

Environmental Information Regulations 2004

Decision Notice

Date: 18 August 2010

Public Authority: Cheshire West and Chester Council
Address: County Hall
Chester
CH1 1SF

Summary

The complainant made a request for recorded information about the reasons why a road had not been adopted by the public authority. The public authority provided an explanation and the complainant requested an internal review. The public authority refused to conduct an internal review, although stated that its position remained the same. The Commissioner has considered this case carefully. He has determined that the information, where held, is environmental information and that this case should be considered under the Environmental Information Regulations (EIR). He found that the public authority did hold one piece of information and has ensured that this has now been provided to the complainant. He has determined that the public authority holds no further relevant recorded information in this case that needs to be provided under Regulation 5(1). However, he finds that the Council have contravened Regulation 5(1) (in failing to provide the single email that it did hold until the Commissioner's investigation), Regulation 5(2) (in failing to provide email in twenty working days), and Regulation 11 (in refusing to conduct an internal review.) He requires no remedial steps to be taken in this case as the single piece of information that is relevant to the request has now been provided.

The Information Commissioner's Role

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

provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. The Council is a Unitary Authority Area with borough status that was established in April 2009 by virtue of an order under the Local Government and Public Involvement in Health Act 2007.
3. This Order establish a new Unitary Authority, Cheshire West and Chester Council ("the Council"), for the area that comprises of the boroughs Ellesmere Port and Neston, Chester and Vale Royal, replacing and taking the functions of the borough councils for those respective areas as well as Cheshire County Council's previous functions. This is relevant as the historical issues in this case involve the old Vale Royal Borough Council (VRBC) and Cheshire Country Council (CCC).
4. In May 1992 VRBC signed a section 38 [Highways Act 1980] Road Adoption Agreement with a specified developer which would lead to the completion of the whole of Rookery Rise project including the newly constructed minor roads that link to it. One of the minor roads that linked to Rookery Rise is called Beechfields.¹ It did this as the agent of CCC's Highway Authority. This agreement explained the work that would be undertaken and that once it was undertaken CCC would adopt all the roads for the Rookery Rise project. It provided provisions that CCC could undertake the work in the event that the developer defaulted and that the money could be claimed back from a surety. CCC also explained that it would use its best endeavours to mitigate the loss where appropriate. It allowed the developer to apply for certification in relation to parts of Rookery Rose project should it so desire.
5. Later in 1992 VRBC issued a Part One certificate for the whole Rookery Rise project.
6. In late 1996 the specified developer went into liquidation and was unable to finish the project (including the road) by itself.
7. In 1997 and 2002 the complainant made complaints to the Local Government Ombudsman about the conduct of VRBC and CCC in this matter.

¹ The remainder of this Notice will refer to Beechfields as 'the road'.

8. Between 1998 and 2006 the Local Government Ombudsman tried to assist the parties in obtaining an appropriate resolution to the complainant's complaint.
9. In 2001 the CCC told its agents VRBC to obtain the money from the surety in line with the May 1992 agreement.
10. Also in 2001 VRBC moved to undertake the work to bring the road up to an adoptable standard on behalf of CCC.
11. On 17 February 2010 notices were placed in the area by the Council explaining that the road was to be adopted.
12. On 18 March 2010 the whole of the road was finally adopted by the Council.

The Request

13. On 10 November 2009 the complainant requested the following information from the Council in accordance with section 1(1) of the Act:

'I would like a copy of any and all recorded information that would explain why the roads servicing Beechfield, Winsford remain unadopted.'

14. On 8 December 2009 the public authority responded in a detailed email. A full copy of this email is found in Annex A attached to the bottom of this notice. The main elements were that:
 - The request was very similar to a previous request dated 16 June 2009;
 - The position of the Council had not changed since then and it copied the response it issued previously; and
 - The reasons why the road was not adopted were:
 1. The road could not be adopted in isolation of the main road network and outside the phased Adoption agreements. The road was being adopted sequentially.

2. In this case the developer went insolvent and this led to some of the delay.
 3. There was a complex legal dispute between the developer (and the then CCC) and the complainant about the vehicular crossing to his own drive and this led to further delays.
 4. That CCC's scarce engineering resources were used up by this dispute.
 5. The Council had recently been restructured, a considerable number of staff had left the public authority due to this restructure and this created the recent delay.
 6. That the adoption would be completed as soon as possible when the resources became available.
15. Later the same day, the complainant requested an internal review. He explained that he disputed that this request was the same as the previous request. He explained that he believed that the original reasons were no longer valid and that he believed that a 'real' reason existed and/or information that explained why the road wasn't adopted by 10 December 2009. He also explained that there was there was a sufficient gap between the requests for further information to have been generated.
16. On 18 December 2009 the Council provided a response. It explained that there was no new reason why the road was not adopted. It explained that the task would receive appropriate attention as and when operational priorities and resources permit. It stated that the complainant had failed to set out sufficient grounds to warrant a review being undertaken and that it would not conduct one.

The Investigation

Scope of the case

17. On 18 December 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- That this request concerns the roads on Beechfields Estate itself, while the earlier request relates to the road leading to it, called Rookery Rise. The roads are connected but not the same and the Council's response implies that they are.
 - That the public has the right to know why this road is not adopted.
 - That he has found further evidence that should be considered:
 1. The previous request provided information about the East of the site, while the road could have been adopted from the West of the site since the spring of 2005. The public authority had not in his view explained why it wasn't adopted then.
 2. The cost of adopting the road has been estimated at 10 hours of work and is not therefore a large undertaking.
 3. That VRBC paid £60,000 to finish the roads to adoptable standard in 2001 and it was 'ludicrous' that the public authority had failed to find the money during the last 8 years to pay an officer for 10 hours work.
18. On 22 February 2010 the Commissioner agreed the scope of the investigation with the complainant as follows:
- 'Any and all recorded information containing the reason why the roads servicing Beechfields were not adopted between 2005 and 2009, namely the period during which they could have been adopted from the adopted westerly end of the crescent known as Rookery Rise.'*
19. During the course of this investigation, one email was located that the Commissioner found was in the scope of the request. This email was dated 29 June 2007. It explained that there was a boundary dispute with an adjacent landowner and this prevented the road being adopted. The Commissioner finds that this email is covered by the scope of the request since it is information about the reason the road wasn't adopted. The Commissioner notes that the complainant is not satisfied that this is the true reason why the road was not adopted, however it is information that falls within the scope of the request.
20. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular the Commissioner does not have the jurisdiction to make any judgment about the wisdom of the public authority's position and can only consider information access matters.

Chronology

21. 15 February 2010: The Commissioner spoke to the Council on the telephone. He discussed the Council's handling of the case up to then.
22. Later the same day the Commissioner spoke to the complainant on the telephone. He spoke to the complainant about the background to the complaint and to understand what information was outstanding and to set the scope of his investigation.
23. Finally, the Commissioner wrote to the complainant to confirm the scope of his investigation in this case.
24. 22 February 2010: The complainant explained to the Commissioner that he had a slightly wider scope in mind. The Commissioner replied and explained the scope of his investigation would be as the complainant suggested.
25. 25 February 2010: The Commissioner wrote to the Council. He confirmed the scope of his investigation and asked the Council a number of questions about how it held its records and why it believed that there was no further relevant recorded information.
26. 11 March 2010: The Commissioner received detailed submissions from the Council.
27. 30 March 2010: The Commissioner received confirmation that the road had now been adopted. The Commissioner telephoned the complainant to ask if he wanted the case to continue. The Commissioner also telephoned the Council to ask it to conduct further searches.
28. 31 March 2010: The complainant informed the Commissioner that he did want the case to continue.
29. 13 April 2010: The Council wrote to the Commissioner with the result of its extra searches. The letter included correspondence that had been found when the areas suggested were searched. Within this correspondence was an email dated 29 June 2007.
30. Later the same day the Commissioner telephoned the Council. He explained that in his view the email dated 29 June 2007 was covered by the scope of his investigation and asked that it was disclosed to the complainant. The public authority agreed to do this and released the information to the complainant on the same day.

31. 15 April 2010: The complainant informed the Commissioner that he did not believe that the information provided to him on 13 April 2010 was covered by the scope of the investigation. The Commissioner replied on the same day to explain why in his view it was.

Analysis

Substantive Procedural Matters

Is the information environmental?

32. The Commissioner has first considered whether the request made by the complainant is a request for environmental information as defined by the EIR.
33. The Commissioner considers that the information, where held, falls within the Regulation 2(1)(c)²: 'measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures designed to protect those elements.'
34. In this case all the information, where held, would consist of a reason why a road was not adopted. The Commissioner believes this amounts to a measure (a programme and activity) that is likely to affect the land and landscape [2(1)(a)]. The Commissioner is satisfied that the information would all be environmental information in this instance.

Is further relevant recorded information held?

Regulation 5(1)

35. Regulation 5(1) imposes an obligation on a public authority to make the recorded information that it holds available on request (subject to issuing an appropriate refusal notice when it can rely on an exception).
36. In order to determine its position under the Regulations it is important as a first step for it to determine what relevant recorded information it holds that is covered by the scope of the request for information.

² A full copy of all the provisions cited in this Decision Notice can be found in the legal annex that is attached to the bottom of the Notice.

37. At the beginning of the Commissioner's investigation the Council stated that it had provided all the recorded information that it held in the email dated 8 December 2009. It explained that the complainant knew of all the reasons why the road was not adopted and that it held no more relevant recorded information about its reasons.
38. As explained above an email dated 29 June 2007 which was recorded information relevant to the request was located during the course of the Commissioner's investigation. This was subsequently provided to the complainant on 13 April 2010. The failure to provide this information at the time of the request is a breach of Regulation 5(1).
39. The remainder of the substance of the Commissioner's investigation is to determine on the balance of probabilities whether further recorded information beyond the two emails referenced in paragraphs 37 and 38 above was held that is covered by the agreed scope of his investigation (explained in paragraph 18 above).
40. An important initial point to make is that the Commissioner is limited to considering whether or not recorded information exists at the time of the request for information. This is the only information that a public authority is obliged to provide. The time of the request was 10 November 2009 in this case.
41. In investigating cases involving a disagreement as to whether or not information is in fact held by a public authority, the Commissioner has been guided by the approach adopted by the Information Tribunal (the 'Tribunal') in the case of *Linda Bromley & Others and Information Commissioner v Environment Agency* (EA/2006/0072). In this case the Tribunal indicated that the test for establishing whether information was held by a public authority was not one of certainty, but rather the balance of probabilities. The Commissioner will apply that standard of proof to this case.
42. He has also been assisted by the Tribunal's explanation of the application of the 'balance of probabilities' test in the same case. It explained that to determine whether information is held requires a consideration of a number of factors including the quality of the public authority's final analysis of the request, the scope of the searches it made on the basis of that analysis, and the rigour and efficiency with which the search was then conducted. It also requires considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.
43. There has been considerable correspondence between the complainant and the Council concerning the road. The correspondence stretches

- from around 1995 and continues until the present day. The Commissioner has agreed with the complainant that he will focus his investigation in the time period 2005 to Nov 2009 (the date of the request).
44. When analysing the request and the agreed scope the key word is in the Commissioner's view is 'the reason' why the road has not been adopted.
 45. The Council has stated that the reason that the road has not been adopted is because of the way it viewed its operational priorities. The development of the road was a complex undertaking. It explained that its resources between 2005 and 2009 were taken up trying to resolve the complainant's complaints arising from its work on the road to ensure that it was all up to an adoptable standard. The Council pointed to the Local Government Ombudsman's report which stated that the public authority had 'gone to what could be considered extraordinary lengths to ensure' that it did not deprive or interfere with the complainant's property³. The adoption of the road was not regarded as a priority task and resources were not allocated to it.
 46. In addition it explained that it had decided to keep the development to the west and this development separate. This was a decision taken on pragmatic grounds to keep different developer's obligations apart.
 47. It also explained for the relevant time [2005-2009] there was only one individual who had the responsibility for the adoption sites for the whole of west Cheshire County.
 48. Further from May 2009 the Council underwent a restructure that led to the reorganisation of the relevant department. The Council lost 466 staff and this meant that it did not have the resources to adopt the road. In addition the individual referred to in paragraph 47 has not been able to work for it from that time. It held no recorded information that connected that individual to the adoption of the specified road.
 49. The Council explained that the operational explanation set out above was the reason why it did not adopt the road until 18 March 2010 and it did not have any recorded information that crystallised its decision. This is because there was no positive decision taken to not adopt the road within the dates specified. However, it has recently employed another engineer and instructed him to adopt the road and this has now been done.

³ Complaint No. 06/C/04993, at page 33, paragraph 108.

50. The complainant has argued that there must be another reason why the road has not been adopted. He explained that the work that required undertaking was slight and the cost to the Council in 2001 was much larger. The Commissioner has also considered the complainant's website and it appears that he believes that there was another legal dispute or something similar that prevented the road from being adopted. The email dated 29 June 2007 did explain that the process had been delayed due to a legal dispute with an adjacent landowner. The Council has confirmed to the Commissioner that that adjacent landowner was the complainant.
51. The Commissioner notes that the road has now been adopted. This provides less rationale to suspect that there is another underlying reason that prevented it from being so.
52. The Commissioner has also asked the Council to explain the sort of records that its highway engineers hold. It explained to the Commissioner that the records for the road are a combination of conventional paper files and in recent times; drawings and scans of documents stored in its electronic document management system.
53. The records are stored in the Transportation and Planning Service and the Legal and Democratic service where active, and if archived in the Records Management section of the Culture and Recreation Service.
54. It explained that it had checked the relevant files and the document management service within the Legal Service. It explained that its Legal Service has been involved throughout the complainant's series of complaints and is aware of the circumstances of the case. It explained that the individual who was responding to the Commissioner's enquiries had detailed knowledge of the matter and fully believes that there is no further recorded information to be found. It stated that this belief was based on the sound reasoning in paragraphs 45 to 48 above.
55. It explained that it did have a legal obligation to hold information about the status of unadopted roads in line with its statutory requirement to maintain a list of streets. This is used to respond to Con29 and Local Land Charges Register searches. It explained that it also was necessary to document any contracts with third parties and account for revenue.
56. The Commissioner asked for further searches to be undertaken of the Council's Highways engineers' department. He was particularly interested about whether there had been clarifications to Con29 enquiries and whether there was any recorded information about the reasons why the road had not been adopted. The Council undertook a further search and sent the Commissioner the limited information that

it held about the road, only one email of which was found to be within the scope of the request. This was the email dated 29 June 2007, which the Commissioner asked to be provided to the complainant. The rest of the information related to solicitors enquiries in the purchase of a property and contained no information that could be said to be a 'reason' for why the road is not adopted. The Commissioner is satisfied that the searches that have been undertaken are now reasonable in this case.

57. The Council explained that its business requirements for holding such information are to enable audit, and for any legal requirements. However, neither its business nor legal requirements require it to have recorded information about reasons why it did not adopt a road.
58. It explained that it was in the process of adopting a new records management process and was until then using the Local Government Classification Scheme as a default scheme. This scheme does not impose any obligation to have a reason why it did not adopt a road either.
59. The Commissioner has considered the circumstances of this case in detail. He is satisfied that on the balance of probabilities there is no further relevant recorded information that falls within the scope of the request.

Procedural Requirements

Regulation 5(2)

60. Regulation 5(2) imposes an obligation on public authorities to make information available on request within twenty working days. The Council failed to find the email dated 29 June 2007 and therefore failed to provide it in twenty working days. It therefore breached section 5(2). As this information has now been provided there are no remedial steps appropriate for remedying this breach.

Regulation 11

61. Regulation 11 imposes an obligation on a public authority to conduct an internal review after receiving representations from the requestor. The Council refused to conduct an internal review and therefore breached Regulation 11.

The Decision

62. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- *It holds no further relevant recorded information within the scope of the Commissioner's investigation.*

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

- *It failed to find and provide the single piece of relevant recorded information it held that was within the scope of the request and thereby breached Regulation 5(1).*
- *It failed to provide this single piece of information within twenty working days and thereby breached Regulation 5(2).*
- *It failed to conduct an internal review and therefore breached Regulation 11.*

Steps Required

64. The Commissioner requires no steps to be taken.

Right of Appeal

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

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

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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

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

Dated the 18th day of August 2010

Signed

**Rachael Cragg
Group Manager Complaints Resolution**

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

Annex A – A full copy of the original response from the public authority (with personal data redacted) on 8 November 2009

With regard specifically to the status of Beechfields it is considered to be essentially the same query you raised in your request of 16 June 2009 logged as 400085. The response to that request in [Member of Staff Redacted] 's email dated 22 July was as follows: -

...

FREEDOM OF INFORMATION ACT 2000 Unadopted Roads

I refer to your FOIA request number 400085 made by emailed dated 16 June timed at 18.48. I apologise on behalf of the council that you have not had a response sooner.

Beechfields has remained unadopted due to the intermediate sections of road linking it to the main adopted road network being subject to separate phased adoption agreements with the Authority. No Highway Authority will adopt a road in isolation from the main adopted network and the adoption of these lengths of street under separate phased road Agreements has therefore had to take place in a progressive sequential manner.

On a development the size of Rookery Rise the completion of the individual phases by the respective developer/s can take sometime to complete prior to the next phase being released for further development.

Usually, the speed of construction operations to finish off the individual phases is beyond the control of the Authority and is directly governed by economic conditions and/or the developer's own build programme.

In this instance the developer initially made normal progress with the construction of the first phase of Rookery Rise. However, some time ago it became apparent that the developer's progress on site had started to slow due to financial difficulties. This ultimately lead to the receiver being called in and, finally the developer company going into liquidation. Ultimately, as you are aware, the highway authority carried out the works to bring that part of Rookery Rise up to adoption standard.

From your comprehensive knowledge of issues relating to [information about complainant's property redacted] and

documentation and reports in your possession or provided to you in the past you will be aware that there existed an outstanding and complex dispute with the developer and subsequently the highway authority concerning the vehicular crossing to your private drive access and the installation of a public pedestrian footway required to bring Rookery Rise up to adoption standard. However, that section of Rookery Rise, phase one has now been adopted.

I can now confirm that phase two, of which Beechfields forms part, is also now of a suitable standard to be adopted by the Authority. Ideally, that adoption would have been finalised by now, but unfortunately the Authority is currently undergoing a major reorganisation following the abolition of the County and District Councils and the creation of this new unitary Council which has given rise to some delay.

Notwithstanding this I can inform you that it will now receive appropriate attention in order for Beechfields to achieve adoption status as publicly maintainable street.

It is not considered that there is any additional information to provide to you which is not already in your possession.

I consider that the substantive reply makes your recent request for an Internal Review no longer necessary.

[Individual redacted]

You raised additional related queries logged as 20090807 in emails dated 22 and 24 July concerning the status of Beechfields and [Individual redacted] responded by letter dated 7 August as follows: -

...

Thank you for your emails dated 22 July and 24 July.

There are no "information documents" pertinent to your assertion that Beechfields could or should have been adopted in 2001 by reason of the adoption of later westerly phases of Rookery Rise, ie the [developers redacted] development.

As a matter of sound operational highway engineering practice, road adoptions on major developments are, as far as possible, dealt with sequentially in an orderly fashion as it can never be

assumed that subsequent phases will necessarily be constructed without modification from the initial approved layout or may be provided with different ultimate connections to the existing road network.

You will be aware that the scarce engineering resource available to supervise the adoption of the roads on the Rookery Rise development was necessarily and significantly diverted and distracted in having to address the longstanding and complex dispute concerning the vehicular crossing to your private drive access and the installation of a public pedestrian footway required to bring Rookery Rise Phase 1 up to adoption standard.

I trust this addresses all your points.

....

Since [Individual Redacted]'s letter of 7 August, I can inform you that the restructuring of the Council's services, referred to in that letter, is currently underway following some 466 staff having left on voluntary redundancy on 30th September. These included officers in Highways and Transportation Service. This, combined with other temporary operational resource constraints, has meant the procedures to bring about the adoption of Beechfields have not yet been initiated. In that context, it remains the case that there is no documentary information to disclose in relation to your request.'

Legal Annex

* Environmental Information Regulations 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 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 11 - Representations and reconsideration

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

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

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

(a) consider them and any supporting evidence produced by the applicant; and

(b) decide if it has complied with the requirement.

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

Regulation 11(5) Where the public authority decides that it has failed to

comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of -

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

*** Freedom of Information Act 2000**

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

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

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.