

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 2 October 2007**

**Public Authority:** Basingstoke and Deane Borough Council  
**Address:** Civic Offices  
London Road  
Basingstoke  
Hampshire  
RG21 4AH

### Summary

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The complainant made two requests for information in relation to a planning dispute with his neighbour. The Commissioner's decision is that the public authority has provided all the information it holds on the following elements of the requests: a letter from the public authority to the Local Government Ombudsman (the LGO); an internal memorandum; an alleged tape recording; and an alleged threat against the complainant's neighbour. However, the letter to the LGO, the internal memorandum and the information on the alleged threat were not provided within 20 working days.

The public authority initially informed the complainant that it was withholding a second memorandum under section 42 of the Freedom of Information Act. The Commissioner has considered that this request should have been dealt with under the Environmental Information Regulations 2004 (the EIR) and that regulation 12(5)(b) can be applied to withhold the information. Due to the similarities between this exception and section 42 of the Act, the Commissioner does not require the public authority to inform the complainant of the specific reason for withholding the information under the EIR.

The Commissioner has found that the remaining elements of the requests should have been dealt with as a subject access request under the Data Protection Act and the public authority has subsequently written to the complainant in response to that subject access request.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

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

## The Requests

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### Request 1 (2 April 2005)

3. On 2 April 2005, the complainant requested the following information:
  - A list of all correspondence and telephone conversations between the public authority and the Local Government Ombudsman (the LGO) prior to the public authority's letter to the LGO of 19 May 2003
4. On 26 April 2005, the public authority wrote to the complainant providing some information but withheld a report and a letter written to the LGO in respect of that report by applying section 36 (effective conduct of public affairs) of the Act. The public authority informed the complainant that it would be writing again to explain the application of section 36.
5. Subsequently, on 19 May 2005, the public authority wrote to the complainant providing its reasons for applying section 36 of the Act. It also added that the withheld report contained information subject to legal professional privilege.
6. On 25 August 2005, the complainant wrote to the public authority asking for a review of the public authority's decision.
7. On 9 September 2005, the public authority wrote to the complainant upholding its original decision.

### Request 2 (12 July 2005)

8. On 12 July 2005, the complainant requested the following information:
  - a) Exchange of internal memoranda or other communications seeking legal advice on planning powers as referred to in the Chief Executive's letter of 12 January 1996
  - b) Report referred to at item 19 on the agenda of the public authority's Planning Committee meeting of 6 March 1996
  - c) Copy of allegation that audio recording was made of Planning Committee meeting of 14 February 1996; communications from any investigation of the allegation; copies of any interviews with the person who made the allegation; records of the Chief Executive's discussions of

the allegation with witnesses, Councillors, Council Officers and the Chairman; copy of final report or determination of the allegation; and the list of persons to whom this report or determination was circulated.

d) Copy of any information on the public authority's solicitor's involvement in or knowledge about a threat made against the complainant's neighbour or his property

9. On 4 August 2005, the public authority provided some information in response to the request and responded as follows to elements a, b and d of the request:
  - a) this information is exempt under section 42 (legal professional privilege) of the Act
  - b) this information is exempt under section 36 (effective conduct of public affairs) of the Act
  - d) no information is held
10. The public authority made no specific reference to the alleged tape recording (element c of the request).
11. On 8 August 2005, the complainant wrote to the public authority asking for an explanation of the public interest considerations in relation to the exemptions under section 36 and 42 of the Act. The complainant also informed the public authority that he did not believe that element c of the request had been responded to.
12. On 9 August 2005, the public authority wrote to the complainant providing its consideration of the public interest in relation to sections 36 and 42 of the Act. It also informed the complainant that it had already sent him all the information it held in relation to the alleged tape recording.
13. On 25 August 2005, the complainant wrote to the public authority asking for a review of the request. On 9 September 2005, the public authority wrote to the complainant upholding its original decision.

## **The Investigation**

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### **Scope of the case**

14. On 4 August 2005 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:

#### **Request 1**

- whether the public authority was entitled to apply section 36 of the Act to withhold the information

- why the public authority did not provide any clarification as to whether it was applying section 42 (legal professional privilege) of the Act to withhold the information
- whether a correct refusal notice was issued

## Request 2

- whether the public authority was entitled to apply sections 36 and 42 of the Act to withhold the information
- whether a correct refusal notice was issued
- whether the public authority was correct to state that it did not hold any information in relation to element d of the request
- whether the public authority had provided all the information it held in relation to the alleged tape recording (element c of the request)

## Chronology

### 3 October 2006

15. On 3 October 2006, the Commissioner wrote to the public authority asking for a copy of the withheld information in relation to both requests. The Commissioner followed this up with a letter of 9 October 2006, in which he asked the public authority for information in relation to the alleged tape recording and the alleged threat against the complainant's neighbour (elements c and d of request 2).

### 23 October 2006

16. On 23 October 2006, the public authority wrote to the Commissioner providing copies of the following withheld information:
- a letter to the LGO dated 19 May 2003 (request 1)
  - four separate internal memoranda dated 22 December 1995, 9 January, 10 January and 11 January 1996 (element a of request 2)
  - two Planning Committee reports dated 6 March and 19 June 1996 (request 1 and element b of request 2)
17. The public authority also stated that it could not provide the Commissioner with further information in relation to the alleged threat against the neighbour as the only person who could assist is a former employee, who left the public authority in Spring 2002. The public authority did not at this point provide the Commissioner with any information in relation to the alleged tape recording.

### 7 November 2006

18. On 7 November 2006, the Commissioner wrote to the public authority informing it that he considered the requests to be for environmental information and therefore he would consider the complaint under the EIR. The Commissioner repeated his request for information in relation to the alleged tape recording and asked for further information in relation to the alleged threat against the neighbour. The Commissioner also asked the public authority to explain which exception of the EIR it was applying to withhold the letter to the LGO, the internal memoranda of

22 December 1995 and 10 January 1996 and the two Planning Committee reports dated 6 March and 19 June 1996.

### **12 December 2006**

19. On 12 December 2006, the public authority wrote to the Commissioner providing the information on the alleged tape recording and the threat against the neighbour (elements c and d of request 2).
20. The public authority explained that it was applying regulation 12(5)(f) of the EIR to withhold the letter to the LGO, regulation 12(4)(e) to withhold the memoranda and regulation 12(5)(d) to withhold the reports. It also provided its reasons for the application of the exceptions.

### **28 February 2007**

21. On 28 February 2007, the Commissioner wrote to the public authority asking for clarification of information provided to the complainant regarding the alleged tape recording.
22. The Commissioner informed the public authority that he did not consider that regulation 12(5)(f) could be applied to withhold the letter to the LGO. He provided his reasons in support of this consideration.

### **28 March 2007**

23. On 28 March 2007, the public authority wrote to the Commissioner clarifying what information had been provided to the complainant regarding the alleged tape recording.
24. The public authority informed the Commissioner that it was maintaining its application of regulation 12(5)(f) to withhold the letter to the LGO and provided further reasons in support of this.

### **7 June 2007**

25. On 7 June 2007, the Commissioner wrote to the public authority providing his final assessment of the complaint. He informed the public authority that he did not consider that regulation 12(4)(e) and 12(5)(f) of the EIR could be applied to withhold the memorandum of 22 December 1995 and the letter to the LGO respectively and set out his reasons for these findings. He therefore asked the public authority to release this information to the complainant.
26. Following internal discussions, the Commissioner was satisfied that the two Planning Committee reports and the memoranda of 9 and 11 January 1996 constituted the complainant's personal data. He therefore asked the public authority to treat the requests for that information as subject access requests and respond to the complainant either providing the information or explaining why it could not be provided.

27. The public authority then issued a response to the complainant on 23 July 2007, providing the memorandum of 22 December 1995 and the letter to the LGO. In response to the subject access requests, the public authority informed the complainant that it would not disclose the two Planning Committee reports or the memoranda of 9 January 1996 without the complainant's neighbour's consent. The public authority also informed the complainant that the memorandum dated 11 January 1996 was exempt as it was covered by legal professional privilege.

## Analysis

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28. Paragraph 27 above explains that some of the information requested by the complainant was treated as a subject access request. Therefore, the remainder of this Decision Notice and the actual decision itself focus on the following information, which is not considered to be the complainant's personal data:
- letter to the LGO (request 1)
  - memorandum of 22 December 1995 (request 2)
  - alleged tape recording (request 2)
  - alleged threat against neighbour (request 2)
  - memorandum of 10 January 1996 (request 2)

### Whether the information is environmental

29. The letter to the LGO and the two memoranda (of 22 December 1995 and 10 January 1996) were generated in order to settle a dispute between the complainant and his neighbour over a suggested breach of planning permission. The Commissioner considers that this is information on measures which are likely to affect the state of the landscape, being one of the elements of the environment. As such, the Commissioner has handled the requests for this information under the EIR as the information falls within Regulation 2(1)(c) of the definition of environmental information.
30. In contrast, the Commissioner considers that the information on the alleged tape recording and the alleged threat against the complainant's neighbour does not fit within any part of the definition of environmental information provided in Regulation 2(1) of the EIR. Accordingly, the Commissioner has considered the request for this information under the Act.

### Procedural matters

#### Letter to the LGO dated 19 May 2003 provided late (request 1)

31. Paragraph 27 of this Decision Notice explains that, following the Commissioner's intervention, the public authority provided the letter to the LGO to the complainant on 23 July 2007. As the information was requested on 2 April 2005, this was not within the 20 working days stipulated in the EIR.

**Memoranda of 22 December 1995 provided late (element a of request 2)**

32. Paragraph 27 of this Decision Notice explains that, following the Commissioner's intervention, the public authority provided the memorandum of 22 December 1995 to the complainant on 23 July 2007. As the information was requested on 12 July 2005, this was not done within the 20 working days stipulated in the EIR.

**Whether all information has been provided on the alleged tape recording (element c of request 2)**

33. The public authority has informed the Commissioner that all information held on this matter is contained in a letter from the Chief Executive to the complainant dated 19 February 1996 and an exchange of internal memoranda between the Planning Committee Chairman and the Chief Executive. These were provided to the complainant on 4 August 2005.
34. In order to ensure that all information has been provided to the complainant, the public authority's Head of Internal Audit has reviewed all five files relating to the complainant's complaint to the LGO. Planning and Environmental Health Officers have also reviewed all their files and a member of the legal department has reviewed the legal file on the matter. Following these searches, the public authority has confirmed that it holds no further information on the alleged tape recording.
35. From the explanation given in the preceding two paragraphs, the Commissioner is satisfied that the public authority has provided all the information held on this matter.

**Whether any information is held on the alleged threat against neighbour (element d of request 2)**

36. The public authority has informed the Commissioner that the only reference to a threat against the complainant's neighbour is cited in a letter to the neighbour from the public authority. The public authority has stated that the complainant has seen this letter as he made reference to it in a letter dated 12 July 1996.
37. In order to ensure that all information has been provided to the complainant, the public authority's Head of Internal Audit has reviewed all five files relating to the complainant's complaint to the LGO. Planning and Environmental Health Officers have also reviewed all their files and a member of the legal department has reviewed the legal file on the matter. Following these searches, the public authority has confirmed that it holds no further information on the alleged threat against the complainant's neighbour.
38. From the explanation given in the preceding two paragraphs, the Commissioner is satisfied that the public authority has provided all the information held on this matter.
39. At paragraph 36 above, the public authority confirmed to the Commissioner that it held a letter, which would provide information on the element d of request 2.

Therefore, the public authority was not correct to state that it did not hold any information on this matter. However, the Commissioner is satisfied that the complainant has already had access to the letter and does not therefore require the public authority to take any action.

## **Whether correct refusal notices were issued**

### **Request 1 (2 April 2005)**

40. The public authority responded to the request of 2 April 2005 on 26 April 2005. It stated that it was withholding the information (letter to the LGO and Planning Committee report of 6 March 1996) by applying section 36 of the Act. Following the Commissioner's intervention, the public authority issued a revised response to the complainant on 23 July 2007. In that response, it released the letter to the LGO to the complainant and treated the request for the report of 6 March 1996 as a subject access request under the DPA.
41. The public authority should have released the letter to the LGO to the complainant within 20 working days of the request. This breach is recorded at paragraph 31 above.
42. The public authority should also have responded to the subject access request for the report of 6 March 1996 within 40 days as stipulated under the DPA. However, this would constitute a breach of the DPA rather than the EIR and, as such, is not addressed in the main body of this Decision Notice. (See the 'Other matters' section of this Decision Notice for further consideration of the complainant's subject access request).
43. In light of the previous two paragraphs, the public authority should not have issued a refusal notice in response to the request of 2 April 2005. Therefore, the Commissioner is unable to find that the specifics of such a notice could constitute a breach of the EIR.

### **Request 2 (12 July 2005)**

44. The public authority responded to the request of 12 July 2005 on 4 August 2005. It stated that it was withholding the internal memoranda and Planning committee report of 19 June 1996 by applying sections 42 and 36 of the Act respectively. Following the Commissioner's intervention, the public authority issued a revised response to the complainant on 23 July 2007. Paragraph 27 above explains that, in that response, the public authority treated two of the memoranda (dated 9 and 11 January 1996) and the Planning Committee report as personal data and released one of the memoranda (dated 22 December 1995). The Commissioner has found at paragraph 69 below that the remaining memorandum (dated 10 January 1996) can be withheld by applying regulation 12(5)(b) of the EIR.
45. The public authority should have released the memoranda of 22 December 1995 to the complainant within 20 working days of the request. This breach is recorded at paragraph 31 above.



46. The public authority should also have responded to the subject access request for the report of 19 June 1996 and the memoranda of 9 and 11 January 1996 within 40 days as stipulated under the DPA. However, this would constitute a breach of the DPA rather than the EIR and, as such, is not addressed in the main body of this Decision Notice. (See the 'Other matters' section of this Decision Notice for further consideration of the complainant's subject access request).
47. The public authority has not informed the complainant that it is applying regulation 12(5)(b) of the EIR to withhold the memorandum of 10 January 1996. However, there is much similarity between that exception of the EIR and the exemption (section 42 of the Act) cited to the complainant to withhold the information. As such, the Commissioner does not require the public authority to retrospectively inform the complainant that it is withholding this information by applying regulation 12(5)(b) of the EIR.

### **Clarification in applying section 42 (request of 2 April 2005)**

48. In its initial response (26 April 2005) to the request of 2 April 2005, the public authority applied section 36 to withhold the information. In its subsequent response of 19 May 2005, the public authority stated that "the report also contained information subject to legal professional privilege" but did not specifically state that it was applying section 42 of the Act. In its subsequent internal review response of 9 September 2005, the public authority made no reference to "legal professional privilege."
49. At paragraphs 40 to 43 above, the Commissioner has found that a refusal notice was not necessary to respond to this request. It is therefore not necessary for the Commissioner to make any further comment as to whether section 42 of the Act was clearly applied or not.

### **Exception**

#### **Regulations 12(4)(e) and 12(5)(b) – internal memorandum of 10 January 1996**

50. Paragraph 20 of this Decision Notice explains that the public authority withheld the internal memoranda by applying regulation 12(4)(e) of the EIR. However, having viewed a copy of the memorandum of 10 January 1996, the Commissioner is of the view that it would be more appropriate to consider the applicability of regulation 12(5)(b) to withhold this particular memorandum.
51. A public authority may refuse to disclose environmental information if:
  - An exception to disclosure applies, and
  - In all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information
52. There is a presumption in favour of disclosure in the EIR, established by Regulation 12(2).

53. The Commissioner has firstly considered whether the exception under regulation 12(5)(b) of the EIR applies. Regulation 12(5) states that

“a public authority may refuse to disclose information to the extent that its disclosure would adversely affect-

(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.”

54. The Information Tribunal case of ‘Mr M S Kirkaldie and the Information Commissioner EA/2006/001 (4 July 2006)’ outlines the similarity between regulation 12(5)(b) of the EIR and section 42 (legal professional privilege) of the Act at paragraph 21 of that case as follows:

“The purpose of this exception is reasonably clear. It exists in part to ensure that there should be no disruption to the administration of justice, including the operation of the courts and no prejudice to the right of individuals or organisations to a fair trial. In order to achieve this it covers legal professional privilege, particularly where a public authority is or is likely to be involved in litigation.”

55. The concept of legal professional privilege is therefore covered by regulation 12(5)(b) of the EIR. The principle of legal professional privilege can be described as a set of rules or principles designed to protect the confidentiality of legal or legally related communications and exchanges, between the client and his/her or its lawyers, and exchanges which contain or refer to legal advice which might be imparted to the client.

56. There are two separate categories within this privilege known as advice privilege and litigation privilege.

57. Advice privilege covers communications between a person and his lawyer provided they are confidential and take place for the sole or dominant purpose of obtaining legal advice or assistance in relation to rights or obligations.

58. The Commissioner has obtained a copy of the information withheld by the public authority. The information consists of written communication from a lawyer to the public authority for the dominant purpose of providing legal advice on dealing with two planning applications. For these reasons the Commissioner is satisfied that the requested information is protected by advice privilege.

### **Adverse affect**

59. Turning now to the consideration of the adverse effect of disclosure, in the case of *Christopher Bellamy v Information Commissioner and Secretary of State for Trade and Industry (EA/2005/0023)* the Information Tribunal described legal professional privilege as:

“a fundamental condition on which the administration of justice as a whole rests”.

60. The Commissioner considers that if information subject to legal professional privilege were to be disclosed to the public, this would undermine the common law principle on which it rests. He also accepts that it would adversely affect the public authority's ability to obtain such advice in the future.
61. In reaching his decision on whether disclosure would have an adverse effect, the Commissioner has considered the interpretation of the word "would". It is the Commissioner's view that the Information Tribunal's comments in the case of *Hogan vs. Oxford City Council and Information Commissioner (EA/2005/0026 and EA/2005/0030)* in relation to the wording of "would prejudice" are transferable to the interpretation of the word "would" when considering whether disclosure would have an adverse effect. The Tribunal stated that when considering the term "would prejudice" it may not be possible to prove that prejudice would occur beyond any doubt whatsoever. However, it confirmed that the prejudice must at least be more probable than not.
62. The Commissioner is satisfied that, in this case, it is more likely than not that disclosure of the legal advice would adversely affect the course of justice and therefore that the exception provided by regulation 12(5)(b) is engaged.

## **Public interest**

### **Arguments in favour of maintaining the exception**

63. Regulation 12(5)(b) of the EIR is subject to a public interest test. The Commissioner acknowledges that there is a strong public interest in protecting the established principle of confidentiality in communications between lawyers and their clients, a view also supported by the Information Tribunal in the case of *Bellamy v the Information Commissioner and the DTI* (3 April 2006). At paragraph 8 of the Bellamy case, the Tribunal states that "with regard to legal professional privilege, there is no doubt that under English law the privilege is equated with, if not elevated to, a fundamental right at least insofar as the administration of justice is concerned."
64. At paragraph 35 of the Bellamy case, the Tribunal stated that "there is a strong element of public interest inbuilt into the [legal professional] privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest." At paragraph 35, the Tribunal also states that "it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear cut case."
65. The above two paragraphs demonstrate that there is a clearly strong public interest in protecting the concept of legal professional privilege and therefore withholding the information in this current complaint.

### **Arguments in favour of disclosure**

66. The Commissioner considers that there is a general public interest in releasing the information for the following reasons. Firstly, it may help the public

to form a view as to whether the public authority is acting responsibly in exercising its planning powers, based on the legal advice received.

67. Secondly, release of the information would enable the public to check the quality of the legal advice on which the public authority spends public money to receive.
68. Both of the above reasons underlie the overarching general reason that releasing the information ensures that the public authority is accountable for its actions.

### **Balancing the competing considerations**

69. Regulation 12(1) of the EIR states that “a public authority may refuse to disclose environmental information requested if -

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.”

70. The Commissioner recognises that there is a strong public interest in disclosing the information. However, he considers that the arguments set out above in favour of maintaining the exception are stronger. In view of the overwhelming public interest in protecting the current principle of legal professional privilege, he has concluded that the public interest lies in maintaining the exception and therefore withholding the information.

### **The Decision**

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71. The Commissioner’s decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the EIR/Act:
  - The public authority provided the letter to the LGO (request 1) and the memorandum of 22 December 1995 (request 2) to the complainant in accordance with regulation 5(1)<sup>1</sup> of the EIR.
  - The public authority has correctly withheld the internal memorandum of 10 January 1996 (request 2) by applying regulation 12(5)(b)<sup>1</sup> of the EIR.
  - The public authority has provided all the information it holds in response to the alleged tape recording (request 2) in accordance with section 1(1)<sup>1</sup> of the Act.
  - The public authority has provided all the information it holds in response to the alleged threat against the complainant’s neighbour (request 2) in accordance with section 1(1) of the Act.
72. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the EIR/Act:

- The public authority did not provide the letter to the LGO (request 1) or the memorandum of 22 December 1995 (request 2) within 20 working days in accordance with regulation 5(2)<sup>1</sup> of the EIR.
- The public authority did not provide the information on the alleged threat against the complainant's neighbour (request 2) within 20 working days in accordance with section 10(1)<sup>1</sup> of the Act.
- The public authority did not inform the complainant of its reasons for withholding the internal memorandum of 10 January 1996 (request 2) in accordance with regulation 14(3)<sup>1</sup> of the EIR.

## Other matters

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73. Paragraph 27 of this Decision Notice explains that, following the Commissioner's intervention, the public authority treated the complainant's requests for the two Planning Committee reports and the memoranda of 9 and 11 January 1996 as subject access requests. Any complaint about the public authority's response of 23 July 2007 to these subject access requests would be treated by the Commissioner as a request for assessment under the Data Protection Act 1998.

## Steps Required

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74. The Commissioner requires no steps to be taken.

## Right of Appeal

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

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

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

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

**Dated the 2<sup>nd</sup> day of October 2007**

**Signed .....**

**Jane Durkin  
Assistant Commissioner**

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

## Legal annex

### Freedom of Information Act 2000

**Section 1(1)** provides that -

“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.”

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

**Section 42(1)** provides that –

“Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”

### Environmental Information Regulations 2004

**Regulation 2(1)** provides that -

“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;

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

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

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

**Regulation 12(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 –

- (c) 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;

**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).