

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

**Decision Notice**

**Date: 12 September 2011**

**Public Authority:** Chichester District Council  
**Address:** East Pallant House  
1 East Pallant  
Chichester  
West Sussex  
PO19 1TY

**Summary**

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The complainant contacted the Council to request information relating to proposals to build affordable housing on a piece of land next to her property. The Council responded refusing to disclose information under regulation 12(4)(e) of the EIR. As the complainant remained dissatisfied, she approached the Commissioner. During the Commissioner's investigation the Council claimed a late reliance on regulations 12(4)(d), 12(5)(e), 12(5)(f) and 13 of the EIR. The Commissioner has considered the application of these exceptions to the remaining withheld information. In this case he has concluded that regulations 12(4)(e), 12(4)(d), 12(5)(e) and 12(5)(f) do not apply. Concerning regulation 13 of the EIR, the Commissioner concluded that this exception had been applied correctly to the names of third parties external to Council. The Commissioner has ordered the Council to release all outstanding withheld information to the complainant, with the names of external third parties redacted, within 35 days of this Notice.

**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. The complainant contacted the Council on 13 July 2010 to make the following request for information:

"...would you please provide me with information regarding any plans or discussions, on the potential building of Affordable Housing, or otherwise, on a field to the west of Crooked Lane. My property [name of property redacted] lies between the potential site and Crooked Lane, and the "Track" lies to the north and next to my property. As the boundary between my property and the track is in dispute, I would appreciate any knowledge of discussions that are taking place."

4. The Council responded on 9 August 2010. It informed the complainant that it considered the requested information was exempt from disclosure under regulation 12 of the EIR.
5. As the complainant remained dissatisfied, she contacted the Council to request an internal review (date unknown).
6. The Council responded on 17 August 2010. It confirmed that it remained of the opinion that the requested information was exempt from disclosure and made specific reference to regulation 12(4)(e) of the EIR.

## The Investigation

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### Scope of the case

7. On 8 September 2010 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider whether the Council had acted appropriately by withholding the requested information under regulation 12(4)(e) of the EIR.
8. During the Commissioner's investigation the Council provided a table detailing the withheld information. It numbered each document from 1 to 35. This Notice will consider 30 of these documents and the Council's application of regulation 12(4)(e) of the EIR. It will also consider the Council's late reliance on regulations 13, 12(4)(d), 12(5)(e) and 12(5)(f) of the EIR. Five documents, labelled 2, 6, 7, 9 and 16 by the Council, will not be considered in this Notice. This is because these documents

were either disclosed in their entirety to the complainant during the Commissioner's investigation or disclosed in part with redactions; redactions which the complainant agreed to.

9. Concerning the application of regulation 13, the Council applied this to the names of Council staff and to the names of external third parties involved in the plans to build affordable housing and their contact details. During the Commissioner's investigation the complainant confirmed that she did not wish to see the names of Council employees or any contact details; only the names of external third parties. This Notice will therefore concentrate on the Council's application of regulation 13 of the EIR to the names of any external third parties mentioned throughout the withheld information.

### **Chronology**

10. The Commissioner wrote to the Council on 26 October 2010 to inform it that he had received a complaint from the complainant and to request a copy of the withheld information.
11. As he received no response, the Commissioner wrote to the Council again on 22 November 2010 to request a copy of the withheld information. In addition, the Commissioner requested the Council to explain in more detail why it considered this information was exempt from disclosure under regulation 12(4)(e) of the EIR.
12. The Council responded on 9 December 2010. It provided a table detailing the withheld information but failed to provide a copy of each document. It also failed to explain in sufficient detail exactly how regulation 12(4)(e) of the EIR applied to this information. At this point, the Commissioner noticed that the Council had also raised further exceptions; 12(4)(d), 12(5)(e) and 12(5)(f) of the EIR.
13. The Commissioner wrote to the Council on 22 December 2010. He requested the Council to provide a copy of the withheld information as a matter of urgency. He also reminded the Council that it had not to date explained in more detail why it wished to rely on regulation 12(4)(e) of the EIR. In respect of the late claim on regulations 12(4)(d), 12(5)(e) and 12(5)(f) of the EIR, the Commissioner asked the Council to explain why these exceptions had been raised at such a late stage.
14. The Council responded on 5 January 2011 providing a copy of the withheld information.
15. The Council responded further on 10 January 2011 explaining in more detail why it considered the withheld information was exempt from disclosure under the exceptions cited.

16. The Commissioner reviewed the withheld information and wrote to the Council on 1 February 2011 to request some further information.
17. The Council responded on 14 February 2011.
18. As the Council had failed to address some of the matters the Commissioner raised in his correspondence dated 1 February 2011, the Commissioner wrote to the Council on 30 March 2011 to provide the Council with a final opportunity to submit the requested information.
19. The Council responded on 13 April 2011 advising the Commissioner that it had nothing further to add. It, however, confirmed that it was willing to release further information to the complainant and proposed to do so within a few days.
20. The Commissioner wrote to the Council on 13 April 2011 to request that it releases the additional information to the complainant by 18 April 2011.
21. The Council released additional information to the complainant on 9 May 2011.
22. The Commissioner noted that the personal data of third parties had been redacted from some of the disclosures the Council had recently sent the complainant, he therefore wrote to the Council on 6 June 2011 to request further arguments to support this.
23. As the Commissioner had not received a response, he contacted the Council on 14 June 2011 to chase the matter up.
24. The Council responded on 15 June 2011 informing the Commissioner that it now wished to rely on regulation 13 of the EIR for the non disclosure of the personal data of third parties.

## Analysis

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### Exceptions

25. As stated previously, the Council wishes to rely on regulations 12(4)(d), 12(4)(e), 12(5)(e), 12(5)(f) and 13 of the EIR for the non disclosure of the remaining withheld information. As detailed in paragraph 8 above, 30 documents will be considered in this Notice. Some of these have been released to the complainant in part or withheld in their entirety. Some have also been withheld under more than one exception. Instead of addressing each of the 30 documents in turn, the Commissioner will consider each of the exceptions claimed in turn referring to the documents as and when this is necessary.

26. The Commissioner will first consider regulation 13 of the EIR and its application to the names of third parties outside the Council who are or have been involved in the plans to build affordable housing in the local area. As stated earlier in this Notice, the names of third parties outside the Council are mentioned throughout the 30 documents being considered here.

### **Regulation 13 – personal data**

27. The exception under regulation 13 of the EIR applies to information that is the personal data of an individual other than the applicant (the complainant), where disclosure of that information would breach the data protection principles or section 10 of the Data Protection Act ('DPA').
28. The Council argued that disclosure of this information would be unfair on the data subjects concerned, as they would have a reasonable expectation that their names and connection with the proposal would not be ordinarily disclosed to members of the public. The Commissioner has understood from these comments that the Council considers disclosure would breach the first data protection principle outlined in the DPA.
29. The Commissioner must first consider whether the withheld information is personal data. If he is satisfied that it is, he will then go on to consider whether disclosure would breach the first data protection principle outlined in the DPA, as the Council has alleged.

#### Is the withheld information personal data?

30. Personal data is defined in Section 1 of the DPA as follows:

““personal data” means data which relate to a living individual who can be identified -

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”

31. The Commissioner notes that the information withheld under regulation 13 of the EIR is the names of third parties involved in the project who are not council employees but involved in the ongoing negotiations concerning the acquisition of the land required for the project and the

proposal to build affordable housing in the area. For obvious reasons, the Commissioner considers the names of these individuals to be personal data.

32. The Commissioner now needs to consider whether disclosure of this information under the EIR would breach the first data protection principle outlined in the DPA.

Would disclosure breach the first data protection principle?

33. The first data protection principle states that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -

- (a) at least one of the conditions in schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

34. The Council argued that the third party names are held by the Council for the purpose of negotiation in connection with the potential acquisition of land by the Council and not for any other purpose. It stated that none of the data subjects concerned have consented to the disclosure of this information to the wider public and it considers these individuals are entitled to expect that their names would not be released in this way. The Council confirmed that disclosure of this information would render it extremely difficult for individuals to convey their own views or their client’s view in a frank and open manner, particularly if disclosure occurred before the transaction was completed.
35. The Commissioner notes that the withheld information being considered here consists of the name of one private individual and the names of various private sector employees or their agents. At the time of the complainant’s request, he notes that negotiations were still ongoing and that much of the Council’s deliberations appeared to have taken place in a closed environment. For these reasons, the Commissioner accepts in this case that the data subjects concerned will have the expectation that their personal data will not be routinely disclosed to members of the public on request.
36. In these circumstances, the Commissioner considers it would be unfair to require the release of these third party names into the public domain. He considers that disclosure would be in breach of the first data protection principle outlined in the DPA and therefore that regulation 13 of the EIR applies to this information.
37. The Commissioner will now go on to consider the Council’s application of regulation 12(4)(d) of the EIR.

### **Regulation 12(4)(d) – information in the course of completion**

38. Regulation 12(4)(d) states that a public authority may refuse to disclose information to the extent that the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.
39. The Council has applied regulation 12(4)(d) of the EIR to documents 1, 10, 17, and 33 of its schedule of withheld information dated 9 December 2010. The Council confirmed that its proposals to potentially develop the land in question for affordable housing are still in the early stages. Contracts with the vendor and a suitable registered social landlord are either conditional or yet to be obtained. The Council explained that it considers the contents of these documents relate to matters which are still in the course of completion or incomplete data, as the terms have yet to be finalised in relation to both the acquisition and disposal and the nature of the development which may occur.
40. The Commissioner has considered the application of this exception to these documents. It is the Commissioner's view that the relevant consideration here is the information contained within each document itself and the purpose for which it was created not the overall project or development proposal it relates to. The Commissioner considers the fact that the proposal to develop affordable housing was still at idea stage at the time of the request and therefore an unfinished project is not a relevant consideration for the application of this exception.
41. Taking document 10 as an example, this document is a statement which was submitted to West Sussex County Council to assist it in giving advice to the Council in its capacity as the Highways Authority. This document is not a draft or an incomplete report. The information contained in this document was used by West Sussex County Council to provide the advice the Council required. The advice the Council received was then used to inform the overall proposal and the Council's proposal to develop the land in question progressed based on this advice.
42. The Commissioner considers the same argument applies to document 33, which is a committee report to the Council's Executive Board. There is no evidence to suggest that this is a draft report or an unfinished document. As far as the Commissioner is aware, this document was submitted to the Executive Board for it to consider the Council's proposal for the acquisition of land identified for the provision of rural affordable housing. The Board will have considered its contents, made some form of recommendation and the project will then have proceeded on that basis.

43. Document 17 is an email between the Council and its social landlord. The Commissioner has been provided with no evidence to suggest that this was not a completed communication. The Commissioner is of the view that the recipients of this email will have acted on the contents of the communication and progressed the project based on these contents.
44. For the reasons explained above, the Commissioner has concluded that regulation 12(4)(d) of the EIR does not apply in this case to any of the documents claimed by the Council.

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

45. Regulation 12(4)(e) states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications.
46. The Commissioner understands that the Council wishes to rely on this exception for the non disclosure of documents 1, 10, 17, and 33. Document 1 is a file note. As stated above, document 10 is the statement the Council submitted to West Sussex County Council for its advice as Highways Authority, document 17 is an email to the Council's social landlord and document 33 is a report to the Council's Executive Board.
47. In respect of document 1, the Council confirmed that this was a file note created by a parish councillor who then submitted it to the Council. The Commissioner considers that this document does not fall within the definition of "internal communications". He considers an internal communication to be either a communication between officers within the Council or a note or aid memoire created by a Council officer which is left on record for others to consult. It is clear that this information was created by a separate public authority, which was then submitted to the Council for its reference. For these reasons, the Commissioner has concluded that this document does not fall within the definition of this exception.
48. Document 10 is a statement which was created by the Council but then submitted to a separate public authority (West Sussex County Council) to obtain advice. It is the Commissioner's opinion that this statement was created with the intention of circulating it outside the authority and therefore it is not an internal communication for the purposes of the EIR.
49. Document 17 is an email which was circulated to Council employees and external third parties who were involved in the ongoing negotiations concerning the proposal to building affordable housing. It is the Commissioner's view that once an email is circulated externally i.e. to a third party outside of the Council it is no longer an internal



communication. This follows the Implementation Guide to the Aarhus Convention, which states:

“once particular information has been disclosed by the public authority to a third party, it cannot be claimed to be an ‘internal communication’”.

50. Document 33 is a report created by the Council itself for its Executive Board to enable it to decide how the current proposals should proceed. It is clear that the document was intended for internal circulation only and therefore the Commissioner is satisfied that regulation 12(4)(e) applies to this document.
51. As the Commissioner has decided that regulation 12(4)(e) is engaged for document 33, it is now necessary for him to consider the public interest test.

#### Public interest in favour of disclosure

52. The Council raised no public interest arguments in favour of disclosing this information. It stated that the complainant's interests in this information are purely private, as she owns a property adjacent to the land earmarked for possible development.
53. The Commissioner, however, considers himself that there are public interest factors in favour of disclosure in this case. He considers there is a public interest in the overall accountability and transparency of the Council and providing members of the public with access to information which enables them to understand more clearly why decisions are made.
54. He also considers there is a public interest in planning issues or proposals to develop land for housing or other facilities and that members of the public have a right to be involved in these issues and ideas at an early stage so that public authority's take into account the views of the public and ensure that the decisions that are made reflect the views and the needs of its constituents.
55. Developments such as these even at any earlier stage usually involve significant amounts of public funding and resources. The Commissioner considers there is a public interest in information which assists the public in understanding more clearly why such resources have been directed to a particular development or proposal.
56. Disclosure in this case would encourage public debate on the plans to build affordable housing this area. There is a public interest in encouraging public debate in such matters at an early stage. It engages the public, it obtains the view of the local people who will be affected by the proposal if it goes ahead and often leads to more timely and

effective decisions being made, which reflect the views and needs of the local people.

#### Public interest in maintaining the exception

57. The Council considers there is a public interest in withholding the information until the registered social landlord has acquired title to the land in question and is in a position to submit a planning application. It considers the local community will have the ability to voice its views in relation to the development of the land then under the planning process.
58. The Council argued that it considers disclosure at this stage would hinder its proposals and enable interested parties to take certain courses of action to constrain its prospects of success, for example some form of physical action or legal action with the view to hindering the proposals. It argued that there are very few sites in the local area that could be used for affordable housing and as a public authority it must encourage such proposals, as there is a local need for social housing.

#### The balance of the public interest test

59. It is the Commissioner's view that regulation 12(4)(e) of the EIR is intended to protect internal decision making processes and preserving internal confidentiality. He considers its purpose is to protect the safe space public authority's require to formulate policy, debate 'live' issues and to reach conclusions without being hindered by external comment.
60. For the Commissioner to give any weight to a public interest argument for maintaining this exception the argument must be linked to these factors.
61. The Council's public interest arguments for maintaining the exception, outlined in paragraph 57 and 58 do not relate in anyway to concerns that disclosure would hinder the Council's internal decision making process or hinder its ability to debate these proposals internally or reach a conclusion. The arguments presented are not relevant to the purpose of this exception and can therefore be given no weight by the Commissioner when reaching his decision on the balance of the public interest test.
62. 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 cannot take into account the arguments the Council presented in favouring of maintaining this exception, as they are not relevant to the purpose and intentions behind regulation 12(4)(e).

63. However, the Commissioner does acknowledge that there is a public interest in the disclosure of information which enables the public to understand more clearly the decisions the Council has made in respect of this development proposal, particularly as this proposal will continue to involve a considerable amount of public funds and resources if it is successful. There is also a public interest in the general accountability and transparency of the Council.
64. In this case, the Commissioner has therefore concluded that the public interest in favour of disclosure is not outweighed by the public interest in maintaining this exception.

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

65. 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.
66. The Council confirmed that it wished to rely on 12(5)(e) of the EIR for the non disclosure of documents labelled 12, 13, 14, 15, 18, 20, 21, 26, 28, 29, 30 and 31.
67. For the Commissioner to agree that regulation 12(5)(e) of the EIR applies, the Council must demonstrate for each document cited that:
  - a. the information is commercial or industrial in nature,
  - b. the information is subject to a duty of confidence provided by law;
  - c. the confidentiality is required to protect a legitimate economic interest; and
  - d. the confidentiality required to protect a legitimate economic interest would be adversely affected by disclosure.
68. 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.
69. The Council stated that the contents of these documents is information of a commercial nature and that it was shared with Council officers or provided to Council officers in circumstances where such information would not ordinarily be provided to the public. It referred the Commissioner to the standard provision on the reverse of the some of

the documents (which are emails) that the information is provided in confidence either by the third party or the Council.

70. The Commissioner advised the Council that these arguments were not sufficient to demonstrate that regulation 12(5)(e) is engaged. He requested the Council to explain in more detail how each document cited in paragraph 66 above meet each of the criteria outlined in paragraph 67. It failed to provide any additional arguments or evidence to support the application of this exception and informed the Commissioner that it had nothing further to add
71. 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. Without any evidence from the Council to demonstrate that each of the bullet points listed in paragraph 67 above apply to the documents cited in paragraph 66, the Commissioner cannot agree that regulation 12(5)(e) of the EIR applies in this case. The Commissioner would also point 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.
72. As the Commissioner has concluded that regulation 12(5)(e) of the EIR is not engaged in this case, 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**

73. 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-
  - was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
  - did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
  - has not consented to its disclosure.
74. The Council considers the documents labelled 12, 13, 14, 15, 18, 20, 21, 26, 28, 29, 30 and 31 are exempt from disclosure by virtue of this exception.
75. The Council provided the same argument for each document. It stated that the information contained in these documents had been provided by third parties who were not under any legal obligation to supply it and in circumstances where the Council has no duty or entitlement other than under the EIR to disclose it and those third parties have not to date consented to its disclosure.

76. As stated above in paragraphs 70 and 71, the Commissioner advised the Council that this argument was insufficient to demonstrate that regulation 12(5)(f) applies to each of the documents it cited. He again requested the Council to provide more detailed arguments to support its position. The Council responded. It failed to provide any additional arguments or evidence to support the application of this exception and informed the Commissioner that it had nothing further to add.
77. As he has explained previously, 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. Without any evidence from the Council to demonstrate that each of the bullet points listed in paragraph 73 above apply to the documents cited in paragraph 74, the Commissioner cannot agree that regulation 12(5)(f) of the EIR applies in this case. The Commissioner would also point 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)(f) of the EIR.
78. As the Commissioner has concluded that regulation 12(5)(e) of the EIR is not engaged in this case, there is no need for him to go on to consider the public interest test.

### **Procedural Requirements**

79. The Commissioner finds that the Council was in breach of regulation 14(3)(a) in this case. This is because the Council's refusal notice of 9 August 2010 failed to cite the sub-section of regulation 12 on which it wished to rely for the non disclosure of the requested information.
80. The Commissioner also finds the Council in breach of regulation 14 in this case, as it failed to cite in its refusal notice of 9 August 2010 exceptions of the EIR on which it later relied (12(4)(d), 12(5)(e), 12(5)(f) and 13 of the EIR).

### **The Decision**

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81. The Commissioner's decision is that the Council dealt with the following aspects of the request for information in accordance with the EIR:
- It correctly relied on regulation 13 of the EIR for the non disclosure of the names of external third parties
82. The Commissioner's decision is that the Council did not deal with the following aspects of the request for information in accordance with the EIR:

- it incorrectly relied on regulations 12(4)(e), 12(4)(d), 12(5)(e) and 12(5)(f) for the non disclosure of the remaining withheld information;
- it breached regulation 14(3)(a) of the EIR by failing to cite the sub-section of regulation 12 on which it wished to rely in its refusal notice to complainant; and
- it breached regulation 14 by failing to cite in its refusal notice to complainant exceptions of the EIR on which it later relied.

## **Steps Required**

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83. The Commissioner requires the Council to take the following steps to ensure compliance with the EIR:

- The council should release all outstanding withheld information to complainant with the names of external third parties redacted.

84. 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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85. 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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86. 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)

87. 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.
88. 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 12<sup>th</sup> day of September 2011**

**Signed .....**

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

## Legal Annex

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### Freedom of Information Act

#### Section 1(1)

Provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

### Environmental Information Regulations

#### 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(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.