

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

Decision Notice

Date: 26 November 2009

Public Authority: The Department for Communities and Local Government
Address: Eland House
Bressenden Place
London
SW1E 5DU

Summary

Following the conclusion of a public inquiry concerning the proposed Port of Exeter Harbour Revision Order, the complainant asked to be provided with a copy of the Inspector's report before the Secretary of State for Transport makes his decision about whether or not to approve it. The Planning Inspectorate initially dealt with the request under the Freedom of Information Act 2000 ("the Act") and refused to provide the requested information relying on section 22 (Information intended for future publication).

The Commissioner intervened and advised the public authority that in his view the information constituted environmental information covered by the Environmental Information Regulations 2004 ('the EIR'). Subsequent to the Commissioner's intervention the Planning Inspectorate claimed that the information was excepted from the right of access by virtue of Regulations 12(4)(d) and (e) (Information still in the course of completion and Internal communications respectively).

The Commissioner has determined that some of the information within the report is the complainant's personal data. Regulation 5(1) does not provide a right of access to that information. The Commissioner has concluded that in respect of the remainder of the requested information the Planning Inspectorate was correct to rely on regulation 12(4)(d) and that the public interest arguments favouring the maintenance of the exception outweigh those in favour of disclosure. As the Commissioner concluded that all of the remaining information was excepted by virtue of Regulation 12(4)(d) he has not gone on to consider the exception in 12(4)(e).

The Commissioner has also decided that the Planning Inspectorate breached Regulations 14(2) and 14(3)(a) and (b) in failing to issue a refusal notice citing Regulations 12(4)(d) and (e) together with its public interest considerations, within 20 working days of the complainant's request. The Commissioner has not ordered any remedial steps.

The Commissioner's Role

1. The Commissioner's role 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 ('the 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 Act are imported into the EIR.

Background

3. A public inquiry was held during September 2008 in connection with the proposed Port of Exeter Revision Order. The inquiry was conducted by an Inspector appointed by the Secretary of State for Transport, under the provisions of the Harbours Act 1964. The report produced by the Inspector is the subject of the complainant's request.
4. The Commissioner notes that under the EIR the Planning Inspectorate is not a public authority itself, but is actually an executive agency of the Department for Communities and Local Government (DCLG) which is responsible for the Planning Inspectorate. For the purposes of the EIR, therefore, the public authority in this case is actually the DCLG. However, for the sake of clarity, this decision notice refers to the Planning Inspectorate as if it were the public authority.

The Request

5. The complainant wrote to the Planning Inspectorate on 25 November 2008 and made the following request:

"I understand that [the Inspector's] report following September's Public Inquiry has been written... Could you please forward a copy of the report by return email."
6. The Planning Inspectorate responded to the complainant's request on 26 November 2008. It informed the complainant that 'the report would not be available to the public prior to the decision being issued'. The complainant was told that he could obtain a copy of the report and the eventual decision, direct from the Department for Transport.

7. The complainant immediately responded to the Planning Inspectorate's refusal to supply a copy of the requested report. He stated why he wished to review the report prior to a decision being made in this matter and that he was concerned that points made during the Inquiry might have been lost or misrepresented. The complainant was particularly concerned that there were errors of fact in the summary presented by Exeter City Council's Barrister and that no cross examination had been allowed. The complainant concluded by stating his belief that the Freedom of Information Act does not allow the retention of a document under the circumstances expressed by the Planning Inspectorate.
8. On 1 December 2008 the Planning Inspectorate informed the complainant that the report would be available to him once a decision had been made by the Secretary of State for Transport. In view of the report's intended future publication, the Planning Inspectorate determined that section 22 (Information intended for future publication) of the Act should be applied.
9. On 10 December 2008 the Planning Inspectorate acknowledged the complainant's request for an internal review of its decision. The Planning Inspectorate stressed that its internal review would be considered on the individual merits of the case. Nevertheless, the complainant's attention was drawn to the Information Commissioner's decisions in two previous cases¹ which involved information requests of a similar nature.
10. The complainant wrote to the Planning Inspectorate again, also on 10 December 2008. He asserted that the Commissioner's decisions cited by the Inspectorate were materially different from the facts of this case. He pointed out that the two decisions related to planning applications whereas the report he seeks concerns a harbour revision order. Nevertheless the complainant conceded that there was some parallel as both types of report are ultimately determined by a Secretary of State acting on full and balanced information. The complainant stressed that he required the withheld report because of worries relating to alleged inaccuracies contained in Exeter City Council's Barrister's submissions to the Inquiry and the lack of opportunity given to objectors to raise these in cross examination.
11. The complainant informed the Planning Inspectorate that he and others had contacted a decision maker at the Department for Transport (DfT) to raise concerns about the withheld report. He also acknowledged that he had sent the DfT a document² which outlined what he considered to be the 'key variances'. He stressed that his list may not be comprehensive as some of the issues were of concern to other objectors. The complainant concluded his letter by stating that the DfT had not provided any timetable by which the DfT and Secretary of State would complete the decision making process. He stressed that he is not seeking an opportunity for further public debate through his request, merely the opportunity to ensure the accuracy of the information that had been presented.

¹ www.ico.gov.uk/upload/documents/decisionnotices/2006/fs50071457_dn001.pdf
www.ico.gov.uk/upload/documents/decisionnotices/2006/decision_notice_fs50070181.pdf

² The complainant provided the Commissioner with a copy of this document. It is referenced by the complainant as HRO 232.

12. The Planning Inspectorate concluded its internal review and communicated its decision to the complainant on 13 January 2009. The reviewer upheld the Inspectorate's decision to apply section 22 to the withheld report and provided the complainant with its considerations of the public interest arguments.

The Investigation

Scope of the case

13. On 14 January 2009 the complainant contacted the Commissioner to complain about the Planning Inspectorate's refusal to provide him with a copy of the requested report. The complainant drew the Commissioner's attention to the Inspectorate's stated deadline for responding to his request for an internal review and pointed out that this had not been met. He also raised a number of issues which he asserts were not taken into account during the review, these are:
 - The apparent assertion of the reviewer that the complainant's Harbour Revision Order 232 document sent to the DfT would be taken into account by the DfT Decision Maker, even though the Decision Maker was unable to confirm whether this would be considered.
 - The Inquiry had been conducted by an Inspector who allegedly said that he was 'entirely unfamiliar' with boating and Harbour Revision Orders. The Inspector's apparent lack of experience or expertise would not allow him to 'pick up all the subtleties of the interaction of boat and man with sea and tide in one visit and a few days' debate'. Therefore this adds a further reason why the withheld report should be subject to review before a decision is made.
 - The complainant understands that the Secretary of State's decision can only be challenged under section 44 of the Harbours Act 1964 on procedural grounds as opposed to the inaccuracy of evidence on which the decision is based.
 14. During the course of the Commissioner's investigation it transpired that the information in one of the appendices to the draft report was in fact already available in the public domain on Exeter City Council's website. This lists the evidence considered by the Inspector at the public Inquiry. The complainant was advised where he could locate that information. In view of this the Commissioner has limited his investigation and decision to the remainder of the information in the draft report and has not considered Appendix B any further in this notice.
- ### Chronology
15. The Commissioner telephoned the Planning Inspectorate on 22 April 2009 asking it to provide him with a copy of the withheld information. The Commissioner also discussed whether the withheld report was environmental information, and

- therefore should more appropriately be dealt with under the Environmental Information Regulations 2004 ('the EIR').
16. The Planning Inspectorate sent the Commissioner a copy of the withheld report on 23 April 2009. The Inspectorate confirmed that the report contained information falling under the definition of environmental information as set out in Regulation 2(1)(c) of the EIR, but argued that it also contained information which it considered did not fall within this definition.
 17. The Commissioner wrote to the Inspectorate on 24 April 2009 informing it that he considered that the withheld report fell within the ambit of the EIR and therefore section 22 of the Act could not be used as the basis for non-disclosure. In the light of this determination the Inspectorate was asked to inform the Commissioner which of the exceptions of the EIR it would rely on if it was not prepared to provide the report to the complainant.
 18. The Planning Inspectorate responded to the Commissioner's enquiries on 9 June 2009. It described the withheld report as concerning 'the establishment, constitution and functions of a new harbour authority in respect of the maintenance and management of the Exe Estuary Harbour.' It added that, '...the functions include those for conservation of the environment', and therefore concluded that some of the information in the report fell under the terms specified by Regulation 2(1)(c) of the EIR. The Inspectorate asked the Commissioner to consider whether the report also contained information relating to procedures and administrative measures themselves, rather than administrative measures which are likely to affect the elements set out in Regulations 2(1)(a) and 2(1)(b) of the EIR. The Inspectorate determined that, insofar as the report contained environmental information, it would rely on the exceptions provided by Regulations 12(4)(d) and 12(4)(e) as the request seeks disclosure of a report that was still in the course of completion and which constituted an internal communication. For the avoidance of doubt it added that if all of the information was considered to be covered by the EIR then it considered all of it to be excepted by virtue of the Regulations previously mentioned. In support of its application of those Regulations the Inspectorate provided the Commissioner with its public interest considerations.
 19. The Commissioner also wrote to the complainant of 9 June 2009. He informed the complainant that he was considering his complaint under the EIR.
 20. The complainant responded to the Commissioner on 17 June 2009. His letter outlined his concerns and provided his reasons why he felt that he should receive a copy of the withheld report before it was passed to the Secretary of State and before he makes his decision.
 21. The Commissioner wrote to the Planning Inspectorate on 28 July 2009 making enquiries concerning the application of the exceptions to the withheld report.
 22. On 15 October 2009 the Commissioner wrote to the Planning Inspectorate to make further enquiries.

23. The Planning Inspectorate responded to the Commissioner's enquiries on 20 October 2009.
24. Having considered the withheld information in detail the Commissioner noted that the information sent to him by the Planning Inspectorate appeared to post-date the request for information. As he is required to consider the information held by the public authority at the date of the request he contacted the Planning Inspectorate on 17 November 2009 and asked it to supply a copy of the draft report held as at the date of the complainant's request. He also asked the Planning Inspectorate to respond to some additional queries.
25. The Planning Inspectorate responded to the Commissioner on 19 November 2009 and provided a copy of the withheld report as it existed at the time of the request together with a response to the further queries.

Findings of fact

26. The Commissioner has established the following facts in relation to the withheld report:
 - (1) The Secretary of State for Transport appointed the Inspector to conduct the Inquiry.
 - (2) The services of the Inspector were commissioned through the Planning Inspectorate.
 - (3) The Planning Inspectorate has provided this service to other government departments for many years. It has established procedures for running public inquiries and employs specialist Inspectors within a wide range of 'technical areas'.
 - (4) The draft report and any recommendation contained within it, was being prepared for the Department for Transport.
 - (5) It is a matter for the Secretary of State to determine whether he will consider further representations after the submission of an Inspector's report.
 - (6) At the time of writing this Notice a decision in the matter of the Harbour Revision Order has not been taken by the Secretary of State.
 - (7) It is possible for the Secretary of State to make a provisional decision in matters of this nature and thereby allow further representations to be made.
 - (8) Harbour Revision Orders are open to legal challenge under the provisions of section 44 of the Harbours Act 1964³.

³ http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1964/cukpga_19640040_en_1

Analysis

Environmental Information

27. Regulation 2(1) of the EIR 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 elements of the environment referred to in (b) and (c).'
28. The Commissioner considers that the phrase 'any information...on' should be interpreted widely, in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor etc in question. In other words, information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.
29. Bearing in mind the Commissioner's broad interpretation of the term 'information on', he is satisfied that the draft of the Inspector's report, which will be used to inform the Secretary of State's decision, is information on a measure as defined under Regulation 2(1)(c) affecting or likely to affect the elements of the

environment, both directly and via the factors referred to in Regulation 2(1)(b). The measure is the proposed Harbour Revision Order to be made under section 14 of the Harbours Act 1964.

30. The Order would establish a new authority responsible for the conservancy, protection, regulation, maintenance, operation, management and improvement of the harbour and its facilities. It would provide the authority with powers in relation to authorising dredging, managing moorings, removing wrecks and dealing with pollution of the harbour. In addition it would restrict public rights to moor vessels and give the authority powers to make regulations specifying classes of activity that may take place on the quay. Finally in relation to public quays, it would limit the Council's obligations to provide or maintain quays for mooring and loading and provide it with a power to dispose of land, subject to planning requirements. The Commissioner is satisfied that as the Order provides powers to administer the harbour and to decide how it is used as well as whether some of the land is designated part of a public quay, it is likely to affect the land and landscape. It also gives the authority powers to create byelaws to regulate the navigation of vessels, prohibit the discharge of deposits (including polluting liquid) and regulate or prohibit fishing for marine creatures and therefore in the Commissioner's view is likely to affect the state of the water and marine area as well as the discharges likely to affect those elements.
31. The Commissioner notes that the report also contains information on another measure falling with Regulation 2(1)(c). It contains details of the redevelopment of the City Basin which is likely to affect the land and landscape. Finally it also contains details about the current state of the land and landscape which is information that falls within Regulation 2(1)(a). In view of all of the above, the Commissioner is satisfied that all of the withheld information should have been considered under the EIR.

Regulation 5(1)

32. Regulation 5(1) provides that,

“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”.

33. However Regulation 5(3) states that,

“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”.

34. Therefore, to the extent that any of the requested information is personal data of the applicant, the duty to make that information available does not apply. The Commissioner has reviewed the withheld information and considers that some of it constitutes the complainant's personal data. However, in view of Regulation 5(3), the public authority has no duty to make that information available. Given

that Regulation 5(1) does not apply to that information, the Commissioner has not given further consideration to the information within the report that he considers constitutes the complainant's personal data. However, he has made comments about other possible rights of access to that information in the 'other matters' section below.

Regulation 12

35. In relation to the remainder of the withheld information the Commissioner has considered the exceptions in Regulations 12(4)(d) and (e) cited by the Planning Inspectorate.
36. Regulation 12(1)(a) of the EIR states that a public authority may refuse to disclose requested environmental information if an exception to disclosure applies under Regulations 12(4) or 12(5) and, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
37. Regulation 12(2) of the EIR requires that a public authority apply a presumption in favour of disclosure.

Regulation 12(4)(d) (Material still in the course of completion)

38. Regulation 12(4)(d) states that for the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

“the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data”.

It is a well established principle that the Commissioner must consider the information held by the public authority and the circumstances of the case, at the time of the request. The Planning Inspectorate explained that at the time of the request the requested report was still being completed by the Inspector. Having reviewed a copy of the relevant withheld information the Commissioner is satisfied that it did constitute material that was still in the course of completion and therefore the exception in 12(4)(d) applied. He has therefore gone on to consider the public interest test below.

Public Interest test

39. The Commissioner has considered the public interest arguments for maintaining the exception and for disclosing the information that are relevant in this case. He has then gone on to balance those arguments bearing in mind the requirement of Regulation 12(2) to apply a presumption in favour of disclosure.

Public interest arguments in favour of disclosing the requested information

40. In this case the complainant has expressed doubts concerning the accuracy of the information contained in a document presented to the Inquiry by Exeter City Council's Barrister. The complainant assured the Commissioner that this

document was presented to the Inquiry towards its conclusion and that it was neither subject to public scrutiny nor cross examination. Providing access to the Inquiry Report at this stage would allow the public the opportunity to scrutinise the draft. This would inform the public about the degree to which their views and submissions had been considered and incorporated in the draft. It would be likely to bring to light any defects and allow further representations to clarify the position prior to the Secretary of State making his decision.

In the Commissioner's view disclosing the draft would inform the public about the Inspector's progress and reassure them that he was giving the matter full and thorough consideration. It would also demonstrate that he was making detailed recommendations to the Secretary of State to assist him in reaching his decision. Greater transparency would further public confidence in the Inquiry process and ultimately the decision being made about the proposed Order.

Public interest arguments in favour of maintaining the exception

41. There is a public interest in preserving a space within which the Inspector can complete his report in relation to this Inquiry. This ensures that the process is as efficient as possible and that the report is available at the earliest opportunity to assist the Secretary of State in reaching his decision. This ultimately is likely to reduce the overall cost of the process to the public purse.
42. The public Inquiry was conducted on a similar basis to planning inquiries and provided relevant parties the opportunity to make their representations. The Commissioner accepts the Planning Inspectorate's argument that there is a public interest in 'closing the book' on further public consultation to allow the Inspector the time and space away from interruption to reflect upon the evidence, reach a view and complete his written recommendations. He further accepts that if the draft report were released it would likely result in further representations being made on the basis of incomplete material that may not in fact remain in the version sent to the Secretary of State. This is likely to harm the efficiency of the Inquiry process and delay the final the Secretary of State's decision.

Balance of the public interest arguments

43. The Commissioner is mindful of the considerable impact that the proposed Harbour Revision Order is likely to have on the local community and the degree of concern it has generated. This is evidenced by the degree of public involvement in the consultation process surrounding the proposed Order, including at the public Inquiry, at the time of the request. In view of the above, the Commissioner has attributed some significance to the argument that disclosure would inform the public about the progress of the Inspector's report.
44. The Commissioner has also given some weight to the argument that it would be in the public interest to disclose the draft at the time of the request, in advance of the Secretary of State's decision, so that any factual errors it may or may not contain could be brought to light and corrected. This would help to ensure that the final decision is based on accurate information and increase public confidence in it. However, he has not attributed as much weight to this factor as he might have

done if the information within the scope of the request had been the final version of the report that was to be sent to the Secretary of State. If this had been the case it would have given a more complete picture of the Inspector's recommendations.

45. The Commissioner also notes that, where there are concerns about the evidence presented at a public Inquiry, representations can be made to the Secretary of State directly, as they have been in this case, and that these may be taken into account prior to the decision being reached. Moreover the provisions of section 44 of the Harbours Act 1964 (amended by the Transport Act 1981) provide the opportunity to question any Order within six weeks of the date on which it comes into effect. The Planning Inspectorate has also highlighted that if the complainant considers that there has been a departure from proper procedure then he would have the right of challenge the decision by way of a judicial review.
46. In the Commissioner's view the ability to make further representations and the possibility of challenging the Secretary of State's decision diminishes the weight that should be given to the factors favouring disclosure of the requested information.
47. The Commissioner has also given some weight to the argument about greater transparency surrounding the Inquiry. He accepts that the draft would further inform the public about the Inquiry process and the progress that had been made in this particular case. However he also considers this argument to be of limited significance for the following reasons.
48. The Commissioner understands that there are no specific procedures laid down for conducting public inquiries relating to Harbour Revision Orders. However, the Planning Inspectorate has assured him that the inquiry followed the spirit of those followed in planning appeals⁴. Having reviewed the withheld information the Commissioner can find no evidence to suggest that a full and thorough process has not been carried out. He also notes that prior to the Inquiry concerns were raised by some of the objectors about some of the evidence and the process being followed. However these concerns appear to have been given full and detailed consideration by the Inspector. Furthermore the Planning Inspectorate has received no substantiated complaints about the Inspector or the conduct of the Inquiry.
49. The complainant appears to question whether the Inspector was qualified to undertake the Harbour Revision Order Inquiry and to assert that one site visit and the limited time available for debate, would not equip him with the necessary understanding of the issues involved. The question of whether the Inspector was qualified for his task is not a matter for the Commissioner, except in the context of his consideration of the public interest relating to the efficacy of the procedures he followed and the report he was in the process of producing. The Commissioner understands that the Inspector appointed to undertake the Inquiry was chosen on the basis that he holds the relevant Inspectorate specialism (Transport) required by those who undertake Harbour Revision Order Inquiries. Furthermore, he is

⁴ <http://www.opsi.gov.uk/si/si2000/20001624.htm>

assured that the Inspector followed established Planning Inspectorate procedures and can see no evidence to contrary within the withheld information.

50. The Commissioner also notes that the DfT has committed to publish the Inquiry report together with its decision once it is taken. He recognises that this will also go some way to ensuring that the Secretary of State is accountable for his decision and transparent about the basis on which it was reached.
51. In the Commissioner's view the arguments in favour of maintaining the exception in this case have substantial weight and outweigh those in favour of disclosure. In reaching this view he has taken into account the fact that at the time of the request the report was still in the process of being completed. Furthermore, a significant amount of information had already been placed in the public domain regarding the proposed Order and provision had been made for the public to provide input, most notably via the public Inquiry. The Commissioner recognises that the requirement for public input must be balanced against the need for a space in which the Inspector can reflect upon the evidence and compile his recommendations. He considers that if the draft report had been released it would have led to further representations and a delay in its completion and ultimately the Secretary of State's decision. In this case the Commissioner agrees that at the time of the request the public interest in 'closing the book' on public consultation and giving the Inspector space to complete his report outweighed the arguments in favour of disclosure.

Regulation 12(4)(e) (Internal communications)

52. In view of the Commissioner's conclusions above it has not been necessary to go on to consider Regulation 12(4)(e) in this case.

Procedural Requirements

53. In its refusal notice and subsequent internal review, the Planning Inspectorate relied on section 22 of the Act to withhold the Inspector's report. Following the Commissioner's intervention the Planning Inspectorate considered the information under the EIR and determined that the exceptions provided by Regulations 12(4)(d) and (e) applied. In failing to issue a refusal notice citing these exceptions within 20 working days the Planning Inspectorate breached the requirements of regulation 14(2) and 14(3)(a) and (b).

The Decision

54. The Commissioner's decision is that to the extent that the withheld information contains the complainant's personal data, the public authority was not obliged to make that information available under Regulation 5(1).

In relation to the remainder of the withheld information the Commissioner has decided that the Planning Inspectorate correctly refused to provide it on the basis that it was excepted from Regulation 5(1) by virtue of Regulation 12(4)(d).

55. However, the Commissioner has also decided that the Planning Inspectorate breached Regulations 14(2) and 14(3)(a) and (b) in failing to issue a refusal notice citing Regulations 12(4)(d) and (e) and explaining its public interest considerations within 20 working days.

Steps Required

56. The Commissioner requires no steps to be taken.

Other matters

57. As explained above, the Commissioner considers that some of the withheld information constitutes the complainant's personal data. Consequently the duty to make that information available under the EIR does not apply. Personal data of the applicant is also subject to an absolute exemption under section 40(1) of the Freedom of Information Act 2000. However, the complainant may be entitled to access his personal data under section 7 of the Data Protection Act 1998. The Commissioner has provided the complainant with separate advice in this regard.

Right of Appeal

58. 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 26th day of November 2009

Signed

**Jo Pedder
Senior Policy Manager**

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

Legal Annex

The Environmental Information Regulations 2004

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

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- (g) 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;
- (h) 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);
- (i) 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;
- (j) reports on the implementation of environmental legislation;
- (k) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- (l) 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);

Regulation 12 - Exceptions to the duty to disclose environmental information

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

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all 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(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

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

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

Regulation 14(1) If a request for environmental information is refused by a public authority under Regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

Regulation 14(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 14(3) The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under Regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, Regulations 13(2)(a)(ii) or 13(3).

The Harbours Act 1964

Section 44 - Limitation of right to challenge harbour revision orders, &c., in legal proceedings

(1) A person who desires to question any such order as follows, namely, a harbour revision or empowerment order (not being one confirmed by Act of Parliament under section 6 of the Statutory Orders (Special Procedure) Act 1945, or under section 2(4), as read with section 10, of that Act) or an order under section 15A of this Act, on the ground that there was no power to make the order or that a requirement of this Act was not

complied with in relation to the order, may, within six weeks from the date on which the order becomes operative make an application for the purpose to the High Court or the Court of Session, as the case may be.

(1A) On an application under the foregoing subsection the court—

(a) may, by interim order, suspend the operation of the order or of any provision thereof, either generally or so far as may be necessary for the protection of the interests of the applicant, until the final determination of the proceedings; and

(b) if satisfied that there was no power to make the order or that the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement of this Act so far as regards the inclusion in the order of that provision, may quash the order, or any provision thereof, either generally or so far as may be necessary as aforesaid.