

## **Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004**

### **Decision Notice**

**Date: 15 December 2009**

**Public Authority:** Department for Culture Media and Sport  
**Address:** 2-4 Cockspur Street  
London  
SW1Y 5DH

### **Summary**

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The complainant requested documents relating to the public cost of the Royal Family and their accommodation. DCMS refused to disclose this information under sections 21, 31, 36, 37 38, and 43 of the Act and regulation 12(5) (d) and 12 (5) (f) of the EIR. The Commissioner has investigated and found that sections 21, 36 and 37 are engaged but in relation to sections 36 and 37 the Commissioner found that the public interest in maintaining the exemption does not outweigh the public interest in disclosure of the information. The Commissioner also found that sections 31, 38 and 43 and regulations 12(5) (d) and (f) of the EIR are not engaged. The Commissioner requires the public authority to disclose the information withheld under sections 31, 36, 37, 38 and 43, and under regulations 12(5) (d) and 12(5) (f) within 35 calendar days of this notice.

### **The Commissioner's Role**

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. Because the some of the information requested is environmental information, the Commissioner has made a decision as to whether parts of the request were dealt with in accordance with the requirements of Part 2 of the Environmental Information Regulations (EIR). The EIR came into force on 1 January 2005, 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

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3. The complainant has advised that on 28 June 2006 he made the following request for information to the Department for Culture Media and Sport (DCMS):

*“Please disclose under the terms of the Freedom of Information Act all the correspondence of the last two years between the government and Buckingham Palace and Clarence House in respect of the public cost of the Royal Family and their accommodation.”*

4. On 2 August 2006 DCMS responded explaining to the complainant that it holds information relevant to the request but that this information is exempt from disclosure under section 37 of the Act. DCMS explained that as section 37 is a qualified exemption it required more time to consider the public interest test and estimated that it would be able to respond in full to the complainant by 31 August 2006.
5. On 17 November 2006 DCMS provided a substantive response to the complainant via email. DCMS explained that after careful consideration it had concluded that the information was exempt under sections 21, 31, 35, 36, 37, 38 and 43 of the Act. All but one of these exemptions (section 21) is a qualified exemption and DCMS outlined the public interest arguments for and against disclosure of the requested information. DCMS concluded that the public interest in maintaining the exemptions outweighed that in disclosing the information.
6. On 17 November 2006 the complainant requested via email an internal review of the decision to withhold all the requested information.
7. DCMS completed its internal review and communicated its findings to the complainant on 30 January 2007. The internal review upheld the original decision to withhold the requested information under sections 21, 31, 35, 36, 37, 38 and 43 and provided further explanation regarding their application.

## The Investigation

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### Scope of the case

8. On 16 March 2007 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 ‘significant’ public interest in disclosure of the information.

### Chronology

9. Regrettably there was a delay of eight months before the Commissioner began his investigation. On 3 December 2007 he wrote to DCMS requesting a copy of

- all the information being withheld, annotated to show where each exemption had been applied, and further information regarding the application of each exemption. The Commissioner also asked DCMS to expand on the public interest arguments considered for and against maintaining each exemption.
10. DCMS responded on 10 March 2008 providing the Commissioner with a copy of the information, comprising documents numbered 1 -125, and a detailed explanation regarding the application of each of the exemptions. DCMS also informed the Commissioner that it was no longer seeking to rely on section 35 to withhold the information.
  11. The Commissioner wrote to DCMS on 24 April 2008 informing it of his initial views on the applicability of the exemptions. The Commissioner also stated that he felt documents 31-39 and 39a fell within the definition of environmental information as defined in the EIR and asked DCMS for its view on this and the exception(s) under EIR it wished to apply to withhold these documents.
  12. DCMS responded on 13 June 2006. DCMS explained that it had reviewed all the documents withheld from the complainant. In doing so it had found that documents 31, 32, 33, 34, 65, and 73 fell outside of the scope of the complainant request. The complainant's request was for correspondence between the government and Buckingham Palace and Clarence House and these documents comprise either internal correspondence within DCMS or correspondence between DCMS and other government departments.
  13. DCMS therefore only considered if documents 35-39 and 39a should have been dealt with under the EIR and not the Act. DCMS explained that it agreed that this information was environmental information and should have been dealt with under the EIR. DCMS found that documents 35 and 39a were not exempt under any of the exceptions in the EIR and disclosed these documents to the complainant. However DCMS explained that it considered documents 36, 37, 38 and 39 were exempt under exceptions 12(5) (d) and 12(5) (f). DCMS provided to the Commissioner an explanation supporting the application of these exceptions and the consideration of the public interest test.

### **Findings of fact**

14. DCMS found that some of the documents originally withheld fell outside of the scope of the request. Documents 31, 32, 33, 34, 65 and 73 are all either internal correspondence within DCMS or correspondence between DCMS and other government departments. The Commissioner having viewed these documents agrees that this information falls outside of the complainant's request for 'correspondence between the government and Buckingham Palace and Clarence House'.
15. Documents 35, 36, 37, 38, 39 and 39(a) fall within the definition of environmental information under the EIR. Documents 35 and 39a have been disclosed to the complainant and documents 36, 37, 38 and 39 are being withheld under exception 12(5) (d) and 12 (5) (f).

16. Sections 37 (1) (a) has been applied to documents 1-30, 40-64, 66-72, 74-78, 81-125. Section 36(2) (b) has been applied to all the above documents excluding documents 93 - 125.
17. Section 21 has been applied to documents 79 and 80. Sections 31 and 38 apply to specific references within documents 95, 100,101, 102 and 105 and section 43 applies documents 42, 82, 83, 84, 85, 88, 89, 90, 91, 92(a), 94, 98, 100, 101, 103, 104, 105, 106, and 107.

## Analysis

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### Procedural Matters - EIR

18. DCMS dealt with the request for information under the Freedom of Information Act and accordingly applied exemptions under the Act. The Commissioner has viewed the information and has found that documents 31- 39 and 39a are environmental information as defined by the EIR.
19. The Commissioner considers that the information falls within the regulation 2(1) (c), being 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 designed to protect those elements.
20. The documents relate to the application by the Royal Household for an energy saving grant, which is a measure or part of a programme likely to affect the elements and factors referred to in (a) and (b) such as air and atmosphere.
21. Regulation 5(1) states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request.
22. Regulation 14 'Refusal to disclose information' 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; and the matters considered in reaching a decision with respect to the public interest under regulation 12(1) (b).
23. The complainant made his request on 28 June 2006. DCMS only recognised that documents 35-39 and 39a fell within the definition of environmental information and should have been dealt with under the EIR on 13 June 2008, following the intervention of the Commissioner. At this stage DCMS also found that documents 35 and 39a should have been disclosed to the complainant under regulation 5. However, the Commissioner finds that in failing to disclose these documents no later than 20 working days after the date of receipt of the request DCMS breached the requirements of regulation 5(2).

24. DCMS also found that documents 36-39 were exempt from disclosure under exceptions 12(5) (d) and 12(5) (f). However, by failing to deal with the request under the correct legislation and therefore failing to issue a refusal notice which meets the requirements above DCMS breached the requirements of regulation 14.

**Exemption: Section 21 'Information accessible to the applicant by other means'**

25. Section 21 provides that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
26. DCMS have explained that section 21 is being applied to four documents within the bundle of withheld information these are:
- Community Energy Development Grant Guidance Notes May 2004 (round 9) issued by the Energy Saving Trust and Carbon Trust
  - Community Energy programme prospectus from the Carbon Trust and Energy Saving Trust
  - Copy of the Grant in aid for the Maintenance of the Occupied Royal Palaces in England, Royal Communication and Information and for the Maintenance of Marlborough House Annual Report 2004-05 and Annual Report 2005-06.
  - Financial Summary of the Royal Public Finances year to 31 March 2006
27. Copies of the Royal Public Finances Annual report of 2004-05, 2005-06 and 2006-07 and the financial summary of the Royal Public Finances can be found at the Royal Website, [www.royal.gov.uk/output/page3954.asp](http://www.royal.gov.uk/output/page3954.asp). At the time of the request copies of the Community Energy Development Guidance Notes May 2004 and the Community Energy programme prospectus could be obtained from the Energy Saving Trust. The Energy Saving Trust has since updated the information and this can be found at [www.energysavingtrust.org.uk](http://www.energysavingtrust.org.uk). DCMS provided links to this information to the complainant in its refusal notice.
28. The Commissioner is therefore satisfied that the information to which section 21 has been applied is reasonably accessible to the applicant and is therefore exempt from disclosure. As section 21 is an absolute exemption there is no requirement to go on to consider the public interest test.

**Section 37: 'Communications with Her Majesty etc. and honours'**

29. Section 37(1) (a) provides that information is exempt if it relates to communications with Her Majesty, with other members of the Royal Family or with the Royal Household.
30. In line with his approach to the term 'relates to' when it appears in other sections of the Act (for example section 35), the Commissioner interprets this term broadly and thus the exemption contained at section 37(1)(a) provides an exemption for information which 'relates to' communications with the Royal Family or with the Royal Household rather than simply communications with such parties.

31. Therefore, this exemption has the potential to cover draft letters, memorandums or references to the existence of meetings with the Royal Family or Royal Household irrespective of whether such communications have in fact been sent or received or indeed whether such meetings have in fact occurred.
32. However, information must still constitute, or relate to, a communication to fall within the exemption. So, for example an internal note held by a government department that simply references the Royal Family or Royal Household will not necessarily fall within the definition. It must be evident that the information is intended for communication, or has been communicated, or that it references some other communication falling within the definition.
33. All the withheld information relates to communications with the Royal Household in relation to the accommodation costs of the Royal Family. All of the withheld information has been received from, or sent directly to, the Royal Household.
34. The Commissioner is satisfied that all the withheld information (excluding documents 31-39 and 39a which are environmental information) relates to communications with the Royal Household and is therefore exempt under section 37.

### **Public Interest Test**

35. Section 37 is a qualified exemption and is therefore subject to the public interest test. The Commissioner must therefore decide if the public interest in maintaining the exemption outweighs the public interest in disclosing the withheld information.
36. DCMS have acknowledged that the following factors favour disclosure of the requested information: openness helps to increase trust in the government; there is a public interest in ensuring transparency and accountability of public funds; and there is a general public interest in the role of the Royal Family which extends to the cost of their accommodation.
37. However, DCMS state that the public money spent on accommodation by the Royal Household is already subject to a comprehensive process of audit and review, leading to the publication of the audited annual report on the Royal Public finances, which includes, the 'Property Services Grant in Aid'<sup>1</sup>. The details of this audit process are as follows: the Royal Household regularly provides the Department with information relating to how the grant in aid is being spent including annual budgets, five year plans, monthly draw downs and quarterly management accounts. The management accounts, five year plans and annual budgets are scrutinised in detail each quarter by external auditors engaged by the Department. The Royal Household also carry out internal audits on the information. In addition, the annual accounts are currently audited by KPMG (an accountancy firm) who consult with both DCMS and the National Audit Office

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<sup>1</sup> The Property Service Grant in Aid is a separate grant voted by Parliament each year to cover the cost of the upkeep of the Royal Residences for official and public use. It meets the cost of property maintenance, utilities, telephones and related services of the Occupied Royal Palaces. It is provided through DCMS and the Royal Household annual submits a rolling five-year plan to DCMS for its approval as well as quarterly reports and a detailed budget at the start of each financial year.

during the audit. The National Audit Office carries out additional audit work where it is considered necessary. Also, information is regularly provided in answer to Parliamentary Questions.

38. DCMS explained that this audit process is based on the full and open exchange of financial information relating to the accommodation of the Royal Household. Communications between the Royal Household and Her Majesty's Government (HMG) take place in circumstances where both the Royal Household and HMG expect that the information will remain confidential, save where that information is audited and published. Under a 'Financial Memorandum' document there is an obligation on the Royal Household to provide HMG with easy access to any documents or records which have a bearing on the expenditure of the Grant in Aid. The exchange of information, however, takes place in the expectation that the information will be confidential. If the information exchanged between the Royal Household and HMG is disclosed, this will inevitably change the nature of the relationship between the Royal Household and HMG in a manner which will likely inhibit the open provision of information to the detriment of the comprehensive audit process. This argument is akin to a 'chilling effect' argument in that disclosure of the information will inhibit the Royal Household from providing free and frank comment regarding the spending of the Grant in Aid and consequently a valuable channel of communication between DCMS and the Royal Household would break down to public detriment. There is a strong public interest in maintaining the working relationship between the Royal Household and HMG which contributes towards the integrity of the audit process.
39. DCMS also argue that some of the information held is communications between officials in DCMS and employees of the Royal Household which is essentially trivial in nature, DCMS do not believe there is in any public interest in disclosure of 'trivial' information.
40. DCMS explained that it has consulted with the Royal Household who have not consented to the release of this correspondence, DCMS assert that this is relevant to the public interest and adds weight to its determination that the public interest favours maintaining the exemption. Finally DCMS state that the public interest arguments in favour of disclosure are met by the publication of the annual report on Royal Public Finances.
41. In the Commissioner's opinion given the broad reading of the term 'relates to' the subject matter of information which can fall within the scope of section 37(1)(a) can be very broad because communications, and information relating to such communications, could potentially cover a huge variety of different issues. Therefore establishing what the inherent public interest is in maintaining the exemption contained at section 37(1)(a) is more difficult than identifying the public interest inherent in a more narrowly defined exemption, for example section 42, which clearly provides protection for legally privileged information.
42. The Commissioner believes that the following four public interest factors can be said to be inherent in the maintaining of the exemption:

- Protecting the ability of the Sovereign to exercise her right to consult, to encourage and to warn Government and to preserve her position of political neutrality.
  - Protecting the ability of the Heir to the Throne to be instructed in the business of government in preparation for when he is King and in connection with existing constitutional duties, whilst preserving his own position of political neutrality and that of the Sovereign.
  - Preserving the political neutrality of the Royal Family and particularly the Sovereign and Heir to the Throne to ensure the stability of the constitutional monarchy; and
  - Protecting the privacy and dignity of the Royal Family.
43. Of the public interest factors inherent in maintaining the exemption only the final factor is relevant in the circumstances of this case. The information being withheld does not consist of communications direct from the Sovereign or the Heir to the Throne, nor does it fall within the constitutional convention relating to the Heir of the Throne or Sovereign. All of the communications being withheld are between the Royal Household and DCMS and relate to the spending of the Grant in Aid. Disclosure of the information would not impact on the ability of the Sovereign or Heir to the Throne to take part in their constitutional duties or impact on their positions of political neutrality. However, the Commissioner does accept that where the information goes beyond mere facts and figures and contains free and frank discussion between DCMS and the Royal Household that disclosure of this advice may have an impact on the privacy of the Royal Family / Household. However, the information relates to the Royal Household rather than to an individual member of the Royal Family and does not contain the views any individual members of the Royal Family. Further, the content of the information is such that it does not relate to personal privacy of any member of the Royal Family but rather the discussions relate to the spending of the Grant in Aid which is specifically in relation to maintenance and upkeep of the Royal Household. In the Commissioner's view, disclosure would not undermine the privacy of nor the constitutional position of the Royal Family.
44. With regard to attributing weight to the chilling effect arguments, the Commissioner does not believe that such arguments automatically attract weight in the way in which correspondence falling within the convention would. Rather, the assessment as to whether a chilling effect will occur will be based upon factors considered in other cases involving an assessment of the chilling effect, most notably the content of the information itself. This is because in the Commissioner's opinion in order for a chilling effect argument to be convincing the information which is being considered for disclosure has to be more than anodyne in nature.
45. The Commission notes that much of the withheld information can be said to be an exchange of factual accounting information passing between DCMS and the Royal Household. This is information which the Royal Household is under an obligation to provide and therefore the Commissioner does not consider that disclosure would result in any form of 'chilling effect'. However, some of the information contains free and frank commentary on the decisions being taken by DCMS. The Commissioner accepts that this information is of a relatively frank



and candid nature and thus some weight should be attributed to the argument that disclosure of this information would result in a chilling effect.

46. However, the Commissioner considers that the public interest in ensuring the correspondence is free and frank and uninhibited is outweighed by the public interest in understanding the role of DCMS in the spending of the Grant in Aid. Disclosure of the information could show how DCMS respond to requests for funding from the Royal Household which would enhance public confidence in the way in which DCMS control the spending of public money and increase public understanding in the way in which public money is spent on the upkeep and maintenance of the Royal Household. Whilst the Commissioner has acknowledged that there could be a chilling effect from disclosure of this information in relation to the free and frank way the two parties communicate over funding, he does not consider that the weight attributed to this argument outweighs the public interest in disclosure.
47. The Commissioner does not accept that the 'trivial' nature of the information is itself a justification for maintaining the exemption, although he does accept that there may be limited public interest in disclosure. Further the Commissioner does not accept that the publication of the Annual Report on Royal Public Finances necessarily satisfies the public interest in disclosing information about these matters. In reaching a decision as to the balance of the public interest the Commissioner must consider the public interest in disclosure of the requested information and balance that with the public interest in maintaining the relevant exemptions.
48. The Commissioner recognises the importance of ensuring that the audits undertaken are based on full and open exchanges of information. However, he does not consider that disclosure of the requested information would have the negative effect of inhibiting this exchange. DCMS have highlighted that the Financial Memorandum contains an obligation on the Royal Household to provide all the documents and records which have a bearing on the process. Therefore, whilst the Commissioner appreciates that the documents may have been provided with an expectation of confidentiality, he does not accept that disclosure would inhibit exchanges in the future.
49. The Commissioner also notes the DCMS argument that the accountability element of the public interest in favour of disclosure is met because the public money spent on accommodation by the Royal Family is already subject to reviews and audits. Whilst the Commissioner acknowledges the importance of comprehensive audits and reviews, he does not believe that the mere fact that these take place necessarily meets the public interest in openness and accountability in the spending of public funds. He believes that disclosure of the requested information would enhance public awareness and understanding of the funding and accommodation arrangements of the Royal Household and this would be in the public interest.
50. Having balance the respective public interests, the Commissioner finds that the public interest in maintaining the exemption is outweighed by the public interest in disclosing the withheld information.

### Section 36: 'Prejudice to the effective conduct of public affairs'

51. Section 36(2) provides that information is exempt if, in the reasonable opinion of a qualified person, disclosure of the information... (b) would or would be likely to inhibit (i) the free and frank provision of advice, or (ii) the free and frank exchange of view for the purposes of deliberation.
52. Information can only be exempt by virtue of section 36(2)(b) if 'in the reasonable opinion of a qualified person' disclosure would, or would be likely to lead to the above adverse consequences. In order to establish that the exemption has been correctly applied the Commissioner must:
- Establish that an opinion was given;
  - Ascertain who was the qualified person or persons;
  - Ascertain when the opinion was given;
  - Consider whether the opinion was objectively reasonable and reasonably arrived at.
53. DCMS explained that the qualified person was the Minister for Culture David Lammy MP. His opinion was sought on 30 October 2006 and it was given on 13 November 2006. He was sent a submission detailing the request and reasons why the information should be withheld under section 36. He was also sent a table which details the documents under consideration as well as copies of the documents themselves.
54. DCMS explained that the qualified person found that that if the information were to be released it would inhibit the free and frank provision of advice (or exchange of views) for the purposes of deliberation between the Royal Household and the DCMS. This is because the Royal Household would be less likely to offer uninhibited advice or full facts in the future. This could make the Departments role of monitoring the Royal Household's expenditure difficult.
55. The Information Tribunal has decided (*Guardian & Brook v The Information Commissioner & the BBC*) (EA/2006/0011 and EA/2006/0013) that a qualified person's opinion under section 36 is reasonable if it is both '*reasonable in substance and reasonably arrived at*'. It elaborated that the opinion must therefore be 'objectively reasonable' and based on good faith and the proper exercise of judgement, and not simply '*an opinion within a range of reasonable opinions*'. However, it also accepted that '*there may (depending on the facts) be room for conflicting opinions both of which are reasonable*'. In considering whether an opinion was reasonably arrived at it proposed that the qualified person should only take into account relevant matters and that the process of reaching a reasonable opinion should be supported by evidence, although it also accepted that material which may exist in the making of a judgement will vary from case to case and that conclusions about the future are necessarily hypothetical.

56. The Commissioner has viewed the requested information and is satisfied that in this case the opinion of the qualified person is a reasonable one. The Commissioner therefore finds that the exemption is engaged.

### **Public Interest Test**

57. Section 36 is a qualified exemption and the Commissioner must therefore consider if the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.
58. DCMS acknowledge that there is a public interest in the disclosure of information relating to the public cost of the Royal Family and their accommodation, to ensure transparency in the accountability of public funds and to ensure public money is being spent effectively. They also acknowledge that there is a public interest in the public being able to assure themselves that there are procedures in place to accurately measure the performance of the Royal Household where public money is being spent and the public would be interested to see that the Royal Household is audited and holds a risk register.
59. However, DCMS found that the public interest in maintaining the exemption outweighed the public interest in disclosure of the requested information for the following reasons:
- It would make it less likely in the future that uninhibited advice of full facts would be offered by the Royal Household. This could affect future decision making which requires officials to be frank and to record all facts.
  - There is a public interest in the Royal Household being able to report this type of information to DCMS in the expectation that the information will remain confidential but will be subject to comprehensive audit with the result of that audit being published.
60. In reaching a decision as to the balance of public interest the Commissioner must consider the severity, extent and frequency of the prejudice which would, or would be likely to occur from disclosure of the information.
61. DCMS have provided no explanation to explain how disclosure of the information would have the negative effects described above; they have simply stated that disclosure would have these effects.
62. The Commissioner notes that the information for the most part relates to the predicted and actual expenditure of the grant-in-aid, comments about the amount of the grant-in-aid and details as to where and how the grant-in-aid has been spent. In fact it provides little more than is already available in the publicly accessible annual report. Whilst the Commissioner recognises that this information was provided with an expectation of confidentiality he does not accept that its disclosure would inhibit the free and frank provision of advice or exchange of views to any significant extent. It follows that any prejudice would be very limited. As discussed previously, there is an obligation on the Royal Household for audit purposes to provide detailed information to DCMS and the nature of the grant-in-aid requires the Royal Household to discuss planned expenditure.

63. DCMS have also argued that disclosure would inhibit the Royal Household in providing information to the government in a free and frank manner. The Commissioner does not agree that disclosure would or would be likely to have this negative effect to any significant extent. The Commissioner also finds that disclosure of the information would enhance the public understanding in relation to the funding of the Royal Household and increase transparency and accountability in the process.
64. For all these reasons the Commissioner finds that the public interest factors in favour of disclosing the withheld information is not outweighed by the public interest in maintaining the exemption.

### **Section 43 'Commercial Interests'**

65. Section 43 provides that information is exempt if its disclosure under the Act would, or would be likely to prejudice the commercial interests of any person.
66. DCMS state that the disclosure of budgeted costs contained within some of the documents would, or would be likely to affect the commercial interests of the Royal Household due to the likely prejudicial effect that publication would have on the Royal Household's present and future business dealings with contractors. If contractors know how much money the Royal Household have set aside for certain work this will prejudice the Royal Household's ability to obtain value for money as contractors are likely to bid below this and therefore risk the quality of work, or contractors will inflate their prices to the budgeted price. DCMS also consider that release of the breakdown of costs from current contractors could be harmful to the commercial interests of those contractors as it would give other companies a competitive advantage when tendering for future work.
67. In reaching a decision the Commissioner has again considered the test for 'prejudice' as considered in the Tribunal Decision *EA/2005/005 'John Connor Press Associates vs The Information Commissioner'*. The Commissioner is not persuaded that disclosure would, or would be likely to prejudice the commercial interests of either the contractors of the Royal Household. Contrary to DCMS arguments the Commissioner does not consider that disclosure would give the contractors, who have been or are currently engaged, or future competitors a commercial advantage. Whilst the information may indicate the amount the Royal Household paid for works it does not detail in full what the works entitled, the length of time taken or any other aspects of the contract. DCMS have also argued that disclosure will prejudice the Royal Household's ability to obtain value for money, or risk the quality of the work. The information makes it clear that contracts are not awarded simply on the basis of the cheapest contractor but demonstrates that many factors are taken into account during the tendering process including the workmanship, previous knowledge of the firm and the firm's knowledge of the Royal Household's requirements, without providing details of these factors. He therefore thinks it is unlikely that any contractor could use the information on the budgeted costs to form the basis for any future bids.

68. For these reasons the Commissioner finds that section 43 is not engaged as he does not find that disclosure would, or would be likely to prejudice the commercial interests of any person. Having found the exemption is not engaged, there is no need to consider the public interest test.

### **Section 31: 'Law Enforcement'**

69. Section 31(1) (a) provides that information is exempt if its disclosure under the Act would, or would be likely to prejudice the prevention or detection of crime.
70. DCMS explained that the quarterly and annual works reports and forward work plans contain details of work undertaken or planned work relating to security, for example security lights and cameras. The disclosure of this information would be likely to prejudice the prevention or detection of crime as release of the information would enable potential criminals to build up a picture of the security measures in place at any various Royal Palaces. This would reduce the ability of the Police to prevent and detect crime in these places.
71. The Commissioner has viewed the withheld information and does not find that disclosure would have this effect. The entries withheld under section 31 relate to reports and work plans which are referenced with no more than three or four words, showing, for example, that work is needed on a security measure in a specific area. The entry gives no detail as to whether this is to replace an existing measure, where in the area the measure is to be placed, or the focus of the measure. The Commissioner does not believe that disclosure of this information would enable any potential criminal to build up a picture of the security measures in place. The information does not detail all the measures in place across the property portfolio and does not distinguish if the references relate to repairs, installations or simply maintenance.
72. For these reasons the Commissioner finds that the exemption at section 31 is not engaged as he does not find that disclosure would, or would be likely to prejudice, the prevention or detection of crime. There is therefore no need to consider the public interest test.

### **Section 38: 'Health and Safety'**

73. Section 38 provides that information is exempt if its disclosure under the Act would, or would be likely to endanger the physical or mental health of any individual or endanger the safety of any individual.
74. DCMS have provided the same arguments to support the application of this exemption as those provided to support the application of section 31. No additional arguments have been made to support the application of the health and safety exemption. The Commissioner has found that section 31 is not engaged and for the same reasons finds that section 38 is also not engaged. Again there is no need to address the public interest test.

## **Regulations: 12 (5) (d) 'Confidentiality'**

75. Regulation 12(5) (d) of the EIR states that a public authority may refuse to disclose information to the extent that its disclosure would adversely effect the confidentiality of proceedings of that or any other public authority where such confidentiality is provided by law.
76. DCMS states that it considers 'proceedings' of a public authority to encompass functions which it conducts in the normal course of business and therefore the proceedings of DCMS include its functions in corresponding with the Royal Household in relation to its accommodation. DCMS state that the information provided to it by the Royal Household is given in the expectation of confidentiality which gives rise of a duty of confidence in law.
77. DCMS go onto explain that disclosure of the information would adversely affect the confidentiality of the proceedings of it. Although much of the information relating to the public cost of the accommodation of the Royal Household is already made public in the form of audited annual reports, the background information provided by the Royal Household is not made public and is provided with the expectation that it will remain confidential. DCMS state that the information in documents 36-39 has not been made public and in light of this expectation, and the absence of consent, its disclosure would adversely affect its confidentiality.
78. The Commissioner notes that these documents relate to the application by the Royal Household for an energy saving grant.
79. The EIR contains no definition of 'proceedings' however, the Commissioner considers that proceedings will include a range of investigative, regulatory or other activities carried out according to a statutory scheme. Among the other activities that the Commissioner would consider fall within the meaning of "proceedings" would be, say, the formal consideration of a planning application or a disciplinary hearing. He does not, however, believe that the term is as wide in its meaning as to include any business conducted by a public authority or its officials.
80. The Commissioner also notes that DCMS states that the Royal Household was not under any obligation to provide to it the information which is about its consideration of energy grants. The Commissioner accepts this but does not consider this point to be relevant to the engagement of regulation 12(5)(d) . Whilst the Commissioner accepts that it is one of DCMS's functions to correspond with the Royal Household on matters relating to accommodation, correspondence itself would not constitute a 'proceeding' under regulation 12(5)(d).
81. The Commissioner finds that regulation 12(5)(d) is not engaged as the information held does not fall within the definition of a 'proceeding' of the public authority.

**Regulation 12(5) (f)**

82. Regulation 12(5) (f) provides that a public authority may refuse to disclose information if its disclosure would adversely affect the interest 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 these Regulations to disclose it; and (iii) has not consented to its disclosure.
83. In order to decide whether the exception has been correctly applied the Commissioner must first consider if the information has been supplied to DCMS by the Royal Household. The first three documents being withheld under this exception were sent from DCMS to the Royal Household, however, DCMS argue that these documents reflect the information supplied to it from the Royal Household in the fourth document (document 39).
84. Having viewed these documents the Commissioner does not agree. There is no reference in documents 36, 37 and 38 to the information supplied to DCMS in document 39. The Commissioner does not consider that for the first three documents the exception at regulation 12(5) (f) is engaged.
85. Document 39 was sent to DCMS from the Royal Household and so can be said to be information 'provided' to the public authority. The Commissioner therefore accepts that 12(5) (f) is applicable.
86. 12(5) (f) (i) states that the information must have been provided where a person was not under, and could not have been under any legal obligation to supply it to the public authority. DCMS have explained that it does not consider that the Royal Household was under any obligation to provide the information in document 39 to the department. The information is about the Royal Household's consideration of energy grants. DCMS state that although the terms on which the Grant in Aid is provided for the Royal Accommodation contain an obligation on the Royal Household to allow access to documents relating to expenditure of the Grant in Aid this obligation does not constitute a legal obligation. The Commissioner accepts that the information in document 39 was provided voluntarily to DCMS and was not provided under any obligation. 12(5) (f) (i) therefore applies.
87. 12(5) (f) (ii) states that information was not supplied in circumstances such that that or any other public authority is entitled to disclose it. DCMS states that because the information was provided to it with an expectation that it would remain confidential neither it nor any other public authority would be entitled to disclose it. The Commissioner accepts that, other than under the EIR, DCMS have no entitlement to disclose this information. 12(5) (f) (iii) states that for the exception to be engaged the person must not have consented to disclosure. DCMS confirmed that Royal Household has not consented to disclosure.
88. The Commissioner is satisfied that the information contained in document 39 falls within the description of information under regulation 12(5) (f) (i), (ii) and (iii).

However, to engage the exemption DCMS must demonstrate that disclosure would adversely affect the interests of the person who provided the information.

89. DCMS argue that disclosure would adversely affect the interests of the Royal Household as it would be likely to inhibit the free and frank exchange of information between the Royal Household and DCMS in relation to the Royal accommodation. This will adversely affect the interest of the Royal Household as it will be less likely to receive the benefit of full and frank advice and guidance in relation to the public funding of the Royal accommodation and, in particular, in relation to energy efficiency schemes.
90. The Commissioner had regard to the comments made in the decision of the Information Tribunal (“the Tribunal”), *Office of Government Commerce v Information Commissioner EA/2006/0068 and 0080*. The Commissioner found the Tribunal’s comments about the wording of the prejudice test helpful in considering the interpretation of the word “would” in the adverse effect test as follows: “The Tribunal has considered the meaning and application of the prejudice test, which is common to a number of qualified exemptions under FOIA, in several decisions e.g. *Hogan and Oxford City Council v Information Commissioner and John Connor Press Associates Limited v Information Commissioner*. These cases have found the term “would prejudice” means that it is “more probable than not” that there is prejudice to the specified interest set out in the exemption. The other part of the prejudice test, “would be likely to”, has been found by the Tribunal to mean something less than more probable than not but where “there is a real and significant risk of prejudice.” (Hogan at paragraph 35). This finding has drawn support from the decision in *R (on the application of Lord) v Secretary of State for the Home Office [2003] EWHC 2073 (Admin)*”.
91. The Commissioner considers that the ‘adverse’ effect in this instance is linked to the fact that the information has been provided to DCMS voluntarily. DCMS have not claimed that disclosure of this document would directly ‘adversely’ affect the interests of the Royal Household but that the adverse affect would be indirect in that it would discourage the Royal Household from seeking such advice in the future, and damage the interests of DCMS in having open and candid exchanges with the Royal Household.
92. The Commissioner also considers that the Royal Household is unlikely to be discouraged from seeking future advice solely on the basis of this disclosure. It is in the interest of the Royal Household to ensure that when necessary it has the advice it requires to make decisions on applications for these types of schemes. The Commissioner considers that is unlikely that disclosure of the document in question would inhibit the Royal Household from asking necessary questions of the department which may result in a saving to the Grant in Aid or additional funds for the Royal Household.
93. For these reasons the Commissioner finds that exception 12(5) (f) is not engaged.



## The Decision

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94. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- i. The Application of section 21 to four documents within the withheld information.
95. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- i. The refusal of the request was in breach of regulation 12 of the EIR
  - ii. By failing to disclose document 35 and 39a until 16 June 2008 DCMS breached the requirements of regulation 5(2)
  - iii. DCMS incorrectly applied regulations 12(5) (d) and 12(5) (f) to documents 36, 37, 38 and 39 and therefore breached regulation 5
  - iv. DCMS incorrectly applied sections 31(1) (a), 36(2) (b) ,37(1)(a), 38(1) (a) and (b) and 43(2) of the Act.

## Steps Required

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96. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- i. Disclosure the information withheld under sections 31, 36, 37, 38 and 43 and regulations 12(5) (d) and 12(5) (f).
97. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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98. 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

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99. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://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 15<sup>h</sup> day of December 2009**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex

### Information Accessible by other Means

**Section 21(1)** provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

**Section 21(2)** provides that –

“For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

**Section 21(3)** provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”

### Law enforcement.

**Section 31(1)** provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or

- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”

**Section 31(2)** provides that –

“The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.”

**Section 31(3)** provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1).”

### **Prejudice to effective conduct of public affairs.**

**Section 36(1)** provides that –

“This section applies to-

- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.

**Section 36(2)** provides that –

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
  - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
  - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
  - (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
  - (i) the free and frank provision of advice, or
  - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

**Section 36(3)** provides that –

“The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).”

**Section 36(4)** provides that –

“In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable opinion of a qualified person".

**Section 36(5)** provides that –

“In subsections (2) and (3) "qualified person"-

- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
- (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,
- (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
- (d) in relation to information held by the House of Commons, means the Speaker of that House,
- (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,
- (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
- (g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,
- (h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means-
  - (i) the public authority, or

- (ii) any officer or employee of the authority authorised by the Assembly First Secretary,
- (i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,
- (j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,
- (k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,
- (l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means-
  - (i) the public authority, or
  - (ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,
- (m) in relation to information held by the Greater London Authority, means the Mayor of London,
- (n) in relation to information held by a functional body within the meaning of the Greater London Authority Act 1999, means the chairman of that functional body, and
- (o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means-
  - (i) a Minister of the Crown,
  - (ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or
  - (iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown."

**Section 36(6)** provides that –

“Any authorisation for the purposes of this section-

- (a) may relate to a specified person or to persons falling within a specified class,
- (b) may be general or limited to particular classes of case, and
- (c) may be granted subject to conditions.”

**Section 36(7)** provides that –

A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion-

- (a) disclosure of information held by either House of Parliament, or
- (b) compliance with section 1(1)(a) by either House, would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.

### **Communications with Her Majesty.**

**Section 37(1)** provides that –

“Information is exempt information if it relates to-

- (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or

- (b) the conferring by the Crown of any honour or dignity.”

**Section 37(2)** provides that –

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).”

### **Health and safety.**

**Section 38(1)** provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.”

**Section 38(2)** provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).”

### **Commercial interests.**

**Section 43(1)** provides that –

“Information is exempt information if it constitutes a trade secret.”

**Section 43(2)** provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”

**Section 43(3)** provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).”

## **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(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.

**Regulation 12(2)** A public authority shall apply a presumption in favour of disclosure.

**Regulation 12(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.

**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;
- (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.

**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 –

- (a) international relations, defence, national security or public safety;
- (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;
- (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.

**Regulation 12 (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).

**Regulation 12(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.

**Regulation 12(8)** For the purposes of paragraph (4)(e), internal communications includes communications between government departments.

**Regulation 12(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).

**Regulation 12(10)** For the purpose of paragraphs (5)(b), (d) and (f), references to a public authority shall include references to a Scottish public authority.

**Regulation 12(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 - 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 14(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.

**Regulation 14(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.