at its premises in Leeds, and had offered to pay travel expenses to facilitate this. The Council also explained that contrary to the complainant's assertion in his email of 20 July 2007 it had not engaged an external consultant to search its hard drives as it was confident that it had responded fully to the complainant's request for information. Commenting on the complainant's claims that specific information which should be held was not, it said "The problem is [the complainant] constantly suspects/alleges we are withholding something from him when we aren't!" It said it had invited him to supply evidence of the existence of such information or to supply evidence of fraud or wrongdoing, which it would refer to the police.
54. On 9 October 2007 the Commissioner wrote to the complainant and asked whether he had received a copy of the Council's in-house legal opinion. The complainant replied on the same date and said that he had been told the information did not exist, as the legal team did not retain copies of their instructions, and that the individuals responsible had since left the Council.
55. On 12 November 2007 the Commissioner advised the Council of the complainant's claim and asked it to forward a copy.

56. On 16 November 2007 the Council emailed a copy of the legal opinion to the Commissioner, explaining that it had been sent previously to the complainant but that he might not have recognised it as being the Council's in-house legal opinion as it had been included with other material sent to him and had come from an external email address (the Council shared legal services with another local authority). A request for opinion had been made in January 2007, and the resultant advice was dated 6 June 2007. It therefore fell outside the scope of the original request (which asked for material held between November 2004 and July 2005).
57. On 20 November 2007 the Commissioner wrote to the complainant supplying a copy of the fresh legal opinion. The Commissioner explained that, having sent him the legal advice and the background information which it held on the matter, he was satisfied that the Council had now complied with his request of 6 July 2005. The Commissioner conceded that the records management procedures uncovered by the investigation appeared to be unsatisfactory and had hampered the investigation of the complaint. However the Commissioner considered that the Council had demonstrated that it had conducted thorough searches and was satisfied that no information covered by the request was being withheld.
58. Although the Commissioner is satisfied that the complainant has been provided with the items he asked the Commissioner to help him obtain, the complainant has attempted to argue that his request should be treated as a request for the Council's own opinion on the legal advice it received. The Commissioner considers that the Council has supplied everything that it holds which is covered by the terms of the request, and that if any such opinion was held, it would have been supplied to the complainant as part of the background information. Furthermore, the Commissioner is mindful of the fact that the complainant specifically commented he was *not* interested in this information in his original complaint to the Commissioner, and that he had also made comments to the effect that he had this information already, in correspondence with his MP. The Commissioner therefore considers that the complainant has received all the information held by the Council, to which his request entitled him.
59. It is clear that during the course of the Commissioner's investigation there continued to be a significant amount of communication between the Council and the complainant, much of which the Commissioner has not been privy to. This has included further requests for information by the complainant (for example the request to view the entire planning application file, mentioned in his email of 17 May 2007 and the requests received by the Council when its files had been turned over to an external solicitor). During parts of the investigation it has been unclear whether the complainant has been seeking to assert his rights in respect of the request he complained to the Commissioner about, or these subsequent requests. The Commissioner has therefore returned to the complainant's original complaint when assessing whether the terms of the request he has complained about have been met.

Analysis

Procedural matters

60. The complainant made his first request for information on 26 July 2005. The Council did not commence supplying the information he requested until April 2007. It therefore failed to supply the information within the 20 working days required by regulation 5(2) of the EIR.
61. The email issued to the complainant on 7 November 2005 (the Refusal Notice), indicating that the legal advice would not be supplied because it was confidential, did not identify the relevant exception, explain how the public interest had been considered in reaching the decision to withhold or advise the complainant of his rights of appeal. Furthermore, it did not explain that the Council did not hold some of the other information the complainant requested. Therefore the Council failed to supply the complainant with an adequate refusal notice, within 20 working days of the request, as required by regulation 14(1), (2) and (3) of the EIR.

Exceptions

62. In considering whether or not environmental information should be released a public authority should apply a presumption in favour of disclosure (regulation 12(2)). Regulation 12(2) therefore weights the public interest in favour of release from the outset. There are, however, exceptions to that presumption, and those of relevance to this complaint are set out below.

Regulation 12(4)(a)

63. The Council claimed that it did not hold some of the background information requested by the complainant. It acknowledged that there had been problems with its records management procedures, but it set out the steps that it had taken to search for the material that the complainant had asked for, and the opportunities it had given the complainant to access the files it held.
64. In considering whether the information was held by the Council, the Commissioner was mindful that in EA/2006/0072 (Environment Agency v the Information Commissioner) the Information Tribunal upheld the Commissioner's view that the test to be applied in establishing if information is held by a public authority is not certainty, rather it should be based on the balance of probabilities. The application of that test required a consideration of a number of factors including the quality of the public authority's final analysis of the request, the scope of the search it made on the basis of that analysis and the rigour and efficiency with which the search was then conducted.
65. The Council demonstrated that it had made rigorous attempts to identify and locate information covered by the complainant's request. It made several searches of electronic archive and live archive files, as well as reviewing all physical files. The Council approached individual departments to check whether

they held relevant information not held on the planning files. It also approached external bodies and asked them to supply any information which might be relevant to the request. It turned over all its information on the wind farm application to an external lawyer, who was engaged in a procedural review of the application, and asked him to go through the information to try to identify any information which might be pertinent to the request. It gave the applicant several opportunities to view the files in its own offices and also to view the records supplied to the external lawyer. It held a number of meetings with the complainant in an attempt to identify and resolve his concerns.

66. The Commissioner is therefore satisfied that on the balance of probabilities the background information requested is not held by the Council and therefore concludes that this portion of the request was dealt with in accordance with section 12(4)(a) of the EIR.
67. Regulation 12(1)(b) states that all exceptions are subject to the public interest test. However, it is clearly not possible to consider the public interest in respect of information that is literally not held.

Regulation 12(5)(b)

68. The Council claimed that the legal advice it received was subject to legal professional privilege and therefore excepted from disclosure under regulation 12(5)(b) of the EIR. The Commissioner found that the Council disclosed significant information about its contents to the complainant and his representatives and that the Council had therefore waived its right to claim the legal advice as privileged. The Council therefore wrongly claimed that the exception at regulation 12(5)(b) applied in respect of the legal advice.
69. In view of the fact that that the right to consider the information as privileged was waived and the information has ultimately been supplied to the complainant, the Commissioner has not considered the public interest test in respect of this information.

The Decision

70. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the EIR:
 - applying the exception at regulation 12(4)(a), in respect of information which is not held.
71. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the EIR:
 - applying the exception at regulation 12(5)(b), to claim that the legal advice was excepted from disclosure;

- failing to supply information within 20 working days of the request, required by regulation 5(2) of the EIR; and
- failing to supply an adequate Refusal Notice, as required by regulation 14(1), (2) and (3).

Steps Required

72. The information requested by the complainant was supplied to him during the course of the Commissioner's investigation. The Commissioner therefore requires no steps to be taken.

Other Matters

73. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
74. By failing to retain the outcome of the internal review, the authority has failed to conform to part XIII, paragraph 64 of the Environmental Information Regulations (2004) Code of Practice. The Commissioner would also expect copies of the request and the authority's initial response to be retained.
75. In December 2006, the authority advised the complainant that they did not have a formal complaints process for FOI. The Commissioner would expect such a complaints procedure to be in place and furthermore, under the Environmental Information Regulations (2004), a complaints procedure is mandatory.
76. In January 2007, the Council advised the complainant that requests should be directed to the authority's Information Management Section. Whilst authorities may direct a requester to a particular department or point of contact, it should be noted that a request could be made to any part of an authority. It is the responsibility of the public authority to ensure that its staff are trained to recognise requests and deal with them accordingly. This is particularly important in respect of requests for environmental information within the meaning of the Environmental Information Regulations (2004), as a request may be made verbally.
77. Throughout the investigation, verbal contact and correspondence with the Council suggested a reluctance to fully engage with the Commissioner in resolving the complaint. Furthermore, some of the Council's actions suggest misapprehensions about access to information legislation and the related appeal processes. The Commissioner would like to remind the Council that he publishes guidance on both the Freedom of Information Act and the Environmental Information Regulations which may be of assistance. This can be accessed at www.ico.gov.uk

78. The Council failed to retain records of the complainant's requests or its responses. In addition several key meetings had gone unrecorded, with the consequence that they had to be recalled by those involved from memory. The Council has given assurances that lessons have been learned from this case and the matter has been reported to its Management Team. To this extent, the Commissioner hopes that this case has drawn attention to the importance of good records management and retention procedures and to the code of practice issued under regulation 16 of the EIR.
79. Nevertheless the Commissioner believes that the Council would benefit from obtaining further advice and guidance from the Records Management Advisory Service at The National Archives (see contact details below). The Commissioner would hope that such advice will improve the Council's handling of future requests for information under the Regulations (and the Freedom of Information Act).

Records Management Advisory Service (RMAS)
National Advisory Service
The National Archives
Kew
Richmond
Surrey
TW9 4DU

rmadvisory@nationalarchives.gov.uk

Right of Appeal

80. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Reference: FER0096306



Dated the *14th* day of *February* 2008

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Environmental Information Regulations 2004

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 5(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

Regulation 5(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

Regulation 5(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.

Regulation 5(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

Regulation 12 - Exceptions to the duty to disclose environmental information

Regulation 12(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(a) it does not hold that information when an applicant's request is received;

Regulation 12(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect – ...

...(b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;

Regulation 14 - Refusal to disclose information

Regulation 14(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

Regulation 14(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 14(3) The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

Regulation 16 - Issue of a code of practice and functions of the Commissioner

Regulation 16(1) The Secretary of State may issue, and may from time to time revise, a code of practice providing guidance to public authorities as to the practice which it would, in the Secretary of State's opinion, be desirable for them to follow in connection with the discharge of their functions under these Regulations.

Regulation 19 – Offence of altering records with intent to prevent disclosure.

Regulation 19(1) Where –

- (a) a request for environmental information has been made to a public authority under regulation 5; and
- (b) the applicant would have been entitled (subject to payment of any charge) to that information in accordance with that regulation,

any person to whom this paragraph applies is guilty of an offence if he alters, defaces, blocks, erases, destroys or conceals any record held by the public authority, with the intention of preventing the disclosure by that authority of all, or any part, of the information to which the applicant would have been entitled.