

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

### Decision Notice

**Date: 11 May 2010**

**Public Authority:** Snowdonia National Park Authority  
**Address:** National Park Office  
Penrhyndeudraeth  
Gwynedd  
LL48 6LF

### Summary

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The complainant requested a copy of an independent appraisal, commissioned by the Authority, into a planning application by a third party. The Authority initially refused to provide the information on the basis that it was exempt under section 40 of the Act. At the internal review, the Authority decided that the request ought to have been considered under the EIR and claimed reliance on regulation 13. Following the Commissioner's intervention the Authority released most of the requested information. The Authority withheld the remaining information under regulation 13 of the EIR. The Commissioner finds that the Authority correctly applied regulation 13 to information that was not already in the public domain but that the Authority should have disclosed information that was already in the public domain. However, the Commissioner also found procedural breaches in the way the Authority refused the request.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation

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

## Background

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3. The disputed information in this case is contained within an independent appraisal of a planning application, which was carried out at the request of Snowdonia National Park Authority (the "Authority"). The planning application related to a proposed additional dwelling on a farm that is not the complainant's own land or property. The purpose of the appraisal in this case was to determine whether there was a legitimate need for this dwelling. The appraisal contains information provided by the planning applicants and third parties who had provided their views and opinions on the proposal. The appraisal also contains a very limited amount of personal data of the complainant and the author of the appraisal.

## The Request

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4. On 20 November 2008 the complainant submitted, by email, a request to the Authority for a copy of the "independent assessment and justification" used for planning application NP5/58/470. The complainant repeated the request on 21 November 2008 and stated that "when I paid a visit to your offices this file 'could not be found' for some reason".
5. On 26 November 2008 the Authority responded. It stated that the requested information was exempt under section 40 of the Act. The Authority stated that the information constituted personal data, and that "disclosure of the information to a member of the public would contravene data protection principles". The Authority did not state which data protection principles would be breached by disclosure.
6. On 15 December 2008 the complainant requested an internal review of the Authority's refusal.
7. On 18 December 2008 the Authority issued the findings of its internal review. It stated that it considered disclosure of the requested information would contravene the first and second principles of the Data Protection Act 1998 (the "DPA"). The Authority stated that it

considered "disclosure of such sensitive personal information would be unlawful as it would be an actionable breach of confidence". The Authority concluded that the information was exempt under section 40 of the Act, and regulation 13 of the EIR.

## The Investigation

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### Scope of the case

8. On 18 December 2008 the complainant contacted the Commissioner to complain about the Authority's handling of his request for information.
9. The Commissioner noted that the request was for a copy of the "independent assessment and justification" used for planning application NP5/58/470 and that this could be objectively interpreted as having a wider scope than simply the independent appraisal referred to in the Council's correspondence with the complainant. For example the request could have referred to the appraisal and any other information justifying the decision. However, based on his correspondence with the complainant, the Commissioner is satisfied that the information pursued by the complainant is the withheld information from the independent appraisal which is titled 'Appraisal of Application Reference NP5/58/470 and 2DC030.001/ALL/DT'.
10. During the course of the investigation, the Commissioner determined that a large amount of information contained within the independent appraisal was also contained within the Authority's Planning and Access Committee documentation, which is available on the Authority's website<sup>1</sup>.
11. As a result, the Authority agreed to release a redacted version of the independent assessment to the complainant in which the redactions related to the planning applicants and third party personal data - including identities, business profits, and views and opinions on the planning application. Following the disclosure of the redacted appraisal, the Commissioner unsuccessfully attempted to informally resolve this matter with the complainant who did not accept that the withheld information was exempt from disclosure.

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<sup>1</sup> [http://www.snowdonia-npa.gov.uk/home/parkauthority/home/parkauthority/planning\\_agendas\\_2010/inspection\\_15-6-08.pdf](http://www.snowdonia-npa.gov.uk/home/parkauthority/home/parkauthority/planning_agendas_2010/inspection_15-6-08.pdf)

12. As such, the Commissioner's decision in this case only relates to the redacted information, which will be referred to as the 'withheld information' throughout the remainder of this notice.

## Chronology

13. Between 23 June 2009 and 26 June 2009, the Commissioner wrote to the complainant and Authority outlining his view that the withheld information was likely to constitute environmental information as defined by regulation 2(1) of the EIR. The Commissioner asked the Authority to provide him with a copy of the withheld information and further representations regarding its application of regulation 13 of the EIR. The Authority accepted the Commissioner's view regarding the application of the EIR, and provided the withheld information and further representations on 3 July 2009.
14. Between 28 July 2009 and 11 December 2009, the Commissioner obtained further representations from the Authority in relation to its application of regulation 13 of the Act. During this period, the Commissioner also wrote to the complainant on a number of occasions regarding the possibility of informally resolving the case. On 19 August 2009, the complainant asked the Commissioner to issue a Decision Notice on this case.

## Analysis

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### Substantive Procedural Matters

15. The full text of the legislation referred to can be found in the Legal Annex at the end of this notice.

### Relevant Access Regime

16. The Commissioner has considered whether the request should have been considered under the Act or the EIR.
17. The Commissioner is mindful of the EU Council Directive 2003/4/EC, which is implemented into UK law through the EIR. A principal intention of the Directive is to allow the participation of the public in environmental matters. Therefore, the Commissioner considers the phrase "*any information ...on*", as contained in the definition of environmental information under regulation 2, should be interpreted widely. It can include information concerning, about or relating to

measures, activities and factors likely to affect the state of the elements of the environment.

18. The Commissioner is satisfied that the independent appraisal - and as such the withheld information - falls within the definition of environmental information as set out under regulation 2(1)(c) of the EIR:

*" '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 on -*

*(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."*

19. The Authority has clarified that independent appraisal was used to help it to determine the planning application in question. In this sense, the independent appraisal, of which the withheld information is part, can be considered to be information on an activity affecting or likely to affect the elements referred to in regulation 2(1)(a) – namely, land and landscape.
20. As such, the Commissioner is of the view that the correct access regime in this case is the EIR. The Commissioner is satisfied that the Authority's decision to introduce regulation 13 of the EIR at the internal review stage supersedes the original decision to apply section 40(2) of the Act, and it is this decision which the Commissioner investigated.

## **Exceptions**

### **Regulation 13(2) – third party personal data**

21. The exception under regulation 13(2) applies to information that is the personal data of an individual other than the applicant (the complainant), where disclosure of that information would breach any of the data protection principles or section 10 of the DPA. In this case, the Authority considers that disclosure of the withheld information would breach the first and second principles of the DPA.

### **Is the information personal data?**

22. In considering whether the Authority has correctly applied regulation 13(2) of the EIR to the withheld information, the Commissioner has

first considered whether the withheld information can be considered to be 'personal data'.

23. According to section 1(1) of the DPA, personal data can be defined as follows:

*" 'personal data' means data which relate to a living individual who can be identified –*

*(a) from those data, or*

*(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller."*

24. In considering whether the information requested is 'personal data', the Commissioner has also taken into account his own guidance on the issue<sup>2</sup>.

25. The two main elements of personal data are that the information must "relate to" a living person, and that person must be identifiable. Information will "relate to" a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.

26. The Authority stated that it considers the withheld information to meet the definition contained within the DPA. The Commissioner noted that the withheld information contains the identities of the planning applicants, members of their family and business parties, together with such information as financial details and details of the proposed distribution allocation of business interest. The withheld information also contains the identities of third parties who objected to the application, and their views and opinions on the planning application, from which they would be identifiable. The Commissioner is satisfied that such information relates to living individuals, and that those individuals can be identified from the information in question.

### **Would disclosure contravene any of the principles of the DPA?**

27. The Authority stated that it considers disclosure of the withheld information would breach the first and second principles of the DPA.
28. The Commissioner notes that regulation 13(2) of the EIR is the equivalent of section 40(2) of the Act. As outlined in the

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<sup>2</sup>[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)

Commissioner's guidance on section 40(2) of the Act<sup>3</sup>, and, therefore, regulation 13(2) of the EIR, the Commissioner considers it is likely only the first principle will be relevant when considering disclosure under the EIR.

### **First data protection principle**

29. The first data protection principle states:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

Schedules 2 and 3 to the DPA set out conditions under which personal data may be processed, such as the consent of the data subject, and the legitimate interests of the data controller.

30. Apart from the personal data of the appraiser, which is dealt with in paragraph 60 below, the Commissioner does not consider the withheld information to constitute sensitive personal data, as defined by section 2 of the DPA.

### **Would disclosure of the information be fair?**

31. In considering whether disclosure of the withheld information would be unfair, and therefore contravene the requirements of the first data protection principle, the Commissioner's approach in this case was to balance the consequences of any disclosure and the reasonable expectations of the individual(s) concerned with legitimate interest and general principles of accountability and transparency.

32. The Authority stated that it considered disclosure of the withheld information would cause “an unwarranted interference with the data subject's privacy”. The Authority also stated:

“there is significant potential for harm or distress to be caused when private information about family life is disclosed in this way. In this case, there is a reasonable expectation by the data subject that this information would not be made public”.

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<sup>3</sup>[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/personal\\_information.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/personal_information.pdf)

33. The Authority was also of the view that, as the contents of the withheld information would normally be considered “a private matter”, there is no genuine public interest in disclosure of this information.
34. The complainant indicated that he considered disclosure of the withheld information necessary to ensure that the correct process had been followed by the planning authority. The complainant stated that he considered “personal details such as telephone numbers and email addresses” could be redacted, but also stated that information used in determining whether planning permission could be granted should be publicly available in order to meet the public expectation for open and transparent processes. The complainant also stated that disclosure was necessary for those who wished to challenge the decision to grant permission.
35. The Commissioner first considered the reasonable expectations of the individuals in question. The Commissioner noted that the majority of the withheld information relates to the planning applicants and to other third parties, and that the withheld information concerns such matters as financial statements, and views and opinions about the planning application. Given that the withheld information relates to different parties he has firstly considered whether disclosure of the planning applicants’ personal data is fair and has gone on to consider the personal data of third parties. The Commissioner finally considered the small amount of the appraiser’s own personal data and the complainant’s own personal data contained in the report.

### The Applicants

36. The Commissioner considers that any individual or individuals submitting an application for planning consent should expect certain information relevant to the application to be available to the public. The Commissioner agrees with the complainant’s suggestion that reasons for this include ensuring that the planning process is being correctly followed or to allow for potential challengers to the proposal to be sufficiently informed.
37. The Commissioner also considers that the public availability of such information as referred to in paragraph 10 (which includes information originally withheld by the Authority relating to the applicants’ family life and the future direction and reorganisation of the business) may have an important bearing when considering the reasonable expectations of the individuals to whom the withheld information relates; that is, where some information has already been disclosed, the individual in question may no longer reasonably expect the remainder to be withheld.



38. However, the Commissioner is also of the view that the independent appraisal also contains personal information which the applicants or third parties may not reasonably expect to be disclosed. In particular, the Commissioner considers that business profits or details of the applicants' family history would fall into this category.
39. For example, although the Commissioner accepts that during the independent appraisal process there was a need to explore financial aspects of an application, he does not consider that all such information needs to be disclosed into the public domain to satisfy the need for transparency in the planning process. The Commissioner considers that a document (such as the independent appraisal), which demonstrates that such factors have been considered, can meet the public interest in ensuring that due process has been followed. The Commissioner does not consider, for example, that disclosure of the trading profit of a business is necessary to meet the public interest when an independent appraisal of the financial standing of that business has been conducted and an opinion offered. The Commissioner considers that while certain members of the public may be interested in the trading profit of a business, it is not the same as there being a public interest in the disclosure of this information; particularly when an independent person has considered the financial viability of that business.
40. Similarly, the Commissioner does not consider that disclosure of details regarding the planning applicants' family life, or the role family members play in the business, is necessary to meet the public interest in transparency of the planning process or accountability of decisions. Such factors were considered during the independent appraisal to ensure that the appraiser was aware of the background to the business and whether they would impact on its viability.
41. As such, the Commissioner agrees with the Authority that, where information is not already in the public domain, the disclosure of withheld information relating to the applicants – including financial and family information – would be unwarranted because such information is, by its very nature, private to the applicant and not information that he would want to be disclosed into the public domain. The Commissioner does not consider there to be an overwhelming public interest in disclosure because the planning process is well established and, in itself, provides reassurance that the finances and set up of the applicants' business have been taken into account.
42. The Commissioner is not aware of any assurances of confidentiality that might have been given to the planning applicants during the

- appraisal process and the Authority has been unable to provide any further detail, as it says this is a matter for the person commissioned to undertake the appraisal. In the absence of any clarification of this point and, given that some of the information provided by the applicants during the appraisal process was put into the public domain through the report referred to in paragraph 45, below, the Commissioner has concluded that it would be reasonable to assume that the planning applicants would have had an expectation that some of the information they provided would have been discussed during the course of the consideration of the application. The Commissioner considers that, again taking into account the general principle of openness that runs through the planning process, it would be reasonable to assume that the applicants would have expected that at least some of the information they provided to the appraiser would have been made public – either through discussions during open meetings or through published reports.
43. However, the Commissioner does not consider that this expectation would necessarily extend to all of the information provided to the appraiser by the applicants. For example, the Commissioner considers it reasonable for the applicants to have assumed that only information relevant to their application would have been put into the public domain and that the Authority would use discretion to determine what was relevant.
44. The Commissioner therefore considers that disclosure of further personal data of the planning applicants, not already in the public domain at the time of the request, would be unfair and would breach the first data protection principle.
45. However, the Commissioner notes that some of the withheld information was already in the public domain when the request was submitted to the Authority. For example, at page 48 of the publicly available Planning and Access Committee report referred to in paragraph 10, above, an assessment of the planning application in question is set out. The Commissioner considers that, for example, the majority of the information at bullet points 4 and 7 of point 3.1 of the appraisal (pages 4 and 5) is therefore already in the public domain.
46. As such, the Commissioner considers that, in relation to information already in the public domain, the planning applicants' expectations regarding disclosure would therefore be different. That is, the planning applicants would not expect information already disclosed into the public domain to be withheld. As a result, the Commissioner considers that the consequence of disclosure of information already in the public

domain would not cause unwarranted harm or distress to the planning applicants and would not therefore be unfair.

47. The Commissioner finds that the Authority should not have withheld personal data of the planning applicants that it had already placed into the public domain during the course of normal planning considerations.

### Third parties

48. In relation to the identities, views and opinions of third parties (all of whom objected to the planning application) contained within the withheld information, the Commissioner notes that any individual opposing this planning application had the opportunity for the objections to be considered at the Authority's Planning and Access Committee<sup>4</sup>. By raising objections in this way, any objector would also have made their identity and views available to the public, and, therefore, such individuals would have had a reasonable expectation that their identity and views would be publicly available.
49. The Commissioner acknowledges that the planning process should be sufficiently transparent to determine that the correct procedures have been followed, and to allow for challenges. The Commissioner is also mindful that the Directive from which the EIR are derived sets out that one of the purposes of the legislation is to allow the participation of the public in environmental decision making at the earliest stages.
50. However, in this case, the third parties identities were not disclosed in the course of consideration of the application by the Planning and Access Committee, although their objections were summarised in the report highlighted in paragraph 45, above. The Commissioner is unable to comment on the withheld information in any great detail because to do so would reveal its content but his view is that any further disclosure of the third parties' views and opinions will make them identifiable to the complainant and to the public at large.
51. The Commissioner has therefore considered whether, taking into account the general principle of openness that runs through the planning process, disclosure of the views of the third parties that were expressed to the Authority and included in the appraisal, would be unfair and breach the first data protection principle.
52. The Authority made no specific reference to the personal data of third parties who objected to the planning application in any of its correspondence with the complainant or its submissions to the

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<sup>4</sup> [http://www.snowdonia-npa.gov.uk/agenda\\_17-12-08.pdf](http://www.snowdonia-npa.gov.uk/agenda_17-12-08.pdf)

- Commissioner and this has not helped the Commissioner reach a decision in this matter. Where a public authority does not make specific arguments to support its application of an exception the Commissioner will generally order disclosure. However, in the case of personal data, the Commissioner is mindful of his responsibilities as regulator of the DPA, the Act and the EIR and takes care not to order disclosure of information that should not be put into the public domain.
53. In this case the Commissioner has considered the expectations of the third parties, the unwarranted harm or detriment that would be caused by disclosure and whether there are any overriding public interest arguments that would favour disclosure.
  54. The circumstances in which the third parties provided their objections to the planning application have not been clarified by the Authority but the information contained in the independent appraisal states that the letters and emails that formed the objections were held in a 'confidential file' (point 3, page 3 of the appraisal) and, as mentioned previously in this Notice, the third parties did not make their objections public at the Planning and Access Committee's meeting of 17 December 2008 at which the application was approved.
  55. The Commissioner is not aware that the objections have been made public through any other media, other than the summary of the nature of the objections set out in the report referred to in paragraph 45, above. As the third parties chose not to speak at the meeting of 17 December 2008, he considers it reasonable to assume that they did not wish to make their objections public and that they had an expectation that their identities would not be put into the public domain.
  56. The Commissioner has considered whether there is any overriding public interest in disclosure and he finds that there is not. The Commissioner has already commented in this Notice that there is a public interest in the transparency and openness of the planning process but he notes that a summary of the objections received and considered by the Authority has already been made public through the report referred to in paragraph 45, above.
  57. Similarly, the public interest in the impartiality of the planning process can be said to have been served by the fact that an independent appraisal was commissioned to provide an assessment of the planning application in question and that the objections were reviewed during this exercise.
  58. The Commissioner does not consider it to be in the public interest to circumvent the existing planning processes and procedures. Again, his

view is that while certain members of the public may be interested in knowing who objected to the planning application in question, this does not mean that the public interest is served by disclosure of further information.

59. The Commissioner considers that the consequence of disclosure of the third parties' identities, or the disclosure of further information regarding their objections that could lead to them being identified, would therefore be an unwarranted interference to their privacy. Consequently, the Commissioner considers that disclosure of the withheld information that would identify the third parties would be unfair and would breach the first data protection principle.

### **Personal data of the appraiser**

60. The Commissioner notes that the appraisal contains the appraiser's own personal data. This consists of the first line of paragraph 2 on page 1 of the appraisal. The Commissioner considers that, in line with the definition provided by section 2(e) of the DPA, this information is the sensitive personal data of the appraiser. The Commissioner has not gone on to consider this matter in any detail, as he does not consider this information to be the focus of the complaint. The Commissioner considers that regulation 13 is engaged because disclosure of this information would be unfair and would breach the first data protection principle.

### **Personal data of the complainant**

61. The complainant is referred to by name in two instances in the appraisal. The Commissioner considers this information to be the personal data of the complainant and, accordingly, this information is exempt from disclosure under regulation 5(3). Instead the access route for this information would be via a subject access request under the Data Protection Act.

### **Second data protection principle**

62. For the sake of completeness, the Commissioner considered the Authority's position in relation to the second data protection principle.
63. The Authority stated that disclosure of the withheld information would breach the second principle, which states that "personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes". However, the Commissioner considers that disclosure under the Act or EIR that complies with the DPA in other

respects will not breach the second principle. The Commissioner does not consider the disclosure of personal data in response to a request for information to be a specific purpose for which such information is processed. In responding to a request for information under the EIR, a public authority is not fulfilling one of its business purposes; it is simply complying with a legal obligation.

64. The Commissioner is of the view it would be difficult to argue that, as a rule, compliance with a legal obligation, such as that imposed by the EIR, would be incompatible with the other purposes for which personal data may be processed. Therefore, the Commissioner rejects the argument that a disclosure in response to a request under the EIR or Act would, in itself, breach the second data protection principle.

## **Procedural Requirements**

### **Regulation 14 – refusal to disclose information**

65. The Commissioner notes that the Authority's refusal notice of 26 November 2008 failed to explain why an exception to disclosure had been applied or inform the complainant of his right to make representations to the public authority under regulation 11 of the EIR. The Authority also failed to inform the complainant of the enforcement and appeal provisions of the Act applied by regulation 18 of the EIR. As such, the Commissioner finds that the Authority breached regulation 14(3) and (5) of the EIR.

## **The Decision**

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66. The Commissioner finds that the public authority was correct to apply regulation 13 of the EIR to the withheld information to the extent that the withheld information was not already in the public domain.
67. The Commissioner finds that the public authority incorrectly withheld the personal data of the planning applicants to the extent that the public authority had put such information into the public domain before it received the request.
68. The Commissioner finds that the public authority breached regulations 14(3) and 14(5) of the EIR in its handling of the request.

## Steps Required

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69. The Commissioner requires the public authority to take the following step to ensure compliance with the Act:

Consider the withheld information and disclose to the complainant the information already in the public domain which was redacted within the appraisal report; that is, the information relating to the planning applicants that it had already placed in the public domain during the course of normal planning considerations.

70. The public authority must take the step required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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71. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Other matters

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## Access Regime

72. The public authority appears to have experienced some difficulty establishing which access regime was appropriate to the request.

Paragraph 1 of the EIR code of practice states:

“All communications to a public authority, including those not in writing and those transmitted by electronic means, potentially amount to a request for information within the meaning of the EIR, and if they do they must be dealt with in accordance with the provisions of the EIR. It is therefore essential that everyone working in a public authority who deals with correspondence, or who otherwise may be required to provide information, is familiar with the requirements of the EIR and this Code in addition to the FOIA and the other Codes of Practice issued under its provisions, and takes account of any relevant guidance on

good practice issued by the Commissioner. Authorities should also ensure that proper training is provided.”<sup>5</sup>

The Commissioner expects that, in its future handling of requests the authority will have due regard for the recommendations of the codes of practice issued under the FOIA and the EIR and will ensure that its staff have received sufficient training in these regards.

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[http://www.ico.gov.uk/upload/documents/library/environmental\\_info\\_reg/detailed\\_specialist\\_guides/environmental\\_information\\_regulations\\_code\\_of\\_practice.pdf](http://www.ico.gov.uk/upload/documents/library/environmental_info_reg/detailed_specialist_guides/environmental_information_regulations_code_of_practice.pdf)



## Right of Appeal

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

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

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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

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

**Dated the 11th day of May 2010**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

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

## Legal Annex

### **Freedom of Information Act 2000**

#### **Section 40 - Personal information**

**Section 40(1)** provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

**Section 40(2)** provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

**Section 40(3)** provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
  - (i) any of the data protection principles, or
  - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

**Section 40(4)** provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

## **Environmental Information Regulation 2004**

### **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 5 – Duty to make environmental information available 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(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 13 - Personal data**

**Regulation 13(1)** To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

**Regulation 13(2)** The first condition is –

- (a) in a case where the information falls within any paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –
  - (i) any of the data protection principles; or
  - (ii) section 10 of the Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998(a) (which relates to manual data held by public authorities) were disregarded.

**Regulation 13(3)** The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of the Act and, in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

**Regulation 13(4)** In determining whether anything done before 24<sup>th</sup> October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

**Regulation 13(5)** For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that –

- (a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10

- of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded; or
- (b) by virtue of any provision of Part IV of the Data Protection Act 1998, the information is exempt from section 7(1)(a) of the Act.

## **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.

## **Data Protection Act 1998**

### **Section 1 - Basic interpretative provisions**

(1) In this Act, unless the context otherwise requires—

“data” means information which—

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
- (b) is recorded with the intention that it should be processed by means of such equipment,

(c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or  
(d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

"data controller" means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;

"data processor", in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;

"data subject" means an individual who is the subject of personal data;

"personal data" means data which relate to a living individual who can be identified —

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

"processing", in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—

(a) organisation, adaptation or alteration of the information or data,

(b) retrieval, consultation or use of the information or data,

(c) disclosure of the information or data by transmission, dissemination or otherwise making available, or

(d) alignment, combination, blocking, erasure or destruction of the information or data.

(2) In this Act "sensitive personal data" means personal data consisting of information as to -

(a) the racial or ethnic origin of the data subject,

(b) his political opinions,

(c) his religious beliefs or other beliefs of a similar nature,

(d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),

(e) his physical or mental health or condition,

(f) his sexual life,

(g) the commission or alleged commission by him of any offence, or

(h) any proceedings for any offence committed or alleged to have been committed by him, at the disposal of such proceedings or the sentence of any court in such proceedings.

## **Schedule 1**

### **The first data protection principle**

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

### **The second data protection principle**

“Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.”