

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

### **Decision Notice**

**Date: 31 March 2010**

**Public Authority:** The Environment Agency  
**Address:** Block One  
Government Buildings  
Burghill Road  
Westbury on Trym  
Bristol  
BS10 6BF

### **Summary**

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The complainant requested information in relation to non-prosecution concerning illegal landfill gas emissions at Welbeck landfill site. The Environment Agency refused to disclose this information on the basis that regulation 12(4)(e) of the EIR applied, and the public interest in maintaining the exception outweighed the public interest in disclosure. After investigating the case the Commissioner decided that both regulations 12(4)(e) and 12(5)(b) were engaged, and that the public interest in maintaining the exceptions outweighed the public interest in disclosing the information. Therefore he has decided that the Environment Agency was correct to withhold the information in question.

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

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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

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2. Welbeck landfill site is a former gravel pit to the east of Wakefield which is now, and was at the time of the request, operating as a landfill site.
3. The landfill operations at Welbeck are managed by Welbeck Waste Management Limited, a subsidiary of Waste Recycling Group Ltd.
4. Prior to the request being made, the Environment Agency had been involved in assessing the operator's compliance with two different permit conditions with a view to prosecution if a breach could be proved.

## The Request

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5. The complainant wrote to the Environment Agency on 23 July 2008:

*'[Name of complainant] were most disappointed not to receive a full explanation for the non prosecution of Welbeck Waste Management Ltd in relation to the permit conditions over illegal emissions of land fill gasses at the Welbeck Landfill Site.*

*Your officers informed me that at a meeting with Normanton Town Council that you have been in discussions with your legal team over this issue and therefore their must be written documentation/letters/official paperwork as to why no prosecution has taken place [sic].*

*We are confident that this documentation should be made public....'*

6. The Environment Agency (the Agency) responded on 18 August 2008 providing some information to the complainant and relying on the exception under regulation 12(4)(e) (disclosure of internal communications) to withhold the remainder.
7. The complainant requested a review of this decision on 27 August 2008. The Agency upheld the decision to withhold information in its internal review correspondence of 21 October 2008.

## The Investigation

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### Scope of the case

8. On 27 October 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner notes that the Agency disclosed some information to the complainant on 18 August 2008. This comprised *'copies of briefing notes ... plus additional information subsequently supplied... that we produced to the National Audit Office'*. The Agency explained to the complainant that *'sections of the briefing notes which do not relate to your request have been blanked out'*.
10. In his request for internal review, the complainant told the Agency that *'the actual detail that we requested appears to have been deleted from the pages of documentation we have received'*.
11. During the course of his investigation, the Agency told the Commissioner that the redacted information was not relevant to his request.
12. Having viewed an un-redacted version of the disclosed information, it is the Commissioner's view that the version that was provided to the complainant was correctly provided in that the redacted information does not fall within the scope of the request. He has not therefore considered this information during his investigation.

### Chronology

13. Unfortunately, due to a backlog of complaints at the Commissioner's office about compliance with the Act, there was a delay of almost twelve months before his investigation into this complaint got underway. The Commissioner contacted the Agency on 27 October 2009 asking it to clarify its citing of the exception provided by regulation 12(4)(e). He also asked whether the Agency wished to make any further submissions in relation to its consideration of the public interest test.
14. The Agency provided a comprehensive response on 2 December 2009. In its response, the Agency told the Commissioner that although it considered the exception at regulation 12(5)(b) was relevant it had not argued it *'given that the documentation containing the disputed information also fell within the exception under 12(4)(e)'*. It confirmed it would rely on regulation 12(5)(b) in the alternative if the Commissioner did not find the exception at 12(4)(e) engaged.

15. Where a public authority has not referred to a particular exemption or exception when refusing a request for information, the Commissioner may exercise his discretion whether, in the circumstances of the case, it is appropriate to take the exemption or exception into account if it is raised during the course of his investigation.
16. In this case, having given due regard to the topic of the information, its profile, its sensitivity and the impact of release, the Commissioner responded on 18 December 2009, inviting the Agency to provide him with its arguments in respect of 12(5)(b).
17. During the course of the Commissioner's investigation the Agency provided the complainant with a written explanation of why no prosecution took place at the landfill site. The complainant advised the Commissioner on 21 January 2010 that this did not satisfy his request for information.

## Analysis

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### Is the information environmental?

18. Regulation 2(1) of the EIR defines 'environmental information' as having the same meaning as in Article 2(1) of Council Directive 2003/4/EC:

*'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)'.*

19. In the Commissioner's view, the use of the word 'on' indicates a wide application and will extend to any information about, concerning, or relating to the various definitions of environmental information.
20. In considering regulation 2(1)(b) in relation to this case, the Commissioner considers the term 'emissions' indicates the direct or indirect, accidental or deliberate, release of substances, heat, radiation or noise into the air, water or land.
21. In relation to regulation 2(1)(c), the examples in the EIR of 'measures (including administrative measures)' are policies, legislation, plans, programmes, and environmental agreements. Administrative measures are specifically mentioned, but the interpretation of measures is not restricted to those of an administrative nature. In the Commissioner's view, 'measures' will include regulatory, economic and voluntary tools, such as Acts of Parliament, local by-laws, taxes, prosecutions, charges, and voluntary agreements.
22. In reaching a decision as to whether information is environmental or not, rather than base his decision on an assessment of the request, the Commissioner considers it appropriate to consider the actual information that has been identified as held by the public authority.
23. In this case, the Agency has told the complainant that '*the withheld information constitutes legal advice from qualified legal advisors, requested by Agency staff on the matter of the regulation and possible prosecution of Welbeck Landfill and includes documents referring to such advice*'.
24. The underlying issue giving rise to the matter of the regulation and possible prosecution in this case concerns gas emissions. The Commissioner is satisfied, having viewed the withheld information, that the withheld information in this case is environmental information as

he considers it concerns both a factor and a measure affecting or likely to affect the state of the elements of the environment.

## Exceptions

### Regulation 12(4)(e) – Internal Communications

25. Regulation 12(4) states:

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

*(e) the request involves the disclosure of internal communications'.*

26. In this case, the Agency cited the exception at regulation 12(4)(e) in relation to all the withheld material. The Agency told the complainant that it is withholding the information on the grounds that the request involves the disclosure of *'internal communications between Agency staff and their legal advisors'*.

*What constitutes an internal communication?*

27. Neither the EIR, nor the directive from which they are derived, provide a definition of what constitutes an internal communication.

28. In determining firstly what constitutes a communication, the Commissioner notes the view put forward by Coppell in *'Information Rights'* (2007) that where information is recorded simply to be used by its author, for example as an aide memoire, it will not constitute a communication. However, where the record is intended to be communicated to others or to be placed on file, where it may be consulted by others, the information will constitute a communication.

29. In this case, the Agency has clarified that it is relying on the exception in relation both to *'internal legal advice and to advice from a barrister contracted to advise the Agency'*.

30. The Commissioner has first addressed the issue of whether or not the internal exchanges between members of Agency staff engage the exception. He has then gone on to address the question of whether or not the exception is engaged in relation to the communications between the Agency and the barrister.

Exchanges between Agency staff

31. In the Commissioner's view, communications within any single public authority will be internal for the purposes of regulation 12(4)(e).

32. Having viewed the withheld information, the Commissioner is satisfied that some of it is communications between staff within the Agency. He is therefore satisfied, in this case, that this information constitutes internal communications. Accordingly he finds the exception engaged in respect of this information.

The communications with the external third party

33. The Commissioner has next considered the withheld information relating to *'advice from a barrister contracted to advise the Agency'*.

34. The Commissioner interprets regulation 12(4)(e) restrictively, to include only communications passing between members of staff in a public authority to constitute internal communications. In his view, communications between a public authority and a third party will not constitute internal communications except in very limited circumstances.

35. The Agency has argued:

*'there is no question that when a barrister is instructed by the EA's in house solicitor to give advice on the law and its application to the work of the EA, then that barrister is working under contract to the EA and advice given, which is subject to legal professional privilege, is for the EA only. The barrister....is in effect part of the legal team...'*

36. In support of its argument that it considers the barrister's advice to be 'internal communications' as the barrister was 'contracted to provide legal advice', the Agency cited the decision of the Information Tribunal in the case of *The Department of Transport v Information Commissioner* (EA/2008/0052).

37. In that case, the complainant had requested a copy of the first draft of the Sir Rod Eddington Transport Study. The Tribunal concluded at paragraph 95:

*'that Sir Rod was firmly embedded within the civil service and it is accurate to describe him as "the head of a team of civil servants"'*.

38. In considering this matter, the Commissioner has also referred to the case of *South Gloucestershire Council v Information Commissioner* (EA/2009/0032) which addressed the issue of internal communications. In that case, the Tribunal concluded that the engagement of the consultants *'was made in the ordinary way by means of contracts for the provision of expert services to the Council'*.



39. The Commissioner has taken into account the fact that one of the responsibilities the Agency lists on its website is that of *'taking action against those who don't take their environmental responsibilities seriously'*. He therefore considers it reasonable to conclude that the Agency may require legal advice in order to carry out its role and that such advice may include advice sought externally from a barrister.
40. The Commissioner accepts in this case that the barrister was instructed to provide advice to the Agency, and that this advice was sought in relation to its consideration of whether or not to prosecute. However, he does not consider the Agency has provided sufficient evidence that the barrister was 'embedded' for him to be satisfied that the communications with the barrister constitute internal communications for the purposes of the regulation. This conclusion is supported by the Tribunal's finding in the case of *South Gloucestershire Council v Information Commissioner* (EA/2009/0032).
41. In reaching this conclusion, it follows that the Commissioner does not find the exception engaged in respect of this information.

### **The public interest test**

42. Since regulation 12(4)(e) is a class based exemption there is no need for a public authority to demonstrate that disclosure will cause any prejudice. However, it is a qualified exception and therefore subject to a public interest test, as set out in regulation 12(1)(b) of the EIR, which states that a public authority may refuse to disclose requested environmental information *'if in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information'*. The Commissioner has therefore gone on to consider the public interest test in relation to the withheld information which he finds engages the exception at regulation 12(4)(e).

#### *Public interest arguments in favour of disclosing the requested information*

43. Regulation 12(2) states that *'A public authority shall apply a presumption in favour of disclosure'*. The Agency acknowledged this, telling the complainant that *'there is the general presumption that public authorities will disclose requested information'*.
44. It also told him that:  
  
*'It is clearly in the public interest that the public is fully informed of potential environmental issues arising from the operation of landfill sites'*.



45. Further, the Agency acknowledged that it is in the public interest '*to release information about EA [Environment Agency] regulation and enforcement of permits and permit conditions, in the interests both of transparency and of accountability in spending public money*'.
46. The Commissioner takes the view that there is a strong inherent public interest in releasing environmental information. It has long been recognised that in order to protect the environment it is important for people to have access to environmental information, to be able to participate in environmental decision making and have access to justice. In the words of the current European Directive (2003/4/EC):
- 'Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.'*
47. In addition, in relation to the site at Welbeck, the Agency has told the Commissioner that '*public debate around this site is considerable*'.

*Public interest arguments in favour of maintaining the exception*

48. The Commissioner finds that it is relevant to give weight to LPP factors under 12(4)(e). The basis of the exception is to protect a safe space for internal deliberation and protect the provision of frank and candid advice. In the Commissioner's view it is relevant to take into account the characteristics of the information when considering the weight to be given to protecting the internal communications process in question.
49. In favour of withholding the information, the Agency has argued that the internal communications were subject to legal professional privilege (LPP), which is an important principle that should be respected:

*'The main public interest factor in favour of withholding the information is that the information is covered by legal professional privilege (LPP) between Agency staff and their legal advisers. Such privilege exists in order to protect the unique relationship of trust between lawyer and client.'*

*'In considering your request, we are guided by the decisions of the Information Commissioner and Information Tribunal, which emphasise that care must be taken to ensure that freedom of information principles do not undermine well established common law rights, such as LPP.'*

50. Legal professional privilege (LPP) is not defined by the Act or in any other legislation. It is a common law concept shaped by the courts over time. It is intended to provide confidentiality between professional legal advisers and clients to ensure openness between them and safeguard access to fully informed, realistic, candid and frank legal advice, including potential weaknesses and counter arguments. LPP belongs to the client and material protected by LPP cannot ordinarily be revealed without the consent of the client, even to a court.
51. For the purposes of LPP, it makes no difference whether the legal adviser is an external lawyer or a professional in-house lawyer employed by the public authority itself. This is in accordance with the Information Tribunal in the case of *Calland and the Financial Services Authority* [EA/2007/0136] which confirmed that in-house legal advice and communications between in-house lawyers and external solicitors or barristers attract legal professional privilege.
52. There are two categories of LPP: litigation privilege and legal advice privilege. Litigation privilege applies when litigation (legal action before a court) is underway or anticipated. Legal advice privilege may apply whether or not there is any litigation in prospect.
53. The Commissioner recognises that there is a strong public interest in enabling persons to obtain appropriate legal advice. He considers it important that people, whether public authorities or members of the public, can have frank communications with their legal advisers with a high degree of certainty that the exchanges are not liable to be disclosed without consent.
54. The Agency has also told the complainant:

*'There is also a significant risk that, by making public details of the Agency's enforcement tactics, those people who seek to breach regulations and operate outside the requirements of permits and consents, would benefit from the knowledge, to the detriment of the environment'.*

*'[The withheld information] also contained information on how we gather evidence and construct our cases. It was decided that it was not in the public interest to release this information as if it became public knowledge operators would have inside knowledge on how we collect and collate evidence and make decisions on prosecution and this could jeopardise future investigations and our protection of the environment'.* The Commissioner, however, affords this argument little weight in the context of internal communications.

55. The Agency has also argued that *'such internal exchanges should not be fettered by the fear that either the facts or the advice will be disclosed to the public'*. The Commissioner does not attach any significant weight to such generic "chilling effect" arguments.
56. In support of its argument to withhold the requested information the Agency stated it has provided the complaint with its briefings to the National Audit Office *'which include most of the information you have requested and give you considerable understanding of the relevant issues'*. However, the Commissioner considers that this release actually reduces the public interest in disclosure as it would not add much to the information already in the public domain. The Commissioner does, however, also acknowledge that there will always be a public interest disclosing additional information in order to reveal the 'full picture' about an issue.

#### *Balance of the public interest arguments*

57. In considering the opposing factors in this case, the Commissioner is mindful of the overriding presumption in favour of disclosure. Even in cases where an exception applies, the information must still be disclosed unless *'in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information'*. The threshold to justify non-disclosure is consequently high.
58. He has also taken into account the Information Tribunal's comments in *Bellamy v the Information Commissioner and the DTI* [EA/2005/0023]:
- 'The fact there is already an inbuilt weight in the LPP exemption will make it more difficult to show the balance lies in favour of disclosure but that does not mean that the factors in favour of disclosure need to be exceptional, just as or more weighty than those in favour of maintaining the exemption.'*
59. On balance, whilst the Commissioner considers there are strong public interest arguments favouring the release of the information, these are outweighed by the significant public interest in protecting legal advice and therefore the interest subject to regulation 12(4)(e).

#### **Regulation 12(5)(b) – Course of justice**

60. As the Commissioner has not found the exception at regulation 12(4)(e) engaged in relation to some of the withheld information, he has next considered whether or not the Agency was correct to cite 12(5)(b) in relation to this information.

61. Under this regulation, a public authority can refuse to disclose information to the extent that its disclosure would adversely affect 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. In the case of *Kirkaldie v ICO & Thanet District Council* [EA/2006/0001] the Tribunal stated that:

*'The purpose of this exception is reasonably clear. It exists in part to ensure that there should be no disruption to the administration of justice, including the operation of the courts and no prejudice to the right of individuals or organisations to a fair trial. In order to achieve this it covers legal professional privilege, particularly where a public authority is or is likely to be involved in litigation.'*

62. The Commissioner has also noted the views of the Tribunal in *Rudd v ICO & The Vederers of the New Forest* [EA/2008/0020], which stated that:

*'...the Regulations refer to 'the course of justice' and not 'a course of justice'. The Tribunal is satisfied that this denotes a more generic concept somewhat akin to 'the smooth running of the wheels of justice'...Legal professional privilege has long been an important cog in the legal system. The ability of both parties to obtain frank and comprehensive advice (without showing the strengths or weaknesses of their situation to others) to help them decide whether to litigate, or whether to settle; and when to leave well alone, has long been recognized as an integral part of our adversarial system.'*

63. In this case, the Agency has said that release of the withheld information would adversely affect the course of justice. It has argued that the legal advice remains live and relevant with respect to the Agency's ability to carry out enforcement not only at the site in question but also at other sites.
64. The Agency has told the Commissioner that the barrister's advice was sought for the dominant purpose of litigation: in this case, consideration of prosecuting the landfill operator for breach of condition. However, it also considers that advice privilege is relevant in connection with the withheld information that relates to enforcement conditions generally.
65. After considering the arguments presented to him by the Agency, the Commissioner is satisfied that the information is covered by LPP and that disclosure of the withheld information would more likely than not adversely affect the course of justice. Therefore he is of the view that regulation 12(5)(b) is engaged.

66. As regulation 12(5)(b) is subject to a public interest test the Commissioner has gone on to consider whether the public interest in maintaining the exception outweighs the public interest in disclosure.

*Public interest arguments in favour of disclosing the requested information*

67. The Agency has put forward similar arguments in relation to this exception to those it put forward in relation to the exception at regulation 12(4)(e).

*Public interest arguments in favour of maintaining the exception*

68. The Agency has argued:

*'the particular issue raised by the legal advice remains "live" which renders it particularly sensitive'.*

69. In this respect, the Commissioner accepts that the withheld information constitutes *'legal advice from qualified legal advisers, requested by Agency staff on the matter of the regulation and possible prosecution of Welbeck Landfill'* and necessarily discusses the strength of the evidence and the likelihood of a successful prosecution. He accepts the Agency's argument that the advice is 'live' on the basis that it is relevant to enforcement action at this and other sites.

70. In relation to some of the information withheld under this regulation the Agency has argued that, without context, disclosure of the information *'would serve to cause confusion were it released to the public'*. The Commissioner does not accept this argument as he considers there is nothing to prevent a public authority providing an explanation to accompany information in order to put it in context.

71. With respect to the fact that, in its view, disclosure of the withheld information *'would substantially hamper the ability of the Agency to regulate and ensure the protection of and reduction of harm to the environment'*, it told the Commissioner:

*'what is clear though is that the public should have a clear understanding of the regulatory situation and what is being done about it'.*

72. In this respect, the Commissioner notes that the Agency provided the complainant with an explanation of why no prosecution took place, together with details of the steps it had taken to address the situation.

*'On review, the relevant section of the Landfill Gas Management Plan did not contain wording that was sufficiently prescriptive for us to be*

*able to prove a breach beyond reasonable doubt. In view of this, taking into account the evidence we had, we decided that we did not have a realistic prospect of securing a successful prosecution, in the Criminal Court, for failing to comply with the Management Plan...Whilst we were not able to take a prosecution in this case, we have secured the necessary improvements. There is now a state of the art gas utilisation facility and an extensive gas collection system. This has resulted in a significant increase in the amount of landfill gas collected and treated'.*

73. While he acknowledges the provision of this explanation, the Commissioner is mindful of the fact that the relevant consideration is whether release of the particular information in question further informs the public.

### **Balance of the public interest arguments**

74. As described above, the Commissioner takes the view that there is a strong inherent public interest in releasing environmental information. However, he has also taken into account the case of *Bellamy v the Information Commissioner and the DTI* [EA/2005/0023] in which the Tribunal, on the subject of LPP, said:

*'...there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest...it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case...'*

75. The Commissioner considers that there is a strong public interest in disclosing information that allows scrutiny of a public authority's decisions. In his view, this helps create a degree of accountability and enhances transparency of the way in which those decisions were arrived at. He considers that this is especially the case where the public authority's decisions have a direct effect on the environment.
76. However, the Commissioner also accepts that the concept of legal professional privilege is based on the need to ensure that clients receive confidential and candid advice from their legal advisers after having full and frank disclosures. This is a fundamental principle in the legal system and there is a strong public interest in maintaining it.
77. In reaching his decision in this matter, the Commissioner is mindful that he must consider the circumstances at the time of the request. In this case the Commissioner has noted that, at the time of the request, the information related to a live issue.



78. On balance, having considered the opposing factors in this case, the Commissioner considers that the public interest arguments favouring the release of the information are outweighed by the significant public interest in protecting legal advice and therefore the interest subject to regulation 12(5)(b). In reaching this decision, the Commissioner has accorded significant weight beyond the general weight applied to protecting legal advice as he considers it recent and current advice at the time of the request.

### **Procedural Requirements**

79. Regulation 14(3) of the EIR sets out what a public authority must do when it refuses a request for environmental information:

‘The refusal shall specify the reasons not to disclose the information requested, including –

(a) any exception relied on under the regulations 12(4), 12(5) and 13...’

80. Although the Agency provided the complainant with a refusal notice citing regulation 12(4)(e) as a basis upon which to refuse to disclose the requested information, it did not cite regulation 12(5)(b) which it later relied on. This constitutes a breach of regulation 14(3).

### **The Decision**

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81. The Commissioner’s decision is that the public authority did not deal with the request for information in accordance with the Act.
- it breached regulation 14(3) for failing to specify the regulation at 12(5)(b) in the refusal notice.

### **Steps Required**

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82. The Commissioner requires no steps to be taken.



## Right of Appeal

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83. Either party has the right to appeal against this Decision Notice to the First-Tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
Arnhem House  
31 Waterloo Way  
Leicester  
LE1 8DJ

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 31<sup>st</sup> day of March 2010**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

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

## Legal Annex

Regulation 12(4) states

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) states

*'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 these Regulations to disclose it; and*
  - (iii) has not consented to its disclosure; or*
- (g) the protection of the environment to which the information relates'.*