

Decision Notice



Decision 174/2012 Mr Damien Henderson of The Herald and Transport
Scotland

Correspondence regarding national speed limits

Reference No: 201200106
Decision Date: 23 October 2012

www.itspublicknowledge.info

Rosemary Agnew
Scottish Information Commissioner

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Summary

Mr Henderson asked Transport Scotland for correspondence about changes to national speed limits. Transport Scotland dealt with the request under the Environmental Information (Scotland) Regulations. It directed Mr Henderson to certain published information, but withheld other information on the basis that it constituted material in the course of completion or internal communications, and the balance of the public interest favoured withholding that information.

Following an investigation, the Commissioner concluded that while at least one exception was applicable to the information in each of the withheld documents, the balance of the public interest favoured disclosure of some of the withheld information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) (Effect of exemptions); 39(2) (Health, safety and the environment)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation) (definitions (a), (b) and (c) of “environmental information”); 5(1) and (2)(b) (Duty to make environmental information available on request); 10(1), (2), (4)(d) and (e) (Exceptions from duty to make environmental information available); 13(d) (Refusal to make information available)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 31 October 2011, Mr Henderson emailed Transport Scotland asking for a copy of all correspondence between the Scottish Ministers (the Ministers) and Transport Scotland regarding changes to national speed limits during the period May 2007 to May 2011.
2. Transport Scotland subsequently contacted Mr Henderson asking him to provide more particulars in relation to his request in order to assist it in identifying and locating the specific information which he was interested in receiving.



3. Following an exchange of correspondence, Mr Henderson's finalised request was for correspondence between Transport Scotland and the Ministers from May 2007 to May 2011 on the 70 and 60 mph national speed limits with particular reference to:
 - the current review of speed limits being carried out by Transport Scotland and local authorities on all A and B class roads
 - information regarding the Calman proposal to devolve the national speed limits in the Scotland Bill and
 - correspondence about national speed limits in relation to climate change.
4. Transport Scotland responded to this request on 8 December 2011, providing Mr Henderson with links to information on the Scottish Government's website, which it considered fell within the scope of his request. It notified Mr Henderson that it was withholding some information on the basis that it was excepted from disclosure in terms of regulation 10(4)(d) and 10(4)(e) of the EIRs and that the public interest in disclosure of the information was outweighed by that in maintaining the exceptions.
5. On 9 December 2011, Mr Henderson emailed Transport Scotland requesting a review of its decision. Mr Henderson questioned Transport Scotland's view that there was insufficient public interest in disclosing the withheld information.
6. Transport Scotland notified Mr Henderson of the outcome of its review on 10 January 2012, upholding its previous decision without modification.
7. On the same day, Mr Henderson wrote to the Commissioner, stating that he was dissatisfied with the outcome of Transport Scotland's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to certain specified modifications.
8. The application was validated by establishing that Mr Henderson had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

9. Transport Scotland is an executive agency of the Ministers and, in line with agreed procedures, the Ministers were notified in writing on 7 February 2012 that an application had been received from Mr Henderson and were asked to provide the Commissioner with the information withheld from him. The Ministers, on behalf of Transport Scotland, provided the information and the case was then allocated to an investigating officer. Subsequent references to communications with Transport Scotland should be read as relating to communications with the Ministers acting on Transport Scotland's behalf.



10. The investigating officer contacted Transport Scotland, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. Transport Scotland was asked to justify its reliance on any provisions of FOISA and the EIRs it considered applicable to the information withheld.
11. In its response, Transport Scotland provided submissions on its application of the exceptions in regulations 10(4)(d) and 10(4)(e) of the EIRs and the related public interest test. Transport Scotland subsequently provided clarification on a number of points in response to further questions raised by the investigating officer.
12. The investigating officer also contacted Mr Henderson during the investigation seeking his submissions on the matters to be considered in the case. The relevant submissions received from both Transport Scotland and Mr Henderson will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to her by both Mr Henderson and Transport Scotland and is satisfied that no matter of relevance has been overlooked.

Handling under the EIRs

14. Transport Scotland dealt with Mr Henderson's request in terms of the EIRs. Environmental information is defined in regulation 2(1) of the EIRs (the relevant parts of the definition are reproduced in the Appendix to this decision). Where information falls within the scope of this definition, a person has a right to access it under the EIRs, subject to various restrictions and exceptions contained in the EIRs.
15. Having had regard to the subject matter of Mr Henderson's request (policy on speed limits and on speed limits as it relates to climate change), and the information withheld from Mr Henderson, the Commissioner is satisfied that it concerns measures and activities affecting or likely to affect the state of the elements of the environment (in particular air and atmosphere) and factors (in particular noise and emissions), which would in turn affect, or be likely to affect, the elements of the environment. The Commissioner therefore agrees with Transport Scotland that the information falls within definition (c) of environmental information in regulation 2(1) of the EIRs.



Section 39(2) of FOISA – environmental information

16. The exemption in section 39(2) of FOISA provides that environmental information, as defined by regulation 2(1) of the EIRs, is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs. This exemption is subject to the public interest test required by section 2(1)(b) of FOISA. In this case, the Commissioner finds that Transport Scotland was entitled to apply the exemption in section 39(2) of FOISA to the withheld information, given her conclusion that it is properly considered to be environmental information.
17. As there is a separate statutory right of access to environmental information available to Mr Henderson, the Commissioner also accepts that the public interest in maintaining this exemption and dealing with the request in line with the requirements of the EIRs outweighs any public interest in disclosure of the information under FOISA. The Commissioner has consequently proceeded to consider this case in what follows solely in terms of the EIRs.

The withheld information

18. When asked to supply the information withheld from Mr Henderson, Transport Scotland initially provided six documents. Documents 1 and 3 within the schedule provided to the Commissioner do not constitute correspondence between Transport Scotland and the Ministers, so the information in these documents is not within the scope of Mr Henderson's request. Therefore, the Commissioner has considered only the remaining withheld information, which is contained in the documents numbered 2, 4, 5 and 6.

Regulation 10(4)(e)

19. Transport Scotland consider that the exception in regulation 10(4)(e) of the EIRs applies to all of the withheld information (i.e. the information in documents 2, 4, 5 and 6).
20. Under regulation 10(4)(e) of the EIRs, a Scottish public authority may refuse to make environmental information available to the extent that the request involves making available internal communications.
21. As with the exceptions in regulation 10(4)(d), which is considered below, a Scottish public authority applying this exception must interpret it in a restrictive way (regulation 10(2)(a)) and apply a presumption in favour of disclosure (regulation 10(2)(b)). Even where the exception applies, the information must be made available unless, in all the circumstances of the case, the public interest in making the information available is outweighed by that in maintaining the exception (regulation 10(1)(b)).
22. The Commissioner notes that the communications under consideration are all between the Ministers and Transport Scotland, which, as noted above, is an executive agency of the Scottish Government. Since both parties to the correspondence are parts of the same legal entity, the correspondence under consideration was exchanged only within that entity.



23. Accordingly, she is satisfied that the withheld information under consideration comprises internal communications for the purposes of the EIRs and that the exception was properly applied to this information.

Consideration of the public interest test associated with regulation 10(4)(e)

24. Having agreed that the exception in regulation 10(4)(e) applies, the Commissioner is required to consider the public interest test required by regulation 10(1)(b) of the EIRs. As noted above, the test specifies that a public authority may only withhold information to which an exception applies where, in all the circumstances, the public interest in making the information available is outweighed by the public interest in maintaining the exception.
25. In its submissions to the Commissioner (provided on 5 April 2012), Transport Scotland provided background information about the information under consideration. It explained that local authorities in Scotland have the power to set specific lower speed limits on local roads, and the Ministers have the power to set specific lower limits on trunk roads.
26. Following the commencement of provisions within the Scotland Act 2012, the Scottish Ministers now have the power to set generic national speed limits for Scotland. However, when Transport Scotland notified Mr Henderson of the outcome of their review (which is the point at which the Commissioner must consider whether the exception applies), the Scotland Bill was still undergoing Parliamentary consideration.
27. Transport Scotland explained that the information withheld related to its ongoing review of speed limits on A and B Class roads. Every local authority had been asked to review the speed limits on all such roads within its area by the end of 2011, and Transport Scotland had done the same for the trunk road network. The speed limit review had been underway since 2007, and was due for completion at the end of 2011, but the outcome of the review had still not been published when it made its submissions to the Commissioner.
28. Transport Scotland advised the Commissioner that the purpose of the review was to inform Ministers and to allow for the gathering of evidence of potential impacts of changes to the national speed limits across Scotland to allow Ministers to consider the possibilities for management of these limits once the responsibility for national speed limits was transferred to them.
29. Transport Scotland noted that policy development relating to speed limits was in various stages of completion. It maintained that there would be no benefit served by the early disclosure of information, which it considered would provoke confusion and be potentially dangerous if the public were to interpret incorrectly the likelihood of changes to national speed limits when the Ministers did not (at the time relevant for this decision) have the power to control these limits, and when they were still considering the results of the review of speed limits.



30. Transport Scotland accepted that there will be a public interest in the outcome and conclusions of the speed limit review, particularly given the potential impact on the public. They noted that this information would be published after the Ministers had the time and space to consider the findings. They considered that the public interest in disclosure was outweighed by the public interest in allowing Ministers and officials to discuss rigorously and debate the available options in order to fully understand the possible implications.
31. Transport Scotland stated that the documents in question would not have been prepared in the expectation that they would be published prior to the publication of the speed limit review. It considered that there was a clear public interest in withholding documents prepared solely for internal communication, and that the public interest would be better served by publishing the review in future, rather than by releasing internal documents before the outcome of the review had been considered.
32. Mr Henderson, on the other hand, took the view that the Scottish Government had not been explicit about its policy on potential changes to national speed limits, or how it had arrived at its position. He considered there to be considerable public interest in knowing its position, and the justification for that position. Although Transport Scotland had directed him to published documents which were relevant to his request, they did not, in his view, set out the Scottish Government's policy on changing national speed limits.
33. He highlighted that two of the documents to which he was directed comprised a set of policy options for reducing transport-related carbon emissions which had been prepared for the Government, and the Government's response to these. He noted, however, that the question of setting national speed limits is not confined to environmental considerations, but also includes issues such as creating better, faster, transport connections. He also commented that these documents give only a partial view on the Government's position on this limited aspect of the policy, and one that appeared to be contradicted by other government statements.
34. With respect to a third published document, Mr Henderson noted that it referred to the Scotland Bill's proposals to devolve power over national speed limits to Scotland, but did not say what the Scottish Government would then do if it were granted these powers.
35. In summary, Mr Henderson commented that the Scottish Government had remained silent on several important points in relation to its position on changing national speed limits, and he believed it to be manifestly in the public interest for these issues to be made public. He added that, if the discussions Ministers and officials were having in private were accompanied by a public discourse on these policy issues, he would find it easier to accept the argument that these discussions should remain private. However, he believed that in the absence of such a public discourse, there was a very strong case in favour of disclosure.
36. The Commissioner has considered the submissions from both Transport Scotland and Mr Henderson carefully when conducting the balancing exercise required by the public interest test. She has also had regard to the particular content of the information under consideration.



37. The Commissioner recognises that there is some public interest in allowing public understanding of the Ministers' thinking on the setting of speed limits ahead of the devolution of power to amend these.
38. However, she recognises also that the Ministers' policy in this area was in the process of formulation at the relevant time. As a result, the information which has been withheld does not present a clearly articulated policy position, but includes communications relating to the drafting of the relevant provisions in the Scotland Bill (documents 5 and 6), an update on progress with respect to the speed limit review (document 4), and communications relating to a briefing which has already been disclosed to Mr Henderson (document 2).
39. The Commissioner has reached different conclusions in relation to the different types of information under consideration.
40. With respect to documents 5 and 6 (with the exception of a letter attached to document 6), she recognises that, at the point relevant for her consideration of this decision (the date when Transport Scotland notified Mr Henderson of the outcome of its review), the Scotland Bill was still undergoing Parliamentary consideration. She considers that disclosure of the information in these documents at that time could have undermined the ability of Transport Scotland and the Ministers to discuss advice and options in relation to the Bill. Given the timing of Mr Henderson's request, and the nature of the information in these documents, the Commissioner accepts that, at that time, the public interest favoured allowing Ministers and officials a degree of private space in which to develop their thinking in relation to the desired form of the new legislation, and the associated rationale.
41. While disclosure of that information would give some insight into the Ministers' thinking on how the power to modify speed limits might be used, it is clear from the content of these emails and Transport Scotland's submissions that no firm position had been reached. Accordingly, the Commissioner has given only limited weight to the public interest identified by Mr Henderson, because she considers that the information in document 5 and the majority of document 6 would not provide the type of understanding of the Government's policy position that the request was intended to access.
42. Having conducted the balancing exercise in relation to the information within document 5 and the majority of document 6, the Commissioner found that the public interest in disclosure of that information was at the relevant time outweighed by the public interest in maintaining the exception. She concludes that Transport Scotland was entitled to withhold the information in documents 5 and 6, with the exception of the letter attached to document 6 which is considered further below.



43. However, when considering the balancing exercise in relation to the information contained in documents 2, 4 and the letter attached to document 6, the Commissioner found there to be less weight to the public interest in maintaining the exception in regulation 10(4)(e). She noted that the information in document 2 was of a more routine nature, and did not involve policy discussion, beyond confirming the position set out in information disclosed to Mr Henderson or otherwise in the public domain. Document 4 simply sets out a progress report on work undertaken on the speed limit review, without stating the outcomes of the review or policy options arising from it. Additionally, the letter attached to document 6 was already available in the public domain on the Scottish Government's website at the time of Mr Henderson's request.
44. The Commissioner is unable to accept that disclosure of this information at the relevant time would have undermined the Ministers' ability to develop and consider the outcome of the speed limit review or policy options. While the information might not have been generated in the expectation that it would be made publicly available, the Commissioner is unable to accept, on the basis of the submissions made by Transport Scotland, that disclosure of this information would undermine the ability of Ministers and officials to rigorously discuss and debate the available policy options in order to fully understand the possible implications.
45. Having conducted the balancing exercise in relation to the withheld information within documents 2, 4 and the letter attached to document 6, the Commissioner has concluded that the public interest in disclosure of that information is not outweighed by the public interest in maintaining the exception.

Regulation 10(4)(d)

46. The Commissioner will now go on to consider the exception in regulation 10(4)(d). Given that the Commissioner has already concluded that the information contained in document 5 and most of document 6 is excepted from disclosure under regulation 10(4)(e), she will not go on (and is not required) to consider whether the information is also excepted from disclosure under regulation 10(4)(d).
47. Regulation 10(4)(d) of the EIRs provides an exception from the duty to make environmental information available where the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data. Where a Scottish public authority refuses to make information available on this basis, it must state the time by which the information will be finished or completed (regulation 13(d)).
48. Transport Scotland argued that the information (in document 4) relates to the speed limit review, the outcome of which was incomplete at the time relevant for this decision.
49. The Commissioner accepts that document 4 contains information relating to the review, which she further accepts is an incomplete document and comprises material in the course of completion. For this reason, she accepts that the exception in regulation 10(4)(d) applies to this information.



50. However, the Commissioner does not accept that the information in document 2 relates to the speed limit review: although the review is mentioned in a paper attached to document 2 (the paper has been disclosed to Mr Henderson), the withheld correspondence does not relate in any discernible or meaningful way to the review itself.
51. For this reason, the Commissioner is unable to accept that the withheld information in document 2 relates to material in the course of completion, incomplete documents or incomplete data. Accordingly, she concludes that the exception in regulation 10(4)(d) was incorrectly applied to this information.
52. In relation to the letter attached to document 6, this was a final version of a letter which, as noted above, was in the public domain at the time of Mr Henderson's request. Accordingly, the Commissioner is unable to accept that this document was unfinished or in the course of completion and she concludes that the exception in regulation 10(4)(d) was incorrectly applied to it.

Consideration of the public interest test in relation to regulation 10(4)(d)

53. Having reached this conclusion, the Commissioner is required to consider the public interest test associated with regulation 10(4)(d) of the EIRs only in relation to document 4. Once again, this involves considering whether, in all the circumstances, the public interest in making the information available is outweighed by the public interest in maintaining the exception.
54. The submissions from both Transport Scotland and Mr Henderson are summarised in some detail above and will not be set out full again. In brief, the Ministers considered that the public interest was best served in supporting the Ministers and officials to rigorously discuss and debate the available options in order to fully understand the possible implications arising from the speed limit review. They considered that an environment in which full consideration can be given to differing opinions is central to ensuring that Ministers can arrive at a settled view of options going forward in the consideration of the new powers in relation to speed limits without fear of misinterpretation of facts, or confusion which may be likely to arise from the early release of the results of the review.
55. Mr Henderson has maintained that the public interest would be best served by disclosure of information that would reveal the Ministers' position on the use of the power to amend speed limits, or information that reveals the rationale for this position.
56. When considering the public interest in relation to document 4, the Commissioner has again noted that it simply provides an update on the progress of the speed limit review. It provides no details of the outcome of that review, or policy options arising from it. In the circumstances, it would not contribute a significant amount to public understanding of the Ministers' position, but would give some insight into the steps taken to progress the review.



57. Given the nature of the information, the Commissioner cannot accept that disclosure would undermine the ability of Ministers and officials to debate and consider all available policy options, or the outcome of the review. The information within this document relates to the process and progress of the review, rather than its outcome or implications. In the circumstances, the Commissioner is unable to envisage any possibility of the disclosure of this particular information leading to the types of harm that the Ministers suggest.
58. Given that the Commissioner finds the Ministers submissions to have very limited relevance when the nature of the information in document 4 is taken into consideration, she has given limited weight to the public interest in maintaining the exception in relation to that information.
59. Having undertaken the balancing exercise in relation to the information contained in document 4, the Commissioner has concluded that the public interest in disclosure in this case is not outweighed by that in maintaining the exception.

Consideration of cumulative public interest

60. Having reached the above conclusions, the Commissioner is required to go on to consider a further public interest test in relation to the information in document 4. In doing so, she has had regard to the judgement of the European Court of Justice (ECJ) in the case of OFCOM v the Information Commissioner¹.
61. In that judgement, the ECJ considered how the public interest test should be addressed under the EIRs, in cases where more than one exception has been found to apply to the same information.
62. The ECJ concluded that, in such cases, a two stage public interest test should be carried out. The first step (undertaken above) is to consider, in relation to each exception judged to apply, whether the public interest in disclosing that information is outweighed by the public interest in maintaining the exception.
63. Where more than one exception is found to apply to the same piece of information (as it does here, exceptions under both regulations 10(4)(d) and (e)), the second test is then to cumulatively weigh all grounds for refusing to disclose the information against all of the public interests served by disclosure, and to come to a decision as to whether the information should be disclosed.
64. Both Mr Henderson and Transport Scotland were invited to make further submissions to inform the Commissioner's consideration of this cumulative public interest test. Mr Henderson responded by indicating that he had nothing more to add to his previous submissions.

¹ <http://www.bailii.org/eu/cases/EUECJ/2011/C7110.html>



65. Transport Scotland made further submissions, explaining that the main focus of the reasons to withhold this information regards the fact that the information is not finalised and the study is undergoing scrutiny. It reiterated that it is important that Ministers and officials can consider and debate the findings of the report in order to develop an understanding of the positive or negative results and to determine how these results would affect policy development and delivery. They maintained that, in order to do this work, it is necessary for there to have been, and continue to be, communications between Ministers and officials, and between officials working directly under Transport Scotland and those working in other parts of the Scottish Government.
66. Whilst Transport Scotland accepted that there would be considerable public interest in knowing what the results of research on this subject uncovered as it relates to a topic which affects most people in their everyday lives, it considered that the public interest in withholding the information at this stage in the process was necessary to allow Ministers and officials to engage in the development of research to inform their understanding of the impacts of changes to long standing public norms, such as speed limits, to inform their policy making in order to help them determine if change is, or is not, in the public interest.
67. Transport Scotland considered that it was not in the public interest to prematurely release information which could lead to misunderstanding or confusion on the implementation of statutory requirements as regards speed limits, when all the consequences of the report have as yet to be considered and debated to identify potential issues, problems or potential gains.
68. As a result, Transport Scotland submitted that the cumulative effect of the public interest test supported the withholding of this information at the relevant time and greatly outweighed the public interest in the unconsidered results of the report.
69. The Commissioner has considered these comments, along with all other submissions from Mr Henderson and Transport Scotland on each exception and the associated public tests when considering the cumulative public interest test.
70. She has again noted that Transport Scotland's reasons for non-disclosure do not appear to be directly relevant to the content of document 4, since it does not contain any information about the policy options under consideration, or the outcome of its speed limit review. Reviewing the content of this document, the Commissioner remains unable to accept that the types of harm described by Transport Scotland would be prompted by disclosure of this information.
71. Therefore, she is unable to give any significant weight to these grounds for withholding the information in document 4, when they are considered cumulatively. On the other side, she recognises that some (albeit limited) public interest would be served by disclosure of that information, by offering some insight into the process being followed in order to inform the policy making process.
72. On balance, given the Commissioner's views on the very limited relevance and weight of the arguments against disclosing the information in document 4, she does not consider these to outweigh the overall public interest in disclosing that information.



73. For this reason, the Commissioner concludes that Transport Scotland was not entitled to withhold the information in document 4.

DECISION

The Commissioner finds that Transport Scotland partially complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr Damien Henderson.

The Commissioner finds that Transport Scotland was entitled to refuse to make documents 5 and 6 (with the exception of the letter attached to document 6) available.

However, for the reasons set out above, the Commissioner finds that Transport Scotland was not entitled to refuse to make the information in documents 2 and 4 and the letter attached to document 6 available. By withholding this information, Transport Scotland failed to comply with regulation 5(1) of the EIRs.

The Commissioner requires Transport Scotland to disclose the information contained in documents 2 and 4 and the letter attached to document 6, by 7 December 2012.

Appeal

Should either Mr Henderson or Transport Scotland wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Rosemary Agnew
Scottish Information Commissioner
23 October 2012



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and
(b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

39 Health, safety and the environment

...

- (2) Information is exempt information if a Scottish public authority-
- (a) is obliged by regulations under section 62 to make it available to the public in accordance with the regulations; or
(b) would be so obliged but for any exemption contained in the regulations.

...



The Environmental Information (Scotland) Regulations 2004

2 Interpretation

(1) In these Regulations –

...

"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 paragraph (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 paragraphs (a) and (b) as well as measures or activities designed to protect those elements;

...

5 Duty to make available environmental information on request

(1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.

(2) The duty under paragraph (1)-

...

(b) is subject to regulations 6 to 12.

...



10 Exceptions from duty to make environmental information available–

- (1) A Scottish public authority may refuse a request to make environmental information available if-
 - (a) there is an exception to disclosure under paragraphs (4) or (5); and
 - (b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
- (2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall-
 - (a) interpret those paragraphs in a restrictive way; and
 - (b) apply a presumption in favour of disclosure.

...

- (4) A Scottish public authority may refuse to make environmental information available to the extent that
 - ...
 - (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
 - (e) the request involves making available internal communications.

...

13 Refusal to make information available

Subject to regulations 10(8) and 11(6), if a request to make environmental information available is refused by a Scottish public authority in accordance with regulation 10, the refusal shall –

...

- (d) if the exception in regulation 10(4)(d) is relied on, state the time by which the authority considers that the information will be finished or completed; and

...