

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 15 June 2016

Public Authority: Vehicle Certification Agency (an executive agency of the Department for Transport)

Address: VCA Headquarters
1 The Eastgate Office Centre
Eastgate Road
Bristol
BS5 6XX

Decision (including any steps ordered)

1. The complainant has requested testing and approval documentation for a number of chain saws and brush cutters. The Vehicle Certification Agency (VCA) refused the request under regulation 12(5)(a) – international relations, and 12(5)(c) – intellectual property rights. During the Commissioner’s investigation the VCA also applied the exception provided by regulation 12(5)(f) – interests of the person who provided the information, and, in respect of the names of junior officials, regulation 13 – third party personal data. The complainant has not contested the application of regulation 13.
2. The Commissioner’s decision is the VCA is not entitled to rely on the exceptions provided by regulations 12(5)(a),(c) and (f).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the approval documentation for the six products referred to in the request, apart from the limited redactions of personal data relating the VCA’s officers.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 5 May 2015, the complainant wrote to the VCA and requested information in the following terms:

"Please send me detailed testing and approval documentation for all elements of the products listed in the attached schedule and approved by VCA under the following permit numbers:

- e11*97/68SA*2011/88*1767*01;
 - e11*97/68SA*2011/88*0747*05;
 - e11*97/68SA*2004/26*1204*00;
 - e11*97/68SA*2011/88*2577*00;
 - e11*97/68SA*2010/26*1691*00;
 - e11*97/68SA*2010/26*1413*01."
6. The schedule referred to simply provided more details of the products to which the request related, listing such details as the name of manufacturer, the model number of the product, the type of product for example 'brush cutter' or 'chain saw' etc. Since there is no dispute as to the identity of the products to which the request relates the Commissioner has not found it necessary to reproduce that schedule as part of this notice.
7. The VCA responded on 1 June 2015. It stated that all the requested information was exempt under regulation 12(5)(a) on the basis that its disclosure would have an adverse effect on international relations. It also applied regulation 12(5)(c) to some of the information on the basis that its disclosure would have an adverse effect on intellectual property rights.
8. Following an internal review the VCA wrote to the complainant on 7 September 2015. It upheld its original decision to refuse the request.
9. During the course of the Commissioner's investigation the VCA advised the Commissioner that it was now applying additional exceptions. These were regulation 12(5)(f), which in broad terms protects the interests of the person who provided the information, and regulation 13. Regulation 13 was applied in respect of the names of junior officials.

Background

10. Before any product with an internal combustion engine can be sold in the European Union (EU) it has to be approved by an appropriate approval authority. There are a number of such approval authorities operated by different countries within the EU. The VCA is the UK's.
11. The Commissioner understands that the approval process involves testing that the engines' emissions meet the standards required by EU directives. In this case the complainant has argued that independent tests show that the approved products exceed the permitted emissions of carbon monoxide, hydrocarbons and oxides of nitrogen.

Scope of the case

12. The complainant contacted the Commissioner on 3 December 2015 to complain about the way his request for information had been handled. The complainant claimed that the VCA had misapplied regulation 12(5)(a), arguing that the VCA was trying to circumvent regulation 12(9). Regulation 12(9) states that certain exceptions cannot be relied on when the requested information relates to emissions; one of those exceptions being regulation 12(5)(e) – confidentiality of commercial information. The complainant argued that the VCA's grounds for applying regulation 12(5)(a) related to the supposed confidentiality of the information and that therefore the appropriate exception should have been 12(5)(e), however as that exception was not available, the VCA was trying to rely on 12(5)(a).
13. In respect of the VCA's application of 12(5)(c) – intellectual property rights, the complainant argued that the VCA's application of the exception was too generic, that no attempt had been made to identify specific information which constituted an intellectual property right and was in effect a blanket application of the exception. Finally in respect of the public interest in maintaining both exceptions the complainant argued that the VCA had failed to take account of the importance in protecting public health.
14. The Commissioner considers that the matter to be decided is whether any of the exceptions provided by regulation 12(5)(a), (b), or (f) can be relied on to withhold the requested information. The complainant has chosen not to challenge the VCA's application of regulation 13.

Reasons for decision

The requested information

15. The requested information is the approval documentation for six engines tested and approved by the VCA. The approval documentation for each engine consists of a covering letter, a three page approval certificate signed by the relevant member of staff, the test results completed by VCA staff and, what is described as, an information package. The information package contains information provided by the engine's manufacturer when seeking approval. It contains details of the engine which appear to be submitted on a pro-forma, together with technical drawings of the engines' components and photographs. The information packages may also include details of tests which the manufacturer has conducted and assurances as to the quality standards adhered to in the production process. Having viewed the withheld information the Commissioner is satisfied that this is the case
16. Regulation 12(5)(a) – international affairs has been applied to all the information, 12(5)(f) – interests of the person who provided the information, has been applied to a significant proportion of the information, whilst regulation 12(5)(c) – intellectual property rights has been applied to only a limited amount of information.
17. The VCA has provided copies of all the information falling within the scope of the request. It has marked up the documentation in respect of one engine to show which information has been withheld under regulations 12(5)(f) and (c). The VCA has advised the Commissioner that, as the other approval documentation is broadly similar, it should be possible to extrapolate from those redactions which information in the other sets of approval documentation it considers exempt. The Commissioner understands that this approach was taken due to the length of time the VCA believes it would take to apply these exemptions to all six sets of documents. Although the Commissioner has proceeded with his investigation on this basis, he considers the VCA's approach significantly weakens its arguments in respect of the exceptions provided by regulations 12(5)(f) and (c). The Commissioner infers from the VCA's approach that it has not actually considered the application of these exceptions to specific information within the remaining five sets of approval documentation.

Regulation 12(5)(c) – intellectual property rights

18. Regulation 12(5)(c) states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect intellectual property rights.
19. The exception has been applied to a relatively limited amount of the information consisting of some of the test results produced by the VCA and some of the information contained in the information package provided by the engines' manufacturer. In respect of the one set of approval documentation which the VCA marked up, it has also been applied to an additional one page from the information package which consists of data on the essential characteristics of an engine.
20. In order to engage the exception a public authority must be able to demonstrate that:
 - the material is protected by intellectual property rights;
 - that the holder of those rights would suffer harm as a result of the information being disclosed;
 - that the harm would be as a consequence of the intellectual property rights being infringed; and
 - the potential harm or loss could not be prevented by enforcing the intellectual property rights.
21. The VCA's arguments relate to the intellectual property rights of the manufacturers of the engines. In light of this the Commissioner finds there is no basis for applying the exception to results of tests carried out by the VCA itself.
22. In respect of the other information, the Commissioner accepts that this information has been provided by the manufacturers of the engines. However the VCA has not identified a particular form of intellectual property right which attaches to this information, for example patents.
23. Nevertheless the Commissioner recognises the potential for some of the more technical data and drawings of the components to be protected by patents. He notes that some of the drawings in the set of approval documentation marked up by the VCA are of components manufactured by companies other than the manufacturer of the chain saw, for example a leading brand of spark plug. The VCA has argued that intellectual property rights can extend to the selection and combination of component in order to create a competitive product. It has not however identified the type of intellectual property right which would offer such protection.

24. In any event the Commissioner considers that if the withheld information is protected by patents or similar intellectual property they would not act as a barrier to disclosure. The purpose of such rights would be to prevent the misuse of information which is already in the public domain. The Commissioner is satisfied through internet searches that the chainsaw to which the marked up set of approval documentation relates is available for sale on the open market and that therefore anyone could purchase and disassemble the saw to discover for themselves the information being withheld by the VCA. The purpose of any intellectual property rights such as patents is to protect the misuse of information obtained in such a fashion. Therefore the Commissioner considers the disclosure would not undermine any intellectual property rights that may be held by the tool's manufacturer.
25. The Commissioner finds that regulation 12(5)(c) is not engaged.

Regulation 12(5)(a) – international relations

26. So far as is relevant, regulation 12(5)(a) states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect international relations.
27. The exception has been applied to all the information captured by the request. The VCA's main argument is that disclosing this information would damage the UK's relations within the European Union (EU), including with the European Commission itself. The second ground for applying the exception is that disclosure would have an adverse effect on the UK's relations with China. The Commissioner will consider each ground separately. He notes that the VCA led with arguments concerning relations within the EU and that the majority of its submission on regulation 12(5)(a) concerned this ground. The Commissioner takes this to mean that the VCA believes this to be the stronger of its two grounds and he will look at these arguments first.
28. Obviously to test and approve engines the VCA needs to obtain information from their manufacturers. The VCA has explained that this system has always operated on a confidential basis; only the fact that the engine has been approved is public. It argues that to release the technical information provided or produced as part of the tests could breach that confidentiality and that where the product is not yet ready for the market, this could cause significant financial loss to the manufacturer.
29. Before continuing with the VCA's argument, the Commissioner notes that the one set of approval documentation marked up by the VCA relate to a chain saw that is currently on sale. The VCA has not identified any of the other products as not being on sale. From the

complainant's submission and internet searches conducted by the Commissioner, it would appear these other tools are also for sale.

30. Returning to the VCA's arguments, it has explained that in order to ensure that EU environmental standards are met the VCA operates with other EU approval authorities. This ensures that the legislation is applied in a consistent and robust way. The VCA has advised the Commissioner that the relevant EU framework directive¹ sets out the requirements of confidentiality in a number of places and that to disclose confidential information in the face of such requirements would signal to other approval authorities that the VCA could not be relied upon to keep any information they shared with the VCA confidential. This would damage relations with those approval authorities as they would be less willing to share information with the VCA. The VCA has also argued that it could lead to the European Commission seeking an apology from the UK Government for making the disclosure or taking further action against the UK. However it has not specified what such action may be.
31. The Commissioner follows the logic of the VCA's argument. However the argument is based on the premise that the requested information is commercially confidential and that its disclosure would breach the confidentiality requirements of the framework directive. The VCA has not explained in any detail why it considers the information to be commercially confidential and the Commissioner has therefore considered some of the arguments presented by the VCA in respect of its application of regulation of 12(5)(c) – intellectual property rights. The VCA did contact the manufacturers to gauge their concerns over the release of the approval documentation. The Commissioner has seen the responses and is satisfied that none of them consented to disclosure. However the VCA has not convincingly demonstrated how disclosing the approval documentation would damage the commercial interests of the manufacturers. It has simply stated that the technical data may allow competitors to gain knowledge of the engineering of the equipment without being encumbered with research and development overheads. This argument can be rebutted on the same basis as the intellectual property arguments were rejected, ie that the knowledge could be acquired by anyone who purchased one of the tools and then took it to pieces.
32. The Commissioner has also considered the specific requirements as to confidentiality which the VCA has cited from the framework directive in the following terms:
 - Article 38(1)(2nd paragraph) says that the vehicle manufacturer may impose a binding agreement on the manufacturers

¹ The European Type Approval Framework Directive -2007/46/EC (as amended).

components or separate technical units to protect the confidentiality of any information that is not in the public domain, including what is related to intellectual property rights.

- Paragraph 2 of Appendix 2 to ANNEX V – Auditors from technical services –[ie 3rd parties who assess vehicles] shall show trust and integrity. They shall respect confidentiality and discretion.
 - Paragraph 12 of Appendix 2 to ANNEX V – the competent authority shall maintain records of technical services [ie 3rd parties who assess vehicles] to demonstrate that requirements for designation, including competence, have been effectively fulfilled. 12.2 The competent authority shall keep the records on technical services secure to ensure confidentiality.
 - Appendix 1 to ANNEX XVI (which relates to virtual testing), paragraph 3 (3rd paragraph), refers to the technical services duty to respect confidentiality (when working with manufacturers).
33. The Commissioner is not aware of any binding agreements which exist in respect of the approval documentation in this case and therefore gives no weight to the requirements of Article 38 as referred to in the first bullet point. However the Commissioner does accept that the other provisions place an obligation on the approval authority and anyone conducting tests on its behalf to consider the confidentiality of the technical information it obtained in order to conduct the necessary tests, or which is generated during those tests.
34. The Commissioner recognises that there will be occasions where there is a need for confidentiality. Such scenarios would include where the approval documentation contained truly commercially sensitive information; but the Commissioner is not convinced this is the case here. There may be occasions where the product being tested has not yet been marketed in any part of the world, in which case the information could well be commercially sensitive. There may also be occasions where approval was not granted and revealing as much might damage the company's reputation. However neither of these two scenarios apply to the information which is the subject of this request.
35. In light of the above the Commissioner is sceptical that there would be any genuine grounds for regarding the information captured by this particular request as being truly commercially confidential, despite the existence of a general expectation that information relating to the testing process could be confidential.
36. Furthermore, the Commissioner notes that the EIR represent the UK Government's implementation of the European Directive 2003/4/EC on

public access to environmental information. As such the other EU approval authorities would have obligations under regulations equivalent to the EIR. The Commissioner does not accept that other EU approval authorities would take exception to the VCA making an appropriate disclosure of information in accordance with European legislation which they were also subject to.

37. Finally, in respect of relations with other EU approval authorities, the Commissioner notes that regulation 5(6) of the EIR states that any rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply. It follows that any confidentiality requirements imposed by the framework directive are dis-applied and therefore the other EU approval authorities could have no reasonable grounds for objecting to the VCA disclosing approval documentation. This is particularly so where it cannot be clearly demonstrated that the approval documentation in question is commercially sensitive. As a consequence, the Commissioner does not accept that other EU countries or the EU Commission itself would have grounds for censoring the UK Government over the disclosure.
38. The Commissioner finds that the regulation 12(5)(a) cannot be engaged on the basis that disclosing the information would damage relations with the EU members of the Commission.
39. The complainant has argued that the application of regulation 12(5)(a), in respect of relations with other EU member states, should be rejected on another ground. He contends that following the decisions of the European Court of Justice in *Sison v Council* Case C-266/05 P and of General Court in *Federal Republic of Germany v European Commission* Case T-59/09, the term 'international relations' should exclude relations within the EU. As the Commissioner has already determined that, for the reasons set out above, the exception does not apply in respect of relations within the EU he has only considered these cases very briefly.
40. Both cases concern requests made to the institutions of the EU for documents provided to them by member states. Those requests were made under Regulation (EC) No 1049/2001, regarding public access to documents. Therefore both cases relate to a different access regime, albeit one that has an exception from disclosure on the grounds that releasing the information would prejudice international relations. He notes that they both consider the impact that a disclosure of information would have on relations between a member state and institutions of the EU, whereas the main argument presented by the VCA concerns relations between member states. Furthermore, in the leading case, *Sison v Council*, the application of the international relations exception was rejected because it had been based on a misunderstanding of the facts, rather than on the basis that it could not be applied to relations

between the Council and member states. The Commissioner does not accept the complainant's contention that the exception provided by 12(5)(a) cannot be applied in respect of relations between member states of the EU.

41. The Commissioner will now consider the VCA's argument that disclosing the requested information would have an adverse effect on the UK's relations with China. The basic argument presented to the Commissioner is as follows; the manufacturers of the engines are Chinese, the VCA sought the views of these companies when responding to the Commissioner's enquiries, the companies objected to the disclosure, to disregard these views would result in the companies complaining to the Chinese Government which in turn would complain to the UK Government.
42. The Commissioner notes that the views of the Chinese companies were not sought at the time the request was initially dealt with. Nor was the impact on relations with China referred to in the initial refusal. Therefore problems caused by disclosing information in the face of such objections did not exist at the relevant time for considering the application of regulation 12(5)(a). However the Commissioner notes that some consideration had been given to relations with China by the time of the internal review as the matter is touched upon in the VCA's letter of 7 September 2015. In that letter the VCA state that "We also make the point that the approvals were issued to Chinese companies so there is also the potential to impact on relations with the authorities there in the case of release."
43. Therefore the Commissioner will consider the objections raised by the Chinese companies to support the VCA's position that disclosing the information has the potential to damage relations with China.
44. The Commissioner has seen the letter sent to these companies. It asks for their views on what harm (if any) releasing this information would cause the company in question. The responses were very limited, with some simply declining to agree to disclosure. Others refer, very briefly, to the information containing technical files and to information on patents. This may in part be due to language and cultural differences. Nevertheless the Commissioner notes that there is no suggestion that these companies would pursue the matter with their government if the information was released.
45. The VCA has also referred to the expectation, created by the Framework Directive, that truly commercially sensitive information will be treated as being confidential during the approval process. However the Commissioner has not been provided with any convincing arguments as to the commercial sensitivity of this information. In the absence of such

arguments the Commissioner does not accept that the Chinese companies would have grounds for raising concerns that the VCA was unable to safeguard sensitive information.

46. However even though the Commissioner may not accept the arguments regarding the damage to commercial interests, this does not mean that he can necessarily reject the VCA's arguments that the Chinese companies would take offence if information on their products was disclosed. As set out in the Commissioner's guidance on regulation 12(5)(a), how another country reacts to a disclosure will depend on the culture and tradition of that country. Therefore although another European country, whose public authorities are also subject the EU directive which the EIR implement, may not object to a disclosure, other non-member states may place a greater value on confidentiality. Therefore if the Chinese companies truly believed the approval process would be confidential it is possible that they might take offence to the disclosure and complain to their government, even though they would not suffer any commercial harm as a consequence.
47. In its submission the Commissioner understands the VCA to say that if the information was disclosed it is probable that the companies trust in the VCA to safeguard its technologies would be undermined and that this would have a negative impact on future trading agreements. However the VCA has not explained in any detail why it considers this to be the case other than a saying that this was the view of staff with experience of dealing with Chinese companies.
48. For the exemption to be engaged the disclosure of the information would have to adversely affect international relations. The Commissioner interprets the wording of 'would adversely affect' in regulation 12(5) to set a relatively high threshold in terms of likelihood, which has to be met in order for any of the 12(5) exceptions to be engaged. In other words it is not sufficient that the disclosure may or could have some level of adverse effect, but rather that disclosure 'would' have an adverse affect. In the Commissioner's opinion this means that the likelihood of an adverse affect must be more substantial than remote. Whilst the Commissioner acknowledges that the VCA's argument is a logical one and concedes that there is the potential for the Chinese companies to complain to their government, he is not satisfied that the VCA has provided sufficient evidence to support its contention that this would happen and that relations with China would be adversely affected as a result. Therefore the Commissioner finds that the exception is not engaged on the basis of relations with China either.
49. The complainant has also argued that the application of 12(5)(a) should be rejected on the basis that the arguments presented by the VCA relate to commercial confidentiality and therefore belong to the exception

provided by regulation 12(5)(e). In broad terms, regulation 12(5)(e) allows a public authority to withhold information if its disclosure would have an adverse effect on the confidentiality of commercial information. Under regulation 12(9) public authorities are barred from applying this exception where the information is on emissions. The complainant therefore argues that as, in his opinion, the information is on emissions the VCA is trying to circumvent the bar on using 12(5)(e) by presenting the same arguments under 12(5)(a).

50. The Commissioner does not accept the complainant's argument. He considers the real basis of the VCA's argument to be that there needs to be trust between any two parties in order to foster good relations. This trust extends to the keeping of confidences regardless of the reason why the information is considered to be sensitive.
51. Furthermore, since the complainant made his submission, the VCA has gone on to apply the exception provided by 12(5)(f) – interests of the person supplying the information. Public authorities are also barred from using this exception where the requested information is on emissions. This would suggest that the VCA does not consider the application of regulation 12(9) has any significant bearing on the exceptions available to it.

Regulation 12(5)(f) – interests of the person who provided the information

52. Regulation 12(5)(f) states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect 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.
53. The VCA only applied the exception during the course of the Commissioner's investigation and the justification for its application was limited to a single paragraph. It has been applied to a variety of information including that contained in the test result documentation completed by the VCA itself and the majority of the details provided by the manufacturers contained in the information packages which form part of the approval documentation. It has not however been applied to the technical drawings contained in the information packages.

54. Before looking at the application of the exception in more detail it is necessary to discuss the relevance of regulation 12(9) to this information. As discussed earlier, regulation 12(9) states that certain exceptions, including 12(5)(f), cannot be applied to information on emissions. Although the VCA recognises this in its submission, it appears that the VCA has nevertheless gone on to apply the exception to information which is clearly on emissions, for example test results stating the actual emissions of carbon monoxide and nitrogen oxides produced by engines. Clearly the Commissioner finds that such information cannot be protected by this exception. However, as, for the reasons explained below, the Commissioner has ultimately found that the exception does not apply to any of the information to which it has been applied, he has not found it necessary to identify each specific piece of information which constitutes information on emissions.
55. Returning to the application of the exception, the European directive on which the EIR are based is itself the EU's implementation of the Aarhus Convention. The Aarhus Implementation Guide suggests that the purpose of the exception is to encourage the voluntary flow of information from third parties to public authorities.
56. The exception can be broken down into a four stage test as follows:
- (i) Would disclosure adversely affect the interests of the person who provided the information to the public authority?
 - (ii) Was the person under, or could they have been put under any legal obligation to supply the information to the public authority?
 - (iii) Did the person supply the information in circumstances where the recipient public authority, or any other public authority, was entitled to disclose it apart from under the EIR?
 - (iv) Has the person supplying the information consented to its disclosure?
57. The VCA's justification for the exception's application was limited to a single paragraph which focused on the contention that the manufacturers had provided the information in the expectation that it would remain confidential and that they had not consented to its disclosure.
58. As previously mentioned, the exception has been applied to information contained in the test result documentation completed by the VCA itself. Some of this may have been lifted directly from the contents of the information packages provided by the manufacturers. The Commissioner will deal with such information in the next paragraph. However to the

extent that any of the information has been produced by the VCA's technicians during the actual testing, the Commissioner does not accept it has been provided by a third party and so rejects the application of the exception on that basis. Although it could be argued that this information was provided by a third party in the sense that the test results drew on information provided by the manufacturer and from the engines they provided, in the same way that a doctor's diagnosis is based on an examination of the patient, the Commissioner does not consider such an analogy is appropriate in this context.

59. This then leaves the information contained in the information packages actually provided by the manufacturers. The term 'person' as used in the exception includes legal entities such as the companies who manufactured the engines. In accordance with the four stage test set out above the Commissioner will start by looking at whether the interests of those companies would be adversely affected by the disclosure of the contents of the information packages. For there to be an adverse effect the VCA would need to identify a harm to the interests of these companies which is real, actual and of substance. In the context of a commercial company the Commissioner considers it appropriate to only look at potential harm to the companies' commercial interests. Once the VCA has identified the nature of the harm, it needs to explain why disclosure would, on the balance of probabilities, directly cause that harm.
60. The VCA has not identified any such harm, but the Commissioner is prepared to look at the arguments presented by the VCA in respect of regulation 12(5)(c) – intellectual property rights, in order to assess whether disclosure would harm the companies' commercial interests. Having looked at the information contained in the relevant parts of the information package, the Commissioner finds that it is not obvious how its disclosure would harm their interests. The engines in question are available for sale on the open market and therefore any purchaser could take one apart and glean much of the information contained in the information package. The Commissioner considers it likely that other information such as the name of the manufacturer, their address and some of the technical details would be available from any instruction manual which is likely to accompany these products. Some of the withheld information is readily available on the labels attached to the engine in the copy of the approval documentation marked up by the VCA.
61. The exception has also been applied to tests which appear to have been carried out by, or on behalf of, the manufacturers and which they supplied as part of the information packages. There is nothing obviously sensitive in this test information. Certainly in the case of the documentation marked up by the VCA, these tests appear to show

emissions roughly in line with the VCA's own results. It would be surprising if a company chose to submit results which exceeded the permitted levels.

62. In light of the above, and in the absence of compelling arguments to the contrary, the Commissioner is not persuaded that any harm of substance would result from disclosing the information.
63. The Commissioner finds that the exception provided by regulation 12(5)(f) is not engaged.
64. As the Commissioner finds that the application of the exception falls at the first stage of the four part test, it is not strictly necessary to consider the other elements. However the Commissioner considers it would be useful to also comment on the second part of the test, ie, that, in essence, the information was provided on a voluntary basis.
65. The exception cannot be engaged if there is a legal obligation on the companies to supply the information to the VCA (or any other public authority). In line with his published guidance on regulation 12(5)(f), the Commissioner finds that where a company is applying for some form of permission, such the approval certificate required before these chainsaws and brush cutters can be marketed in the EU, the provision of the information is not truly voluntary. Despite the fact that the decision to apply for the approval certificate is a voluntary one, once the company has made the decision to do so, it will be obliged to provide certain information for the approval application to be processed.
66. The VCA informed the Commissioner that the information packages often contain information over and above that which a manufacturer is obliged to provide. It has not however identified which information falls into this category. In so far as the VCA has applied the exception to information which manufacturers are obliged to provide as part of the approval process the Commissioner would reject its application under part two of the test.
67. In respect of any information which the manufacturers are not compelled to provide, the Commissioner understands from a discussion with the VCA that this additional information is provided to assist the approval process by providing information on, for example, the manufacturing process. Even if the Commissioner accepted that such information engaged the exception, which he does not because it has not been demonstrated that disclosing the information would cause any harm, the Commissioner considers it unlikely that manufacturers would choose to hinder the completion of an approval process by not providing relevant information, when the manufacturers have a commercial interest in the outcome of the approval process. If the exception had

been engaged this issue would have been addressed as a public interest factor in favour of disclosing the information.

68. As the Commissioner has found that none of the contested exceptions apply the VCA is required to disclose the approval documentation, as identified by the VCA and supplied to the Commissioner, for all six of the products referred to in the request, apart that is from the personal data of the VCA's officers.

Right of appeal

69. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

70. 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.
71. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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