

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

### Decision Notice

**Date: 4 November 2010**

**Public Authority:** Natural England  
**Address:** Head Office  
1 East Parade  
Sheffield  
S1 2ET

### Summary

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The complainant requested a number of pieces of information in relation to an area of land known as the Saltings, at Rye Harbour, East Sussex. Although some information was disclosed to the complainant, Natural England withheld part of a document entitled "The Saltings Project Brief Paper" under regulation 12(4)(e). During the Commissioner's investigation Natural England disclosed some of the previously withheld information, but continued to rely upon regulation 12(4)(e) in relation to the outstanding parts of the document. In addition to this, Natural England also applied regulation 12(5)(g) to this information. After investigating the case the Commissioner decided that the withheld information should be withheld under regulation 12(4)(e). However, he also decided that Natural England had not met the requirements of regulations 5(1), 5(2), 14(1) and 14(2).

### The Commissioner's Role

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1. 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 Freedom of Information Act 2000 (the "Act") are imported into the EIR.

## Background

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2. Natural England is a Non-Departmental Public Body created by the Natural Environment and Rural Communities Act 2006. Section 2(1) of that Act sets out Natural England's general purpose as, "to ensure that the natural environment is conserved, enhanced and managed for the benefit of present and future generations, thereby contributing to sustainable development." Natural England's functions include the protection and management of Sites of Special Scientific Interest (SSSI).<sup>1</sup>
3. The focus of this case is an area of land known as the Saltings, which is located in East Sussex. It was originally notified as part of the Rye Harbour SSSI in 1988 because of salt marsh habitat on the site. In 1990 a sea defence was constructed on the riverward side of the Saltings. This sea defence prevented tidal inundation of the site, which subsequently led to a decline in the salt marsh habitat. In 2006 the Saltings was notified as part of the Dungeness, Romney and Rye Bay SSSI. However, this notification was withdrawn in 2007.
4. It is a matter of dispute between the owners of the Saltings and Natural England whether the site remains a SSSI because of the 1988 designation. As an associated matter, it is also a matter of dispute whether the site can be restored to the pre-existing salt marsh habitat. These matters have a significant bearing on the future usage and potential development of this land.
5. In October 2007 The Saltings Project Brief Paper ("The Saltings Brief") was prepared by two Natural England officers. Natural England have described The Saltings Brief in the following terms,

"[The Saltings Brief] was directed at Natural England officers and directors including legal and technical specialists, not at Board Members. It is an internal document discussing the background to the case and planning position, and to consider what additional information is required in order to inform a decision upon whether or not to propose de-notification of 'the Saltings' from the Rye Harbour SSSI."

The Saltings Brief forms the focus of this case.

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<http://www.naturalengland.org.uk/ourwork/conservation/designatedareas/sssi/default.aspx>

## The Request

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6. The complainant contacted Natural England on 10 December 2008 and requested a number of pieces of information in relation to the Saltings. The part of the request that is relevant to this case referred to a letter written by a named Natural England officer to the complainant on 18 October 2007, and stated,

“In the fourth paragraph of this letter, [the named Natural England officer] states ‘With regard to the SSSI de-notification process we are currently considering this matter and would hope to report to the Executive Board later this year.’ Please provide all documentation relating to Natural England’s consideration of this matter, including why such de-notification was necessary; and the report to the Board. If no such report was ever made, please provide documents explaining why.”

7. Natural England responded in a letter dated 29 January 2009. In relation to this request it stated,

“Natural England’s consideration of the matter is documented at document C8 [i.e. The Saltings Brief]. No report was written or sent to the Board because no decision was taken to seek de-notification.”

It disclosed a redacted version of The Saltings Brief to the complainant. However, it also stated that it believed that some of the information contained in this document was exempt under regulation 12(4)(e). It explained that it was applying this exception to sections that concerned, “internal thought processes in relation to the SSSI status of the site.” It also provided further arguments as to why it thought that the public interest in maintaining this exception outweighed the public interest in disclosure.

8. The complainant contacted Natural England on 24 March 2009 and requested an internal review of this decision.
9. Natural England carried out an internal review and contacted the complainant in a letter dated 15 May 2009. It stated that it still believed that the redacted sections of The Saltings Brief were exempt from disclosure under regulation 12(4)(e). The internal review gave further submissions as to why Natural England believed that this exception was engaged.

## The Investigation

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### Scope of the case

10. On 28 July 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. The complainant confirmed in a telephone conversation on 30 September 2009 that the focus of his complaint was Natural England's refusal to disclose an unredacted version of The Saltings Brief.
12. During the course of the investigation Natural England disclosed some of the previously withheld information to the complainant. Therefore the Commissioner has not considered the application of the exceptions in relation to this information.
13. In addition to this, during the course of the investigation Natural England informed the Commissioner that it was also seeking to rely upon regulation 12(5)(g) in order to withhold the information in question (see paragraph 16 below).
14. Therefore the focus of the investigation has been to consider Natural England's application of regulations 12(4)(e) and 12(5)(g) in relation to the outstanding withheld information from The Saltings Brief.
15. Although not referred to by the complainant, the Commissioner has also considered whether Natural England met the requirements of regulations 5 and 14 of the EIR.

### Chronology

16. Natural England wrote to the Commissioner on 9 September 2009 and provided him with an unredacted version of The Saltings Brief, together with initial submissions to support its use of regulation 12(4)(e). It also informed him that it was also relying upon regulation 12(5)(g) in order to withhold the information in question.
17. Following a telephone conversation on 19 May 2010, the Commissioner wrote to Natural England on 20 May 2010 and asked it to provide him with further submissions to support its use of regulations 12(4)(e) and 12(5)(g).
18. Natural England emailed the Commissioner on 7 June 2010 and provided further submissions to support its use of these exceptions. It

- also informed him that it was now prepared to disclose some of the previously withheld information.
19. The Commissioner emailed Natural England on 12 July 2010. He noted that it was now prepared to disclose some of the previously withheld information, and asked it to do so. He also asked it to notify him when this disclosure had been made.
  20. The Commissioner wrote to Natural England again on 22 July 2010 and noted that he had not received a response to his previous email. He asked it to respond by no later than 5 August 2010.
  21. Natural England emailed the Commissioner on 26 July 2010 and confirmed that it had disclosed the additional information to the complainant.
  22. The complainant contacted the Commissioner on 29 July 2010 and informed him that he was still seeking access to the outstanding withheld information. During a subsequent telephone conversation on 3 August 2010 the complainant informed the Commissioner that he wished to provide further arguments in regard to Natural England's use of regulation 12(5)(g).
  23. The complainant contacted the Commissioner in an email dated 9 September 2010 and provided further arguments relating to Natural England's use of regulation 12(5)(g).

## **Analysis**

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### **Substantive Procedural Matters**

24. Both Natural England and the complainant agree that the contents of The Saltings Brief fall under the definition of environmental information as set out in regulation 2 of the EIR. After considering the withheld information the Commissioner is also satisfied that it falls within the definition of environmental information, as set out in regulation 2.
25. The full text of regulation 2 can be found in the Legal Annex at the end of this Notice.

## Exceptions

26. As noted above, Natural England has relied upon regulations 12(4)(e) and 12(5)(g) to withhold the information in question in this case. The Commissioner has first considered its use of regulation 12(4)(e).

### **Regulation 12(4)(e)**

27. Under regulation 12(4)(e) a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. This exception is subject to a public interest test.
28. The Commissioner has first considered whether The Saltings Brief can be considered to be an internal communication.
29. As noted at paragraph 5 above, Natural England has stated that The Saltings Brief is an internal document, written by its employees, and directed at its officers and directors. After considering these arguments and examining the withheld information, the Commissioner is satisfied that The Saltings Brief constitutes an internal communication for the purposes of this exception. Therefore he is satisfied that the exception is engaged.
30. As noted above, this exception is subject to a public interest test. Therefore information may only be withheld under regulation 12(4)(e) if the public interest in maintaining the exception outweighs the public interest in disclosing the information. Regulation 12(2) explains that when considering the public interest test the public authority must apply a presumption of disclosure. This means that in the event that the weight of public interest is evenly balanced, the information should be disclosed.
31. The Commissioner has gone on to consider the public interest test in relation to the outstanding information in this case.

### **Public interest arguments in favour of disclosing the requested information**

32. The core of the complainant's argument is that it is in the public interest to establish whether or not the area known as the Saltings is, in fact, a SSSI. This is a matter that is disputed between Natural England and the landowners. The complainant has argued that,

“Natural England maintains that the site remains a SSSI, yet they have not exercised their statutory powers to restore the salt

marsh interest on the site. The result of this inaction over nearly two decades is that the site has no value of salt marsh and very little value to the landowners while Natural England maintains its position. [The complainant] considers that the public interest lies in the true status of this site being determined finally..."

33. The complainant has expanded upon this point, and has argued that:
  - the wider public need to know for certain whether this site is, or is not, a SSSI;
  - Rother District Council, as the local planning authority, are vitally interested in the proper designation of this site, so as not to be inhibited in performing its planning function; and
  - the Environment Agency is entitled to know what the true status of the site may be.
  
34. The complainant has argued that in order for these outcomes to be achieved Natural England should disclose the withheld information. Only then can these other public authorities and the general public understand Natural England's reasons for pursuing the course of action that it has.
  
35. In addition to this, the complainant has provided further public interest arguments which (the Commissioner believes) only relate directly to the complainant. As the EIR is applicant blind, and disclosure under it is considered as disclosure to the world at large, the Commissioner is only able to take into account public interest factors which relate to the public as a whole. He is unable to take into account public interest factors which, in reality, only relate to the applicant. Therefore, whilst he appreciates the complainant's strength of feeling in relation to arguments in favour of disclosure of this information, he is not able to take into consideration factors that only relate to the complainant's interests. However, the Commissioner has considered whether any public interest factors in favour of disclosure can be extrapolated from the more individual arguments provided by the complainant. Whilst he does not believe that it is appropriate to detail the individual arguments in this Notice, the Commissioner believes that the main public interest arguments that can be extrapolated from them are reflected in paragraphs 32 to 34 above, and in paragraph 37 below.
  
36. The Commissioner takes the view that there is a strong inherent public interest in releasing environmental information. It has long been recognised that in order to protect the environment it is important for people to have access to environmental information, to be able to participate in environmental decision making and have access to justice. The EU Directive, from which the EIR is derived, states that,

“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.”<sup>2</sup>

37. A SSSI may be made on any area of land which is considered to be of special interest by virtue of its fauna, flora, geological or physiographical features. The decision to notify an SSSI is made by the official nature conservation body for that part of the United Kingdom – in this case Natural England.<sup>3</sup> Given the role that SSSI’s play in nature conservation and protection, the Commissioner believes that there is a public interest in increasing the transparency of any decisions made by Natural England in relation to a SSSI. In considering the weight to give to this public interest argument, the Commissioner has also taken into consideration the potential impact that the designation of a site as a SSSI may have on the future usage and potential development of that site.
38. In this instance the Commissioner notes that the complainant has argued that it is in the public interest to establish whether the Saltings is, in fact, a SSSI. He also notes that this is a matter of dispute, as it is Natural England’s belief that the site is a SSSI, whilst it is the complainant’s position that it is not. The Commissioner does not believe that it is appropriate for him to make a judgement on these differing views of the status of this site. However, he does accept that the status of this site is a matter of considerable debate amongst interested parties, and he believes that there is a public interest in increasing the transparency in the process by which this debate is being attempted to be resolved.

### **Public interest arguments in favour of maintaining the exception**

39. Natural England has raised arguments about the necessity for the formulation and development of policy, and decision making, being made in private. At internal review it argued that disclosure of the withheld information, “...could have a detrimental effect as it is internally sensitive to issues still not resolved...” It also argued that,

“Part of our statutory function is to protect designated sites. I believe releasing this information would compromise this function

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<sup>2</sup> [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF)

<sup>3</sup> <http://www.sssi.naturalengland.org.uk/Special/sssi/index.cfm>



as it would undermine our ability to ensure the best possible environmental outcome for this site.”

The Commissioner has interpreted this as a ‘safe space’ argument.

40. The Commissioner accepts that there is a need for a ‘safe space’ for public authorities to formulate policy, debate ‘live’ issues, and reach decisions without being hindered by external comment and/or media involvement. The Commissioner also accepts that it is in the public interest to preserve this ‘safe space’ – especially when the issues that relate to the information are live at the time of the request. In this instance (as noted at paragraphs 4 and 38 above), the dispute over whether the Saltings is a SSSI and whether it can be restored to the pre-existing salt marsh habitat, is a matter that was live at the time of the request (indeed, it remains so). Additionally, having examined The Saltings Brief the Commissioner is satisfied that the contents of the document relate directly to the issues that were live at the time of the request. Bearing this in mind, the Commissioner believes that the need for safe space is a strong public interest factor in favour of maintaining the exception in this case.

### **Balance of the public interest arguments**

41. As noted above, the Commissioner accepts that given the role that SSSI’s play in nature conservation and protection – as well as the potential impact an SSSI designation may have on the future use and development of a site – there is a strong public interest in increasing the transparency of any decisions made by Natural England in relation to such a site. However, conversely he believes that there is also an strong public interest in avoiding potential prejudice to Natural England’s decision making process, whilst that process is still underway. Such a process will inevitably involve negotiation between Natural England and the landowners, as well as (potentially) enforcement action. The Commissioner does not believe that it is in the public interest to cause unnecessary prejudice to this process by disclosure of information under EIR whilst this process is underway.
42. The Commissioner notes that the issues surrounding the status of the Saltings were a matter of considerable debate and dispute between Natural England and the landowner at the time of the request. Given the role of Natural England in the designation and protection of SSSI’s, the Commissioner believes that the ‘safe space’ arguments that it has made were relevant to its internal processes in relation to the Saltings that were underway at the time of the request. Given that this process related to an issue that was live at the time of the request, the

Commissioner finds the public interest in protecting this 'safe space' particularly weighty.

43. The Commissioner does recognise the strength of the public interest arguments provided in favour of the disclosure of this information. However, having carefully considered the arguments for and against disclosure, and given that the outstanding information relates to an issue that was live at the time of the request, the Commissioner considers that the public interest in maintaining regulation 12(4)(e) outweighs the public interest in disclosure.
44. The full text of regulation 12(4)(e) can be found in the Legal Annex at the end of this Notice.

### **Regulation 12(5)(g)**

45. As he has decided that the outstanding information should be withheld under regulation 12(4)(e), the Commissioner has not gone on to consider the application of regulation 12(5)(g).
46. The full text of regulation 12(5)(g) can be found in the Legal Annex at the end of this Notice.

### **Procedural Requirements**

47. Regulation 5(1) states that a public authority that holds environmental information should make that information available on request (subject to issuing an appropriate refusal notice when it can rely on an exception).
48. During the course of the Commissioner's investigation Natural England disclosed some information from The Saltings Brief that it had previously withheld under regulation 12(4)(e). As this information was not made available to the complainant on request the Commissioner finds that Natural England failed to meet the requirements of regulation 5(1).
49. Regulation 5(2) states that public authorities should make information available under regulation 5(1) within 20 working days. In this case Natural England failed to provide the information subsequently released in 20 working days. Therefore the Commissioner also finds that Natural England failed to meet the requirements of regulation 5(2).

50. Regulation 14(1) states:

"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 shall comply with the following provisions of this regulation."

51. Regulation 14(2) states:

"The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request."

52. Regulation 14(3) states:

"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)."

53. During the investigation of this case Natural England informed the Commissioner that it sought to rely upon regulation 12(5)(g) to withhold the information in question. This exception had not previously been cited to the complainant.

54. In failing to inform the complainant of one of the exceptions it was seeking to rely upon, Natural England failed to meet the requirements of regulation 14(1) – as it had failed to comply with the provision laid out in regulation 14(3)(a) to inform the applicant of any exception relied upon.

55. In addition to this, the Commissioner notes that the request was made on 10 December 2008. By failing to issue a refusal notice until 29 January 2009 the Commissioner finds that Natural England failed to meet the requirements of regulation 14(2).

56. The full text of regulations 5 and 14 can be found in the Legal Annex at the end of this Notice.

## **The Decision**

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57. The Commissioner's decision is that Natural England dealt with the request for information in accordance with the EIR in that it correctly withheld the outstanding information under regulation 12(4)(e).

However, the Commissioner has also decided that Natural England failed to meet the requirements of regulations 5(1), 5(2), 14(1) and 14(2).

## **Steps Required**

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58. The Commissioner requires no steps to be taken.

## Right of Appeal

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

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

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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

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

**Dated the 4<sup>th</sup> day of November 2010**

**Signed .....**

**Pamela Clements  
Group Manager Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### 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.

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

- (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.
- (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.
- (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.
- (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.



- (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.
- (6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

## **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 the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
- (2) A public authority shall apply a presumption in favour of disclosure.
- (3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.
- (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.

- (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.
- (6) For the purpose of paragraph (1), a public authority may respond to a request by neither confirming or denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).
- (7) For the purposes of a response under paragraph (6), whether information exists and is held by the public authority is itself the disclosure of information.

- (8) For the purposes of paragraph (4)(e), internal communications includes communications between government departments.
- (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).
- (10) For the purpose of paragraphs (5)(b), (d) and (f), references to a public authority shall include references to a Scottish public authority.
- (11) Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is withheld by virtue of these Regulations unless it is not reasonably capable of being separated from the other information for the purpose of making available that information.

#### **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.
- (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.
- (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).
- (4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.
- (5) The refusal shall inform the applicant –
  - (a) that he may make representations to the public authority under regulation 11; and

- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.