

Environmental Information Regulations 2004

Decision Notice

Date: 31 January 2011

Public Authority: Department of Energy & Climate Change
Address: 3 Whitehall Place
London
SW1A 2AW

Summary

The complainant made a request to the Department of Energy & Climate Change for information related to the Strategic Environmental Assessment prepared in connection with the government's proposals on the Framework for the Development of Clean Coal. The public authority initially responded to the request under the Freedom of Information Act 2000 and disclosed some of the requested information. Additional information was withheld under the exemptions in section 35(1)(a) (Formulation and development of government policy), section 42 (Legal professional privilege) and section 43(2) (Commercial interests). At the internal review stage the public authority referred to the Environmental Information Regulations 2004 (EIR) and suggested that the withheld information would fall under the exceptions in regulation 12(4)(e) (Internal communications) and regulation 12(5)(b) (Course of justice, etc) if this legislation were to be applied. The Commissioner considers that the withheld information is environmental and that therefore the EIR was the correct regime to apply. However, the Commissioner also found that of the information identified by the public authority only a fraction fell within the scope of the request and that regulation 12(4)(e) was the only relevant exception. The Commissioner decided that this exception was only engaged for some of the information and that the public interest in maintaining the exception outweighed the public interest in disclosure. Where regulation 12(4)(e) did not apply the Commissioner requires the public authority to make this information available to the complainant.

The Commissioner's Role

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.

Background

2. In April 2009 the public authority issued proposals on the development of a new generation of coal-fired power stations which involve technologies to tackle emissions. This was the government's "framework for the development of clean coal". As part of this process the public authority was obliged to carry out a Strategic Environmental Assessment (SEA) of the environmental impact of certain aspects of the proposals. The public authority engaged the consultants ENTEC to produce an environmental report setting out the findings of the SEA.

The Request

3. On 19 May 2009 the complainant wrote to the public authority via email to request information in relation to the government's framework for the development of clean coal and strategic environmental assessment that was produced in connection with the proposals. The request read as follows:

"Please now disclose:

- ENTEC's terms of appointment as an environmental consultant (and all correspondence relating to ENTEC's appointment).
- All documents prepared by DECC to date associated with the required SEA process, including but not limited to any documents prepared by DECC or ENTEC in relation to the scope and level of details for the required SEA (SEA Regulation 12(5)).
- All consultation responses received by DECC from the consultation bodies (SEA regulation 12(6))."

4. The public authority responded to the request on 25 June 2009. At this point a quantity of information falling within the scope of the request was disclosed to the complainant although some information was withheld.
5. As regards part 1 of the request, the public authority provided the complainant with its contract with ENTEC and their terms of reference. Information on ENTEC's consultant's daily rates was withheld under section 43 of the Act which provides for an exemption for information where disclosure would prejudice the commercial interests of any person. For part 2 of the request, documents prepared by the public authority and ENTEC in relation to the SEA process were disclosed. Some internal communications including advice to Ministers, discussions at official level discussing the SEA process and legal advice were withheld under the exemptions in section 35(1)(a) which provides for an exemption for information which relates to the formulation and development of government policy, and section 42(1) which provides for an exemption for information which is subject to legal professional privilege. All of the information falling within the scope of part 3 of the request was disclosed. In each case the public authority explained why the exemption was engaged and outlined its reasons for concluding that the public interest in maintaining each exemption outweighed the public interest in disclosure.
6. On 19 August 2009 the complainant asked the public authority to carry out an internal review of its handling of his request. The complainant challenged the public authority's decision to withhold internal communications under section 35(1)(a) and 42(1) of the Act. In particular the complainant suggested that any public interest in maintaining the exemptions would have been outweighed by the strong public interest in informing public debate on some of the issues arising from the proposals. Whilst the request had referred to the Act, the complainant now suggested that the requested information would fall within the definition of environmental information in regulation 2(1)(c) of the Environmental Information Regulations 2004.
7. The public authority presented the findings of the internal review on 16 September 2009. The public authority now said that it considered that further information could be disclosed and this was made available to the complainant. However, some information continued to be withheld. It explained that the information was now being withheld under regulations 12(4)(e) and 12(5)(b) of the EIR. Regulation 12(4)(e) provides that a public authority may refuse a request where it involves the disclosure of internal communications. 12(5)(b) provides that a public authority may refuse to disclose information to the extent that

its disclosure would adversely affect 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. In respect of the information that continued to be withheld the public authority said that it considered that the public interest in maintaining the exceptions under the EIR outweighed the public interest in disclosure and that in carrying out this balancing exercise it had had regard to the EIR's presumption in favour of disclosure.

8. The public authority went on to say that it noted that the original request referred to the Act whereas the request for internal review refers to the EIR. It said that it was satisfied that in this case it makes no difference to its judgement as to whether the information should be released whether it is considered to be subject to the Act or the EIR. Insofar as the Act applies, it said that that it had nothing further to add to its initial response of 25 June 2009.

The Investigation

Scope of the case

9. On 16 October 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular the complainant asked the Commissioner to consider the public authority's decision to refuse to disclose some of the requested information by relying on the exceptions contained within regulation 12(4)(e) and 12(5)(b) of the EIR. The complainant provided the Commissioner with a detailed submission as to why the public interest favoured greater transparency into the Strategic Environmental Process (SEA) in respect of the government's proposals on the framework for the development of clean coal.
10. Upon receiving the complaint the Commissioner noted that the complainant had not referred to the information relating to ENTEC's daily rates which had been withheld under the section 43 exemption and neither had he queried the public authority's decision to withhold this information when submitting the request for internal review. In light of this the Commissioner contacted the complainant to say that he was assuming that the complaint was limited to the information falling within the scope of parts 1 and 2 of the request which the public authority had withheld under regulations 12(4)(e) and 12(5)(b). The Commissioner invited the complainant to contact him if his understanding was not correct but heard nothing further. Therefore the Commissioner has not considered the public authority's decision to

refuse contractual information on the amount paid to its contractors ENTEC which it indicated was exempt from disclosure under section 43(2) of the Act.

Chronology

11. On 13 November 2009 the Commissioner wrote to the public authority with details of the complaint. The Commissioner asked for copies of the withheld information clearly marked to show where any exemption or exception was being applied.
12. The public authority responded to the Commissioner on 8 December 2009. The public authority provided the Commissioner with copies of the withheld information and a further explanation of why the exceptions were considered to apply together with its reasons for concluding that the public interest favoured withholding the information.
13. On 21 September 2010 the Commissioner contacted the public authority to formally begin his investigation. First of all the Commissioner said that it was his view that the information falling within the scope of the request was environmental and that therefore the EIR was the correct regime to apply. As regards the public authority's application of regulation 12(4)(e) the Commissioner said that it was his view that, for the purposes of the EIR, 'internal communications' would usually extend only to information created within a public authority, or in the case of government departments, within central government. Given that the information related to an environmental report prepared by ENTEC, an external contractor, the Commissioner asked for further details regarding ENTEC's appointment as environmental consultants on the framework for the development for clean coal and the nature of its relationship with the public authority. The Commissioner also asked for background details on the policy itself and in particular, what stage the policy process had reached by the time the complainant submitted the request.
14. For regulation 12(5)(b) the Commissioner noted that the public authority had indicated that this exception applied because the withheld information includes legal advice subject to legal professional privilege. In order to test this claim the Commissioner asked the public authority to confirm if the content of the legal advice had been made public. The Commissioner also asked if any action or decision was taken on the basis of the legal advice and if so whether this was itself made public.

15. The public authority provided answers to the Commissioner's queries on 26 November 2010.

Findings of fact

16. In April 2009 the government announced its proposals on a new generation of coal fired power stations known as the Framework for the Development of Clean Coal.
17. On 17 June 2009 the Framework for the Development of Clean Coal document was published and the proposals were opened up for consultation. In support of this an environmental report produced by the consultants ENTEC was published. This report presented the findings of the Strategic Environmental Assessment on aspects of the government's proposals including the requirement that all new coal fired power stations be Carbon Capture Ready.
18. The Consultation closed in September 2009 and on 9 November 2009 the government published its response to the consultation. At the same time it published a 'Strategic Environmental Assessment for a Framework for the Development of Clean Coal: post adoption statement' which had also been prepared by ENTEC.

Analysis

19. A full text of the relevant statutory provisions referred to in this section is contained within the legal annex.

Substantive procedural matters

Is the information environmental?

20. Neither the public authority nor the complainant have disputed that the requested information is environmental. However, given that the public authority initially responded to the request under the Act the Commissioner believes that it would be helpful to briefly set out his views on this matter.
21. Environmental information is defined in regulation 2(1) of the EIR which 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 on-

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
 - (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
 - (d) reports on the implementation of environmental legislation;
 - (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
 - (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)'
22. In this case the Commissioner considers that the information would fall within the definition provided by regulation 2(1)(c). The information relates to the government's plans surrounding the development of clean-coal power stations. Such plans would be likely to affect elements including the air and atmosphere and factors such as releases into the environment. Therefore the Commissioner is satisfied that the requested information is environmental and that this was the correct regime to apply.

Information falling within the scope of the request

23. When responding to the complaint the public authority provided the Commissioner with a bundle of documents comprising the information falling within the scope of the request which it had withheld from the complainant. However, upon reviewing this information it was apparent

that the majority of this information was actually created after the public authority received the request.

24. Regulation 5(1) provides that a public authority that holds information shall make it available on request. The Commissioner has found that in this case most of the information presented to him was in fact created after the date on which it received the request and as such does not fall within the scope of the request. In particular, the information which the public authority said was covered by the exception in regulation 12(5)(b) was not created until after the request was received and therefore the Commissioner has not undertaken an assessment of this exception.

Exceptions

12(4)(e) – Internal communications

25. Regulation 12(4)(e) provides that a public authority may refuse to disclose information where the request involves the disclosure of internal communications. In order for the exception to be engaged it is only necessary to demonstrate that the request falls within this particular class of information. It is not necessary to demonstrate that disclosure would result in any prejudice. In this case it is clear at first glance that some of the information is covered by the exception because it is communications between officials within the public authority. However, for some other information it is not immediately clear if the exception is engaged. This is where the information amounts to communications between the officials within the public authority and ENTEC.
26. The Commissioner's view is that this exception will only cover communications within a public authority except in very limited circumstances. However, there are instances when it can successfully be argued that internal communications extends beyond the strict confines of the public authority. For instance in *Department for Transport v The Information Commissioner [EA/2008/0052]* the Tribunal considered a request which was made for a report prepared by an unpaid, independent expert who had been commissioned to examine the relationship between transport links and the UK's economic growth, productivity and stability within the context of the Government's commitment to sustainable development. The Tribunal accepted that this individual was embedded in the civil service and that it was accurate to describe him as the head of a team of civil servants which was described as 'an independently led internal working group rather than that of wholly external body'. Whilst not a civil servant, this individual had effectively been invited into the 'private thinking space

of government' and the Tribunal accepted that his report could be classed as an internal communication.

27. In this case the public authority has argued that a contract was issued to ENTEC for the production of an environmental report to accompany the consultation and a post adoption statement to accompany the Government's response to the consultation, as part of the SEA process. The public authority argues that the preparation of the environmental report and post-adoption statement, although often outsourced, are in many respects a core function of government. It informed the Commissioner that ENTEC worked for the public authority during the consultation stage which was launched on 17 June 2009. It prepared the Environmental report on the Strategic Environmental assessment of the government's plans which was published at the same time as the consultation proposals. ENTEC also prepared a post consultation statement on the Strategic Environmental Assessment. The public authority explained that its working relationship with ENTEC was very close and that it collaborated with ENTEC on the completion of the environmental report and that 'there were few sharp lines of demarcation as to who drafted which bits of the documents'.
28. The Commissioner has considered the arguments put forward by the public authority but is not persuaded that the circumstances are substantially similar to the *Department for Transport* case. Whilst the public authority has said that it co-operated closely with ENTEC in producing work in relation to the clean coal proposals, there still appears to have been a clear demarcation between the public authority and ENTEC. There was still a formal client – contactor relationship and there is no evidence that ENTEC's staff were embedded within the public authority. In another case heard before the Tribunal *South Gloucestershire v Information Commissioner [EA/2009/0032]* the Tribunal found that a report prepared by an external consultant which fed into a statutory process was not an internal communication for the purposes of regulation 12(4)(e) and the Commissioner considers that the circumstances here are more akin to that case.
29. The Commissioner is also mindful of the requirement under article 4(2) of the Directive 2003/4/EC, to which the EIR give effect, that the grounds for refusal shall be interpreted in a restrictive way. In light of this the Commissioner has decided that some of the information does not constitute an internal communication and therefore the exception in regulation 12(4)(e) will not apply to such information. The Commissioner has provided the public authority with a confidential schedule to show to which particular pieces of information regulation 12(4)(e) does not apply.

Public interest arguments in favour of disclosing the requested information

30. Whilst the Commissioner has decided that for some of the information the exception is engaged, regulation 12(1)(b) provides that information may only be refused if an exception applies and in all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosing the information. Therefore the Commissioner has undertaken a public interest test in respect of the information to which regulation 12(4)(e) applies.

31. The complainant provided the Commissioner with a detailed submission on why it considers the public interest in disclosure outweighs the public interest in maintaining the exemption. The arguments can be summarised as follows:
 - The issue of climate change is of great importance. There is a strong public interest in ensuring that the public is properly informed about any government proposals that impact on climate change.
 - The complainant suggests that the SEA process may have been deliberately designed to cut off the latest science on climate change research.
 - The complainant has also suggested that the scope of the SEA process was too narrow. The SEA focuses on the effects of requiring all new coal fired power plants to be Carbon Capture Ready. It does not consider the effects of Carbon Capture and Storage (CCS) technology proving to be unviable. The complainant argues that the viability of Carbon Capture and Storage technology is a fundamental part of the government's proposals yet the environmental report 'does not identify, describe or evaluate the risks associated with the possibility that CCS will prove to be unviable'. Therefore it argues that there is a public interest in greater transparency on the background to the Environmental report presumably in order to shed light on the reasoning behind the government's approach to the SEA process.

Public interest arguments in favour of maintaining the exemption

32. The public authority has argued that disclosing the withheld information would mean releasing information that described in detail the formulation of Government Policy and policy discussions which are not in the public domain. It argues that there is a strong public interest in ensuring that government officials are able to give Ministers 'as full and frank a picture as possible about the current position in any given

policy area, and to give Ministers as candid advice as possible on future options, exploring all plausible scenarios however unpalatable or unrealistic, and setting the scene in as full a way as possible.'

33. The public authority suggests that if officials were aware that this sort of advice could be made public this would adversely affect the advice they give to Ministers as the range of policy options would be reduced and the frankness of officials' advice would be inhibited. This would be to the detriment of the policy process because, it argues, Ministers would be prevented from taking decisions based on the fullest understanding of the issues.

Balance of the public interest arguments

34. The arguments advanced by the public authority are effectively the 'safe space' and 'chilling effect' arguments which are well understood and have been considered by the Information Tribunal in a number of cases. The chilling effect argument is that officials within a public authority would be discouraged from providing frank and candid advice to Ministers or would be less likely to consider radical policy options if there was the prospect that the information could be disclosed. The Commissioner is prepared to give this argument some weight when balancing the public interest. This is because the policy process was still ongoing at the time of the request. Indeed the government had not yet opened its proposals to consultation at this point and so it could be expected that the government proposals could undergo some change during this time. Disclosure of information related to the early policy considerations could lead to officials being more reluctant to offer their opinions later on in the policy process, after the consultation responses had been received. The Commissioner notes that a lot of the information involves a frank discussion on the progress of the work undertaken by ENTEC and he is prepared to accept that disclosure could effect the frankness and candour with which both the public authority's officials and ENTEC continue to contribute to the policy making process. The Commissioner does not attach any more significance to this argument. For instance, he is not convinced that disclosure would have any wider impact on officials' willingness to offer frank and candid advice to Ministers on other separate policy proposals.
35. The safe space argument exists separately from the chilling effect argument. This argument is that there is a public interest in allowing a public authority a safe space in which to consider policy options and reach decisions free from outside interference and comment whilst the policy process is still ongoing. Again, the timing of the request is important. The request was submitted on 19 May 2009. The proposals

would not be opened up to consultation until 17 June 2009 and the government's response to the consultation was not published until 9 November 2009. Therefore, it is clear that when the complainant's request was received the Strategic Environmental Assessment was still being formulated and the policy on the framework for the development of clean coal was still being actively considered – the policy was still 'live'. This is a crucial consideration and in the Commissioner's view weighs strongly in favour of maintaining the exception in this case.

36. As regards the public interest in disclosure, the Commissioner is mindful of the presumption in favour of disclosure under regulation 12(2) and so accepts that some weight can be attached to the arguments in favour of greater transparency and accountability. However, the Commissioner considers that these arguments are more general in nature. The Commissioner has seen nothing to suggest that the public authority suppressed evidence from the SEA or otherwise acted improperly, which the complainant has suggested would weigh the public interest in favour of disclosure. Furthermore, in the Commissioner's view, nothing in the withheld information would aid public understanding of the SEA process undertaken by the public authority beyond the information that was subsequently published by the public authority in the SEA Environmental Report on 17 June 2009, the date on which the public authority responded to the complainant's request. The Commissioner also notes that the complainant had previously been involved in discussions with the public authority during which the public authority had explained its approach to the SEA process and the reasoning behind this.
37. The production of a report like this is clearly an iterative process whereby the documents produced by ENTEC are drafted following comments and amendments suggested by officials over a period of time. The Commissioner considers that there is very little public interest in disclosing the content of discussions which focus on stylistic changes made to a draft report which will subsequently be published.
38. Having considered all the circumstances of the case the Commissioner has decided that the public interest in maintaining the exception in regulation 12(4)(e) outweighs the public interest in disclosure.

Procedural Requirements

Regulation 5 – Duty to make available environmental information on request

39. The Commissioner has decided that some information should not have been refused under regulation 12(4)(e). Therefore by failing to make

this information available to the complainant the public authority will have breached regulation 5(1) which requires a public authority to make environmental information available on request. The public authority will also have breached regulation 5(2) which requires that environmental information shall be made available to an applicant as soon as possible and no later than 20 working days.

Regulation 14 – Refusal to disclose information

40. If a request for environmental information is refused regulation 14(3) provides that the public authority shall specify the reasons not to disclose the information requested, including:

‘any exception relied on under regulations 12(4), 12(5) or 13; and the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b).’

41. In this case the public authority initially dealt with the request under the Act. It was only at the internal review stage that the public authority said that the request was being refused under regulations 12(4)(e) and 12(5)(b) and why these exceptions were believed to apply. Therefore, by failing to deal with the request under the EIR the public authority breached regulation 14(3).

The Decision

42. The Commissioner’s decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the EIR:

- The public authority dealt with the request in accordance with the EIR to the extent that it correctly withheld some of the requested information under regulation 12(4)(e).

43. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The public authority breached regulation 5(1) by failing to make available to the complainant some of the requested information.
- The public authority breached regulation 5(2) by failing to make available some of the requested information within 20 working days of receiving the request.

- The public authority breached regulation 14(2) by failing to issue a refusal specifying the reasons not to disclose the information.

Steps Required

44. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
 - The public authority shall disclose to the complainant the information to which the Commissioner has decided regulation 12(4)(e) does not apply.
45. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Right of Appeal

46. 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.

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 sent.

Dated the 31st day of January 2011

Signed

**Steve Wood
Head of Policy Delivery
Information Commissioner's Office
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SK9 5AF**

Legal Annex

Regulation 2(1)

“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);

Regulation 5(1)

Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2)

Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 12(1)

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

- (a) an exception to disclosure applies under paragraphs (4) or (5);
and
- (b) in all the 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(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 –
 - 1. was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
 - 2. did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
 - 3. has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.

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
- (a) 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).