

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 29 May 2008

Public Authority: Department for Transport
Address: Zone 1/28
Greater Minster House
76 Marsham Street
London SW1P 4DR

Summary

The complainant requested a copy of the first draft of the Sir Rod Eddington Transport Study. This request was made to the Department for Transport (the "DfT") and was made under the Freedom of Information Act 2000 (the "Act"). The DfT confirmed that it held a copy of the first draft of the report, but refused to disclose it, citing sections 12, 35 and 36 of the Act. The DfT also stated that it believed that the report contained some environmental information, and it withheld this information under exception 12(4)(e) of the Environmental Information Regulations 2004 (EIR). After considering the withheld information the Commissioner has decided that the whole of the draft report is environmental information and as such falls under the EIR. During the course of the investigation the DfT cited the exceptions listed at regulations 4(1)(a), 12(4)(d) and 12(4)(e) in order to withhold the information. After considering the case the Commissioner decided that regulation 12(4)(d) was not engaged. He also found that regulation 12(4)(e) was not engaged and that regulation 4(1)(a) did not provide an exception from disclosure. Therefore the Commissioner decided that the information in question should be disclosed. The Commissioner also found that the DfT had not met the requirements of regulation 14.

The Commissioner's Role

1. The Environmental Information Regulations 2004 (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. In effect, the enforcement provisions of Part 4 of the Act are imported into the EIR.

The Request

2. On 13 December 2006 the complainant wrote to the DfT and made a series of requests for information under the Act. One of those requests was for,

“A copy of the first draft of the report prepared by Sir Rod Eddington.”

For ease of reference this will be referred to as the “draft report” throughout the rest of this Notice.

3. By way of background Sir Rod Eddington was jointly commissioned by the Chancellor of the Exchequer and the Secretary of State for Transport in March 2005 to examine the long-term links between transport and the UK's economic productivity, growth and stability, within the context of the Government's broader commitment to sustainable development. The draft report was submitted to the Secretary of State for Transport in July 2006. The final version of the Study was published on 6 December 2006 and is available on the DfT website.¹
4. The DfT responded to this request in a letter dated 19 January 2007. It confirmed that it did hold a copy of the first draft of Sir Rod Eddington's Study, which had been submitted to it in July 2006. However, it stated that it believed that it was exempt from disclosure under section 35(1)(a) of the Act. It also informed the complainant that insofar as section 35(1)(a) was not applicable, it believed that section 36(2)(b) or (c) of the Act applied.
5. The DfT also cited section 12 of the Act in relation to some sections of the draft report, stating that it believed that,
- “...a detailed manual comparison of the first draft and the final published report, to ascertain which pieces of background factual information were omitted from the final report and extract this information, would exceed this cost limit.”
6. Finally the DfT also informed the complainant that it believed that the draft report contained some environmental information, as defined in the EIR. It informed the complainant that it believed that the exception listed at regulation 12(4)(e) applied to this information, and the public interest lay in maintaining the exception.
7. On 21 February 2007 the complainant wrote to the DfT and asked for an internal review. He wrote,
- “I do not accept your explanations for that refusal. As this was an independent report submitted to Government, it should not have been subject to review and requests for amendments by Ministers, unless, of course, you are accepting that the report's independence was compromised by Ministers.”

¹ <http://www.dft.gov.uk/about/strategy/transportstrategy/eddingtonstudy/>

8. In an undated letter the DfT responded to the complaint. It informed him that it had conducted an internal review and was of the opinion that the decision to withhold the draft report under sections 35 or 36 of the Act was correct. In response to the points raised by the complainant it wrote,

“Sir Rod’s review was clearly an input to the formulation of policy. Although your letter highlighted Sir Rod’s independent status, the review noted that the FOI Act draws no distinction for its purposes between policy advice sourced internally or externally. It noted that a large amount of analytical background information was published with the report. And the review upheld the original conclusion that the public interest in releasing the draft report was greatly outweighed by the damage to policy making if drafts could not be circulated and discussed without risk of subsequent publication.

My own position has not changed. I do not accept your apparent challenge to the independence of Sir Rod’s report: but in any event it is not relevant to the exemptions under the FOI Act whether policy advice is prepared internally or externally. The more serious – which I hope you will reflect on – is the genuine risk to effective policy development if drafts cannot be circulated and discussed without the prospect of their subsequent publication. This would have serious implications for any Government.”

The DfT informed the complainant of his right to complaint to the Commissioner.

The Investigation

Scope of the case

9. The complainant contacted the Commissioner on 3 April 2007 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the DfT’s decision to withhold the information was correct.
10. Although not raised by the complainant, the Commissioner has also considered some of the procedural aspects of this case.

Chronology

11. The Commissioner wrote to the DfT on 21 November 2007 and asked it to supply him with a copy of the draft report.
12. The DfT responded in a letter dated 21 December 2007 and provided a copy of the draft report. The DfT also provided further submissions to support its use of sections 35 and 36 of the Act.
13. The Commissioner wrote to the DfT on 30 January 2008 and explained that having viewed the draft report he now believed that it was environmental

information as defined by the EIR. He noted that in its letter to the complainant dated 19 January 2007 the DfT had acknowledged that some of the information in the draft report was environmental, and had applied regulation 12(4)(e) in order to withhold it. He asked the DfT whether it wished to make any further submissions regarding the application of the exception 12(4)(e) to the draft report. He also asked for further details of how it had carried out the public interest test. Finally, he asked the DfT to provide further arguments if it wished to apply any of the other exceptions. He asked the DfT to respond within twenty working days.

14. As he did not receive a substantive response within this time limit, the Commissioner wrote to the DfT again on 5 March 2008. He asked the DfT to provide a response to his previous letter, and reminded it of his power to issue an Information Notice. He asked for a response by 20 March 2008.
15. The DfT responded on 20 March 2008. It argued that whilst the draft report did contain some information which it regarded as environmental information, it did not accept that the entire draft report should be considered as such. In regard to the information which it believed was environmental it informed the Commissioner that it believed that this information was exempt under regulations 4(1)(a), 12(4)(d) and 12(4)(e). In regard to the information which it believed was not environmental it informed the Commissioner that it believed that this information was exempt under sections 21, 22, and 35(1)(a) or, in the alternative, 36(2)(b) or (c). It provided further submissions to support its arguments.
16. Lastly, the DfT also stated that,

“We do not hold information that would enable us to compile a list of the actual text changes and additions between the first draft and the final published report. We would consider it unreasonable, and serving no obvious public interest in view of the resource costs we estimate such a task would take, to have to compile such information.”

The DfT did not go on to cite section 12 of the Act, although the Commissioner notes that this was referred to in the original refusal notice issued to the complainant on 19 January 2007 (see paragraph 4).

Analysis

Procedural matters

17. The DfT dealt with the request for information under both the Act and the EIR, and accordingly applied the exemptions listed in the Act, as well as some of the exceptions listed in the EIR.
18. During the course of the investigation the Commissioner informed the DfT that he believed that the entire draft report fell under the definition of environmental information. The DfT responded to the Commissioner and informed him that

whilst it accepted that some of the draft report was environmental information, it did not accept that the entire report fell under this definition. It argued,

“...we cannot agree that the EIR can possibly apply to the entirety of the report. Inevitably, almost every Government policy will have some sort of environmental impact and a policy will often address environmental aspects as part of the overall consideration but that does not mean that every Government policy should then be considered to be entirely environmental information. While we could acknowledge that many aspects of the Eddington Report probably ought to be considered environmental information (inasmuch as a report such as this could ever be said to be a measure ‘likely to affect elements or factors...’ etc), it is in essence a comprehensive review of an entire industry sector and also considers both economic and social impacts. We feel therefore that it would be impossible to characterise such a wide-ranging piece of work as entirely environmental any more than it could realistically be considered to fall solely within the Freedom of Information Act.”

19. Therefore the Commissioner has first considered whether the draft report is environmental information, as defined in the EIR.

Is the withheld information environmental information?

20. A summary of the Sir Rod Eddington study on the DfT website describes it as a,

“...joint HM Treasury and Department for Transport project examining the long-term links between transport and the UK’s economic productivity, growth and stability, within the context of the Government’s broader commitment to sustainable development and the environment.”²

21. The Commissioner understands that the study was commissioned by the DfT and the Treasury in order to feed into the current overall transport strategy of the DfT. When the study was published the Secretary of State for Transport stated,

“The Government will outline shortly its initial reactions to this advice, taking account of my Department’s environmental and social objectives. I will then publish next year...a more detailed response, which will take forward the 2004 White Paper and set out new plans to minimise carbon emissions and sustain economic growth, by delivering improvements to transport at the national, regional and local levels.”³

22. Further to this the Commissioner notes that Sir Rod Eddington stated in the introduction to the Study, “I hope you will find the report both interesting and compelling, and a sound contribution to future transport policy in the UK.”⁴ After considering this, the statement by the Secretary of State for Transport when the

² <http://www.dft.gov.uk/about/strategy/transportstrategy/>

³ www.dft.gov.uk/press/speechesstatements/statements/eddingtonstatement

⁴ The Case for action: Sir Rod Eddington’s advice to Government, pg 2.

<http://www.dft.gov.uk/about/strategy/transportstrategy/eddingtonstudy/>

Study was published (see previous paragraph), and the DfT's comments that, "Sir Rod's review was clearly input into the formulation of policy" (see paragraph 8 above), the Commissioner believes that when commissioned and when published the Study was intended by all the parties involved to feed into the Government's transport strategy.

23. Further to this the Commissioner has also noted that the DfT's website states that its transport strategy, "...includes the Department's plans to support economic growth and to address transport's climate change impacts, responding to the recommendations made in the Eddington Transport Study and the Stern Review of the Economics of Climate Change."⁵
24. In deciding whether information is "environmental information" or not close reference must be made to the provisions of Regulation 2(1)(a) to (f). It is not necessary for the information itself to have a direct effect on the environment, in order for it to be environmental. The Commissioner believes there is a proximity / remoteness test, but that this is a test of the proximity / remoteness of the information itself to the relevant element, factor, measure, activity, analyses etc under 2(1)(a) to (f). Whether it is "information on" is the relevant test in all cases, combined with satisfying the relevant links back through the definition for 2(1)(b) (c) (e) and (f). Environmental information is defined in regulation 2(1)(c) of the EIR as information on measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements.
25. The Commissioner's general approach is to interpret "any information... on..." broadly. The relevant Oxford English Dictionary definition of "on" is "In reference to, with respect to, as to, concerning, about". The Commissioner's view, in line with the purpose expressed in the first recital of the Directive, is that "any information ...on..." will usually include information concerning, about or relating to the measure, activity or factor in question. In other words information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information (subject to the linking process set out in Regulation 2).
26. After considering this, and the contents of the draft report, the Commissioner believes that the Sir Rod Eddington Transport Study is information on the Government's overall transport strategy. The Commissioner believes the Study should be read as a whole in terms of impact on the transport strategy and therefore the entire report is information on the strategy. In reaching his view on this case the Commissioner has concluded that the Study (and the draft report) is information that would inform the public about the overall transport strategy and, would increase public understanding of the overall transport strategy.
27. In this case the Commissioner considers that the Government's overall transport strategy is a measure affecting or likely to affect the state of the elements of the

⁵ www.dft.gov.uk/about/strategy/

environment in 2(1)(a) (such as the land and the air), and the factors listed in 2(1)(b) (such as emissions). As stated above, the Commissioner believes that the Sir Rod Eddington Transport Study (and therefore the draft report) is information on this measure, and therefore he believes that the information in question falls under the definition of environmental information as listed in 2(1)(c) of the EIR.

28. The full text of regulation 2 of the EIR can be found in the Legal Annex at the end of this Notice.

Regulation 14

29. Regulation 14 states that if a request for environmental information is refused, this refusal should be made in writing in no later than 20 working days after the date of the request. The refusal must specify any exception being relied upon under regulations 12(4), 12(5) or 13; the matters considered in reaching a decision with respect to the public interest under regulation 12(1)(b).
30. In this case, when it refused the request, the DfT stated that some of the draft report was environmental information and some of the information was not. It also relied upon some of the exemptions listed in the Act, as well as some of the EIR exceptions.
31. By failing to deal with the whole request under the correct legislation and therefore failing to issue a refusal notice which meets the requirements above the DfT has breached the requirements of regulation 14.
32. The full text of regulation 14 can be found in the Legal Annex at the end of this Notice.

Exceptions

33. In its letter to the Commissioner of 20 March 2008 the DfT cited a number of exceptions in order to withhold the draft report. The Commissioner has gone on to consider each of these in turn.

Regulation 4(1)(a)

34. The DfT has informed the Commissioner that it believes that regulation (4)(1)(a) provides an exception from disclosure, to the extent that environmental information in the draft report was published in the final version of the Study.
35. Regulation (4)(1)(a) states that in respect of environmental information that it holds a public authority shall, "progressively make the information available to the public by electronic means which are easily accessible."
36. The Commissioner believes that regulation (4)(1)(a) places an obligation on a public authority to proactively make environmental information which it holds publicly available. He does not believe that this regulation provides an exception from disclosure.

37. Therefore he does not believe that the DfT can rely upon this regulation to withhold any of the information contained in the draft report.
38. The full text of regulation 4 can be found in the Legal Annex at the end of this Notice.

Regulation 12(4)(d)

39. In its letter to the Commissioner dated 20 March 2008 the DfT has cited regulation 12(4)(d), and has stated that the draft report,

“...was still a work in progress and included material still in the course of completion, with incomplete data.”

40. Regulation 12(4)(d) states that information is exempt from if the request relates:
 - to material which is in the course of completion,
 - to unfinished documents,
 - or to incomplete data.

This exception is subject to a public interest test.

41. The Commissioner has first considered whether the draft report falls under any of the above.
42. In reaching a view on this the Commissioner has noted that the final Sir Rod Eddington Study had been published prior to the request being made to the DfT.
43. The Commissioner believes that the draft report cannot be regarded as ‘material in the course of completion’ as the final version of the Study had already been published prior to the request being made, and as such the material contained in the draft report would now be considered to be completed. Furthermore the Commissioner does not believe that the request relates to incomplete data for the same reasons.
44. The Commissioner has gone on to consider whether the request relates to an unfinished document.
45. In reaching a view on this he has considered the wording of regulation 14(4) which states that,

“If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.”

46. The Commissioner has also been mindful of the wording of article 4.2 of Directive 2003/4/EC (which the EIR implement), which states that, “...grounds for refusal...shall be interpreted in a restrictive way...”

47. Furthermore the Commissioner has considered the wording of the regulation 12(4)(d) which states, “the request relates to...unfinished documents” (our emphasis).
48. After considering this the Commissioner believes that regulation 12(4)(d) is intended to only protect information whilst it is still a work in progress, rather than protect earlier versions of completed work.
49. As such, the Commissioner believes that where a final version of the requested information exists, a request for an earlier version of that information can be said to relate to a finished document, rather than an unfinished document.
50. As the final version of the Study had been published prior to the request being made the Commissioner believes that the material in the draft report was completed material, and the request related to a finished document – albeit an earlier version of that document.
51. Therefore the Commissioner does not believe that the request related to material still in the course of completion, to unfinished documents, or to incomplete data. As such he does not believe that regulation 12(4)(d) is engaged. As the Commissioner has decided that this exception is not engaged he has not gone on to consider the public interest.
53. The full text of Regulation 12(4)(d) can be found in the Legal Annex at the end of this Notice.

Regulation 12(4)(e)

54. Under regulation 12(4)(e) a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. Regulation 12(5)(8) states that for the purposes of this exception ‘internal communications’ includes communications between government departments. This exception is subject to a public interest test.
55. The Commissioner has initially considered whether the draft report can be considered to be an internal communication.
56. The information in question is a draft version of a report produced by Sir Rod Eddington, after he was jointly commissioned by the DfT and the Treasury to produce a study into the future of the country’s transport system. The draft report was presented to the Secretary of State for Transport in July 2006, prior to the final publication of the Study in December 2006.
57. In the refusal notice the DfT referred to Sir Rod Eddington as an, “independent advisor,” and stated that he was, “one of a number of prominent and knowledgeable figures from outside government who have provided a similar service to government in other policy areas, whether paid or unpaid.”
58. Further to this, in response to the complainant raising the point that the author of the Study was independent from the Government, in the internal review response

the DfT wrote that, “the FOI Act draws no distinction for its purposes between policy advice sourced internally or externally.”

59. In considering whether the draft report can be considered to be an internal communication the Commissioner has been mindful of the wording of article 4.2 of Directive 2003/4/EC (which the EIR implement), which states that, “...grounds for refusal...shall be interpreted in a restrictive way...”
60. Bearing this in mind, the Commissioner believes that the exception for internal communications applies to communications between members of staff within a public authority – or between government departments. In this case, after considering the above points, the Commissioner believes that Sir Rod Eddington was not employed by either the DfT or the Treasury, and was instead an external independent advisor. The Commissioner accepts that in certain circumstances, where an external advisor is contracted to perform a function on behalf of a public authority, they may be regarded as an employee of that authority for the duration of that function being carried out. However, in this case the DfT has not offered any evidence to suggest that there was any such contract between Sir Rod Eddington and the DfT. From the evidence available to the Commissioner it appears that he produced the Study on a voluntary basis (during the course of the investigation the DfT informed the Commissioner that Sir Rod Eddington produced the Study, “for no financial reward”). Additionally he does not appear to have been carrying out a function of the DfT, and was instead simply making recommendations on the issue of transport policy.
61. Therefore the Commissioner has formed the view that the draft report is not an internal communication for the purposes of regulation 12(4)(e), and as such he does not believe that this exception is engaged.
62. As the Commissioner has decided that this exception is not engaged he has not gone on to consider the public interest.
63. The full text of Regulation 12(4)(e) can be found in the Legal Annex at the end of this Notice.

The Decision

64. The Commissioner’s decision is that the DfT did not deal with the request for information in accordance with the following requirements of the EIR:

Regulation 5(1) – in that it failed to make available the environmental information requested, to which the complainant was entitled in accordance with the regulations because it incorrectly cited regulations 12(4)(d) and 12(4)(e).

Regulation 14 – in that it did not issue a refusal notice under the EIR for the parts of the draft report it did not consider to be environmental.

Steps Required

-
65. The Commissioner requires the DfT to disclose a copy of the draft report to ensure compliance with the EIR.
 66. The DfT must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

67. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

68. 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.

Dated the 29th day of May 2008

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

Regulation 2(1) In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on–

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

Regulation 4

- (1) Subject to paragraph (3), a public authority shall in respect of environmental information that it holds –
 - (a) progressively make the information available to the public by electronic means which are easily accessible; and
 - (b) take reasonable steps to organize the information relevant to its functions with a view to the active and systematic dissemination to the public of the information.
- (2) For the purposes of paragraph (1) the use of electronic means to make information available or to organize information shall not be required in relation to information collected before 1st January 2005 in non-electronic form.
- (3) Paragraph (1) shall not extend to making available or disseminating information which a public authority would be entitled to refuse under regulation 12.
- (4) The information under paragraph (1) shall include at least –
 - (a) the information referred to in Article 7(2) of the Directive; and
 - (b) facts and analyses of facts which the public authority considers relevant and important in framing major environmental policy proposals.

Regulation 12

- (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –
 - (a) an exception to disclosure applies under paragraphs (4) or (5); and
 - (b) in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
- (2) A public authority shall apply a presumption in favour of disclosure.
- (3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.
- (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;
 - (b) the request for information is manifestly unreasonable;

- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
 - (d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or
 - (e) the request involves the disclosure of internal communications
- (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 –
- (a) international relations, defence, national security or public safety;
 - (b) 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;
 - (c) intellectual property rights;
 - (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
 - (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
 - (f) the interests of the person who provided the information where that person –
 - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
 - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from the Regulations to disclose it; and
 - (iii) has not consented to its disclosure; or
 - (g) the protection of the environment to which the information relates.
- (6)** For the purpose of paragraph (1), a public authority may respond to a request by neither confirming or denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).
- (7)** For the purposes of a response under paragraph (6), whether information exists and is held by the public authority is itself the disclosure of information.
- (8)** For the purposes of paragraph (4)(e), internal communications includes communications between government departments.
- (9)** To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to

disclose that information under an exception referred to in paragraphs (5)(d) to (g).

- (10)** For the purpose of paragraphs (5)(b), (d) and (f), references to a public authority shall include references to a Scottish public authority.
- (11)** Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is withheld by virtue of these Regulations unless it is not reasonably capable of being separated from the other information for the purpose of making available that 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.
- (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.
- (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).
- (4)** If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.
- (5)** The refusal shall inform the applicant –
 - (a)** that he may make representations to the public authority under regulation 11; and
 - (b)** of the enforcement and appeal provisions of the Act applied by regulation 18.