

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

### **Decision Notice**

**Date: 26 January 2011**

**Public Authority:** Wycombe District Council  
**Address:** Queen Victoria Road  
High Wycombe  
Bucks  
HP11 1BB

### **Summary**

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The complainant asked the Council to release copies of all communications it holds relating to the proposed Sport Stadium in High Wycombe and a copy of the feasibility study undertaken of the Wycombe Air Park site. The Council responded refusing to disclose the requested information under 12(4)(d), 12(4)(e) and 12(5)(e) of the EIR. As the complainant remained dissatisfied he approached the Commissioner. During the Commissioner's investigation the Council released some of the previously withheld information. The Council continued to withhold various documents or parts of documents under the exceptions previously cited. In addition, the Council claimed a late reliance on regulations 12(5)(c) and 12(5)(f) of the EIR. The Commissioner has considered the remaining withheld information and he has concluded that regulations 12(4)(d), 12(5)(c), 12(5)(e) and 12(5)(f) are not engaged. In respect of regulation 12(4)(e) of the EIR, the Commissioner accepted that the exception applied to the documents referred to by the Council but then decided that the public interest in favour of disclosing the information outweighed the public interest in maintaining the exception. The Commissioner has therefore ordered the Council to release all remaining information to the complainant within 35 days of this Notice.

### **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.

## The Request

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2. The complainant contacted the Council on 5 November 2009 to request the following information:
  - 1) "Minutes or details of all meetings, correspondence (emails, letters, faxes), that concerns the proposed Sports Stadium, between [the names of two Council officers redacted] and/or any other Council Officer/member. This request should also include other parties such as the London WASPS, Wycombe Wanderers, their employees, owners etc. I will accept non-Council parties to have their names dubbed or censored."
  - 2) "£500,000+ has been set aside to conduct a feasibility study for developing a new Sports Stadium, please inform me whether the contract for conducting the feasibility study, has been subject to EU Procurement rules and if not, why not? Please provide the names of the Company/s conducting the feasibility study?"
  - 3) "Please provide me with any reports or findings from any study that has been conducted thus far, this might be a preliminary study or partial."
  - 4) "Please provide details of any gifts that have been received by any Council Officer or Member from [named redacted]/London WASPS or Wycombe Wanderers Football Club."
3. The Council responded on 16 November 2009. In respect of items 2) and 4) the Council provided the necessary information and/or clarification. Regarding item 1) the Council advised the complainant that it would make available for inspection all information it holds which is not subject to an exemption under the Act. In response to item 3, it confirmed that it holds a preliminary site options appraisal and a financial viability assessment. It confirmed that it was willing to make the site options appraisal available to the complainant but felt the financial viability assessment was exempt from disclosure under section 41 of the Act.
4. The complainant contacted the Council on 18 November 2009 to complain about the response he had received and to request the

- Council to reconsider his request in accordance with the requirements of the Act.
5. The Council responded on 24 November 2009. It advised the complainant that there was the potential for a fees notice to be issued due to the size of his request. The Council asked the complainant to consider narrowing the scope of his information request in light of this.
  6. The complainant wrote to the Council on 24 November 2009. He disagreed that his request may invoke a fees notice and advised the Council that he was willing to narrow the scope of item 3) to the "feasibility study of the Wycombe Air Parksites".
  7. The Council issued its refusal notice on 3 December 2009. The Council advised the complainant that it had reconsidered his request under the EIR and was of the view that items 1) and 3) were exempt from disclosure under regulations 12(4)(e) and 12(5)(e) of the EIR. In respect of items 2) and 4), it again provided the necessary information or clarification that was required.
  8. The complainant contacted the Council on 4 December 2009 to request an internal review.
  9. The Council carried out an internal review and informed the complainant of its findings on 19 January 2010. It confirmed that it upheld its application of regulations 12(4)(e) and 12(5)(e) and also wished to rely on regulation 12(4)(d) of the EIR.

## **The Investigation**

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### **Scope of the case**

10. On 14 March 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the Council had acted appropriately by withholding the outstanding information under regulations 12(4)(d), 12(4)(e) and 12(5)(e) of the EIR.
11. This Notice will focus on items 1) and 3) of the complainant's original request and the remaining withheld information. Items 2) and 4) were resolved prior to the complaint to the Commissioner. Concerning item 3), this Notice will address the narrowed version of this element of the

request provided by the complainant to the council on 24 November 2009 i.e. the feasibility study of the Wycombe Air Park site.

12. The remaining withheld information consists of a number of documents, each individually referenced by the Council. The Commissioner will use the same referencing when addressing the withheld information in this Notice. For clarity, the remaining withheld information consists of the following:
  - Documents 1, 2a, 2f, 3b, 3c, 3d, 5c, 6, 7a, 7b, 10, 11, 12a, 13 and 14b.

Documents 3b, 10, 13 and 14b have been withheld in their entirety. The other documents mentioned above have been released in a redacted form.

13. During the Commissioner's investigation the Council claimed a late reliance on regulations 12(5)(c) and 12(5)(f) of the EIR. In the Information Tribunal hearing of *The Department for Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth (EA/2007/0072)* the Tribunal stated that the Commissioner can exercise his discretion when deciding whether to accept a late claim of an exemption or exception not previously cited by a public authority. As the Council has reviewed its position on more than one occasion, disclosing further information to the complainant, the Commissioner has decided to accept the Council's late reliance on regulations 12(5)(c) and 12(5)(f) of the EIR.
14. This Notice will therefore address the Council's application of regulations 12(4)(d), 12(4)(e), 12(5)(c), 12(5)(e) and 12(5)(f) of the EIR to the remaining withheld information. Some of the documents listed in paragraph 12 above have been withheld under more than one exception. Instead of addressing each document in turn, the Commissioner will consider each regulation applied referring to each of the documents as is necessary.

## **Chronology**

15. The Commissioner wrote to the Council on 18 May 2010 to inform it that he had received a complaint from the complainant and to request the Council to provide a copy of the withheld information.
16. The Council wrote to the Commissioner on 17 June 2010 providing a copy of the withheld information.

17. The Commissioner wrote to the Council on 24 August 2010 to request copies of some missing correspondence. He also noted from the Council's response of 17 June 2010 that it was willing to release further information to the complainant. The Commissioner requested confirmation from the Council that it had now released this additional information.
18. The Council responded on 10 September 2010. It provided a table of the remaining withheld information which detailed the exceptions applied. It also confirmed that it would be writing to the complainant shortly to release the additional information.
19. The Council wrote to the complainant on 13 September 2010 to release the additional information to him.
20. The Commissioner wrote to the Council on 6 October 2010 to request further copies of three withheld documents, as it was unclear to him at this stage what information had been disclosed from these documents and what information had been withheld.
21. The Council responded on 15 October 2010 to provide the additional information requested.
22. The Commissioner wrote to the Council on 25 October 2010 to request more detailed arguments to support the exceptions claimed. The Commissioner explained the level of detail that was required for each document currently being withheld and for each of the exceptions claimed. He also put the Council on notice that if more detailed arguments were not provided in response to this letter he would proceed to a Decision Notice based on the evidence available.
23. Prior to receiving the Council's response, the Commissioner telephoned the Council to obtain some further clarification about the withheld information. He informed the Council that he expected to see a financial viability assessment in the form of a report from the way this had been described by the Council in its correspondence to the complainant. The Council confirmed that there is no report as such; the financial viability assessment is made up of a selection of documents in the table it provided the Commissioner on 10 September 2010; namely documents 12(b), 5(c), 3(c) and 2(f) (document 12(b) was subsequently released to the complainant).
24. The Council responded to the Commissioner's letter of 25 October 2010 on 8 November 2010. It confirmed that it was now willing to release further information to the complainant. However, the Council advised that it still remained of the view that a number of documents were

exempt from disclosure under the EIR (please refer to paragraph 12 for a list of these documents). It provided an up to date version of the table it previously supplied on 10 September 2010 and confirmed that it wished to rely on regulations 12(4)(d), 12(4)(e), 12(5)(c), 12(5)(e), 12(5)(f) of the EIR. Despite being requested to explain in more detail why each exception applied, it failed to do so.

## Analysis

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### Exemptions

#### **12(4)(d) – material still in the course of completion, unfinished documents or incomplete data**

25. Regulation 12(4)(d) states that information is exempt from disclosure if the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
26. The Council has applied regulation 12(4)(d) to documents 2a, 3c, 3d and 6. These documents have been released in a redacted form; all information has been disclosed except the financial figures in documents 2a, 3c and 3d and a paragraph from document 6, which highlighted the proposed return on the Council's investment at the time this document was created.
27. The Council stated that the redacted information is now out of date and represents old figures or valuations which have been superseded as the project has progressed. It considers such out of date information would mislead the public if it were disclosed.
28. The Commissioner has reviewed the documents in question and the remaining withheld information. He accepts that financial figures and valuations may change over time as market conditions alter, requirements change and so on. However, it is the Commissioner's view that this information was relevant and indeed current at the time it was used and was in fact used to inform the Council's decision making at this time in relation to the project.
29. The Commissioner does not accept that the financial figures and the valuation of the Council's investment was incomplete information for the purposes of this exception. Although these figures may have evolved and been updated since these documents were created, at the time the information was created they were the figures and valuation being relied upon by the Council when considering the financial viability

of the project at this time. The Commissioner has therefore concluded that regulation 12(4)(d) of the EIR does not apply to the remaining withheld information in documents 2a, 3c, 3d and 6.

### **12(4)(e) – internal communications**

30. Regulation 12(4)(e) of the EIR states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications.
31. The Council applied regulation 12(4)(e) to documents 1 and 10. Document 1 has been released in a redacted form; the remaining withheld information is five financial figures relating to the financial viability of the project at the time. Document 10 has been withheld under this exception in its entirety. This document contains financial figures that were being discussed at the time and developments within the district.
32. In respect of document 1, the Council argued that this information falls within the definition of “internal communications” because it is a series of internal emails between Council officers concerning the project. In respect of document 10, it similarly argued that this information falls within the definition of this exception, as it is an internal email between senior members of staff in the Council concerning the project and other developments in the district.
33. The Commissioner has reviewed each document. He is satisfied that both documents are internal communications via email between Council officers relating to the project. He is therefore satisfied that the information falls within the definition of this exception and therefore that regulation 12(4)(e) of the EIR is engaged in this case.
34. As the Commissioner is satisfied that 12(4)(e) is engaged for documents 1 and 10, it is now necessary for him to go on to consider the public interest test as required by regulation 12(1)(b) of the EIR.

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

35. The Council argued that it is aware that there is an inherent public interest in public authorities being transparent in the way they discharge their duties in order to promote accountability and public confidence in the way public money is spent.
36. It stated that it also recognised that the subject of local development issues is an emotive one which can provoke a vigorous response from



local residents who are understandably concerned about the impact on their homes and lives. The Council stated that it therefore recognises that it is in the public interest for the Council to be as open as possible about development initiatives involving Council and public money so as to ensure important debates are not clouded by accusations of malpractice and maladministration. It confirmed that it accepted disclosure of the requested information would promote transparency in the way decisions are made.

37. Additionally, the Council argued that there is a public interest in the public having access to information which enables them to understand more clearly the reasons why decisions that affect them are taken by the Council and in the public having the ability to challenge those decisions and to participate in debate around them.

#### Public interest arguments in favour of maintaining the exemption

38. The Council stated that whilst it accepted that there are public interest arguments in favour of disclosure it felt there are overriding public interests in maintaining the exception in this case.
39. In its submissions to the Commissioner the Council stated that there is a public interest in ensuring the Council has the ability to discuss financial issues relating to such projects out of the public gaze. It also confirmed that there is a public interest in ensuring that senior council officers have the private thinking space that is required to formulate decisions. Disclosure in this case would impede on this private thinking space which would in turn hinder the formulation of decisions and policies.
40. In respect of document 1, it also argued that the remaining withheld information is out of date. Disclosure would not therefore aid the public in understanding more clearly the decisions made by the Council in respect of the project. Disclosure would instead cause misunderstanding and mislead the public due to the age of the information.

#### Balance of the public interest arguments

41. The Commissioner has considered the arguments presented by the Council both for and against disclosure. Firstly, he notes that the Council has presented more comprehensive arguments in favour of disclosure than it has against disclosure despite the fact that it reached the decision that the public interest rested in maintaining the exception.



42. The Council argued that disclosure would impede on the private thinking space of senior Council officers and therefore hinder their ability to consider options and formulate decisions. It is the Commissioner's view that the timing of the request is a key consideration when determining whether disclosure would impede on the private thinking space of the Council and its officers. The need to discuss options away from the public gaze, and have private thinking space to formulate decisions without having to deal with outside comment only generally applies up to the point that decision is reached, and may also weaken the closer the timing of the request is to the decision being made.
43. The Council has not to date explained in any detail at what stage the decision making process was at, at the time of the complainant's requests. It has also presented no arguments to demonstrate how the contents of the remaining information in document 1 and document 10 in its entirety would have such an impact if they were disclosed. It is not for the Commissioner to argue a point on a public authority's behalf; it is for the public authority to present the necessary arguments to the Commissioner for him to consider. It is also not obvious to the Commissioner how disclosure would have such an effect from a simple review of the withheld information. For these reasons, he does not accept this argument.
44. Turning now to the Council's final argument in favour of maintaining this exemption in respect of document 1 specifically, it is the Commissioner's view that the age of the information and the fact that it is out of date is not a relevant public interest argument against disclosure. This is because information of this nature usually become less sensitive as times goes on. The Council's concerns about the figures being misleading or causing misunderstanding on disclosure could easily be mitigated by the Council providing a simple explanation that due to the passage of time these figures are now out of date. In the Information Tribunal hearing of *Elmbridge Borough Council v Information Commissioner EA/2010/0106* the Tribunal specifically stated at paragraph 24 that:
- "We are of the view that possible misinterpretation of a document is not ground for withholding disclosure."
45. Regulation 12(2) of the EIR stipulates that when considering the public interest test a public authority should apply a presumption in favour of disclosure. The Commissioner must also be mindful of this presumption when reaching his decision on the balance of the public interest test. As stated above, the Commissioner does not accept that the arguments presented by the Council in favour of non disclosure are sufficiently

detailed to support its position. He, however, does acknowledge that there is a public interest in the disclosure of information which enables the public to better understand the decisions the Council has made in respect of this project, particularly as this project involves a substantial amount of public funds. There is also a public interest in the general accountability and transparency of the Council. The Commissioner has therefore concluded in this case that the public interest in favour of maintaining this exception is outweighed by the public interest in favour of disclosure.

### **12(5)(c) – intellectual property rights**

46. Regulation 12(5)(c) of the EIR states that a public authority may refuse to disclose information to the extent that disclosure would adversely affect intellectual property rights.
47. “Intellectual property rights” are rights granted to creators and owners of work that are the result of human intellectual creativity. These works could be in the industrial, scientific, literary or artistic domain. Intellectual property rights include copyrights, patents, trademarks and protected designs. They may be in the form of, for example, an invention, a manuscript, a suite of software or a business name.
48. The Commissioner notes that 12(5)(c) has been applied to a map attached to documents 7a and 7b. The Council considers this document is the copyright of the Council.
49. The Commissioner has reviewed the map in question. He notes that this is an Ordnance Survey Map which the Council has added a small amount of written material to. The document itself states that it is the copyright of the Crown.
50. Although the Council has asserted that the map is the copyright of the Council, it has not explained in any detail why it holds this view. It has therefore failed to explain why this information falls within the definition of this exception. Furthermore, the Council has not explained in sufficient detail exactly how disclosure would adversely affect the Council’s intellectual property rights. It confirmed that disclosure would give residents in the area an incorrect impression of the proposed layout of the Stadium and this would be misleading to the public. As stated in paragraph 44 above, the Commissioner considers such arguments carry little weight, particularly if the Council can mitigate any misunderstanding with a simple explanation.
51. The Commissioner is aware that there is an alternative jurisdiction in which copyrights falls; The Copyright, Designs & Patent Act 1988. As

stated in paragraph 49 above, the Commissioner considers the document in question is the copyright of the Crown. If the Council wishes to maintain that it holds the copyright on the map, it is the Commissioner's view that it would still be protected by this copyright even if the map was disclosed via the EIR. The Council could still pursue infringement of its copyright through the courts should it wish to do so.

52. As the Council has not provided sufficient evidence to demonstrate that regulation 12(5)(c) is engaged, the Commissioner has concluded that regulation 12(5)(c) does not apply in this case.

### **Regulation 12(5)(e) – the confidentiality of commercial or industrial information**

53. Regulation 12(5)(e) of the EIR states that a public authority may refuse to disclose information to the extent that disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.
54. The Council confirmed that it wished to rely on 12(5)(e) of the EIR for the non disclosure of documents 3b and 14b in their entirety and for the remaining withheld elements of documents 2f, 3c, 3d, 5c, 7a, 7b, 11 and 12a.
55. For the Commissioner to agree that regulation 12(5)(e) of the EIR applies, the Council must demonstrate for each document cited that:
- the information is commercial or industrial in nature,
  - the information is subject to a duty of confidence provided by law;
  - the confidentiality is required to protect a legitimate economic interest; and
  - the confidentiality required to protect a legitimate economic interest would be adversely affected by disclosure.
56. Regulation 12(5)(e) of the EIR is also subject to the public interest test. In addition to demonstrating that the above bullet points are met for each document, the Council must also demonstrate that the public interest in maintaining this exception outweighs the public interest in disclosure.
57. The Commissioner requested the Council to explain in detail how each documents cited in paragraph 54 above meet each of the criteria outlined in paragraph 55. No detailed arguments were submitted.

Instead it stated only that the information is commercially sensitive and of a confidential nature and that disclosure would prejudice its negotiating position.

58. As stated in paragraph 43 above, it is not for the Commissioner to argue a point on behalf of a public authority; it is the public authority's responsibility to provide the necessary arguments and level of detail that is required for the Commissioner to consider. Without any evidence from the Council to demonstrate that each of the bullet points listed in paragraph 55 above apply to the documents cited in paragraph 53, the Commissioner cannot agree that regulation 12(5)(e) of the EIR applies in this case. The Commissioner would also point out that it is not obvious from a simple review of the information himself, why the information would be exempt by virtue of regulation 12(5)(e) of the EIR.
59. The Information Tribunal took a similar approach to the Commissioner in the hearing of *Elmbridge v Information Commissioner EA/2010/0106*. The Tribunal considered the application of 12(5)(e) and 12(5)(f) (to be considered below) during this appeal and agreed with the Commissioner that these exceptions were not engaged. At paragraphs 22 and 23 of its decision the Tribunal stated:
- "This Tribunal accepts that the Respondent [Information Commissioner] was correct in his assessment of the particular facts of this case as presented by the Appellants [Elmbridge Borough Council] in that they have failed to provide sufficient evidence that disclosure of the disputed information would adversely affect the interests of the Additional Party at the time of the request... The onus of proof remains at all times with the Appellant. The Tribunal finds as a fact that the Appellant has failed to establish, on the balance of probabilities, through evidence provided to the Respondent or before this Tribunal, that any harm or prejudice would result to interested parties."
60. As the Commissioner has concluded that regulation 12(5)(e) of the EIR has not been shown to be engaged in this case for the reasons explained above, there is no need for him to go on to consider the public interest test.

### **Regulation 12(5)(f) – interests of the person who provided the information**

61. Regulation 12(5)(f) states that a public authority may refuse to disclose information if its disclosure would adversely affect 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.
62. The Council considers documents 3b and 13 are exempt in their entirety and the remaining elements of documents 3c, 3d, 5c, 11 and 12a are exempt from disclosure by virtue of this exception.
63. For each document the Council has supplied the same argument. It stated that the information was provided by a third party on a voluntary basis in the expectation that it would not be disclosed to any other third party or the public. The Council argued that the supplier of this information has not consented to its disclosure. It explained that it felt disclosure would inhibit open and constructive discussion between the Council and the third party/supplier of the requested information. This could in turn have a detrimental impact on the quantity of information received but also on the Council's relationship with a collaborating organisation which may become unwilling or refuse to disclose important information in the future. This may then have the effect of deterring the development of the project as a whole in which there is a strong public interest.
64. It is the Commissioner's view that the purpose of this exception is to protect the voluntary supply to public authorities of information that might not otherwise be made available. It operates on the principle that if those who provide information on a voluntary basis suffer as a consequence of providing that information, they will not be so willing to volunteer information in the future. Therefore, to engage the exception it is necessary to demonstrate that there would be some adverse affect on the provider of the information if the information were to be disclosed. In other words, only the interests of the provider can be considering when determining whether the exception is engaged. The public authority's own interests are excluded from consideration when deciding whether the exception applies.
65. In this particular case, the Commissioner accepts that there is no evidence that the third party in question was legally obliged to supply the requested information. He also accepts that the information was not supplied in circumstances that would entitle the Council to disclose it, apart from the Act and the EIR. The Commissioner also notes that the Council has stated that the third party has not consented to disclosure.

66. However, the threshold for disclosure under the EIR is a high one. Although the Council stated that the third party has not consented to disclosure, there is no evidence to suggest that the third party has in fact been contacted about this request and the possibility of disclosure under the EIR. Furthermore, the Council has not to date supplied any arguments to demonstrate exactly how disclosure of this information would adversely affect the interests of the third party concerned. Although it stated that disclosure would inhibit open and constructive discussions with the third party and deter it from supplying information in the future, the Council has provided no specific arguments or evidence to support this and has not linked such inhibition to an adverse effect on the third party.
67. The remaining arguments the Council has presented concern the adverse affect disclosure would have on it as a public authority. However, as stated in paragraph 64 above, such interests are excluded from consideration when determining whether this exception is engaged. Such arguments may be relevant when considering the public interest test. However, the public interest is only considered once it has been established that the exception is engaged.
68. As stated in paragraph 65 above, the Council has not provided any detailed arguments to support the application of this exception or indeed evidence to confirm that the third party objects to disclosure. The Commissioner has therefore concluded that regulation 12(5)(f) of the EIR has not been shown to be engaged in this case. As the Commissioner has concluded that regulation 12(4)(f) is not engaged, there is not need for him to go on to consider the public interest test.

### **Procedural Requirements**

69. The Commissioner finds that the Council was in breach of regulation 14(3)(a) in this case, as it failed to issue a refusal notice which identified exceptions on which it later relied; regulation 12(5)(c) and 12(5)(f).
70. The Commissioner also finds that the Council was in breach of regulation 5(2) of the EIR in this case. This is because the Council failed to communicate information that the complainant was entitled to, to him, within 20 working days of his request.

## The Decision

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71. The Commissioner's decision is that the Council did not deal with the request for information in accordance with the Act, for the following reasons:
- it incorrectly relied upon regulations 12(4)(d), 12(4)(e), 12(5)(c), 12(5)(e) and 12(5)(f) of the EIR for the non disclosure of the requested information;
  - it breached regulation 14(3)(a) by failing to issue a refusal notice which identified exceptions on which it later relied.
  - it breached regulation 5(2) by failing to communicate information that the complainant was entitled to, to him, within 20 working days of his request.

## Steps Required

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72. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- the Council should release all remaining information to the complainant. For clarity, the council should release documents 3b, 10, 13 and 14b in their entirety and the remaining withheld information from documents 1, 2a, 2f, 3c, 3d, 5c, 6, 7a, 7b, 11 and 12a.
73. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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



## Right of Appeal

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75. 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 26<sup>th</sup> day of January 2011**

**Signed .....**

**Lisa Adshead  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Environmental Information Regulations 2004

**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 –
  - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
  - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
  - (iii) has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.

### **Regulation 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).