

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

Decision Notice

Date: 3 December 2009

Public Authority: Chesterfield Borough Council
Address: Town Hall
Rose Hill
Chesterfield
Derbyshire
S40 1LP

Summary

The complainant requested a plan of an allotment site and the names of the owners of the plots from it. The public authority responded that the information was held by the allotment association on its own behalf and that it did not hold the requested information. The complainant contested this position and the public authority maintained its position in its internal review. The Commissioner has considered the case and believes that the public authority should have processed the request under the Environmental Information Regulations as the request was for Environmental information. However, he is satisfied that the exception in 12(4)(a) applies because the requested information is not held by it for the purposes of the Regulations. He has found procedural breaches of Regulations 14(3)(a), 14(5)(a) and 14(5)(b) but requires no remedial steps to be taken.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. The complainant lost the right to use his allotment and the request was for information to assist him in establishing a possible legal action about this issue.

The Request

3. On 14 April 2009 the complainant requested the following information from the public authority:

[1] 'Said site plan has all the numbered allotments professionally drawn on card. The size of which is between A1 to A2, and may be under plexiglass. The Council should possess a Photostat copy of said site plan, which was made twenty – or – more years ago, of which a copy of said site plan I request.

Failing discovery of said site plan within the Council offices, I request under the Freedom of Information Act, that the Council authorise a paper copy to be made of which said copy. I request a copy, which need not be more than A4 size, showing all allotments clearly marked.

[2] I hereby make formal request of the Council under the Freedom of Information Act to obtain from said Allotment Association a full list of all current names and addresses of members of said Association, and to furnish me with a full copy thereof.'

4. On 12 May 2009 the public authority issued a response to the complainant. It explained that it had checked its Estates Section, Leisure Services and Architects Section and that it was unable to find a plan which shows each individual plot. It explained that he may wish to ask the Record Office at Derbyshire County Council to enquire whether it has it and provided its contact details. It explained that the Freedom of Information Act enables people to request information about information that is held and cannot be used to request information that is not held. It explained that it felt the request was not valid under the Act. The Commissioner does not agree with this last sentence and has chosen to comment about it in paragraph 54 of this Notice. It provided its internal review process but not the details of the Commissioner.
5. On 24 June 2009 the complainant requested an internal review into the handling of this request. He explained he had contacted Derbyshire County Council but did not obtain the plans. He provided detailed submissions:
- i. That the Allotment site belongs to the Council. He believes it is also administered by it and that it is sublet to an Allotment Association whose sole purpose is to rent the land.
 - ii. That he believes the Council had the plan professionally drawn and that it is the original and lawful property of the Council and should not have left its offices and that it should have kept a copy in any event.
 - iii. That he believes it was the Council's duty to enter the Allotment building and make a physical copy of the plan.

- iv. That the Council would have lawful right to issue the Association with a notice of termination of its tenancy. It would therefore be able obtain the plan.
 - v. That he believes that the names and addresses of the members are essential to his legal case and should be provided.
 - vi. That the Council has exercised its control to evict one individual previously, which proves that the Allotment is under its overall control.
 - vii. He believes that after this example, the members are therefore subtenants of the Council and that their names and addresses are likely to be held.
 - viii. That he believes that the members are under direct legal jurisdiction of the Council and that the information is therefore held.
6. On 10 July 2009 the public authority communicated the result of its internal review. It explained that it does not hold the plan itself and it was satisfied it did not hold the names and addresses of the allotment holders either. It stated that it does not believe that the relevant allotment association holds the plan on behalf of it and that it did not believe it was obliged to enter the building and acquire it for him. He stated that while the Association is subject to sanctions in the event of it breaching its tenancy agreement, it did not believe that it came under the direct legal jurisdiction of the Council and that it is not something that is necessary to consider when considering the application of the Act in any event. It provided the Commissioner's details.

The Investigation

Scope of the case

7. On 1 June 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- * That he wanted clarification that the information would fall under the Act.
 - * That he wanted to clarify whether the fact that the Council Offices may not hold a copy of the plan itself meant that the plan was not held.
 - * That he wanted the Commissioner to ensure that the arguments that he has made in his internal review request were taken into account.
8. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular the Commissioner is unable to comment on the lawfulness of the complainant's eviction from the allotment.

Chronology

9. On 25 July 2009 the Commissioner wrote to the public authority to enquire whether there was any information being withheld in this case. On 11 August 2009 the public authority responded to the Commissioner and informed him that it was unable to provide the complainant with the information as it did not have it.
10. On 28 August 2009 the Commissioner telephoned the public authority to make further enquiries. He wanted to understand the legal relationship between the Council and the allotment association. The public authority explained it had a relationship of landlord and tenant. The Commissioner asked for a copy of the lease and was provided with it on the same day.
11. Later on 28 August 2009 the Commissioner wrote to the complainant. He explained the Commissioner's remit, set the scope of his investigation and provided an update about his preliminary verdict. He asked whether the complainant wished for the case to proceed in this instance.
12. On 31 August 2009 the complainant contacted the Commissioner and explained that he wished for the case to continue. Between 31 August 2009 and 1 September 2009 the complainant and the Commissioner exchanged a number of emails. The result of these emails was that the remit of the Commissioner and the scope of the investigation were clarified.
13. On 1 September 2009 the Commissioner addressed twelve enquiries to the public authority about its position in this case. He received a detailed response on 6 October 2009.
14. Between the 12 October 2009 and 28 October 2009, the Commissioner telephoned the public authority a number of times to see if it could acquire the plan, on a without prejudice basis, for the complainant from the Allotment Association.
15. On 28 October 2009 the public authority telephoned the Commissioner. It explained that the Allotment Association was not prepared to provide a copy of the plan to it. It explained that it could report that the plan was between A2 and A3 in size, was fairly rudimentary and was unlikely to have been drawn by a professional. It explained that the plot sizes were not drawn to scale and that its only purpose was to assist in rent collection.
16. On 29 October 2009 the Commissioner telephoned the complainant to provide an update. He explained that in this case he believed that the information was not held on the balance of probabilities and why. He explained the steps that had been taken to determine that this was so. He asked for any further evidence that the complainant had. The complainant explained that he believed that the Council's Manager of Allotments attended the AGM of the Allotment Association on a Sunday but other than that he had no further evidence. The Commissioner informed him that he would move to draft this Decision Notice.

Analysis

Substantive Procedural Matters

Is the information environmental?

17. The Commissioner has first considered whether the request made by the complainant is a request for environmental information as defined by the EIR.
18. The Commissioner considers that the information falls within the regulation 2(1)(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 designed to protect those elements.'
19. In this case the information, if held, would consist of an allotment plan and its residents' names, this amounts to a measure (a plan) that is likely to affect the land and landscape [2(1)(a)] and the information, if held, would therefore be environmental information in this instance.
20. This decision is supported by a previous decision made by the Commissioner with the reference FS50187166 (at paragraph 12). This case also confirmed that the names and addresses of allotment holders constituted Environmental information. A copy of that Decision Notice can be found at the link below:
http://www.ico.gov.uk/upload/documents/decisionnotices/2009/fs_50187166.pdf
21. The public authority responded under the Act and explained that it did not hold relevant information in relation to the two parts of the request. As the Commissioner has determined that the request was for Environmental information in this case, he has considered the public authority's position under the EIR instead. This is necessary because section 39 of the Act indicates that Environmental information is exempt from disclosure under the Act and is to be considered under the EIR instead.

Exceptions

Regulation 12(4)(a)

22. The EIR are worded so that information not being held does not mean that the only thing the public authority is required to do is to say that it is not held. Instead the public authority is required to apply the exception found in Regulation 12(4)(a), which allows a request to be refused where the information is not held.
23. The Commissioner appreciates that the wording of Regulation 12(1)(b) specifies that 12(4)(a) is a qualified exception. It would therefore imply that a public interest test would need to be conducted when information is not held. The Commissioner believes that a public interest test in the event where the information is not held is not possible. This is because even in the public interest test favoured disclosure the public authority would still not hold the information to enable it to be released.

He therefore cannot consider a public interest test when he adjudicates the application of Regulation 12(4)(a).

24. An important initial point to make is that the Commissioner is limited to considering whether or not recorded information exists at the time of the request for information. This is the only information that a public authority may be obliged to provide. The time of the request was 14 April 2009 in this case.
25. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal (the 'Tribunal') in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency* (EA/2006/0072). In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities. The Commissioner will apply that standard of proof to this case.
26. He has also been assisted by the Tribunal's approach, in the same case, where it explained that the application of the 'balance of probabilities' test to determine whether information is held requires a consideration of a number of factors including the quality of the public authority's final analysis of the request, scope of the search it made on the basis of that analysis and the rigour and efficiency with which the search was then conducted. It will also require considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.
27. The Commissioner's test has recently been confirmed in the Tribunal decision of *Innes v Information Commissioner* (EA/2009/0046) that was published on 27 October 2009. The central issue of the appeal was whether the balance of probabilities was the correct test when reaching a finding as to whether information is held or not. The Tribunal stated at paragraph 41 that;

"This Tribunal is not prepared to introduce any kind of sliding scale in terms of the standard of proof beyond the balance of probabilities. The House of Lords and other senior courts in recent decisions have confirmed the importance of maintaining the core principle -- in civil proceedings -- that the correct test is the balance of probabilities. It is only in relation to Asylum and childcare and child safety issues that there is any kind of variation."

28. There are two ways that information might be held in this case that the EIR allows and the Commissioner will deal with each in turn:
 - * Does the public authority hold the relevant recorded information itself? [Regulation 3(2)(a)]
 - * Does the Allotment Association hold the relevant recorded information on the public authority's behalf? [Regulation 3(2)(b)].

Does the public authority hold the relevant recorded information itself?

Request 1 – the allotment plan

29. The first request was for a copy of the allotment plan showing each individual plot. The complainant identified that the plan was on the wall of the allotment association's hut and explained that it was a copy of this plan that he sought. The public authority visited the site for the Commissioner and confirms that the allotment plan showing each individual plot does exist. The Commissioner is satisfied that the public authority's analysis of the scope of the request was correct.
30. The question in this part of the Notice is whether the public authority held another copy of the plan showing each individual plot.
31. The public authority explained that it did not hold such a plan. It explained that it had checked the following departments:
 - * Estates Section.
 - * Leisure Services.
 - * Architects Section.
32. It explained that it had searched the manual deed packets and the files in these three departments. The Commissioner is satisfied that it had searched the correct departments where, if held, the plan may be found and that the searches conducted were reasonable in the circumstances.
33. The complainant has explained that in his view the map was drawn over 20 years ago and that the public authority should have kept a copy of it. The public authority has explained to the Commissioner that as far as it was aware it never had a legal obligation to hold this information. The Commissioner is satisfied that the age of the information, and the fact that the public authority were not obliged to keep it, strongly suggests that a copy of the information is not held.
34. The complainant explained that he believed that a professional individual employed by the public authority drew up the plan for the Allotment Association at that time. He explained that *'it was clearly drawn up by an experienced Council Officer, an architect or surveyor, with a knowledge of allotment sizes as laid down by government statute. The plan could not therefore have been drawn by a lay person.'* The Commissioner has not seen the plan itself. However, he is satisfied by its detailed description from the public authority that it does not sound like something that would have been drawn up by a professional individual on behalf of the public authority. His reason for this view is that the Allotment Association does not consider the boundaries of the map to be definitive and they only use it to claim rent. While the public authority has no record one way or another, about whether it did originally draw the plan, the Commissioner believes that it is more likely than not to have been created by one of the Allotment Association's original members.
35. The complainant explained that the Allotment Association was under 'direct legal jurisdiction' of the Council and therefore that it held all the information that the Association held. The Commissioner's test is whether the public authority holds

information and it is a matter of fact. The Commissioner does not believe that the Allotment Association is part of the public authority or under its total control. Instead the relationship between them is one of landlord and tenant. There would be no need for the public authority to lease itself land on the facts of this case. In addition the public authority has granted the Allotment Association exclusive occupation of the land leased and this would not make sense if they were the same entity. He therefore does not believe that this argument is convincing to provide any indication that the information is held by the Council on its own behalf. The complainant stated that an employee of the Council has been known to attend the allotments AGM meetings. The Commissioner believes that the fact that AGM meetings are held also adds additional weight to the fact that the Allotment Association is distinct from the public authority.

36. The complainant also explained that he was aware of the public authority moving to evict one allotment holder when he violated its rules. He explained that it was reasonable to suppose that it would administer the border disputes as well and would hold a copy of the plan in order for it to do so. As explained the map is not an adequate reflection of the borders due to its nature. The public authority also explained to the Commissioner that it lacked the resources to police every aspect of allotment administration. Instead it would only respond if it received direct complaints.
37. Finally the Commissioner asked the public authority what would happen to the information in the event that the Allotment Association defaulted on its rent or abandon its role. The public authority said that it would be likely to take recovery action and would try to find a new Allotment Association to take over the space. It explained that the plan may be useful in such an event but commented that this was very hypothetical. The Commissioner is satisfied that these arguments also show that the Allotment Association is distinct from the public authority.
38. For all of the reasons above, the Commissioner is satisfied that on the balance of probabilities the public authority does not hold a copy of the allotment plan on its own behalf.
39. The Commissioner has also asked about the public authority's records management policy and was told that it did not have one. This has meant that it is unable to definitely indicate one way or another that it would have destroyed the information if it had it.

Request 2 – the names and addresses of the allotment holders

40. The public authority conducted the same searches as mentioned in paragraphs 31 and 32 for this information. The Commissioner is also satisfied that these searches were reasonable in the circumstances.
41. The Commissioner also asked whether the public authority held a register of allotment holders as he was aware that there were often waiting lists for them. The public authority confirmed that it had no such register. It explained that it lacked the resources to police all the restrictions in its lettings and where it has no

complaints from or about the Association it takes no active role. Instead its role is simply that of landlord.

42. The Commissioner also explained that he was aware that there are some centrally enforced rules about allotments. Examples are that one is not allowed to commercially sell one's produce or keep bees. The Commissioner asked how these restrictions were policed. The Council explained that it did have this overall role but it did not enforce the rules proactively. Instead it waited to receive a complaint before taking action.
43. The public authority confirmed that it had no legal requirement at any time to hold the names and addresses of the allotment holders. It explained that it never held information about sublettees and their individual plots.
44. The Commissioner is also satisfied that the arguments mentioned in paragraphs 35 to 37 are equally relevant in respect to this information.
45. For all of the reasons above, the Commissioner is satisfied that on the balance of probabilities the public authority does not hold a copy of the names and addresses on its own behalf.

Does the Allotment Association hold the relevant recorded information on the public authority's behalf?

46. The Allotment Association itself is likely to hold both pieces of requested information. The Commissioner must therefore establish whether or not the Allotment Association holds it on the public authority's behalf.
47. The first thing the Commissioner has considered is the lease between the two parties. He notes that the lease has been individually negotiated and shows that the two entities have a commercial landlord and tenancy relationship. In this case the landlord has granted the tenants the right of exclusive occupation (subject to the terms of the letting). There are no terms which enable the public authority to enter the property and obtain the information. The contractual relationship between the two shows that they are distinct entities and that the Allotment Association holds the information on its own behalf.
48. The Commissioner has also considered the arguments mentioned in paragraphs 35 to 37 and 41 to 42 and these support the fact that the Allotment Association is a separate unincorporated association and is able to hold the information on its own behalf and does so. The Commissioner has also considered the nature of the information and considers that it is reasonable that the Allotment Association requires the information for its own functioning and that the public authority does not require this information for any of its purposes at all.
49. The Commissioner notes that the Allotment Association was not prepared to give the information to the public authority without setting conditions. This factor also shows that both entities understand that it holds the information for its own purposes.

50. For all the reasons above, the Commissioner is satisfied that the Allotment Association holds the information on its own behalf. It does not therefore hold the information on the public authority's behalf.
51. The Commissioner has determined that the public authority does not on the balance of probabilities hold any relevant recorded information for either part of the request. It was therefore correct to determine that it does not hold this information and the exception in Regulation 12(4)(a) applies.

Procedural Requirements

52. As the public authority dealt with the information request under the wrong regime, the Commissioner has identified procedural breaches in this case. The public authority is reminded to consider similar cases under the correct regime in the future. There is a breach of regulation 14(3)(a). It requires that where environmental information is being withheld the exception that is relied on must be communicated within twenty working days of receiving the request. The public authority failed to specify the exception it relied on in this case, which was 12(4)(a).
53. The Commissioner has considered the advice and assistance provided in this case and whether it corresponds with its obligation in regulation 9. The Commissioner takes a two step approach to determining whether regulation 9 was complied with in respect to the Regulations:
 - (1) Whether the public authority has complied with paragraphs 8 to 23 of the Regulation 16 Code of Practice.
 - (2) Whether the public authority should reasonably have offered further advice and assistance not covered by the Code of Practice.
54. In relation to the Regulation 16 Code of Practice the emphasis is placed on the public authority providing flexible advice and assistance to the applicant.
55. The public authority did fail to draw the applicant's attention to the differences in legislation as it failed to identify the difference itself. This error meant that its advice and assistance failed to correspond with paragraph 14 of the Code, but this did not have an adverse effect on the applicant in this case. The Commissioner does not find a breach of regulation 9 in relation to this matter. The remainder of the Code was complied with in full.
56. The Commissioner has considered whether further advice and assistance outside the Code of Practice should have been offered in this case. The Commissioner does not believe that further advice and assistance would have been reasonable in the circumstances and that the public authority has therefore complied with regulation 9.
57. The Commissioner did explore the possibility with the public authority that it could try and obtain the information from the third party in order to offer further advice and assistance. There was no requirement for it to do so. The public authority

informed the Commissioner that it would try. The public authority did so and could not obtain the information. The Commissioner believes that this complements the view that there was no further advice and assistance that would be reasonable in the circumstances.

58. The Commissioner has considered whether the public authority should have transferred the request directly to either Derby County Council or the Allotment Association in this case to comply with its obligations under regulation 10. The Commissioner believes that the public authority informed the complainant with sufficient information in this case and complied with regulation 10(1)(b).
59. The complainant was also not informed directly of his right to make representations to the public authority under regulation 11 or of the enforcement and appeal provisions of the Regulations applied by regulation 18. This meant that the public authority also breached regulations 14(5)(a) and 14(5)(b).

The Decision

60. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Regulations:
- Correctly informing the complainant that it did not hold the information in accordance with Regulation 12(4)(a).
 - Complying with its obligations under Regulation 9.
 - Complying with its obligations under Regulation 10(1)(b).
61. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Regulations:
- Failing to cite the correct exception within twenty working days, so contravening Regulation 14(3)(a).
 - Failing to inform the complainant in the refusal notice that he was entitled to make representation to the public authority under Regulation 11, so contravening Regulation 14(5)(a).
 - Failing to inform the complainant in the refusal notice that the enforcement and appeal provisions of the Act were applied to the EIR under Regulation 18, so contravening Regulation 14(5)(b).

Steps Required

62. The Commissioner requires no steps to be taken.
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Other matters

63. The public authority stated that the request was 'invalid' on 12 May 2009. It did this because it did not hold relevant information. This was not correct. The public authority is reminded that all requests for recorded information are valid whether information is held in relation to them or not.

Right of Appeal

64. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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

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

Dated the 3rd day of December 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

* Environmental Information Regulations 2001

Regulation 2 - Interpretation

Regulation 2(1) 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 3 – Application

Regulation 3(1) Subject to paragraphs (3) and (4), these Regulations apply to public authorities.

Regulation 3(2) For the purposes of these Regulations, environmental information is held by a public authority if the information –

- (a) is in the authority’s possession and has been produced or received by the public authority; or
- (b) is held by another person on behalf of the public authority.

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 5(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

Regulation 5(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

Regulation 5(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public

authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.

Regulation 5(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

Regulation 9 - Advice and assistance

Regulation 9(1) provides that –

'A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.'

Regulation 9(2) provides that –

'Where a public authority decides that an applicant has formulated a request in too general a manner, it shall -

(a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and

(b) assist the applicant in providing those particulars.'

Regulation 9(3) provides that –

'Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.'

Regulation 9(4) provides that –

'Where paragraph (2) applies, in respect of the provisions in paragraph (5), the date on which the further particulars are received by the public authority shall be treated as the date after which the period of 20 working days referred to in those provisions shall be calculated.'

Regulation 9(5) provides that –

'The provisions referred to in paragraph (4) are -

(a) regulation 5(2);

(b) regulation 6(2)(a); and

(c) regulation 14(2).'

Regulation 10 - Transfer of a request

Regulation 10(1) provides that –

'Where a public authority that receives a request for environmental information does not hold the information requested but believes that another public authority or a Scottish public authority holds the information, the public authority shall either –

(a) transfer the request to the other public authority or Scottish public authority; or

(b) supply the applicant with the name and address of that authority, and inform the applicant accordingly with the refusal sent under regulation 14(1).'

Regulation 10(2) provides that –

'Where a request is transferred to a public authority, for the purposes of the provisions referred to in paragraph (3) the request is received by that public authority on the date on which it receives the transferred request.'

Regulation 10(3) provides that –

'The provisions referred to in paragraph (2) are –

(a) regulation 5(2);

(b) regulation 6(2)(a); and

(c) regulation 14(2).'

Regulation 11 - Representation and reconsideration

Regulation 11(1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

Regulation 11(2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

Regulation 11(3) The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

Regulation 11(4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations.

Regulation 11(5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of –

- (a) the failure to comply;
- (b) the action the authority has decided to take to comply with the requirement; and
- (c) the period within which that action is to be taken.

Regulation 12 - Exceptions to the duty to disclose environmental information

Regulation 12(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

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

Regulation 12(4)(a) provides that –

'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...'*

Regulation 14 - Refusal to disclose information

Regulation 14(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

Regulation 14(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 14(3) The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

Regulation 14(4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

Regulation 14(5) The refusal shall inform the applicant –

- (a) that he may make representations to the public authority under regulation 11;
and
- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.

* **Freedom of Information Act 2000**

Section 1 - General right of access to information held by public authorities

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.