

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

**Decision Notice**

**Date: 25 January 2011**

**Public Authority:** Devon County Council  
**Address:** County Hall  
Exeter  
Devon  
EX2 4QD

**Summary**

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The complainant requested information relating to the transfer of ownership of part of a school site by Devon County Council ("the Council"). The Council refused to disclose some of the information within the scope of the request by virtue of section 42 of the Act. The Commissioner determined that the information is environmental, and that the Council should have responded to the request under the provisions of the EIR. During the course of the Commissioner's investigation the Council sought to rely on the exception provided by regulation 12(5)(b) of the EIR in relation to the small amount of information it had withheld. The Commissioner found that the exception was not engaged and accordingly has ordered release of the information. The Commissioner found a number of procedural breaches of the EIR.

**The Commissioner's Role**

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. The Environmental Information Regulations (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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3. On 6 February 2010, the complainant wrote to Devon County Council ("the Council") and requested the following (numbering has been added for clarity):
- (i) *the review document conducted by Children and Young Peoples Services, which informed the future of the St Nicholas site as mentioned in Devon County Council (DCC) Exeter County Committee Report Code No: CX/08/10 of February 6, 2008 and any document that relates to the declaration of the St Nicholas site as surplus property by the DCC. The schedule of all DCC properties in Exeter appended to the CX/08/10 report for information and any subsequent schedules for surplus properties discussed within the DCC.*
  - (ii) *any documents and information concerning transfer of part of the St Nicholas Primary School to the adjacent St Leonard's Primary School as documented in Exeter County Committee Report Code No: CX/08/10 of February 6, 2008.*
  - (iii) *any documents and information concerning discussions within the DCC concerning accommodation of the St Leonard's pre-school facility on the site on the former St Nicholas site as mentioned in Exeter County Committee Report Code No: CX/08/10 of February 6, 2008.*
  - (iv) *the full written report delivered by the Head of the Business Transformation Unit to Exeter County Committee on Wednesday, Sep 16 2009. In addition to a copy of this report, we also request details of the "interest....received for the acquisition of the St Nicholas site" as mentioned within this committee meeting and any other matters reported in relation to future use of the former St Nicholas School site.*
  - (v) *Any documents, information or discussions within Devon County Council regarding the sale of St Leonard's Primary School (Exeter) playing fields and the sale of St Nicholas site.*
4. The Council responded on 8 March 2010. It released some information within the scope of the above request, and withheld other information. More specifically, the Council provided the following responses (numbering as above):
- (i) The review document was provided to the complainant. Some information within it was redacted by virtue of section 43(2) of the Act.

- (ii) The Council stated that it held no information relevant to this part of the request.
  - (iii) The Council stated that it held no information relevant to this part of the request.
  - (iv) The Council stated that the requested report was a verbal report, the content of which was available within the minutes of a meeting, which had been published on the Council's website. A link was provided to enable the complainant to access this information. In respect of details of "interest...received for the acquisition of the St Nicholas site", the Council stated that this information was exempt from disclosure by virtue of section 43(2) of the Act.
  - (v) Information relating to the "sale of St Leonard's Primary School" was withheld by virtue of section 43(2) of the Act.
5. On 15 March 2010, the complainant wrote to the Council and provided a list of 18 specific pieces of information that she believed should have been provided as part of the Council's initial response of 8 March 2010. These were not new requests, but expanded on and clarified the complainant's original request.
  6. On 17 March 2010, the Council wrote to the complainant and provided further information in relation to the 18 specific pieces of information referred to in paragraph 5, above. Some information was redacted by the Council under section 40(2) of the Act.
  7. Further relevant information was disclosed by the Council on 7 April 2010.
  8. The Council wrote to the complainant again on 21 April 2010 and confirmed that it had located further information falling within the scope of her request. The Council stated that some of this information was exempt from disclosure by virtue of section 42(1) of the Act, whilst other information was exempt by virtue of section 43(2) of the Act. The Council stated that, in its view, all information within the scope of her request of 6 February 2010 and her clarification of 15 March 2010 had now been disclosed.
  9. On 17 June 2010, the Council wrote to the complainant again and explained that it had located further information relevant to her request. At the same time the Council disclosed that information to the complainant. The Council also used the opportunity to clarify the information that it had withheld, and to clarify its position in relation to each of the 18 specific pieces of information referred to by the

complainant on 15 March 2010. The Council provided the following responses:

- In respect of three of the specific pieces of information, the Council confirmed that the information requested had been provided in full.
- In respect of two of the specific pieces of information, the Council confirmed that some information had been provided, whilst other information had been deleted prior to receipt of the request in line with the Council's retention policy.
- In respect of three of the specific pieces of information, the Council confirmed that some information had been provided, whilst other information had been withheld by virtue of section 42 of the Act.
- In respect of five of the specific pieces of information, the Council confirmed that it had been unable to source the specified information that, had it been able to locate that information, it would be exempt by virtue of section 42 of the Act.
- In respect of five of the specific pieces of information, the Council confirmed that the information requested was exempt by virtue of section 42 of the Act.

## **The Investigation**

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### **Scope of the case**

10. On 15 April 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. During the course of the Commissioner's investigation the complainant clarified that she did not wish to pursue her complaint in respect of the information withheld by virtue of section 40(2) or 43(2) of the Act. In addition, some information within the scope of the original request was released by the Council during the course of the investigation (as set out under the chronology, below). The Commissioner's investigation therefore focused on the following:
  - The withholding of two email strings by virtue of section 42 of the Act.
  - Procedural issues relating to the Council's handling of the request.

### **Chronology**

11. On 16 August 2010 the Commissioner wrote to the complainant to confirm the scope of the investigation. At that stage, the agreed scope consisted of:
  - (a) The redaction of information within the "CYPS Office Strategy" document by virtue of section 43(2) of the Act.

- (b) The withholding of information in relation to part (iv) of the complainant's initial request for information of 6 February 2010 by virtue of section 43(2) of the Act.
  - (c) The withholding of information in relation to part (v) of the complainant's initial request for information of 6 February 2010 by virtue of section 43(2) of the Act.
  - (d) The withholding of some correspondence by virtue of section 42 of the Act.
  - (e) An investigation into the complainant's belief that further information falling within the scope of her information request was held by the Council.
  - (f) Procedural issues in relation to the Council's handling of the request for information.
12. On 16 August 2010, the Commissioner wrote to the Council to request copies of the withheld information and to request further arguments to support the Council's handling of the information request. The Commissioner also asked the Council if it had considered whether the withheld information was environmental and, if it agreed with the Commissioner's preliminary view it was, to reconsider the request under the provisions of the EIR.
13. The Council responded on 16 September 2010, providing a copy of the withheld information. The Council stated that, in its view, the information was not environmental, and therefore considered that it had acted appropriately in considering the request under the Act rather than the EIR. However, the Council stated that if the Commissioner considered the information to be environmental it would withhold the information under the exceptions provided by regulations 12(5)(b) and 12(5)(e). The Council confirmed that some information, previously withheld by virtue of sections 42 and 43(2) of the Act could now be released, and it released that information on 14 October 2010. As the Council's response to the Commissioner of 16 September 2010 did not directly address the Commissioner's questions in relation to each area of the scope of his investigation, it was not clear what information the Council had continued to withhold.
14. On 21 September 2010, the Commissioner wrote to the Council to clarify the information it had continued to withhold and the basis for its decision.
15. On 14 October 2010, the Council replied to the Commissioner to clarify the nature of the information it had continued to withhold and to respond to the Commissioner's questions. The Council confirmed the following (lettering as paragraph 11, above):

- (a) In the Council's view, the redacted information within the "CYPS Office Strategy" document remained exempt from disclosure by virtue of section 43(2) of the Act.
  - (b) The Council confirmed that no information was held in respect of part (iv) of the complainant's initial request for information of 6 February 2010. The Council explained that its initial response of 8 March 2010 had contained incorrect wording, and that the response in relation to part (iv) of the request should have read that no information was held by the Council.
  - (c) The Council confirmed that no information was held in respect of part (v) of the complainant's initial request for information of 6 February 2010. The Council explained that its initial response of 8 March 2010 had contained incorrect wording, and that the response in relation to part (v) of the request should have read that no information was held by the Council.
  - (d) The Council confirmed that two pieces of correspondence remained exempt from disclosure by virtue of section 42 of the Act.
  - (e) The Council provided details of the searches it had carried out and clarified that it held no further information within the scope of the complainant's request.
16. Upon examination of the information in context, the Commissioner considered the information the Council held that was relevant to the request to be environmental information as defined in regulation 2(1) of the EIR.
17. As she still felt that further information relevant to her request was held by the Council, on 14 October, the complainant wrote to the Commissioner to set out her concerns. The complainant had received a redacted "option agreement" from the Council in relation to a separate request for information she had made under the Act. The complainant's view was that earlier versions of this document (which was dated 25 March 2010 and marked as "version 5") might have been held by the Council at the time of her request of 6 February 2010 and that those versions, if held, might have fallen within the scope of this request.
18. The Commissioner wrote to the Council on 20 October 2010 to ask further questions about the "option agreement".
19. A final response was sent to the Commissioner by the Council on 4 November 2010.
20. The Commissioner wrote to the complainant on 8 November with his preliminary view that no further information relevant to the request was held by the Council, and to explain why, in his view, the 'option agreement' in paragraph 17 above did not form part of the scope of the complaint. The complainant did not contest this view, and therefore the

final scope of the Commissioner's investigation was as set out in paragraph 10, above.

## Analysis

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### Substantive Procedural Matters

21. The Council considered the complainant's request for information under the Act and withheld some of the information by virtue of sections 40(2), 42 and 43(2). However, the Commissioner considers that the information requested constitutes environmental information and that the correct access regime under which the request should have been considered was therefore the EIR. While the Commissioner appreciates that the withheld information he is considering in this notice is limited to two emails and those emails, if considered in isolation, might not be considered to constitute environmental information, he considers that the information, as a whole, that fell within the scope of the request does constitute environmental information. The Commissioner therefore considers that the Council should have considered the provisions of the EIR when dealing with the request and he has set out his reasoning below.
22. The Council provided arguments in support of its position that the information in question did not constitute environmental information. The Council's view was that none of the information it held relevant to the request referred to either the environment or elements affecting the environment. Whilst the Council accepted that some of the information related to the size of the site and the associated usage and proportions of the site, it did not consider that it constituted environmental information. The Council's view was that the primary function of the information was to assist the Council in the process of the sale of the site as an asset and that the information did not relate to matters that significantly impact the environment, it did not believe it appropriate to treat this as environmental information.
23. Regulation 2(1)(c) provides 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 –*

*(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".*

24. The factors referred to in (a) include:

*“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”.*

25. In coming to his view that the requested information is environmental, the Commissioner is mindful of the Council Directive 2003/4/EC, which is implemented into UK law through the EIR. A principal intention of the Directive is to allow the participation of the public in environmental matters. The Commissioner therefore considers that the term “any information...on” in the definition of environmental information contained in regulation 2 should be interpreted widely. It will usually include information concerning, about or relating to measures, activities and factors likely to affect the state of the elements of the environment. In other words information that would inform the public about the element, measure etc under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.
26. The Commissioner is satisfied that information regarding the redevelopment of land falls within the definition of environmental information for the purposes of the regulations as provided in regulation 2(1)(c). Whilst the Council’s view is that the information is not environmental, and that it does not relate to any redevelopment, some of the withheld emails relate to developing the land in some way. For example, the information contains email discussions that relate directly to a “Heads of Terms” document, which has been disclosed by the Council without redaction. This document and the associated emails refer to potential development activities within the project. The development of land is a measure, as defined in regulation 2(1)(c), it is an activity likely to affect the elements and factors referred to in 2(1)(a), i.e. the land and the landscape, and the redacted information in question is “on” that measure.
27. The Commissioner is satisfied that, based on the information he has been provided with during his investigation, the proposed sale of the land in question was likely to result in some redevelopment. The Commissioner considers that information regarding the redevelopment of land, including the correspondence withheld by the Council in this case falls within the definition of environmental information as defined by regulation 2(1)(c).



## Exemptions

### Regulation 12(5)(b)

#### Is the exception engaged?

28. Under regulation 12(5)(b), a public authority can 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 the case of *Kirkaldie v ICO & Thanet District Council* [EA/2006/0001] the Tribunal stated that:

*“The purpose of this exception is reasonably clear. It exists in part to ensure that there should be no disruption to the administration of justice, including the operation of the courts and no prejudice to the right of individuals or organisations to a fair trial. In order to achieve this it covers legal professional privilege, particularly where a public authority is or is likely to be involved in litigation”.*

29. The Commissioner has also noted the views of the Tribunal in *Rudd v ICO & The Verderers of the New Forest* [EA/2008/0020], which stated that:

*“...the Regulations refer to ‘the course of justice’ and not ‘a course of justice’. The Tribunal is satisfied that this denotes a more generic concept somewhat akin to ‘the smooth running of the wheels of justice’...Legal professional privilege has long been an important cog in the legal system. The ability of both parties to obtain frank and comprehensive advice (without showing the strengths or weaknesses of their situation to others) to help them decide whether to litigate, or whether to settle; and when to leave well alone has long been recognized as an integral part of our adversarial system”.*

30. Legal professional privilege (“LPP”) protects the confidentiality of communications between a lawyer and client. It has been described by the Tribunal in *Bellamy v ICO & DTI* [EA/2005/0023] as, “a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges

between the clients and their parties if such communication or exchanges come into being for the purpose of preparing for litigation<sup>1</sup>".

31. There are two types of privilege – legal advice privilege and litigation privilege. Litigation privilege will be available in connection with confidential communications made for the purpose of providing or obtaining legal advice in relation to proposed or contemplated litigation.
32. Advice privilege will apply where no litigation is in progress or being contemplated. In these cases the communications must be confidential, made between a client and professional legal adviser acting in their professional capacity, and made for the sole or dominant purpose of obtaining legal advice. Communications made between adviser and client in a relevant legal context will attract privilege.
33. The information withheld under regulation 12(5)(b) consists of two emailed conversations between Council officials, and a member of the legal services team at the Council (the legal adviser). The Council argued that the emails in question are the subject of advice privilege. The Council stated that, for the purposes of the Act, the email conversation constituted advice from an 'in-house solicitor' being provided for the purposes of revising terms of sale and contracts.
34. The Commissioner accepts that communications between Council officials and in-house solicitors can be considered to be communications between a client and a professional legal adviser and he has gone on to assess whether the communications in this case could be considered to be protected by advice privilege.

### **Email String 1**

35. The first of the two email strings (referenced as 'Document 2' by the Council) consists of an email discussion between Council officials, the legal advisor referred to in paragraph 33, above, and third parties (representatives of two private companies). The Commissioner notes, in respect of these emails, that the legal advisor in question was 'copied in' to the conversation, and that no direct advice was requested from her.
36. The Council argued that the email conversation was covered by legal advice privilege. The Commissioner considers that legal advice privilege will apply to confidential communications, made between a client and a legal adviser acting in their professional capacity, for the sole or dominant purpose of obtaining legal advice. The Commissioner's view is that that the correspondence in question was not made for the sole or

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<sup>1</sup> EA/2005/0023, para 9

dominant purpose of obtaining legal advice.. While the legal adviser had some input into the email conversation, she did not offer any advice. The Commissioner notes that one of the emails refers briefly to a legal requirement concerning the transfer of land, but also notes that no detail is given. As such, the Commissioner does not consider that the communication was for the sole or dominant purpose of obtaining legal advice and he does not consider LPP to apply.

37. Whilst the Commissioner's decision is that email string 1 is not subject to LPP, he is mindful that the exception provided by regulation 12(5)(b) has a broader scope and he has considered whether disclosure of the information would have an adverse affect on the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature.
38. A public authority that is reliant on 12(5)(b) in order to withhold information is required by the regulation to demonstrate that disclosure of the information '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 enquiry of a criminal or disciplinary nature. The Tribunal in the case of *Archer v Information Commissioner and Salisbury District Council EA/2006/0037* held that it must be satisfied that disclosure "would" have an adverse affect not that it "could" or "might". The definition of " would" in the context of the phrase "would prejudice" was considered in the case of *Hogan and Oxford City Council v Information Commissioner EA/2005/0026 and EA/2005/0030* where the Tribunal held that "would" must be demonstrated as more probable than not. The Tribunal has agreed with the Commissioner that the *Hogan* definition of "would" is transferable to the EIR. The Commissioner has therefore considered whether or not the council in this instance has demonstrated that sufficient probability of adverse effect would arise from disclosure of the information.
39. The Council stated that, in its view, disclosure of email string 1 "would be likely to" damage the Council's future negotiation position but it did not clarify why that would be the case. The Commissioner considers that the Council failed to supply any convincing argument to demonstrate that the specific disclosure of email string 1 would have an adverse effect.
40. As the Council failed to demonstrate that disclosure would have an adverse effect upon the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature and because he has been unable to identify any relevant adverse effect himself, the Commissioner's decision is that the exception at regulation 12(5)(b) is

not engaged. As the exception is not engaged, the Commissioner is not required to consider the public interest test.

## **Email String 2**

41. The second of the two email strings withheld under regulation 12(5)(b) (referenced as 'Document 3' by the Council) consists of an email discussion between Council officials, its legal advisor and third parties. The Commissioner notes that the legal advisor was 'copied in' to the majority of the email exchanges and that no direct advice was requested from her. The legal adviser had no direct input into the chain of emails although a contractor made reference to some work that was being carried out by the legal adviser on the "Heads of Terms" document (which has already been disclosed by the Council without redaction). There is also the same reference to a legal requirement as described at paragraph 36 (as the same email was included in both email strings). Whilst the Commissioner accepts that some elements of the conversation related to the legal advisor, the Commissioner does not consider that the communications in question constitute legal advice.
42. The Council argued that the email conversation was covered by legal advice privilege. The Commissioner considers that legal advice privilege will apply to confidential communications, made between a client and a legal adviser acting in their professional capacity, for the sole or dominant purpose of obtaining legal advice. In this case the Commissioner's view is that, as the legal adviser was 'copied in' to all of the discussion and no specific advice was sought from her, LPP does not apply.
43. Whilst the Commissioner's decision is that email string 2 is not subject to LPP, as set out in paragraph 37, above, he has considered the broader scope of regulation 12(5)(b). The Commissioner provided a summary of the exemption in paragraph 38, above and for the sake of brevity has not repeated it here.
44. The Council's argument in relation to email string 2 was identical to that for email string 1 (see paragraph 39 above) and the Commissioner's view is as set out in paragraph 40, above.

## **Procedural Requirements**

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### **Regulation 5**

45. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as

possible and no later than 20 working days after the date of receipt of the request.

46. The complainant initially requested the information on 6 February 2010. The Council provided its initial response on 8 March 2010. However, the Council disclosed further information on 17 March 2010, 7 April 2010, 21 April 2010 and 17 June 2010. Therefore the Commissioner considers that the Council breached regulation 5(2) in respect of the information disclosed on 17 March 2010, 7 April 2010, 21 April 2010 and 17 June 2010 for failing to make it available within 20 working days following receipt of the request.
47. During the course of the Commissioner's investigation the Council came to the conclusion that some information, previously withheld by virtue of sections 42 and 43(2) of the Act could be released. Therefore the Commissioner considers that the Council breached regulation 5(2) in respect of the information disclosed on 14 October 2010 for failing to make it available within 20 working days following receipt of the request.
48. As the Commissioner has concluded that some of the information requested was not exempt – namely the two emails referred to above - by virtue of regulation 12(5)(b), he considers that the Council breached regulation 5(1) in failing to make this information available on request, and regulation 5(2) for failing to make it available within 20 working days following receipt of the request.

### **Regulation 11**

49. Regulation 11 of the EIR states that a public authority must conduct an internal review within 40 working days of receiving representations from the applicant. The complainant wrote to the Council on 15 March 2010 to clarify her original information request by highlighting 18 pieces of information that she considered to have been held by the Council but not disclosed. Whilst this was not a formal request for an internal review, the Commissioner considers that it was an expression of the complainant's dissatisfaction and therefore should have been treated by the Council as a request for an internal review. Whilst the Council did contact the complainant on several occasions between 15 March 2010 and 21 April 2010, a full review response was not issued until 17 June 2010. Therefore the Commissioner considers that the Council breached regulation 11(4) by failing to respond to the internal review request within 40 working days.

### **Regulation 14**

50. Regulation 14 of the EIR requires a public authority to inform a complainant in writing as soon as possible and no later than 20 working

days from the date of the request if it is refusing to supply the information requested. It is also obliged to specify the reasons for not disclosing the information, state the regulation that applies and the matters that it considered in reaching its decision with respect to the public interest test. The authority must also tell the applicant that they can make representations (and appeal the decision) to the authority and that they ultimately have a right to complain to the Commissioner.

51. The Council failed to consider the request under the EIR. As such, the Commissioner concludes that the Council breached regulations 14(1), 14(2) and 14(3) of the EIR for failing to issue an adequate refusal notice no later than 20 working days after receipt of the request.

## **The Decision**

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52. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act:

- It incorrectly applied regulation 12(5)(b) to withhold some of the information requested.
- It breached regulation 5(2) in respect of the information disclosed on 17 March 2010, 7 April 2010, 21 April 2010, 17 June 2010 and 14 October 2010.
- The Council breached regulation 5(1) and 5(2) in relation to the information that the Commissioner has concluded not to be exempt under regulation 12(5)(b).
- The Council breached regulation 11 by failing to respond to the internal review request within 40 working days after the date of the request.
- The Council breached regulation 14(1), 14(2) and 14(3) for failing to issue a proper refusal notice under the EIR within 20 working days.

## **Steps Required**

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53. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- To disclose the two emails which have been withheld by virtue of regulation 12(5)(b).

## **Failure to comply**

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54. 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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55. 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)

56. 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.
57. 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 25th day of January 2011**

**Signed .....**

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



## Legal Annex

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### Regulation 2 - Interpretation

#### Regulation 2(1) In these Regulations –

“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 - 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 11 - Representation and reconsideration**

**Regulation 11(1)** Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.

**Regulation 11(2)** Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.

**Regulation 11(3)** The public authority shall on receipt of the representations and free of charge –

- (a) consider them and any supporting evidence produced by the applicant; and
- (b) decide if it has complied with the requirement.

**Regulation 11(4)** A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the receipt of the representations.

**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 –

- (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;

## **Regulation 14 - Refusal to disclose information**

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

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

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

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

**Regulation 14(4)** If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

**Regulation 14(5)** The refusal shall inform the applicant –

- (a) that he may make representations to the public authority under regulation 11; and
- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.