

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

### **Decision Notice**

**Date: 20 December 2010**

**Public Authority:** Olympic Delivery Authority  
**Address:** One Churchill Place  
Canary Wharf  
London  
E14 5LN

### **Summary**

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The complainant requested information relating to radioactive material on the Olympic Park Development site. The public authority deemed the request manifestly unreasonable within the meaning of the exception at regulation 12(4)(b) and additionally claimed that the request was formulated in too general a manner and the exception at regulation 12(4)(c) therefore applied. The Commissioner found that neither of the exceptions applied. He therefore ordered the public authority to either disclose the information or issue a refusal notice relying on exceptions other than Regulations 12(4)(b) and 12(4)(c).

### **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"). 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. This Notice sets out his decision.

## The Request

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2. On 9 June 2009 the complainant requested:

'All records and data concerning radiation monitoring, sampling and assaying, including any air filtering assaying devices, deployed on and near the Olympic Park Development Site, including the location of each and every device.'
3. On 7 July 2009 the public authority responded. It confirmed that it held information within the scope of the request. The public authority however explained that it considered the request manifestly unreasonable within the meaning of regulation 12(4)(b) and could not therefore provide the information held.
4. The public authority further advised the complainant that it was in the process of preparing summary reports which would contain some of the information requested. (This was for its own business purposes, not in response to the request.) These summary reports for the North and South Park Olympic sites were subsequently provided to the complainant by November 2009. The public authority also advised the complainant that he could refine his request. The Commissioner has commented on the assistance provided by the public authority in this regard in the analysis section of this Notice.
5. On 16 July 2009 the complainant requested a review of the public authority's decision to not comply with the request on the basis of regulation 12(4)(b).
6. On 13 August 2009 the public authority wrote back to the complainant with details of the outcome of the internal review. It upheld the application of regulation 12(4)(b) and additionally relied on the exception at regulation 12(4)(c).

## The Investigation

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### Scope of the case

7. On 6 September 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant argued that all the information he had requested would have been relatively straightforward to retrieve and copy because the information is 'recorded, collated and reported by a

specialist contractor.' He additionally alleged that his request had been interpreted in the broadest possible way by the public authority in order to deny him access.

## **Chronology**

8. On 1 July 2010 the Commissioner wrote to the complainant to confirm the scope of his complaint against the public authority.
9. On 3 August 2010 the complainant confirmed the scope of his complaint as reproduced above.
10. In the meantime the Commissioner had written to the public authority on 14 July 2010 requesting its representations on the application of the exceptions. The public authority responded on 20 August 2010.
11. Between 14 September 2010 and 11 October 2010 there were a number of additional exchanges between the Commissioner and the public authority.
12. The Commissioner's letters are dated 14 September 2010 and 5 October 2010. The public authority's respective responses are dated 28 September 2010 and 11 October 2010.
13. The details of the Commissioner's exchanges with the public authority are reproduced in the analysis section below.

## **Analysis**

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14. The text of all the statutory provisions referred to below can be found in the legal annex

### **Information held on behalf of a public authority**

15. Although the public authority did not explicitly argue that it did not hold the requested information for the purposes of the EIR, part of its representations in relation to the magnitude of the task involved in retrieving the information led the Commissioner to consider whether Regulation 3(2) applied.
16. Regulation 3(2) states that information is held by a public authority if the information is in the authority's possession and has been produced or received by the authority or is held by another person on behalf of the authority.

17. The Commissioner's assessment of the applicability or otherwise of regulation 3(2) is detailed in the paragraphs below.

## **Exceptions**

### Regulation 12(4)(b)

18. A public authority may refuse to disclose information on the basis of the above exception to the extent that the request for information is manifestly unreasonable. Broadly, the public authority deemed the requests manifestly unreasonable primarily on the grounds that to comply would divert time away from its core function and also place an unreasonable strain on its limited resources.
19. The EIR does not describe the circumstances under which a request could be deemed 'manifestly unreasonable'. In addition, unlike the Freedom of Information Act 2000 ('the Act'), there are no cost limits in respect of responding to requests for environmental information.
20. The Commissioner however accepts the exception at regulation 12(4)(b) could be extended to circumstances whereby compliance would result in unreasonable costs for a public authority or an unreasonable diversion of its resources. In *DBERR v ICO & Platform* (EA/2008/0096), the Information Tribunal (Tribunal) also pointed out that resource implications in complying with a request would certainly have a bearing on whether a request is manifestly unreasonable (at Paragraph 34).
21. Furthermore, the Commissioner considers that the inclusion of "manifestly" in regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under this exception, the information request must meet a more stringent test than being simply "unreasonable". This requirement for an obvious quality to the unreasonableness referred to, coupled with the clear presumption in favour of disclosure in regulation 12(2), indicates that a high threshold has to be met by a public authority in order to engage the exception.
22. The Commissioner is therefore of the opinion that the following factors need to be considered before concluding that a request(s) is deemed manifestly unreasonable:
  - The fact that there is no cost limit to responding to requests for environmental information,
  - The proportionality of the burden on the relevant public authority's workload, and

- The requirement to interpret the exceptions restrictively taking into account the presumption in favour of the disclosure of environmental information.
23. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 provide a useful guide in ascertaining how the cost of complying with a request for environmental information should be calculated. It is however only a guide which may be taken into account when considering whether a request is manifestly unreasonable under regulation 12(4)(b).
  24. In response to the Commissioner's letter of 29 September 2009 the public authority provided a schedule setting out the 'summaries of all the relevant information held by (the authority) or on (its) behalf...' According to the public authority, the relevant data amounted to 2450 pages.
  25. The public authority explained that the request had been denied due to the volume of data it covered. It argued that to provide all of the relevant information would place an unreasonable strain on its limited resources and divert those resources from its primary function of constructing venues, facilities, and infrastructure for the forthcoming London 2012 Olympics.
  26. The public authority further explained that it was working closely with the Environmental Agency to ensure that all processes and procedures are followed as required under the Radioactive Substances Act 1993 (RSA). It had also kept the various host boroughs informed (through the planning process and through its Planning Decisions Team) of the work carried out on the Olympic Park regarding the treatment and, where necessary, removal of radioactive material.
  27. In response to the complainant's suggestion that the public authority only needed to ask its contractors to locate the relevant information and copy it on to CDs, the public authority explained that 'it may be correct that some of the information could be copied to a CD with relative ease, however the broad scope of your request ("*all records and data*") could include correspondence (e.g. letters and email exchanges) and other records which would require more extensive identification and collation.'
  28. The public authority also asked the Commissioner to take into account that the complainant had been advised to refine his request.

29. In addition, the public authority explained that, prior to the request which was before the Commissioner, the complainant had already submitted 3 requests on the same subject matter (i.e. radioactive material/waste on the Olympic Park Site). Copies of these requests were supplied to the Commissioner. The public authority also noted that the complainant had made at least 21 further requests since the request of 9 June (which is the subject of this notice).
30. The public authority therefore concluded that 'considered on the whole and in full context of his previous requests and the size and volume of the information covered by (the complainant's) request....and his refusal to limit his request, it was not unreasonable for the (public authority) to refuse the request on the grounds of the exception in Regulation 12(4)(b).'
31. In response to the Commissioner's letter of 14 July 2010 the public authority explained that it had divided the request into two parts as follows:
  1. All records and data concerning radiation monitoring, sampling and assaying.
  2. All records and data concerning any air filtering assaying devices, deployed on and near the Olympic Park Development site, including the location of each and every such device
32. The public authority also initially explained that the summary reports for the North and South Park sites constitute all of the information held within the scope of item 1 of the request.
33. The public authority however maintained its reliance on regulation 12(4)(b) in respect of item 2 of the request. Consequently, the public authority provided a breakdown of the estimated time it had spent and the cost it had incurred in producing the summary reports which were provided to the complainant. The public authority further provided a breakdown of the estimated time it would spend and costs it expected to incur in complying with item 2 of the request.
34. In summary, the public authority explained it had taken 36.75 hours at a total cost of £3,542.42 to produce the summary reports for the North Park site and another 42.5 hours at a total cost of £4,041.09 to produce the summary reports for the South Park site.
35. The public authority further explained that to comply with item 2 of the request would take an additional 88 hours at a total cost of £7,379.70.

36. The public authority subsequently clarified that all the records and data concerning air filtering devices as requested under item 2 of the request were held in six lever arch files. However, the location of the air filtering devices will 'require a review of the Tier 1 contractor's site records'.
37. According to the public authority, the majority of the information in the six lever arch files is held in paper format and stored in 'an approximate date order'. However, since the time of the original request, a proportion of the documents within the files had been electronically scanned but a substantial proportion was still in paper format waiting to be scanned.
38. The public authority then suggested that the information could be made available to the complainant after the scanning was complete but that the 'process for preparing the information for scanning involves a review of all the information to ensure that all relevant information is complete, and no information is missing. This review will also involve redaction of the identities of the individuals who have undertaken the work and are mentioned in the information held within the files in order to protect their privacy.'
39. In response to the Commissioner's request for samples of the relevant information in the six lever arch files, the public authority provided the Commissioner with 12 copies of completed 'Static Air Sample Analysis Forms' and advised that there were approximately 300 of those forms in the files.
40. In response to the Commissioner's query as to why the data in the six lever arch files did not also contain the locations of air filtering devices, the public authority explained that the selection of the monitoring locations which actively reflected the excavation works being undertaken at the time were changing on a daily basis and consequently the monitoring locations frequently changed as well. In some cases, the Health Physics Surveyors also wore personal air samplers which are difficult to assign a unique location.
41. According to the public authority therefore, to establish the precise location of each and every air filtering device as requested would require a review of its Tier 1 Contractor's site records to identify the location of the excavations on the corresponding date. It explained that such a review would be best undertaken by the site chemist (employed by a separate consultant) who was involved with the supervision of the remediation works undertaken by the Tier 1 Contractor. The site chemist may require support from the Tier 1 Contractor's engineers present during the works but all of whom are now based off – site and

would have to be reassigned to the Olympic Park for the required duration. Although the site chemist is based at the Olympic Park, such a task would divert their attention away from core tasks and thereby delay the validation reporting of current works. Additional resources may therefore be required to cover the site chemist's normal daily duties for time spent on establishing the location of the air filtering devices.

42. The public authority was also keen to stress that the 'Human health Validation Report' applicable to the area had been approved by the planning authority 'without the requirement to provide the level of detailed information required by the (applicant)'. It therefore argued that there was 'no added benefit to the project' by compiling the information requested.
43. In response to a query from the Commissioner, the public authority subsequently clarified that the summary reports did not in fact constitute all of the information within the scope of item 1 and were provided as a partial response to that aspect of the request. It stressed that to provide "all the records and data" as requested would be manifestly unreasonable. The public authority however added that the raw data would not change or alter any conclusions that were drawn within the summary reports and all the pertinent data were contained therein in any event
44. Having carefully assessed all of the public authority's submissions and in light of the revised position that the summary reports did not in fact satisfy item 1 of the request, the Commissioner wrote back (on 5 October 2010) to the public authority for additional clarifications. The public authority responded but strongly suggested that the Commissioner should reach a decision on the basis of the submissions it had so far provided. A summary of the Commissioner's queries and the public authority's responses are outlined below.
45. The Commissioner requested a list of all the documents in the six lever arch files, and the estimated number of records held for each document on the list. The public authority responded as follows:

'We do not hold a list or index of the documents in the files (and none was held at the time of the (complaint's) request), and we do not currently have the resource to create such a list or index...'
46. The Commissioner requested a list of the documents held by the Tier 1 Contractor relevant to complying with the request for the location of each the air filtering devices. The public authority responded as follows:



'We do not hold a list or index of the contractor's site records (and none was held at the time of the (complainant's) request), and we do not currently have the resource to create such a list or index or to ask the contractor to do so.'

47. The Commissioner additionally requested samples of the relevant Tier 1 Contractor's site records marked to indicate where they refer to the locations of air filtering devices. The public authority responded as follows:

'Given the time and resource already spent on this matter to date, it would be unreasonable to expect the ODA to now generate such annotated records at this time.'

48. The Commissioner also explained that having carefully examined the samples of the Static Analysis Forms provided, it appeared to him that only the names on the forms would have to be redacted prior to disclosure. He therefore invited the public authority to redact the names from the forms (300 of them in total) and disclose the remainder of the information to the complainant. The public authority responded as follows:

'We would suggest that, rather than considering selective redaction or disclosure, the forms must be considered in the context of the ODA's reasons for refusing the request, i.e. on the grounds that it would be manifestly unreasonable to review, check and redact all of the information...'

49. With a view to possibly achieving an informal resolution of the complaint, the Commissioner also asked the public authority to clarify whether it would consider disclosing redacted versions of the relevant data after it had all been electronically scanned. The public authority responded as follows on 11 October 2010:

'We have not made any progress with the scanning since our letter of 28 September – mostly because we have had to commit the relevant time and resource to dealing with (the Commissioner's) queries. In any event, we consider that the ICO must assess the question of manifestly unreasonableness with reference to the circumstances that existed at the time when the request was made, not with reference to whether any documents have been scanned in the meantime.'

50. The Commissioner asked the public authority to clarify whether most or all of the data used to compile the summary reports are held

electronically and for a list of the documents in paper format (if applicable). The public authority responded as follows:

'We do not know whether all of the data used to compile the summary reports are held manually or electronically.....these records are not held by the ODA directly but at sub-consultant level.....we do not directly control the records or the format in which they are held....'

51. The Commissioner asked the public authority to clarify whether the relevant records and data concerning radiation monitoring, sampling and assaying (i.e. item 1) are held on their own or as part of a range of other records. The public authority responded as follows:

'.....(the information) is not held by ODA directly, it is held by external parties.....we therefore do not exercise any control or have any sight of the manner or form in which the data is held. To expect the ODA to generate the information (the Commissioner) requires is tantamount to defeating the exception which the ODA relied on.....in the first place: it is manifestly unreasonable.'

52. Given that the public authority had previously suggested that item 1 of the request could include correspondence, the Commissioner asked the public authority for an estimate of the number of individuals whom it is expected would have exchanged correspondence in relation to subject matter item 1 of the request. The Commissioner also asked for an approximate time frame within which such correspondence would have been exchanged. The public authority responded as follows:

'ODA does not hold any "other information" which may have been created as a result.....ODA also does not know how many people may be "expected" to "have had exchanges in respect of the activities", and we do not wish to speculate about information which we do not hold.'

### **Commissioner's Assessment of the Application the Exception at Regulation 12(4)(b)**

#### Item 1 of the request

53. As already pointed above, regulation 3(2)(b) is clear that if information is held on behalf of a public authority, then it is held by the public authority for the purposes of the EIR. In effect, the public authority therefore is deemed to have control over the relevant information in so far as the application of the provisions of the EIR is concerned.

54. The public authority does not appear to dispute that all the records and data concerning radiation monitoring, sampling and assaying are held on its behalf by sub consultants. However, at the same time, the public authority appears to be suggesting that because it does not directly control the relevant data, it would be unreasonable to expect it to be able to provide the data to the complainant.
55. In so far as the public authority is arguing that because it does not control the relevant data it does not hold it, the Commissioner finds that it does by virtue of the provisions of regulation 3(2)(b). The data was produced on behalf of the public authority as part of its remit in ensuring that the construction works on the Olympic sites meet the relevant human health and safety requirements. It was therefore held by the public authority for the purposes of the EIR.
56. The Commissioner also finds that the public authority has not demonstrated how the provision of the data used to compile the summary reports would have placed an unreasonable strain on its resources. Given that the raw data used to compile these reports invariably forms at least part of the records requested by the complainant, it is unclear how providing the raw data would have been too time consuming and financially prohibitive. The public authority was unable to clarify whether the raw data in question is held manually or electronically. In addition, the public authority did not suggest that there were any categories of information it was unwilling to disclose the complainant, other than names which could be redacted to prevent the disclosure of personal information. In any event, it is unlikely that the Commissioner would consider it reasonable to take account of time spent by public authorities redacting exempt information in the calculating cost of complying with a request under the EIR.
57. Furthermore, given that the public authority did not provide an estimated breakdown of the time and cost it would have spent and incurred respectively in providing the records and data relevant to item 1 of the request, the Commissioner could not take those factors into account in reaching his decision. However, in view of the fact the summary reports were effectively produced from the raw data (which would suggest that that the data would have become easily identifiable and retrievable), the Commissioner is any event not persuaded that complying with item 1 of the request would have been cost prohibitive or taken the public authority an unreasonable amount of time.
58. In terms of the assistance provided by the public authority to the complainant to enable him refine the scope of the request, the Commissioner has reproduced below the relevant paragraph in the public authority's letter 07 July 2009. The public authority stated:

'We would like to give you the opportunity of limiting your request before refusing to respond and closing the matter outright. Given the volume of information which you have currently requested, it may be that a limitation of your request may still result in the ODA charging a fee for the processing.....In order to assist you with trying to limit your request, we can advise that the ODA is in the process of preparing summary reports covering all gamma monitoring on the site...'

59. In the Commissioner's opinion, given that the volume of information was the central issue, the public authority could have been more explicit about the information it would have been able to provide without placing undue strain on its resources. The statement above did not appear to rule out the possibility that the public authority may have been able to provide additional information within the scope of the request. However, at the same time the public authority did not clearly define the parameters of a refined request that it would have been willing to consider.

#### Item 2 of the request

60. In addition to the estimated time and costs for complying with item 2 of the request, the public authority also asked the Commissioner to take into account the estimated time it had spent and costs incurred in producing the summary reports.
61. The Commissioner understands that the summary reports were not produced as a result of the complainant's requests. He has therefore not taken into account the time spent and costs incurred in producing the summary reports in relation to the cost of complying with item 2 of the request.
62. The public authority also asked the Commissioner to take into account the complainant's previous requests on the same subject of radioactive material/waste on the Olympic Park Site.
63. From the documents provided by the public authority, the Commissioner notes that the complainant made a request on 17 December 2007 for:  
  
'Contractors Method Statements for contamination remediation agreed to date.'
64. On 8 June 2009 the complainant made a further request for:

- '.....assessment reports and similar commissioned by, and/or submitted to, the Olympic Delivery Authority that assess the risk and radiological impact, such as health detriment, potentially arising from past and present works on the Olympic Park Development Site, particularly with regard to the possible resuspension of (radio) active contaminated dusts and aerosols, and subsequent respiratory uptake by
- (a) contactors and other personnel engaged on the Olympic Park Development Site, and
  - (b) members of the public in residence or engaged at work places, including educational establishments, nearby the Olympic Park Development Site.'
65. The first request was made in December 2007, nearly two years before the requests of 8 June 2009. These requests, as well as the 21 other requests made after the 9 June request were referred to by the public authority to demonstrate the fact it has had to divert resources from its core functions over a period of time in order to comply with the complainant's requests. According to the public authority, all of these requests relate to the radiological impact of works on the Olympic sites on human health.
66. Public authorities can only take into account factors or circumstances which existed prior to a request being made in determining whether it is manifestly unreasonable. The Commissioner has therefore not taken into account any request which the complainant made after the 9 June request.
67. In terms of the two prior requests above, the Commissioner notes that the first one was made nearly two years before the 9 June request and, in his opinion, this was a reasonable interval between both requests. It is unclear why the public authority considered the costs of the earlier request should be taken into account in calculating the cost estimates for the cost of complying with a request made two years later. In addition, the Commissioner is not persuaded in the circumstances of this case that the interval between the 8 June and 9 June (2009) requests placed an unreasonable strain on the public authority's time and finances. Given that both requests substantially relate to a similar subject matter, they could have been aggregated and dealt with as a single request. The public authority did not provide any specific reasons as to why it may not have been possible to aggregate both requests.
68. The Commissioner also carefully considered the breakdown estimate the public authority specifically provided in relation to complying with item 2 of the request. The estimated time and money the public

- authority expects to spend in relation to each activity (i.e. the location, retrieval, and extraction of records) is clear from the breakdown. However, in the Commissioner's opinion, the public authority has not clearly justified why it would need to spend an estimated 88 hours to comply with this part of the request. To illustrate, the samples of the completed static analysis forms provided did not suggest it would have taken an unreasonable amount of time to redact the names of individuals from those documents. Given that the forms were meant to be illustrative of the nature of the documents held in the lever arch files (and it is for the public authority to make its case to the Commissioner by providing the most relevant documents to support its position), it was not unreasonable to expect that the public authority would have been able to redact the names from similar documents.
69. In addition, the public authority did not provide an estimate of the number of documents actually held in the lever arch files and, as far as the Commissioner can gather, the extent to which the documents need to be reviewed for the purposes of the request is to ensure that the names of individuals are not disclosed. From the sample documents provided, he is not persuaded that it was unreasonable to expect the public authority to conduct this task.
  70. In terms of the location of the air filtering devices, the Commissioner was not provided with a list or an approximate number of documents that would have needed to be reviewed. The public authority could not also provide sample documents to assist the Commissioner's investigation in this respect.
  71. In view of the above, the Commissioner was unable to make a connection between the estimated time and costs and the work the public authority would have had to undertake in providing the complainant with the location of each air filtering device.
  72. Whilst the Commissioner appreciates the effort which would have gone into providing the breakdown estimate, it would have been useful if the nature of the work actually involved in completing each task was clearly described as well. The burden is on a public authority to justify the time and cost estimated for each task, without which, the Commissioner is only able to make a decision on the basis of the explanation the public authority has provided.
  73. The Commissioner does nevertheless recognise that the ODA is a relatively small public authority tasked with very specific functions towards the preparation for the London 2012 Olympics and quite understandably needs to manage its time and budget accordingly. However, as noted above, there is a high threshold to meet in refusing

to comply with a request on the basis that it is manifestly unreasonable. Therefore, in view of the public authority's responses to the complainant as well as its submissions, the Commissioner is not satisfied that the public authority has met that threshold in this case.

74. The Commissioner therefore finds that the complainant's request was not manifestly unreasonable and the exception at regulation 12(4)(b) did not apply.

### **Application of the Exception at Regulation 12(4)(c)**

75. A public authority may refuse to disclose information to the extent that the request is formulated in too general a manner and the public authority has complied with regulation 9.
76. Regulation 9(1) as already noted above imposes a duty on a public authority to provide advice and assistance to applicants and prospective applicants so far as it would be reasonable to expect the authority to do so.
77. Regulation 9(2) further provides that if a public authority decides that a request has been formulated in too general a manner, it shall ask the applicant as soon as possible and no later than 20 working days after the date of the receipt of the request to provide more particulars in relation to the request and assist the applicant in providing those particulars.
78. The Commissioner has already found that the public authority did not clearly set out the parameters within which the complainant could refine his request. Instead, it made the complainant aware of the possible availability of the summary reports 'in order to assist (him) in trying to limit (his) request.'
79. In view of the above the Commissioner finds the exception at regulation 12(4)(c) did not apply because the public authority did not comply with regulation 9. Furthermore, the Commissioner's view is that the request was itself clear. Indeed, the public authority did not ask the complainant for any clarification. Their concern appears to have been about the logistics of compiling the information requested rather than the generality of the request.

## **The Decision**

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80. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.
- The public authority incorrectly relied on the exception at regulation 12(4)(b).
  - The public authority incorrectly relied on the exception at regulation 12(4)(c).

## **Steps Required**

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81. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- Disclose the information or issue a refusal notice relying on exceptions other than Regulations 12(4)(b) and 12(4)(c).
82. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Failure to comply**

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83. 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.



## Right of Appeal

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84. 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 20<sup>th</sup> day of December 2010**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex

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### **Regulation 3 - Application**

#### **Regulation 3(1)**

Subject to paragraph (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 authority; or
- (b) is held by another person on behalf of the authority.

#### **Regulation 3(3)**

These regulations shall not apply to any public authority to the extent that it is acting in a judicial or legislative capacity.

#### **Regulation 3(4)**

These regulations shall not apply to either House of Parliament to the extent required for the purpose of avoiding an infringement of the privileges of either House.

#### **Regulation 3(5)**

Each government department is to be treated as a person separate from any other government department for the purposes of Parts 2, 4 and 5 of the Regulations.

### **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)** 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)** 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)** 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)** 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)** The provisions referred to in paragraph (4) are –

- (a) regulation 5(2);

- (b) regulation 6(2)(a); and
- (c) regulation 14(2).

## **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 the 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(3)** To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

**Regulation 12(4)** For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

**Regulation 12(5)** For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

- (a) international relations, defence, national security or public safety;
- (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- (c) intellectual property rights;
- (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;

- (f) the interests of the person who provided the information where that person –
  - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
  - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
  - (iii) has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.

**Regulation 12(6)** For the purpose of paragraph (1), a public authority may respond to a request by neither confirming or denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).

**Regulation 12(7)** For the purposes of a response under paragraph (6), whether information exists and is held by the public authority is itself the disclosure of information.

**Regulation 12(8)** For the purposes of paragraph (4)(e), internal communications includes communications between government departments.

**Regulation 12(9)** To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs (5)(d) to (g).

**Regulation 12(10)** For the purpose of paragraphs (5)(b), (d) and (f), references to a public authority shall include references to a Scottish public authority.

**Regulation 12(11)** Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is withheld by virtue of these Regulations unless it is not reasonably capable of being separated from the other information for the purpose

## **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
- of the enforcement and appeal provisions of the Act applied by regulation