

## Environmental Information Regulations 2004

### Decision Notice

**Date: 06 September 2010**

**Public Authority:** Rotherham Metropolitan Borough Council  
**Address:** Council Offices  
Doncaster Gate  
Doncaster Road  
Rotherham  
S65 1DJ

### Summary

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The complainant made a request to Rotherham Metropolitan Borough Council (the 'Council') for information relating to the granting of planning permission for a development. In response to the request, the Council provided the complainant with details of how to access the planning file on its website where some of the information was held, and invited the complainant to view the paper planning file on which some of the requested information was held. Additionally, the Council provided the complainant with copies of minutes of the relevant Design Panel and advised that the Planning Board Report and addendum could be accessed by a URL link. The Council explained that, with the exception of the Design Panel minutes, all the requested information was held on the planning file. It confirmed that it did not hold any minutes of internal or external meetings. The complainant asked the Commissioner to consider whether further information was held on the matter. The Commissioner found that the information requested constitutes environmental information and therefore should have been considered under the Environmental Information Regulations 2004 (EIR). He has concluded on the balance of probabilities, that with the exception of the above information which was made available to the complainant, the remainder of the information requested was not held by the Council. It therefore complied with regulation 5(1) and 5(2) in making available the information it held within 20 working days and in stating that no further information was held.

## The Commissioner's Role

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1. 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. This Notice sets out his decision.

## Background

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2. The complainant is a legal firm which is acting on behalf of its client in relation to this case. All references to 'the complainant' are made in relation to it acting on behalf of its client.
3. The complainant is challenging the Planning Board of Rotherham Metropolitan Borough Council's decision to grant planning permission on 30 June 2009 for a planning application to erect a four, five and six storey building to form Civic Offices with associated basement car parking, flood protection and improvements to a particular junction at the site. Prior to planning permission being granted, the complainant raised a number of issues relating to the proposals in writing.
4. Following the granting of planning permission, the complainant made the information request detailed below with a view to understanding how the Council had addressed the concerns of its client.
5. The complainant also entered into a pre-action protocol for judicial review in relation to this planning application in September 2009, which resulted in a series of correspondence that has not been considered as part of this request. References to the judicial review are included in this Notice for the sake of completeness and because, in the letter of complaint to the Commissioner, the complainant stated it believed the Council was refusing to provide the information for three possible reasons, two of which only appeared in the judicial review correspondence. This issue is covered further under the Request and Analysis sections of the Decision Notice.
6. The Council has clarified the process it adopts when a new planning application is received, the application is scanned and is then made available on its website for consultation purposes. Any further correspondence received relating to the consultation process and other

planning considerations is then placed on the paper planning file which is publicly available.

## The Request

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7. On 16 July 2009 the complainant submitted a detailed request which it summarised in its correspondence of 30 October 2009 to the Commissioner for the following information, under each of four areas (planning obligations, sequential assessment, environmental standards and flood risk assessment):
- “minutes of the relevant Council committee meetings and cabinet papers or other formal documents relating to the Application;
  - notes of relevant internal meetings and emails relating to the Application;
  - notes of external meetings and correspondence with the owner of the Site or its agents regarding the Application; and
  - analysis undertaken by or on behalf of the Council to assess the Application.”

The complete version of the request can be found at Annex A attached to this Decision Notice.

8. On 11 August 2009 the Council provided a response confirming that all the requested information it held was available on the planning file and provided details of how this file could be accessed through its website, advising that an appointment should be made if the complainant wished to inspect the file. Additionally, the Council provided the complainant with the URL for the associated Planning Board Report and addendum to this report. The Council confirmed that prior to 7 January 2009 there were no recorded formal pre-application discussions between the applicant/agent and the Local Planning Authority other than the presentation of the application to the Design Panel and provided the complainant with a copy of the minutes of the relevant Design Panel.
9. The complainant submitted a letter to the Council on 25 September 2009 under the judicial review process which included a repeat request for sight of the relevant information.

10. On 7 October 2009 the Council wrote to the complainant referring it to correspondence associated with the judicial review dated 23 September 2009. It stated there was no outstanding information that the Council was aware of and that it was not the Council's intention to supply any further information.
11. On 20 October 2009 the complainant requested the Council reconsider its position regarding the requested information, stating it would otherwise complain to the Commissioner.
12. From the information available on the file, it was not entirely clear at the outset of the investigation whether an internal review had been held. As a result, the Commissioner contacted the Council on 9 December 2009. Subsequently the Council confirmed it had not carried out an internal review and would now do so. The Council also stated the complainant had not requested an internal review.
13. The Council provided the outcome of the internal review on 21 December 2009. It confirmed that all the available information had been provided to the complainant and that no further information was held.

## **The Investigation**

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### **Scope of the case**

14. On 30 October 2009 the complainant contacted the Commissioner to complain about the way its request for information had been handled. Whilst the complainant confirmed its client had inspected the planning file, it stated it was unable to identify any information that addressed the issues raised by it with the Council.
15. In the complaint letter the complainant also made reference to the Council appearing to refuse to provide the requested information on the basis that the information is commercially confidential, specifying that there may be conflict between the private or political interests of the Council in securing new Civic Offices and the public interest in understanding the detailed basis for the planning decision. This element formed part of the Council's judicial review proceedings correspondence of 23 September 2009 and is referred to under the 'Chronology' and 'Analysis' sections of this notice.
16. The complainant specifically asked the Commissioner to consider its view that the Council had not complied with the requirements of the

Act. The Commissioner first undertook to ensure the Council had the opportunity to carry out an internal review. Following receipt of the internal review outcome, the complainant wrote to the Commissioner on 12 January 2010 and again stated its dissatisfaction with the information that had been provided.

17. As part of his investigation, the Commissioner has considered which of the requested information is held by the Council and which, if any, of the requested information is not held. He has also considered whether the requested information is environmental.

## **Chronology**

18. On 25 January 2010 the Commissioner wrote to the Council asking it to provide copies of all the information held relating to the request, including details of contractual arrangements and/or discussions with third party owners/potential purchasers. The Commissioner noted that the Council did not seem to have applied any specific exemptions to the information it appeared to be withholding and invited it to make further submissions in support of its response.
19. The Council wrote to the Commissioner on 10 February 2010 confirming it had not withheld any information and restated that all the information referred to (with the exception of the Design Panel minutes which were provided) was available on the planning application file available on its website or in one of its offices.
20. In response to the Council seeking further clarification the Commissioner wrote further on 15 February 2010 reiterating which of the complainant's requests he was investigating, and asked the Council to either provide a copy of the withheld information explaining which exemption(s) it had applied, or to confirm that it did not hold any additional information beyond that it had provided the complainant with.
21. On 1 March 2010 the Council wrote to the Commissioner and supplied further information about the responses it had provided to the complainant in relation to the request, confirming it had not withheld any information nor had it applied any exemptions.
22. On 3 March 2010 the Commissioner contacted the Council to clarify whether details of contractual meetings/discussions between it and third party owners/potential purchasers were held on the paper planning file and was advised that this information had already been provided to the complainant under a separate information request.

23. On 8 March 2010 the Commissioner wrote to both the Council and the complainant regarding the dispute over whether the Council held or had held in July 2009 some of the requested information. The Commissioner outlined his preliminary conclusions.
24. In preparation for this Decision Notice, the Commissioner contacted the Council on 24 May 2010 to ascertain whether it had considered handling this request under the EIR as opposed to the Freedom of Information Act.
25. The Council responded on 3 June 2010, explaining that its view was that some of the information requested would be covered by the Act and some by the EIR; however it stated that because most of the information was publicly available, with the minutes being provided to the complainant separately, it had not needed to consider any exemptions/exceptions and had not considered further which regime should have applied to this request.
26. On 5 July 2010 the Commissioner wrote to the Council asking it to provide a detailed breakdown of what information it held in respect of each element of the request (please see Annex A) and where that information is stored.
27. The Council responded on 14 July 2010 and also provided further information relating to the search for the requested information.

## **Analysis**

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### **Substantive Procedural Matters**

#### **Regulation 2 - Interpretation**

28. The Commissioner has considered the requested information and in his view it constitutes environmental information. The case to support this would be that information within planning files/application is by its very nature information on an activity which directly affects the use of the land and therefore the state of the land. It could therefore be defined as information on plans and or activities affecting the state of the elements of the environment (primarily land). In reaching this view, the Commissioner has considered the following regulations under the EIR:

Regulation 2(1)(a) provides that –

“the state of the elements of the environment, such as air and atmosphere, water, soil, 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.”

Regulation 2(1)(c) provides that –

“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;”

29. In the Commissioner’s view this constitutes environmental information under regulation 2(1)(c) as it is on an activity affecting or likely to affect the elements of the environment in 2(1)(a), in particular the land and landscape. As the information is environmental it should have been considered under the EIR.

### **Regulation 5(1) – Duty to make available environmental information on request**

30. 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.

The full text for regulations 2 and 5 of the EIR can be found at the legal annex.

31. The Commissioner is mindful of the Tribunal’s decision in *Bromley v the Information Commissioner and the Environment Agency* (EA/2006/0072) in which it was stated that “there can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority’s records”. It was clarified in that case that the test to be applied as to whether or not information is held was not certainty but the balance of probabilities. This is therefore the test the Commissioner will apply in this case.
32. In discussing the application of the balance of probabilities test, the Tribunal stated that, “We think that its application requires us to

- consider a number of factors including the quality of the public authority's initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all of these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed." The Commissioner has therefore taken this into account in determining whether or not the requested information is held on the balance of probabilities.
33. The Commissioner has considered whether the Council has complied with regulation 5(1) of the EIR by stating that it had provided all the available information to the complainant and did not hold any recorded formal pre-application discussions between the applicant/agent and Local Planning Authority. Further the Commissioner has considered whether any additional information is held by the Council and whether, on a balance of probabilities, the Council was correct to deny holding some of the requested information.
  34. In response to the Commissioner's questions about the search process(es) undertaken by the Council in relation to this request, the Council confirmed that during the planning process all information has to be placed on the planning file. It has explained that all its planning officers know that all relevant information had been placed on the file and it therefore did not have to conduct extensive searches. It confirmed, after further searches, that its officers do not hold information individually, or on their own laptops, clarifying that to do so would not be compliant with the planning process as it is a legal requirement that the Council must routinely make all information available. The Council affirmed that any information it receives electronically is printed and placed on the planning file which is publicly available.
  35. The Council confirmed that it has neither deleted nor destroyed any information relating to this planning application. It explained that planning files and the planning register (which consists of the application and the decision) are retained indefinitely because previous planning decisions are capable of amounting to a material consideration in future planning decisions. Furthermore, there may be conditions which will apply to the development indefinitely.



36. The complainant submitted three potential reasons/arguments to the Commissioner as to why it believed the Council was refusing to provide the requested information, as follows:
- the information is commercially confidential and/or
  - the complainant has embarked on a "fishing expedition" and/or
  - the information is available on the planning file relating to application [reference redacted].
37. The first two of the above reasons/arguments were taken from the correspondence associated with the judicial review process. Whilst the Commissioner has not considered this correspondence because it does not fall within his remit, he investigated whether any of the requested information had been withheld because it was considered to be commercially confidential and, as such, whether the relevant exemption/exception had been applied by the Council.
38. During the course of the investigation the Council affirmed it had not withheld any information nor had it applied any exemption(s) or exceptions to the information. The Council clarified that the correspondence relating to contractual arrangements was part of the judicial review proceedings and had not been the subject of the internal review process. It explained that the contractual arrangements with the developer had been disclosed to the complainant in response to a previous information request. Given that the Council has not sought to engage the exemption at section 43 of the Act, nor the exception at regulation 12(5)(b) of the EIR, the Commissioner has not considered the complainant's view that this information was withheld because it is commercially confidential. Whilst the Commissioner understands the inference to commercially confidential information, he has concluded that the allusion to the commercial material was conflated from the judicial review correspondence.
39. The Council sought clarification from its Planning Department in responding to the Commissioner's investigation. It explained that the information requested by the complainant (with the exception of the Design Panel minutes which it provided to the complainant) is held on the planning file which is publicly available. The Council stated this is the comprehensive file for all issues relating to the determination of the application and is a public file which can be viewed at its offices. It explained that the application form and plans are available to view online; however that further correspondence is only available by paper copy and therefore an appointment must be made to view this more detailed information. The complainant has confirmed it has inspected the file.

40. In response to the Commissioner's investigation, the Council confirmed the only minutes held in relation to this application are those of the Planning Board in making the decision, the URL link for the electronic version of the Planning Board Report and Addendum having been provided to the complainant in the Council's initial response.
41. The Council explained that any notes of internal or external meetings held would be included on the paper planning application file and having checked the file, confirmed no minutes of internal or external meetings were recorded. It has advised that it does not hold, nor has it ever held, notes of external meetings and correspondence with the developer, the owner of the site or its agents.
42. The Council confirmed that any emails relating to this application would be held on the paper file and that copies of correspondence by email relating to this case are held on the paper planning file. It has clarified that because the planning process is a regulatory as opposed to an executive function, there are no Cabinet papers in relation to this request. The Council advised that it does not specify the flood risk classification of uses; instead this is specified within Planning Policy Statement 25 which is prepared by the Government to explain statutory provisions and provide guidance on planning policy and the operation of the planning system.
43. With regard to the analysis part of the request, the Council explained that such analysis is the basis of the Planning Board Report which details all relevant development plan policies and material considerations in relation to the application. It confirmed that the relevant Planning Board Report appraises the development plan policies, consultation responses and material considerations and makes a recommendation which was considered by the Planning Board on 21 May 2009, and explained that the Board Report therefore forms the comprehensive assessment of the application.
44. In coming to a conclusion upon this case the Commissioner has taken into account the explanations provided by the Council as well as the Tribunal decisions highlighted above. The Commissioner considers on the balance of probabilities that, apart from the information disclosed to the complainant, no further information is held that is relevant to the request.

## **Public Interest Test**

45. Regulation 12(4)(a) is subject to the public interest test. Given the nature of the exception, the particular circumstances of the case as explained previously and the absolute view taken that no further information is held, the Commissioner considers that the public interest test favours the maintenance of the exception.

## **The Decision**

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46. The Commissioner's decision is on the balance of probabilities that apart from the information disclosed to the complainant within 20 working days, no further information is held that is relevant to the request and therefore the Council complied with regulation 5(1) and 5(2) of the EIR in this case.
47. The Commissioner finds that the Council breached Regulation 14(3) of the EIR in that it applied the Freedom of Information Act to information which is environmental.

## **Steps Required**

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48. The Commissioner requires no steps to be taken.

## Right of Appeal

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49. 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 served.

**Dated the 06 day of September 2010**

**Signed .....**

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

## Annex A

The complainant's complete request made on 16 July 2009 is detailed below:

"This is a request made pursuant to the 2000 Act to obtain information relevant to the interest of Rotherham Metropolitan Borough Council ("Council") in the development of the former [name redacted] site at [address redacted] ("Site") and information relating to the planning permission granted to [name of developer redacted] on 30 June 2009 for its application under [reference redacted] ("Application") to erect Civic Centre Offices at the Site ("Development").

### 1. Planning Obligation

Although the planning officer's report in respect of the Application referred to a package of highways and linkage improvements envisaged as part of the Application proposals, the Council resolved, subject to referral at to the Government Office, to grant planning permission subject to an agreement under section 106 of the Town and Country Planning Act 1990 to secure:

*"the provision of a bus shelter at an existing bus stop on [street names redacted] with a maximum contribution to the Integrated Transport Executive of £6,500."*

Please provide all:

- 1.1 cabinet papers or other formal documents produced in respect of the Application which considered the requirements for the Development to secure a package of highways and linkage improvements;
- 1.2 notes of internal and external meetings and emails which relate to this;
- 1.3 notes of external meetings and correspondence with [the developer], the owner of the Site or its agents relating to highways and linkage improvements required as part of the Development; and
- 1.4 analysis undertaken by or behalf of the Council to assess the Application/Development against the requirement to engender sufficient linkage to the Retail Centre.

## 2. Sequential Assessment

The planning officer's report indicates that sequential assessment has been undertaken but only in respect of town centre sites. Edge-of-centre sites have not been included in the assessment.

Please provide all:

- 2.1 cabinet papers or other formal documents produced in respect of the Application and the Development which considered the Development against alternative site options (including without limitation, the site of the existing Civic Centre) and the draft PPS4;
- 2.2 note of external meetings and correspondence with Evans, the owner of the Site or its agents relating to this;
- 2.3 notes of internal meetings and emails which related to this; and
- 2.4 analysis undertaken by or on behalf of the Council to assess the Application/Development sequentially.

## 3. Environmental standards

The planning officer's report states that the building proposed by the Development is *aimed to achieve a BREEAM rating of Excellent*.

Please provide all:

- 3.1 cabinet papers or other formal documents produced in respect of the Application in the period January 2009 to July 2009 which considered the requirements for the Development to comply with high environmental standards;
- 3.2 notes of internal meetings and emails in that period which related to environmental standards to be applied to the Development;
- 3.3 cabinet papers or other formal documents produced in respect of any pre-Application discussions considering the environmental standards to be applied to the Development in the period before 7 January 2009 (being the date when the Application was validated);
- 3.4 note of internal meetings and emails in that period which related to environmental standards to be applied to the Development;

- 3.5 analysis undertaken by or on behalf of the Council to assess the Application/Development against impacts such as whether the Development has been planned to limit carbon dioxide emissions over the lifetime of the Development and minimise vulnerability and provide resilience to, climate change; and

#### **4. Flood risk assessment**

The Site is classified as flood risk Zone 3a (High Probability) but the Development has been classified as "less vulnerable" so as to fall outside the requirement for an Exception Test under PPS25.

Please provide all:

- 4.1 cabinet papers or other formal documents produced in respect of the Application in the period January 2009 to July 2009 which assessed the Development in terms of flood risk including in particular the criteria applied to determine that it fell within the classification of "less vulnerable";
- 4.2 notes of internal meetings and emails in that period which related to flood risk assessment and the vulnerability of the Development to flooding;
- 4.3 cabinet papers or other formal documents produced in respect of any pre-Application discussions considering the flood risk assessment relevant to the Development in the period before 7 January 2009 (being the date when the Application was validated);
- 4.4 notes of internal meetings and emails in that period which related to flood risk assessment to be applied to the Development;
- 4.5 analysis undertaken by or on behalf of the Council to assess the Application/Development against flood risk; and
- 4.6 notes of external meetings and correspondence with the Environment Agency, [the developer], the owner of the site, or its agents relating to flood risk assessments to be applied to the Development.

Please acknowledge receipt of our request. As our client is considering its legal position in relation to the Development we look forward to hearing further from you within 20 working days of the date hereof.

## Legal Annex

### 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 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(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 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).