

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

Decision Notice

Date: 3 December 2009

Public Authority: Vehicle & Operator Services Agency (an executive agency of the Department for Transport)

Address: Berkeley House
Croydon Street
Bristol BS5 0DA

Summary

The complainant made a request under the Freedom of Information Act 2000 (the 'Act') to the Vehicle & Operator Services Agency (VOSA) for information relating to MOT passes and failures broken down by manufacturer and model of car. VOSA refused the complainant's request as it stated that the information was exempt from disclosure by virtue of section 43(2) of the Act. The Commissioner has reviewed the withheld information and has decided that section 43(2) is not engaged. The Commissioner also considers that some of the requested information constitutes environmental information and should have been considered under the Environmental Information Regulations 2004 (EIR). Upon the consideration of the arguments provided by VOSA in relation to its application of section 43(2) of the Act, the Commissioner does not consider that any of the exceptions under EIR would be applicable in this case. Therefore VOSA breached Regulation 5(1) as it did not provide the complainant with the requested environmental information.

The Commissioner's Role

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 Request

3. The Commissioner notes that under the Act VOSA is not a public authority itself, but is actually an executive agency of the Department for Transport (DfT) which is responsible for VOSA and therefore, the public authority in this case is actually the DfT not VOSA. However, for the sake of clarity, this decision notice refers to VOSA as if it were the public authority.

4. On 3 July 2008 the complainant made a request for the following information:-

“Please disclose the following information under the Freedom of Information Act relating to MOT passes and failures:

Please supply a breakdown by manufacturer and model of car of the number of

- i. the number of initial MOT passes
- ii. the number of MOT failures
- iii. a list of reasons for failures if possible

Please provide this information for 2007.”

5. On 30 July 2008 VOSA responded to the complainant’s request for information. VOSA explained that it already publishes information on pass and fail rates and the top 10 reasons for failure at MOT in its annual ‘Effectiveness Reports’. It provided a link to this information. However VOSA stated that it was unable to provide the complainant with the requested information relating to individual makes and models. It explained that this was because VOSA considered that the exemption under section 43(2) of the Act was applicable in this case. It stated that under section 43(2) information is exempt if disclosure would or would be likely to prejudice the commercial interests of any person (including the public authority holding the information). It considered the public interest test and set out the factors it considered favoured disclosure and the factors it considered favoured maintaining the exemption. In favour of disclosure it stated that if the information were released, members of the public would be able to see information relating to a specific vehicle model in which they may have an interest. In favour of maintaining the exemption it stated that the information is considered to be commercially sensitive and that it would not be in the public interest to disclose information about a particular commercial

body if that information was not common knowledge as it would be likely to be used by competitors to gain a competitive advantage.

6. On 26 August 2008 the complainant asked VOSA to carry out an internal review of its decision.
7. On 10 September 2008 VOSA wrote to the complainant with the result of the internal review it had carried out. VOSA upheld its application of the exemption contained at section 43(2) of the Act. It stated that disclosure would, or would be likely to, prejudice the commercial interests of vehicle manufacturers. It stated that it considered that the public interest in this case favoured maintaining the exemption.
8. As the complainant was dissatisfied with the result of the internal review she made a formal complaint to the ICO.

The Investigation

Scope of the case

9. On 16 October 2008 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider whether VOSA had correctly applied the section 43(2) exemption in this case.
10. The Commissioner has also considered whether some of the information requested would constitute environmental information and therefore whether it should be considered under EIR. He has also considered, based upon the arguments provided by VOSA in relation to its application of section 43(2) of the Act, whether any of the exceptions under EIR would prevent disclosure of the environmental information.

Chronology

11. On 28 May 2009 the Commissioner wrote to VOSA and asked it to provide him with a copy of the withheld information for the purposes of his investigation. The Commissioner also asked VOSA to provide any arguments it wished to rely upon in relation to its application of section 43(2).
12. On 22 June 2009 VOSA wrote to the Commissioner to provide its further arguments in support of its application of section 43(2) of the Act. It also provided the Commissioner with a copy of the withheld information.

Analysis

Exemptions

Section 43(2)

13. Section 43(2) provides an exemption from disclosure of information which would or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). This is a qualified exemption, and is therefore subject to the public interest test.
14. In this case VOSA has stated that disclosure of the requested information would be likely to prejudice the commercial interests of the car manufacturers.
15. In order to determine whether the exemption is engaged the Commissioner has first considered whether the prejudice claimed relates to the car manufacturer's commercial interests.
16. The term 'commercial interests' is not defined in the Act. However the Commissioner has considered his awareness guidance on the application of section 43. This comments that,

"...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services. "

17. The Commissioner has also noted guidance issued by the Scottish Information Commissioner in relation to commercial interests and section 33(1)(b) of the FOI (Scotland) Act 2002. This guidance states that,

"...commercial interests will specifically relate to any commercial trading activity it undertakes, e.g. the ongoing sale and purchase of goods and services, commonly for the purpose of revenue generation. Such activity will normally take place within a competitive environment."

18. The Commissioner considers that car manufacturing is a commercial activity in that it relates to the sale and purchase of goods. The information requested is MOT pass and failure rates broken down by manufacturer and car model. The prejudice claimed is that manufacturer's may use this information to gain a commercial advantage over their competitors and that this information may be used and misinterpreted by consumers when purchasing a car. The prejudice claimed therefore relates to a car manufacturers ability to participate competitively in relation to the sale and purchase of cars within the motoring industry. The Commissioner therefore considers that the prejudice claimed does relate to the car manufacturer's

commercial interests. As such he believes that the withheld information falls within the scope of the exemption.

19. The Commissioner therefore went on to consider how any prejudice to the car manufacturer's commercial interests would be likely to be caused by the disclosure of the requested information.
20. In support of its use of this exemption VOSA stated that it considered that the release of information relating to specific make and model would be likely to be commercially damaging to vehicle manufacturers whose failure rates appear higher, and therefore less favourable, than other manufacturers. It suggested that this information would be likely to be used by some manufacturers to gain a competitive advantage, for example by publicising that their failure rate is lower than another manufacturer's failure rate for a comparable vehicle model.
21. The Commissioner asked what VOSA had based its arguments upon and in particular whether it had contacted the car manufacturers. VOSA explained to the Commissioner that it had not contacted the vehicle manufacturers to determine whether or not those manufacturers believe that disclosure would be likely to prejudice their commercial interests. It explained that it had no record on file as to why the vehicle manufacturers were not contacted at the time, it stated that at the time it must have been considered that release of the information requested would be likely to prejudice the vehicle manufacturer's commercial interests and therefore it was not thought to be necessary to contact the individual manufacturer's to ascertain this.
22. Finally it explained that the reasons for failure and fail rates are complex, for example, it explained that MOT failure can be attributed to a number of factors, such as failure to maintain a vehicle, and not purely because the vehicle is not manufactured to the same quality as a comparable vehicle which has a high MOT pass rate. It suggested that publication of the requested information risked misleading the public as it could lead to the misconception that one manufacturer produces a lower quality of vehicles than another manufacturer when failure rates are compared. It suggested that this misconception would be likely to result in members of the public avoiding purchasing vehicles produced by a particular manufacturer and subsequently a loss in revenue for those manufacturers affected.
23. VOSA has provided no further arguments other than those outlined above.
24. The Commissioner is mindful of the Tribunal's decision in Hogan v Oxford City Council EA/2005/0026 EA/2005/0030 in which it was commented that, "Second the nature of the 'prejudice' being claimed must be considered. An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and prejudice and the prejudice is, as Lord

Falconer of Thornton has stated “real, actual or of substance” (Hansard HL (VOL. 162, April 20, 2000, col. 827). If the public authority is unable to discharge this burden satisfactorily, reliance on ‘prejudice’ should be rejected.” The Commissioner has therefore sought to determine whether the prejudice claimed by VOSA is “real, actual or of substance”.

25. The Commissioner is also mindful of the Tribunal decision in the case of *Derry City Council v the Information Commissioner EA/2006/0014*. In this case the Council argued that the commercial interests of a third party, Ryanair, would be likely to be prejudiced if the requested information were disclosed. The Council did not ask Ryanair for its views as to whether it believed its commercial interests would be likely to be prejudiced nor did Ryanair present any evidence to the Tribunal. The arguments put forward by the Council to the Commissioner as well as to the Tribunal were based upon the Council’s thoughts on the point and not on representations made by Ryanair. In the absence of any evidence from Ryanair the Tribunal stated that it was unable to conclude that Ryanair’s commercial interests would be likely to be prejudiced.
26. The Commissioner acknowledges that the approach taken by the Tribunal may not be appropriate in every case and therefore public authorities may sometimes have to formulate its arguments based on its prior knowledge of a third party’s concerns rather than directly contacting a third party. However the Commissioner still expects a public authority to provide evidence that these arguments genuinely reflect the concerns of the third party involved rather than merely speculate about the prejudice that may be caused to the third party. As explained in paragraph 21 above the Commissioner notes that in this case the prejudice claimed is based upon VOSA’s own thoughts and views. VOSA has not contacted any of the car manufacturers concerned nor any expert bodies which represent the motoring industry, such as the Retail Motor Industry Federation, to obtain their views in relation to this. For this reason the Commissioner considers that the arguments presented by VOSA are insufficient to conclude that the car manufacturer’s commercial interests would be likely to be prejudiced.
27. Finally in this case VOSA has argued that disclosure of the requested information would be likely to prejudice the car manufacturer’s commercial interest rather than would prejudice the car manufacturer’s commercial interests. Therefore the threshold to prove would be likely to prejudice is lower than if VOSA had claimed that the commercial interests would be prejudiced. In dealing with the issue of the likelihood of prejudice, the Commissioner notes that in the case of *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)*, the Information Tribunal confirmed that “the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk” (paragraph 15). He

has viewed this as meaning that the risk of prejudice need not be more likely than not, but must be substantially more than remote.

28. Upon the evidence provided by VOSA the Commissioner is unable to conclude that the car manufacturer's commercial interests would be likely to be prejudiced by disclosure of the requested information. On this basis the Commissioner has decided that the section 43(2) exemption is not engaged and considers the withheld information should be disclosed. He has therefore not gone on to consider the public interest test in this case.

29. The full text of section 43 can be found in the Legal Annex at the end of this Notice.

Procedural Requirements

Section 1(1)

30. Section 1(1) of the Act 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.”

31. The Commissioner has considered whether VOSA has complied with section 1(1)(b) of the Act.

32. As the Commissioner considers that VOSA incorrectly applied the section 43(2) exemption in order to withhold the requested information, VOSA has breached section 1(1)(b) of the Act by failing to communicate the information to the complainant in response to her request.

Section 10(1)

33. Section 10(1) of the Act 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.”

34. The Commissioner has considered whether or not VOSA complied with section 10(1) of the Act.

35. As the VOSA did not provide the requested information to the complainant within the statutory time for compliance because it incorrectly applied the section 43(2) exemption, the Commissioner considers that it breached section 10(1) of the Act in relation to its obligation under section 1(1)(b).

Is it environmental information?

36. The request for information in this case included the reasons for failure of the MOT test. Upon viewing the information requested the Commissioner noted that one of the reasons for failure is 'Fuel and Exhaust'. The Commissioner deemed it necessary to consider whether in fact this part of the requested information sought by the complainant constituted environmental information. He therefore considered this point further and determined that the information did constitute environmental information and therefore this part of the requested information should have been processed in accordance with the EIR. His basis for reaching this decision is set out below.

37. The definition of "environmental information" is set out in Regulation 2(1). This states 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;

(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 the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)..."

38. The Commissioner considers that the phrase "any information...on" should be interpreted widely and that this is in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the Regulations enact.¹
39. In this case the relevant part of the above definition is Regulation 2(1)(c). This defines environmental information as information on 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. In this instance, the information in question is the MOT pass and failure rates broken down by make and model and reasons for failure. The MOT test is a legal requirement which relates to vehicles which are three years old and older. One of the failure items on that test relates to fuel and exhaust. The Commissioner considers that this is a measure which is likely to affect the factors and elements in 2(1)(a) and (b), or designed to protect those elements. In particular it is likely to impact the air and atmosphere due to emissions which arise as a result if a car were to fail this part of the MOT test.
40. The full text of Regulation 2 can be found in the Legal Annex at the end of this Notice.
41. As the Commissioner considers that the information requested is environmental information he has gone on to determine whether or not any of the exceptions contained within the Regulations would prevent disclosure. The exception most relevant to section 43(2) would be regulation 12(5)(e) which relates to the confidentiality of commercial or industrial information. However, under regulation 12(9) this exception cannot be claimed when the information relates to emissions. Based upon this and arguments provided by VOSA in relation to its application of section 43(2) of the Act, the Commissioner does not consider that any of the exceptions under EIR are relevant in this case.

Regulation 5(1)

42. Regulation 5(1) states that "...a public authority that holds environmental information shall make it available on request."

¹ Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and , eventually, to a better environment.

43. In this case VOSA did not make available environmental information which it held upon request and therefore is in breach of Regulation 5(1).

The Decision

44. The Commissioner's decision is that VOSA incorrectly applied the section 43(2) exemption to the requested information.
45. As VOSA incorrectly applied the section 43(2) exemption it breached section 1(1)(b) as it failed to provide the complainant with the requested information.
46. As VOSA did not provide the complainant with the requested information within the statutory time for compliance it breached section 10(1) of the Act.
47. The Commissioner considers that some of the information requested is environmental information and as he does not consider that any of the exceptions under EIR would be applicable VOSA breached regulation 5(1) as it failed to provide the complainant with this information.

Steps Required

48. The Commissioner requires VOSA to disclose the requested information to the complainant.
49. VOSA must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

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

Right of Appeal

51. 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@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 served.

Dated the 3rd day of December 2009

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

Freedom of Information Act 2000

General Right of Access

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 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the

information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Time for Compliance

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 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Commercial interests.

Section 43(1) provides that –

“Information is exempt information if it constitutes a trade secret.”

Section 43(2) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”

Section 43(3) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).”

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 2(2) Subject to paragraph (3), “public authority” means –

- (a) government departments;
- (b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding –
 - (i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or
 - (ii) any person designated by Order under section 5 of the Act;
- (c) any other body or other person, that carries out functions of public administration; or
- (d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment.

Regulation 2(3) Except as provided by regulation 12(10) a Scottish public authority is not a “public authority” for the purpose of these Regulations.

Regulation 2(4) The following expressions have the same meaning in these Regulations as they have in the Data Protection Act 1998(b), namely –

- (a) “data” except that for the purposes of regulation 12(3) and regulation 13 a public authority referred to in the definition of data in paragraph (e) of section 1(1) of that Act means a public authority within the meaning of these Regulations;
- (b) “the data protection principles”;
- (c) “data subject”; and
- (d) “personal data”.

Regulation 2(5) Except as provided by this regulation, expressions in these Regulations which appear in the Directive have the same meaning in these Regulations as they have in the Directive.

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 12 - Exceptions to the duty to disclose environmental information

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

- (a) international relations, defence, national security or public safety;
- (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- (c) intellectual property rights;
- (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
- (f) the interests of the person who provided the information where that person –
 - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

- (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
 - (iii) has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.

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