

Environmental Information Regulations 2004

Decision Notice

Date: 26 April 2010

Public Authority: Information Commissioner
Address: The Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Note: The complaint in this case was made against the Information Commissioner. Since the Commissioner is himself a public authority for the purposes of the Freedom of Information Act 2000, he is unusually under a duty to make a formal determination of a complaint made against himself. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice.

Summary

The complainant made a request to the Information Commissioner for the information that had been withheld from him in respect of a complaint the Commissioner was investigating. The Commissioner handled the request under Freedom of Information Act 2000 however failed to recognise that the requested information constituted environmental information under the Environmental Information Regulations 2004. Therefore the complainant should have been responded to under this legislation. The Commissioner withheld the requested information from the complainant and this Notice upholds that decision.

The Commissioner's Role

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

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

Background

2. The complainant made a request to Exeter City Council (the "Council"). The Council withheld the requested information. Following completion of the Council's internal review procedures, the complainant made a complaint to the Commissioner. It is the Commissioner's standard procedure to ask to be provided with a copy of the information that has been withheld from complainants to assist him in reaching a decision. The Council provided the Commissioner with a copy of the withheld information.
3. Whilst the complaint against the Council was under investigation, the complainant made a request to the Commissioner for a copy of the information that had been withheld from him.
4. The complaint against the Council has since been concluded by way of a Decision Notice under reference FS50202965. It is available online at the following link:

http://www.ico.gov.uk/upload/documents/decisionnotices/2010/fs_50202965.pdf
5. The complainant has a disability requiring reasonable adjustments to be made to avoid him having to communicate with the Commissioner in writing. Therefore, much of the communication between the Commissioner and the complainant in relation to this case has taken place by telephone, with the Commissioner providing the complainant written confirmation for his records.
6. The complainant made his request for information to the Commissioner by telephone. Verbal requests are not valid for the purposes of the Act, however given the Commissioner's need to make reasonable adjustments for the complainant, he has dealt with this matter separately. This Notice therefore only deals with the complainant's request for environmental information under the EIR, as verbal requests constitute valid requests for the purposes of that legislation.

The Request

7. On 7 July 2009 the complainant contacted the Commissioner by telephone and requested copies of correspondence with Exeter City Council in relation to his complaint. The Commissioner transcribed the request. The Commissioner treated this communication as a request for information.
8. The Commissioner responded in writing on 28 July 2009. He explained that the request had been dealt with under both the Act and the Data Protection Act 1998 (the "DPA"). The Commissioner provided the complainant with all of the information that constituted his personal data under the DPA, however withheld the information that did not on the grounds that section 44 of the Act applied, by virtue of section 59(1) of the DPA.
9. On 28 July 2009 the complainant requested an internal review of the decision to withhold information from him.
10. The Commissioner wrote to the complainant on 1 September 2009 with the outcome of the internal review. He confirmed that it was not appropriate to provide the complainant with the requested information.

The Investigation

Scope of the case

11. On 13 September 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to reconsider his decision to refuse to provide the requested information in full.
12. The complainant contacted the Commissioner on 4, 5 and 6 November 2009 to make further arguments in support of his position. The Commissioner telephoned the complainant, at the complainant's request, on 9 November 2009 to enable the complainant to submit further arguments in support of his case.
13. The request made by the complainant is valid only for the purposes of the EIR and therefore this Notice applies to information which constitutes environmental information within the meaning of the EIR only. The Decision Notice in case FS50202965 concluded that parts of

the Housing Quality Network (HQN) mock inspection report constitute environmental information. The Commissioner has therefore considered whether it would be appropriate for him to provide this information to the complainant under the EIR.

14. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of the EIR.

Chronology

15. Having reviewed the nature of the request and the correspondence supplied by the complainant, the Commissioner considered the matter of the complaint internally. He decided that it was not necessary to seek further information or arguments before drawing the complaint to a close, by way of this Decision Notice.

Analysis

16. The relevant sections of the legislation cited in this Decision Notice are set out in the legal annex to this Notice.

Exceptions

Section 59(1) of the Data Protection Act 1998

17. The Commissioner applied section 44(1)(a) of the Act, by virtue of section 59(1) of the DPA when originally refusing the complainant's request.
18. Section 59(1) of the DPA establishes that it is a criminal offence for the Commissioner to disclose information obtained by or provided to him for the purposes of investigating complaints under the legislation he regulates, unless the disclosure is made with lawful authority. Section 59(2) sets out the circumstances in which disclosure may be made with lawful authority.
19. Most regulators' statutory prohibitions include exceptions that allow information to be disclosed in certain circumstances. The issue as to whether or not the Commissioner has the power to challenge a public authority's decision not to apply an exception to the prohibition was considered in the case of *British Entertainment Cinematograph Theatre Union ("BECTU") v the Information Commissioner and Ofcom* (EA/2009/0067). In that case, the Tribunal, at paragraph 67, found that "the Information Tribunal, and for that matter the Information

Commissioner, does have the power to entertain a public law challenge... the test we should apply is that set out in Hoyte [the case of John Hoyte v Information Commissioner and the Civil Aviation Authority (EA/2007/0101)], namely Wednesbury unreasonableness, irrationality or perversity”.

20. Clearly, in this case, the Commissioner is able to apply an exception to the statutory prohibition as he is the public authority in question. However, he cites the BECTU decision as authority for his view that there would be a high standard of proof required for a public law challenge on the grounds of Wednesbury irrationality ie that it was unreasonable or irrational for the public authority not to disclose the requested information into the public domain. He further notes the implication of the Tribunal's decision in the BECTU case, that the statutory prohibitions allow regulators significant control over the use and disclosure of the relevant information.
21. When refusing the request, the Commissioner did not consider there was lawful authority for him to provide the requested information to the complainant. He therefore considered that section 59(1) of the DPA acted as a statutory prohibition to disclosure for the purposes of section 44(1)(a).
22. During the course of the investigation, the complainant asked the Commissioner to consider whether there were any exceptions to his duty to keep the requested information confidential. The complainant did not make any specific or relevant arguments of his own to argue why there the Commissioner had lawful authority to disclose the requested information.
23. The Commissioner has considered his role as the independent regulator of the EIR. He does not act on behalf of the complainant or the public authority in any given case. Therefore, it is not for the Commissioner to generate arguments to strengthen the complainant's case for disclosure.
24. In view of the above, the Commissioner does not consider that the complainant has presented any evidence or arguments that his position on section 59(1) was irrational. The Commissioner cannot see any basis to entertain a public law challenge to his position on section 59(1). The Commissioner's position on the application of the statutory bar was therefore correct.

Exceptions under the EIR

25. However, section 59(1) of the DPA alone is not a bar to disclosure under the EIR. This is because regulation 5(6) provides that “any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.”
26. Instead, the Commissioner considers that regulation 12(5)(d) of the EIR applies to the information requested by the complainant.
27. Regulation 12(5) provides –

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

(d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law.”
28. The Commissioner considers section 59(1) of the DPA to be integral to his decision to apply regulation 12(5)(d) to the requested information.
29. The Commissioner interprets “proceedings” as possessing a certain level of formality, for example legal proceedings or the action of a public authority exercising its statutory powers. In this instance, the proceedings in question are the Commissioner’s powers under Part 4 of the Act, which are incorporated into the EIR, as explained at paragraph 1 of this Notice.
30. The Commissioner considers that the information in question was provided to him in confidence, for the purpose of determining whether the Council had correctly handled the complainant’s request for information. In determining whether the Council would consider the information to be confidential, the Commissioner has paid particular regard to the timing of the complainant’s request. At the time of the request, the complaint about the Council was ongoing. It was therefore open to the Commissioner to make an order for disclosure in relation to that case; the complainant would then have obtained the information he seeks. It would subvert the appeals process if the Commissioner were to disclose withheld information to requesters, before he had determined whether or not the public authority in question should disclose it.
31. In view of the above, the Commissioner considers that the investigation of a complaint made under the legislation he regulates constitutes proceedings, regarding which information supplied to or

obtained by him should remain confidential.

32. In order for regulation 12(5)(d) to apply, the confidentiality identified must be provided by law. This can mean by statute or by the common law. The Commissioner has described above how disclosure of information obtained by or provided to him for the purposes of an investigation constitutes a criminal offence unless that disclosure is made with lawful authority. He has described above that he considers section 59(1) of the DPA to demonstrate that the confidentiality of proceedings in this instance is provided by statute.
33. In order for the exception to be engaged, the Commissioner must demonstrate that the identified confidential proceedings would be adversely affected by disclosure of the information. In the case of *Archer v Information Commissioner and Salisbury District Council* (EA/2006/0037) the Tribunal explained that the threshold set by the “would adversely affect” test to justify non-disclosure was a high one. In the case of *Hogan v Oxford City Council and the Information Commissioner* (EA/2005/0030), the Tribunal discussed the threshold for the prejudice test relevant to the Act. It concluded that to demonstrate that disclosure “would prejudice” it would not be possible to prove that prejudice would occur beyond any doubt whatsoever, but that prejudice must be at least more probable than not. The Commissioner considers that the same principle may be used when determining whether an adverse effect “would” arise.
34. As outlined above, disclosure of the information would breach the statutory prohibition under section 59 of the DPA. He considers it more probable than not that disclosure would adversely affect the confidentiality of the information.
35. In view of the above, the Commissioner considers that the exception under regulation 12(5)(d) is engaged in respect of the requested information. The Commissioner has therefore gone on to consider the public interest test.

Public interest arguments in favour of disclosing the requested information

36. The Commissioner has identified the following arguments in favour of disclosure of the information:
 - There is a public interest in the transparency of the way the Commissioner investigates complaints made to him; and
 - There is a public interest in the openness of how the Commissioner generally carries out his functions.

Public interest arguments in favour of maintaining the exception

37. The Commissioner has considered the following arguments in favour of maintaining the exception:

- The public interest in allowing organisations under investigation to provide information required by the Commissioner in confidence;
- The public interest in allowing the Commissioner to conduct investigations in the most efficient manner; and
- The public interest in ensuring due process is followed in respect of complaints made following refused requests for information.

Balance of the public interest arguments

38. The Commissioner acknowledges that there is a public interest in the transparency of the way the Commissioner investigates complaints made to him and how he generally carries out his functions. However, he considers that this factor is met by the provision of other information, for example the publication of Decision Notices on his website. The Commissioner does not consider that the disclosure of the requested information in this case, being the withheld information in another complaint, would add significantly to the public's understanding in this regard.

39. Far greater weight, however, is placed on the Commissioner's ability to carry out his functions effectively. The Commissioner relies on his ability to maintain confidentiality in respect of withheld information in order to be an effective regulator. Disclosing such information may discourage parties from co-operating fully and frankly with the Commissioner in future.

40. The Commissioner was provided with a copy of the withheld information to enable him to adjudicate on a complaint made to him under section 50 of the Act, and for no other purpose. It is the Commissioner's standard procedure to ask to be provided with the information that has been withheld from the complainant, when carrying out an investigation. The Commissioner is concerned that, should he disclose withheld information, public authorities would refuse to comply with his requests to be provided with information withheld from requesters. This would compromise the Commissioner's ability to adjudicate upon complaints in the future. The Commissioner does have powers under section 51 of the Act to compel public authorities to provide him with information necessary to perform his functions, however to have to resort to using these powers on every occasion would frustrate the operation of the ICO in respect of freedom of information matters. The Commissioner further considers that to

disclose the requested information would subvert the appeals process and thus bring the process into disrepute.

41. The Commissioner's conclusion in this matter is that the regulation 12(5)(d) exception applies to the requested information and that the public interest in maintaining the exception outweighs the public interest in disclosure.

Procedural Requirements

42. Regulation 14 of the EIR sets out public authorities' obligations when refusing to provide information in response to requests.
43. In the Archer case, the Tribunal considered a request that had been handled by the public authority under the Act however which it considered should have been dealt with under the EIR. It stated that "the fact that the Council considered and refused the Appellant's request under the FOIA rather than the EIR means, inevitably, that where the requirements of the FOIA and EIR differ, the Council will not have complied with the provisions of the EIR... It is appropriate that we record a finding that the Council did not comply with all the applicable requirements. In particular they did not comply with regulation 14(3) which requires a public authority that refuses a request for environmental information, to specify the EIR exceptions relied on."
44. The Commissioner considers that the same circumstances arise here. He has therefore breached regulation 14(3) in respect of the complainant's request.

The Decision

45. The Commissioner's decision is that he dealt with the following elements of the request in accordance with the requirements of the EIR:

He correctly withheld the information requested.

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the EIR:

The refusal notice was defective in that it failed to specify an applicable exception under the EIR to the duty to disclose information and to set

out the assessment of a public interest test in relation to this matter.
He has therefore breached regulation 14(3) of the EIR.

Steps Required

46. The Commissioner requires no steps to be taken.

Right of Appeal

47. 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.

Website: www.informationtribunal.gov.uk

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

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

Dated the 26th day of April 2010

Signed

Steve Wood
Head of Policy Delivery

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

Legal Annex

The Environmental Information Regulations 2004

Regulation 2(1) provides –

“In these Regulations –

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

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

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

“the Commissioner” means the Information Commissioner;

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

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

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;

- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

"historical record" has the same meaning as in section 62(1) of the Act;

"public authority" has the meaning given in paragraph (2);

"public record" has the same meaning as in section 84 of the Act;

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

"Scottish public authority" means –

- (a) a body referred to in section 80(2) of the Act; and
- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

"transferred public record" has the same meaning as in section 15(4) of the Act;

and

"working day" has the same meaning as in section 10(6) of the Act."

Regulation 2(2) provides –

"Subject to paragraph (3), "public authority" means –

- (a) government departments;
- (b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding –

- (i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or
- (ii) any person designated by Order under section 5 of the Act;
- (c) any other body or other person, that carries out functions of public administration; or
- (d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment."

Regulation 2(3) provides –

"Except as provided by regulation 12(10) a Scottish public authority is not a "public authority" for the purpose of these Regulations."

Regulation 2(4) provides –

"The following expressions have the same meaning in these Regulations as they have in the Data Protection Act 1998(b), namely –

- (a) "data" except that for the purposes of regulation 12(3) and regulation 13 a public authority referred to in the definition of data in paragraph (e) of section 1(1) of that Act means a public authority within the meaning of these Regulations;
- (b) "the data protection principles";
- (c) "data subject"; and
- (d) "personal data"."

Regulation 2(5) provides -

"Except as provided by this regulation, expressions in these Regulations which appear in the Directive have the same meaning in these Regulations as they have in the Directive."

Duty to make available environmental information on request

Regulation 5(1) provides –

“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) provides –

“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) provides –

“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) provides –

“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) provides –

“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) provides –

“Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.”

Exceptions to the duty to disclose environmental information

Regulation 12(1) provides –

“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) provides –

“A public authority shall apply a presumption in favour of disclosure.”

Regulation 12(3) provides –

“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) provides –

“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) provides –

“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) provides –

“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) provides –

“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) provides –

“For the purposes of paragraph (4)(e), internal communications includes communications between government departments.”

Regulation 12(9) provides –

“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) provides –

“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) provides –

“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.”

Refusal to disclose information

Regulation 14(1) provides –

“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) provides –

“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) provides –

“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) provides –

“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) provides –

“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.”

The Freedom of Information Act 2000

Prohibitions on disclosure

Section 44(1) provides that –

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.”

Section 44(2) provides that –

“The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).”

The Data Protection Act 1998

Confidentiality of information

Section 59 provides –

(1) No person who is or has been the Commissioner, a member of the Commissioner’s staff or an agent of the Commissioner shall disclose any information which –

- (a) has been obtained by, or furnished to, the Commissioner under or for the purposes of the information Acts,
- (b) relates to an identified or identifiable individual or business, and
- (c) is not at the time of the disclosure, and has not previously been, available to the public from other sources,

unless the disclosure is made with lawful authority.

(2) For the purposes of subsection (1) a disclosure of information is made with lawful authority only if, and to the extent that –

- (a) the disclosure is made with the consent of the individual or of the person for the time being carrying on the business,
- (b) the information was provided for the purpose of its being made available to the public (in whatever manner) under any provision of the information Acts,
- (c) the disclosure is made for the purposes of, and is necessary for, the discharge of –
 - (i) any functions under the information Acts, or
 - (ii) any Community obligation,
- (d) the disclosure is made for the purposes of any proceedings, whether criminal or civil and whether arising under, or by virtue of, the information Acts] or otherwise, or

- (e) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
- (3) Any person who knowingly or recklessly discloses information in contravention of subsection (1) is guilty of an offence.