

Environmental Information Regulations 2004

Decision Notice

Date: 17 December 2009

Public Authority: PhonepayPlus
Address: Clove Building
4 Maguire Street
London
SE1 2NQ.

Summary

The complainant requested information from the organisation concerning environmental impact assessments and the recycling schemes that it was involved in. The organisation responded to the request providing some general information and stated that it did not believe it was subject to the Environmental Information Regulations ('the EIR'). The complainant complained to the Commissioner stating that he believed that the organisation was incorrect in its determination of its status under the EIR and that it should provide the outstanding information. The Commissioner has considered the complaint and has determined that the organisation is a public authority for the purposes of the EIR by virtue of Regulation 2(2)(c). He therefore upholds the complaint. This Decision Notice requires PhonepayPlus to either provide the complainant with the requested information or to issue a refusal notice, stating which exceptions (if any) under the EIR it believes to be applicable.

The Commissioner's Role

1. The Environmental Information Regulations (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.

Background

2. The Commissioner believes that it is useful in this case to detail the legislative background, status, structure, funding and regulatory framework of the organisation as this information is relevant for his analysis section below.
3. PhonepayPlus is a consumer protection body, formally designated by OFCOM to be the body responsible for regulating 'Controlled Premium Rate Services'¹ in the UK. It is a company limited by guarantee and a not for profit organisation. It states that it is an independent co-regulatory body and must act in accordance with OFCOM's co-regulatory criteria. It adjudicates complaints without receiving fees from its applicants.
4. The relevant statutory provisions governing the regulation of 'Controlled Premium Rate Services' are set out under sections 120 to 124 of the Communications Act 2003. These provisions provide OFCOM with the power to set conditions that bind the persons to whom they are applied, for the purpose of regulating the provision, content, promotion and marketing of these services. These conditions are enforced by means of notification and fining under sections 95 and 96 of the 2003 Act.
5. Section 121(2) of the Communications Act 2003 has significant wording that is reproduced below:

OFCOM are not to approve a code for those purposes unless they are satisfied—

(a) that there is a person who, under the code, has the function of administering and enforcing it; and

(b) that that person is sufficiently independent of the providers of premium rate services;

(c) that adequate arrangements are in force for funding the activities of that person in relation to the code;

(d) that the provisions of the code are objectively justifiable in relation to the services to which it relates;

(e) that those provisions are not such as to discriminate unduly against particular persons or against a particular description of persons;

(f) that those provisions are proportionate to what they are intended to achieve; and

(g) that, in relation to what those provisions are intended to achieve, they are transparent.

6. Section 122 of the Communications Act 2003 is also relevant as it allows OFCOM to provide and enforce relevant guidelines itself in the event that it has the

¹ These are presently defined as service paid for by a premium charge for content to a telephone account in some form.

Secretary of State's consent and there is no Code of Practice that satisfy its requirements. It also provides the authority to set up a Body Corporate in order to serve this function. An order that is issued under this section can however be revoked by Parliamentary resolution.

7. This regime connects ultimately to OFCOM's principal duty set in section 3(1) of the Communications Act 2003. This is worded as follows:

“it shall be the principal duty of OFCOM, in carrying out their functions
a) to further the interests of citizens in relation to communications matters;
and
b) to further the interests of consumers in relevant markets, where
appropriate by promoting competition.”

8. There is a Memorandum of Understanding between PhonepayPlus (under its previous name ICSTIS) and OFCOM². It states that PhonepayPlus will continue to take all steps necessary to satisfy OFCOM that PhonepayPlus has the capability to ensure successful regulation of this area. The intention is that OFCOM will not involve itself in the operational work of PhonepayPlus or in relation to specific duties unless PhonepayPlus is failing to comply with undertakings, agreed processes or its Key Performance Indicators in circumstances where that is leading to a material negative impact on the adequacy of regulation.

9. This Memorandum states that OFCOM's duties will be focused on:

- approving the PhonepayPlus' Code of Practice and its regulatory budget, where it is satisfied that these enable OFCOM to meet its obligations under the Act;
- using its powers to ensure compliance with PhonepayPlus Directions; and
- carrying out sufficient oversight, and using its backstop powers where necessary, to make sure that regulation of this area is effective.

10. OFCOM is also responsible for:

- (i) Defining the scope of regulation for 'Controlled Premium Rate Services.'
- (ii) Negotiating PhonepayPlus' Key Performance Indicators, including its complaint case management.

11. PhonepayPlus receives most of its funding from a levy imposed upon the industry it regulates. It acquires the rest of its funds from administrative fees, fines and interest from money it holds. In addition every company that carries out activities that fall within the definition of 'Controlled Premium Rate Services' are required to sign up with PhonepayPlus and abide by its Code of Practice.

12. PhonepayPlus publishes and enforces a Code of Practice that contains the rules governing the content and promotion of premium rate services. The present Code

² This can be found at <http://www.ofcom.org.uk/consult/condocs/icstis-mou->

of Practice; the amended eleventh edition, was approved by OFCOM under section 121 of the Communications Act 2003 on 28 March 2008, and came into force on 28 April 2008.

13. PhonepayPlus tend to enforce the requirements of the Code of Practice through issuing directions. A failure to comply with this direction would normally amount to a contravention of the conditions and may lead to PhonepayPlus referring the matter to OFCOM. OFCOM may then take enforcement action under the relevant procedures set out in the 2003 Act. The way this operates can be seen as OFCOM's 'backstop power' because that power performs the function of supporting PhonepayPlus' effectiveness in circumstances where a party falling within the definition of 'Communications Provider' is failing to comply with directions that PhonepayPlus has given to that party.
14. PhonepayPlus' Code of Practice explicitly states that it is independent from the industry it regulates. It also states that it can call on numerous sanctions to assist its regulatory oversight including:
 1. compelling companies to ensure that their literature complies with its Code;
 2. formal reprimands;
 3. making companies come to the regulator for prior approval;
 4. ordering companies to pay full refunds to complainants;
 5. imposing fines;
 6. barring access to services; and
 7. banning named persons from operating services.
15. PhonepayPlus' adjudications can be appealed to the Independent Appeals Body (IAB). This is a body of individuals who are independent from it. A three person panel will be appointed and will hear the case. There is no further appeal process beyond the IAB.

The Request

16. On 27 February 2009 the complainant requested information in accordance with Regulation 5 of the Environmental Information Regulations [the numbers have been added by the Commissioner to enhance the clarity of this notice]:
 1. *[A] Please provide me with a copy of any current environmental impact assessment relating to your activities, [B] and also details of any recycling schemes in which you are involved.*
 2. *I would like to know the name of the company or organisation that you engage for any recycling and the amount paid to them for the last year of their engagement.*
 3. *Please could you break down recycling into recycling of paper; recycling of office equipment (other than computer equipment) e.g, equipment such as desks, chairs, tables; and recycling of computer equipment (including*

*printers and mouses [*sic], and provide me details under each of the three recycling heads as well as details for your recycling overall.*

4. *How many mouses [*sic] and how many printers had to be replaced last year before recycling them, for example because they broke down?*
 5. *What about discs and hard drives?*
 6. *Are mouses [sic*] and printers sent for recycling?*
 7. *Do you have any other recycling? If so, what of?*
 8. *Fax machines and telephones fall as 'office equipment': could you please reveal if your telephones are ever recycled for example by being returned to the telephone company does the recycling of your telephones for you.*
17. On 16 August 2009 the complainant resubmitted his request as he had not yet received a response.
18. On 17 August 2009 the public authority responded to the request. It apologised for not responding to the original letter earlier. It also explained that it did not believe it was subject to the Freedom of Information Act and was not a public authority by virtue of Regulation 2(2) of the EIR. It explained its constitution and that it wanted to be transparent in accordance with the five principles of good regulation. It informed the complainant that it was prepared to provide some information on a voluntary and non-recourse basis [the Commissioner has tried to match the content of the response to the original request to enhance clarity].
1. [A] It stated that the organisation has not undertaken and is not obliged to undertake any Environmental Assessment and had not done so.

[B] It stated that members of its staff are interested in environmental matters, and at their request it recycles white paper, mixed paper, glass, cans and plastic bottles using an organisation called 'Paper Round'. It also gives its staff a chance to buy its old equipment and if it goes unsold it gives it to Computer Aid.
 2. It explained that the amount it paid to 'Paper Round' was confidential. It did not say whether it paid to recycle telephones or computers.
 3. It explained it paid 'Paper Round' to recycle its paper. It explained that it did not pay to recycle its computers and that it had not recycled office furniture for some time. It explained it had however recycled telephones earlier that year, it did not say what it paid to do so.
 4. It explained that it had recycled 15 computers, screens and mice over the past month and undertook a similar exercise last year.
 5. It did not provide an answer to this part of the request.

6. It explained it did recycle mice as part of its overall scheme, but that it had not recycled printers for some time.
 7. As above it explained that it also recycled glass, cans and plastic bottles with 'Paper Round'.
 8. It explained it had not recycled fax machines for some time. It did however say that it replaced its phone system earlier that year. It stated that its old supplier recycled the intelligent part to a charity. It stated that it was unable to recycle the aged handsets despite trying to.
19. On 18 August 2009 the complainant requested an internal review. He explained he was grateful for the information provided. He provided considerable legal background and argued that the organisation was covered by virtue of Regulation 2(2)(c). He also asked for details of any previous cases where the Information Commissioner had considered the organisation's status.
20. On 20 August 2009 the public authority responded to the request for an internal review:

'PhonepayPlus does not accept that it is a public authority for the purposes of regulation 2 (2) of the Environmental Information Regulations. I see that you disagree. We do not currently have an internal review process, although we have one on the shelf awaiting the appointment of an independent Lay Assessor, which we propose to advertise for in September. However, I have referred your issue to our Chief Executive, who confirms the position stated in this letter.'

I am also able to confirm that no case in relation to the application of the Environmental Information Regulations to PhonepayPlus has been referred to the ICO. Having supplied the information requested voluntarily, I am at a loss to understand the additional information that you seek. Like you, I am anxious not to waste time.'

21. On 20 August 2009 the complainant provided further arguments about why he felt that the organisation was a public authority under the Regulations and said that he would consider referring the matter to the Information Commissioner.

The Investigation

Scope of the case

22. On 22 August 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- That he did not believe that he had received all the information to which he was entitled, including:

1. The name of the company who recycled its telephones.
 2. The amount of money paid to this company.
 3. It did not provide the amount paid to 'Paper Round'.
 4. It did not explain whether the number 15 related to complete or individual units (full computer systems or items such as mice).
- That he believed that the organisation was subject to the EIR. This is because it fell within the definition of Regulation 2(2)(c).
 - That recycling was not a core service and it was in the public interest for the amount paid for should be revealed to the public under the EIR in order for the organisation to be accountable.
23. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of the Regulations.
24. The Commissioner has considered the information on the organisation's website, its arguments within the correspondence and the complainant's arguments.

Analysis

Substantive Procedural Matters

25. The Commissioner has structured his analysis to determine firstly whether the organisation was a public authority for the purposes of the EIR, and if so whether the information fell under the definition of Environmental information and was therefore subject to the EIR.

Is the organisation a public authority for the purposes of the EIR?

26. The Commissioner must decide, in this case, whether PhonepayPlus was a public authority within the meaning of regulation 2(2) of the EIR.
27. Regulation 2(2) of the EIR 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 exceptions 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; any person designated by Order under section 5 of the Act;*

- 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”.*
28. The Commissioner has considered whether or not PhonepayPlus falls within any of the categories of “public authority” listed in paragraphs (a) to (d) of regulation 2(2) of the EIR. The Commissioner notes that PhonepayPlus is neither a government department nor a public authority for the purposes of section 3(1) of the Freedom of Information Act 2000 (“the Act”). PhonepayPlus is neither listed by name nor falls within a category of public authority listed in Schedule 1 of the Act. The Commissioner notes also that PhonepayPlus has not been designated as a public authority by Order under sections 4 or 5 of the Act and that a recent consultation on this point concluded that it should not be added to the Act’s scope. The Commissioner is therefore satisfied that PhonepayPlus is not caught by paragraphs (a) and (b) of Regulation 2(2).
29. The complainant’s main arguments focussed on Regulation 2(2)(c) and the Commissioner agrees that this is the paragraph that he must consider with detailed analysis. As stated above paragraph 2(2)(c) applies the Regulations to organisations that carry out functions of public administration.
30. The Commissioner’s approach to determining whether an organisation ‘carries out functions of public administration’ has been informed by the Information Tribunal decision in *Network Rail Ltd v Information Commissioner* (EA/2006/0061 and 0062) (“Network Rail”) the Tribunal concluded that it is not enough that a body performs public functions, regulation 2(2)(c) requires the functions to be administrative in nature. Functions of public administration are a subset of public functions generally. Therefore in order for an organisation to be caught by regulation 2(2)(c), the Commissioner is required to establish both that the body exercises functions that are public in nature and also that these functions are administrative.

Does the body exercise functions that are public in nature?

31. In ‘Network Rail’ the Tribunal confirmed that no single factor was decisive when considering whether a body was exercising public functions. It referred to the judgment of Lord Nicholl in the case of *Parochial Church Council for the parish of Aston Cantlow and Wilmcote with Billesley v Wallbank and Another* [2003] UKHL 37 and [2004] 1 A.C. 546:

“Factors to be taken into account include the extent to which in carrying out the relevant function the body is publicly funded, or is exercising statutory

powers, or is taking the place of central government or local authorities, or is providing a public service.”

32. In addition to these factors the Tribunal stated that both the degree of government control and the performance of regulatory functions are also relevant factors.
33. The Commissioner has considered the evidence in this case and has looked at each factor mentioned above in turn:
 - *The extent to which the body is publicly funded*
34. In this case the organisation is not publicly funded to any extent. This factor goes against the conclusion that it exercises public functions.
 - *The extent that the body is exercising statutory powers*
35. In this case the organisation has been formally recognised as complying with the guidelines set by the Communications Act 2003 and OFCOM has approved its Code of Practise which enables it to take action in its sector.
36. While these powers are not direct statutory powers, they do emanate from statute and enable it to regulate a sector of industry. The Commissioner notes that the enforcement powers tend to be exercised by OFCOM on its behalf. This factor favours the conclusion that it exercises public functions.
 - *The extent that the body is taking the place of central government*
37. In this case OFCOM has the power to step in, in the event that there is no organisation that is willing to regulate this sector of industry. He notes that the regulation of this area connects to OFCOM's principal duty set in section 3(1) of the Communications Act 2003. The Commissioner appreciates that OFCOM itself has been set up as a body corporate and has been given the statutory responsibilities by the government to regulate this area. However, it is clear that the functions it exercises are those that are appropriate for central government in the event that it had not set up a body corporate to do so. This factor also strongly favours the conclusion that it exercises public functions.
 - *The extent that the body is providing a public service*
38. In this case the organisation is clearly providing a public service. It regulates its area to establish public confidence and deals with members of the public. It is also a not for profit company, which indicates that private interests are not a priority for it. This factor also strongly favours the conclusion that it exercises public functions.
 - *The degree of Government control*
39. As stated in paragraphs 4 to 10 of this Notice, OFCOM does have a real role in controlling the performance and powers of this organisation. The organisation in its annual report states that it views that it engages in regulatory action on

OFCOM's behalf and it is clear from the structure of the public authority that this is what it does. This factor also strongly favours the conclusion that it exercises public functions.

- *The performance of regulatory functions*

40. In this case there is no doubt that the organisation performs regulatory functions in its sector. This factor also strongly favours the conclusion that it exercises public functions.
41. Weighing up all the factors, the Commissioner finds five out of six factors that he is to consider strongly favouring the conclusion that it exercises public functions. He therefore believes that the evidence in this case is overwhelming that it is the case.

Are these functions administrative?

42. The next part of his analysis is to consider that whether those public functions are administrative. Only if they are will the organisation be covered by regulation 2(2)(c).
43. The Commissioner believes it will assist to provide a background about what the term administrative means in terms of European Law. Administration can be regarded as being a component of executive power, distinct from both legislative and judicial powers. Administration can be visualised as the managing of power within the state apparatus and the achievement of a non legal goal through reliance on specific legal powers.
44. Administration is a term that is difficult to define, but the Commissioner believes it can be described on the basis of relative characteristics³:
- (i) Administration is a 'social arrangement.'
 - (ii) It is concerned with the public interest.
 - (iii) It is above all an active arrangement aimed at the future.
 - (iv) Administration takes 'concrete measures for the regulation of individual cases'.
45. Further he has been influenced by the definition provided by O. Hood Phillips⁴, which applied these principles in the context of English Law:

'The executive or administrative function is the general and detailed carrying on of government according to law, including the framing of policy and choice of the manner in which the law may be made to render the policy possible.'

³ These considerations were first voiced by H Maurer in *Allgemeines Verwaltungsrecht* (5th ed., Munich 1986) pp. 4 et seq. The Commissioner has used the translation found in page 16 of *European Administrative Law* by Jurgen Schartzke (1992 *Sweet and Maxwell*).

⁴ O. Hood Phillips & P Jackson, *Constitutional and Administrative Law* (6th ed, London 1978) pp 50 et seq.

46. In 'Network Rail' the Tribunal contrasted at paragraph 28, Network Rail (which was not covered) and a body with Regulatory power, which it would expect to be covered as its functions were administrative. PhonepayPlus is a regulator of a specified area. The Commissioner believes that it is an arrangement, that is concerned with the public interest, that is an active arrangement and takes concrete measures in regulating individual cases (as specified in the characteristics in paragraph 43 above). He therefore believes that it does conduct administrative functions within this construction of that term.
47. In 'Network Rail' the Tribunal also quoted paragraph 123 of the Blackburne J's judgment in *Griffin v South West Water Services Limited* [1995] IRLR 15. The facts of this case are not directly relevant although the court identified two categories (numbered by the Commissioner in square brackets):
- '[1] 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 [2] such as town planning, court administration and any of the myriad administrative functions of the civil service'.*
48. The Commissioner is satisfied that the current organisation falls most readily in the second category and therefore is most likely to be an administrative function. In this case the organisation is not profit making entity and is not an organisation that is competitively involved in any business. Instead it has a specific function to regulate a specific area, overseeing an industry, which it is independent of. As explained above the organisation conducts functions that can be correctly explained as administrative.
49. The Commissioner has also received further guidance on this point from the Tribunal decision in *Port of London Authority v Information Commissioner* (EA/2006/0083) ('Port of London'). In this case the Tribunal concluded that the Authority did exercise administrative functions and it considered the following numbered factors:
1. The Authority has statutory duties. If the Authority did not fulfil those duties Government would need to task another organisation with them.
 2. The Authority has to account to Parliament as well as to its shareholders.
 3. The appointment of the Board is heavily influenced by the Secretary of State.
 4. The Authority must report annually to Parliament on all its functions so there is nothing to suggest that some of them are regarded as private and the authority must give the Minister such information as he requires in relation to the exercise of any of their powers.
 5. Some Ministerial approval for borrowing is required.
 6. Appeal of licensing decisions is to the Board of Trade.
 7. The Authority can act akin to a local or governmental authority.
 8. The Authority can regulate others in a way that is over and above the way private companies can.

50. The determination about whether a public authority carries out administrative functions will always be dependant on the facts of what that authority does. Therefore the numbered factors in *Port of London* above should not be regarded as mandatory but merely as examples of the kind of factors that make a function administrative.
51. The Commissioner notes that factors 2, 3, 4, 5 and 6 are not relevant in this case. However, he believes that the decisive factors in this case are that it has Regulatory powers (point 8), carries out its statutory duties and if it was not there then the government would be highly likely to task another organisation with the same powers (point 1). In addition the government provides considerable oversight and control to enable PhonepayPlus to perform regulatory functions on behalf of the government department. This oversight is mentioned in paragraphs 9 and 10 above. The Commissioner therefore believes that this organisation does carry out administrative functions.
52. It follows that his decision is that the organisation does carry out functions of public administration. He therefore concludes that the organisation is covered by Regulation 2(2)(c) and that it is a public authority for the purposes of the EIR.

Which of its functions are covered by the EIR?

53. The Commissioner finds that the functions of PhonepayPlus fall within 2(2)(c) and therefore all the environmental information it holds will be caught by the EIR.
54. As the Commissioner is content that PhonepayPlus is covered by Regulation 2(2)(c) he has not been required to go on to consider Regulation 2(2)(d) in this case.

Is the requested information caught by the EIR?

55. Regulation 2(1) of the EIR defines “environmental information” as follows:
“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 life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);”*

56. The Commissioner is satisfied that information relating to recycling policies and their cost is ‘environmental information’ within the definition in regulation 2(1)(c). Recycling policy is a measure (in part c) that relates to waste (in part b) that affects the state of the elements of the environment; such as land and landscape (in part a).
57. The Commissioner has not had sight of the requested information but is satisfied from the complainant’s request that it covers information that falls within the definition and is therefore covered by the EIR. PhonepayPlus should identify which information falls within the definition and consider which might not.

The Decision

58. The Commissioner’s decision is that PhonepayPlus is a public authority for the purposes of regulation 2(2)(c) of the EIR and that it must handle the complainant’s request in accordance with the EIR.

Steps Required

59. The Commissioner requires PhonepayPlus to take the following action to ensure compliance with the Act:-
- Provide the complainant with the requested information that falls within the definition of environmental information in the Regulations or a formal refusal notice in accordance with the provisions of the EIR.

PhonepayPlus must take the action required by this Notice within 35 calendar days of the date of this Notice.

Failure to comply

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

Right of Appeal

61. 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.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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 17th day of December 2009

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex: Relevant statutory obligations

The Environmental Information Regulations 2004

PART 1

Interpretation

1. Regulation 2(1) provides that:

In these Regulations -

"the Act" means the Freedom of Information Act 2000[3];

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

"appropriate records 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[4] 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 the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

2. 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 exceptions 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;
- (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.

3. Regulation 5(1) provides that:

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.

4. Regulation 6(2) provides that:

“If the information is not made available in the form or format requested, the public authority shall-

- (a) explain the reason for its decision as soon as possible and no later than 20 working days after the date of receipt of the request for the information;*
- (b) provide the explanation in writing if the applicant so requests; and*
- (c) inform the applicant of the provisions of regulation 11 and of the enforcement and appeal provisions of the Act applied by regulation 18”.*