

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

### **Decision Notice**

**Date: 8 September 2011**

**Public Authority:** Derbyshire County Council  
**Address:** County Hall  
Bank Road  
Matlock  
DE4 3AG

### **Summary**

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The complainants requested information held by the council regarding information it held on any investigation or complaint regarding work they intended to carry out on their property. The complainants argued that the land in question belonged to them and that there were no highway rights over it which would prevent them from carrying out the works. The council however needed to consider whether the works would infringe upon highway rights. The council withheld most of the information on the grounds that it was exempt under Regulation 13(1) as it was the personal information of third parties. It also withheld some information under Regulation 5(3) on the grounds that it was the personal data of the applicants. It also found that other information was exempt under Regulations 12(5)(f) and 12(5)(b). The Commissioner's decision is that the council was correct to apply all of the exceptions. He finds however that the council breached Regulations 5(2) and Regulation 14(2) in its handling of the request.

### **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 (the 'Regulations') 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 Regulations 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 Regulations.

## The Request

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3. On 27 June 2010 the complainants asked the council for:

*"We request that under FOI DCC shall now disclose and copy to us any and all information and correspondence in whatever form that may be, including inter alia, and/all DCC briefing and/or meeting or telephone discussion notes, internal, external emails including to/from any elected Member whether formal or informal copy letters or any other notes or photographs in your files concerning investigations or surveillance of any sort including RIPA and any annotations by hand that concern or relate in any way to the subject of [name of street redacted], New Mills including the suggestion of ; "obstruction" and any related strands of correspondence. We understand that you may redact third party names for confidentiality, but not DCC Officers.*

*To avoid any doubt and adequately define the FOI subject request to a reasonably narrow area, it is limited at this stage to any document or image received, created or accessed since 1 Jan 2010 to date concerning "[name of street redacted]" and to/from any resident of [addresses and names withheld], including any other document(s) that clearly pertain(s) to the matter of the "status and extent" of [name of street redacted] and any DCC investigations of whatever nature. Also disclose whatever "evidence" DCC has about the width of [name of street redacted], however "inconclusive" This may be."*

4. The council responded on 5 August 2010. It provided some information to the complainants, however it withheld other information on the basis of the exceptions in Regulation 12(4)(e) (internal communications), Regulation 12(5)(b) (the course of justice), Regulation 12(5)(f) (information supplied voluntarily by a third party) and Regulation 13(1) and 13(2)(a)(i) (3<sup>rd</sup> party personal data as defined by the Data Protection Act 1998).
5. On 28 July 2010 the complainants had also requested from the authority:

*"We understand you said that DCC will not include relevant correspondence after our application date of 27 June and this requires a new application.*

*In case there is such correspondence then we herewith make such a further request today."*

6. On 25 August 2010 the council responded to this second request, disclosing further information to the complainants however withholding other information for the same reasons.
7. On 30 September 2010 the council provided a review to both of the above requests. It found that information which had been withheld under Regulation 12(4)(e) should be disclosed, however information withheld under Regulations 12(5)(b), 12(5)(f) and Regulation 13 should continue to be withheld. The reviewer found however that the council had breached its obligations to respond to the first request within 20 working days.

## **The Investigation**

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### **Scope of the case**

8. On 23 November 2010 the complainants contacted the Commissioner to complain about the way their request for information had been handled. The complainants specifically asked the Commissioner to consider whether the information they had asked for should have been disclosed to them.
9. The Commissioner notes that the majority of the information held by the council is personal data belonging to the complainants and so has carried out a separate request for assessment on the request, however some information relates to discussions with third parties and discussions surrounding the extent of the highway on the road concerned and so this Decision Notice relates to this information.
10. The Commissioner also notes that on review the council found that its prior reliance on Regulation 12(4)(e) was incorrect and that it subsequently disclosed the documents and redacted sections of documents which it had previously excepted under that Regulation. Consequently he has not considered the council's reliance on this exception further.

## Chronology

11. The Commissioner wrote to the council on 30 March 2011 indicating that a complaint had been received which he considered eligible for investigation. He asked the council to provide him with the withheld information and highlighted that the request encompassed a request under both the Regulations and the Data Protection Act 1998. He highlighted that he might therefore be issuing an assessment under the Act as well as a Decision Notice.
12. The council responded on 13 April 2010 providing a copy of the withheld information together with further arguments in support of its position.

## Analysis

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### Substantive Procedural Matters

#### Exceptions

##### Regulation 5(3)

13. The Commissioner is the regulator of the Data Protection Act (DPA) the Freedom of Information Act and the Regulations. The rights of an individual under DPA, which include the right of access to personal information about themselves, are not compromised by the provisions of the Act or the Regulations. Section 40 of the Act provides an exemption relating to personal information in various ways. In *Bowbrick v Information Commissioner (EA/2005/2006)* the Information Tribunal confirmed that the Commissioner can use his discretion to look at section 40 when considering cases under the Act.
14. This case refers to environmental information and must therefore be considered under the Regulations rather than the Act. The Commissioner considers however that the same principle must apply.
15. Regulation 5(3) exempts an authority from its duty to provide information in response to a request under the Regulations when the information in question is the personal data of the applicant. Although the council did not claim it, the Commissioner has decided, as the regulator of the Data Protection Act, to use his discretion to consider whether Regulation 5(3) applies to the requested information.
16. The information relates to the complainants' request to the council for it to provide information to them regarding complaints which were received by it regarding intended works on land which they consider to

be theirs and on the council's subsequent investigation into whether those works would interfere with or block highway rights on [name of street redacted]. The information is a record of the council's discussions about these matters. The information can be separated into information relating to considerations on the actual width of the road in question, and those considering the complainants' property and the changes they intended to make to it. The Commissioner notes however that for some documents there is not always a clear distinction between the two.

17. In England & London Borough of Bexley v Information Commissioner (Appeal No: EA/2006/0060 & 0066) the Tribunal found that information relating to an address of a property was personal data as it would be easy to find out the identity of those living at that property from that address.

18. It found that the owners could be identified from the Council Tax register and the Tribunal went on to conclude that,

*"The address alone, in our view, also amounts to personal data because the likelihood of identification of the owner.... In our view this information amounts to personal data because it says various things about the owner. It says that they are the owner of the property and therefore have a substantial asset ... The key point is that it says something about somebody's private life and is biographically significant."*

19. The Tribunal went on to say that the important question was

*"... what meaning or meanings the data may have in the context of someone's private life. Does the fact that Mr X owns a property potentially worth several thousand of pounds say something about Mr X? In our view it does, and the owner is the focus of that information."* (para 98).

20. The Commissioner has considered this as regards the information in this case. It is his view that all of the information which has been withheld by the council refers to the complainants and to their ongoing dispute with their neighbours, and the council's subsequent endeavours to establish whether the complainants' intended works would interfere with others rights over the highway.

21. The information includes technical discussions between council officers about the intentions of the complainants. It also includes discussions about the council's potential responses to the complainants' complaints, and also other discussions between the council and the complainants.

22. The Commissioner is satisfied that sections of the information are therefore about the complainants' actions or their correspondence and/or their property and that this directly impinges on their personal lives and on their ability to carry out work on their property.
23. The Commissioner's decision is therefore that this sort of information is the personal data of the complainants.
24. Regulation 5(1) provides that an authority shall make environmental information available on request, subject to the other provisions and exceptions within the Regulations. Regulation 5(3) provides that that duty will not apply where the information in question is the personal data of the applicant.
25. The Commissioner therefore finds that Regulation 5(3) applies in this instance, and his decision is that the information is therefore excepted from disclosure under Regulation 5(3).

### Regulation 13

26. Under Regulation 5(1) a public authority that holds environmental information is required to make it available on request. However, that requirement is subject to Regulation 13(1) which provides that, to the extent that the information requested includes personal data of which the applicant is not the data subject and the disclosure of the information to a member of the public would contravene any of the data protection principles set out in the Data Protection Act 1998, a public authority shall not disclose the personal data.
27. The first principle of the DPA requires that the processing of personal data is fair and lawful and that at least one of the conditions for processing in Schedule 2 is met. The Commissioner has firstly considered whether the disclosure of this information would be fair. In order to reach a view on this he has considered what would be the reasonable expectation of the individual(s) who contacted the Council, i.e. would they have any expectation of their personal data being provided to a third party.
28. The Commissioner considers that public authorities must be able to carry out investigations as a result of information received. There must be an expectation that the interests of the parties involved in an investigation will be protected and all parties will be treated fairly. In order for the Council to operate effectively it must be able to receive information without necessarily identifying its sources publicly.
29. The Commissioner considers that that the individual(s) contacting the Council in this case would not have had any expectation that their

personal data would be released to a third party via a request under the Regulations. Disclosures under the Regulations are considered to be a disclosure to the world at large. Such a level of disclosure would not have been envisaged by the third parties in this instance. Their contact with the council was specifically related to their concerns about the highway, and on the intended actions of the complainants. The Commissioner also notes correspondence which the third parties had with the council once the first part of the request was received. In that correspondence the individuals specifically commented that they did not expect their information to be used for any other purposes by the council officers other than to deal specifically with their issues.

30. The Commissioner gave consideration to the Tribunal's decision in an earlier case *De Mello v Information Commissioner (EA/2008/0054)* where the complainants asked for the name of the person who had made an arbitrary/malicious complaint about his septic tank. The Tribunal said at paragraph 45 that *"...there were no public interest considerations in this appeal which could override the confidentiality implicit in the original letter of complaint"* and went on at paragraph 47 to say that they were satisfied that "no further disclosure of information could be made without contravening the first data protection principle". Whilst there is no suggestion that the complaints in this case were either arbitrary or malicious the Commissioner considers that the above does provide a good indicator of the strength with which personal complaints should be treated in confidence.
31. The Commissioner has also considered the counter argument; that the a disclosure of the information is necessary in order to meet the legitimate interests of the public in the council being transparent about its actions as regards protecting the rights of the public to use the highway. Many of these arguments are similar to the public interest arguments in favour of disclosure as outlined in paragraphs 40 to 43 below.
32. However in considering and weighing the above the Commissioner is satisfied that a disclosure of any complaints made to the council in this case would be unfair. A disclosure of the information would therefore breach the first data protection principle. The Commissioner has not therefore gone on to consider a schedule 2 condition.
33. The Commissioner therefore considers that the council was correct to apply Regulation 13 in this instance.

#### Regulation 12(5)(f)

34. The Commissioner has also considered whether information which was voluntarily supplied by third parties to the council should be disclosed



to the complainants. The Commissioner notes in any event that sections of the information are actually also the personal data of third parties and that that information should be exempt under his findings for the application of Regulation 13 and/or Regulation 5(3). His consideration below is therefore restricted to any information which falls outside the scope of these other exceptions.

35. Regulation 12(5)(f) applies to information where disclosure would have an adverse effect upon:
  - (a) the interests of the person who voluntarily provided the information to the public authority,
  - (b) where the authority is not entitled to disclose the information apart from under the Regulations,
  - (c) where the provider has not consented to the authority disclosing it.
36. The purpose of the exception at 12(5)(f) is to protect the voluntary supply to public authorities of information that might not otherwise be made available. In such circumstances a public authority may refuse disclosure when it would adversely affect the interests of the provider.
37. In this particular case, the providers of the information were not, and could not, be legally required to provide the information to the council. The Commissioner also accepts that the information was not supplied in circumstances that would entitle the Council to disclose it, apart from under the Act or the Regulations. The Commissioner also notes that the provider(s) have explicitly refused consent to the disclosure of the information.
38. The Commissioner is also satisfied that a disclosure of the information would be detrimental to the interests of the person(s) who voluntarily provided that information. It is noted that the council left open the question as to the width and extent of the road concerned – stating that if further evidence were to come to light then it may need to reconsider its decision not to take action at this point in time. Additionally, as private rights of way or rights of access might be affected then a disclosure of the information would provide information which the provider might subsequently need to rely on if any legal proceedings arise concerning these rights in the future.
39. The Commissioner is therefore satisfied that the exception in Regulation 12(5)(f) is engaged.



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

40. The central public interest argument in favour of the disclosure of this information rests in creating greater transparency and accountability on the actions taken by the council in this case.
41. The council became involved in a dispute between neighbours, and sought to investigate whether public highway rights would be affected by works intended to be carried out by the complainants. Its decision therefore affected the property of the complainants and/or third parties.
42. The Commissioner notes that the council was clear to the complainants that its investigation was only considering whether the complainants intended actions would affect the highway rights. It was clear that it could not become involved in any civil dispute between neighbours and that it would not do so. Nevertheless its decision would allow, or disallow changes to the environment as it stood and therefore potentially affect the complainants rights to affect changes to his private property or alternatively highway rights currently enjoyed by individuals.
43. There is therefore an argument that the council's actions should be transparent and able to be scrutinised by interested parties whose rights may have been affected by its decision not to take action in this case. There is also a strong personal interest in the landowner being able to ascertain whether the council was acting appropriately in taking the actions it did given that it led to a period of uncertainty as to their rights to carry out work on their property. From the wider point of view this provides public interest arguments that land owners should be able to obtain information on actions taken by local authorities where that affects their ability to carry out work on their own property. There is also a wider public interest argument in providing greater transparency as to the council's actions in a dispute relating to its duties under the Highways Act.

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

44. The Commissioner is clear that the provision of the information in this case was an important step in allowing the council to consider the extent and width of the road in question. Although the providers may have been acting out of self interest the council's stated interest was purely whether highway rights would be affected if the works were carried out. The actual function of protecting the highways is an important function of a local authority and it is through complaints of this sort that it obtains information which is necessary for it to carry

out that function on some occasions. The provision of the information in this case provided the council with valuable evidence from which to draw its conclusions which it would be unlikely to have been able to obtain otherwise.

45. The Commissioner notes that the providers of that information expressly refused to consent to the information being disclosed in response to the request. He notes that if there had been any suggestion that the information would be disclosed it is highly unlikely that they would have provided that information to the council in the first instance.
46. The Commissioner is satisfied that ordering disclosure in this instance would degrade the confidence of individuals that private or personal information which they provide to authorities in such circumstances will be protected from the wider disclosure. This would be likely to dissuade people from submitting evidence or information to the authority in the first instance. It may also dissuade them from making complaints in the first instance.
47. This would have an adverse effect on the ability of the council to have all available evidence before it when considering its course of action. The maintenance of public highways is an important function to the community. There is a strong public interest in the council being able to access any information it needs in order to make informed decisions about public rights of way. There is also a strong public interest in the council being able to access all information it needs to ensure that decisions it takes do not incorrectly affect the rights of individuals to make changes to their own property.

#### Balance of the public interest arguments

48. Having considered the above the Commissioner's decision is that the public interest in maintaining the exception outweighs the public interest in disclosing the information in this instance.

#### Regulation 12(5)(b)

49. The council argued that some redactions had been made for information under Regulation 12(5)(b). Regulation 12(5)(b) applies to information where a disclosure would have an adverse effect 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 inquiry of a criminal or disciplinary nature.
50. Section 137 of the Highways Act 1980 makes it an offence for anyone to "wilfully obstruct the free passage along a highway", unless they

have legal authority to do that. The council states that it has a clear duty under section 130 of the Highways Act 1980 to assert and protect the rights of the public to use any highway.

51. The Council argued some redactions had been made for information under Regulation 12(5)(b), where it was communications between council staff, and also the council's lawyers. It stated that this exception applies because in its role as the Highway Authority it must be able to conduct an inquiry in private, and to allow for legal and professional advice to be sought and given without the fear of disclosure.
52. The council did not specifically state or argue that the withheld information was subject to legal professional privilege; however it did argue that the information contained legal advice and discussion with legal advisers. It is clear therefore that its arguments for withholding the information are similar in that respect.
53. Regulation 12(5)(b) does not specifically require that information is subject to legal professional privilege in order for the exception to be applicable. It merely requires that a disclosure would have an adverse effect on one of the factors stated.
54. The council also argued that the exception applies to some of the information provided to the Council by third parties. It argues that disclosure would adversely affect those parties and affect their ability to pursue their own legal remedy if they wished.
55. The Commissioner has not however considered this latter argument further given his findings as regards the application of Regulation 13 and Regulation 12(5)(f).
56. As in the case of legal professional privilege, the Commissioner accepts that a disclosure of information in such circumstances will have an adverse effect on the course of justice simply through a weakening of the doctrine if such information is disclosed on a regular basis under the Act or the Regulations. The arguments are weaker somewhat in cases where legal professional privilege does not, or has not been applied given the recognised principle that such information should remain privileged. However the arguments are still relevant and are still applicable to a degree in cases such as this.
57. Clients and their advisers must have confidence that their discussions will remain private. A disclosure of such information will weaken that confidence and as a result discussions may therefore become inhibited. Clearly similar arguments can be made in this case.

58. The council must be able to seek advice and discuss matters with its staff (including its legal staff) in order to ascertain the appropriate or best course of action under the circumstances of each case. Such is the case with the withheld information in this case. Clearly the council must be able to take steps to discuss or establish whether the actions of the landowner amounted to a criminal offence, and whether it then had a duty to act to protect the right to pass over the highway.
59. The Commissioner has considered whether the advice was still in use at the time of the request or whether there was any likelihood that it would become relevant to litigation in the future. If that is not the case then disclosure would be less likely to have an adverse effect and the council would need to provide further reasons to show how it might.
60. The Commissioner is satisfied that the information is still “live” and that it might become relevant in future action. At the time of the request the council had informed the complainants that it did not intend to take action at present but if further evidence became available to it subsequently then it may reconsider its position. The Commissioner also notes that it was still possible that third parties may have decided to take their own legal action to assert their rights of way at the time that the request was received.
61. The Commissioner recognises that a disclosure of the information, albeit that that information is inconclusive, could provide involuntary legal advice to one party or another in any civil dispute which continued after the council’s decision not to act, even where the council itself is not a party to those proceedings. This would upset the current level playing field between the parties as it could be seen to provide free legal advice to one party or another. This would therefore have an adverse effect on the course of justice.
62. The majority of the discussion itself does not set out a policy or provide detailed legal advice. It simply assesses and discusses the circumstances of the case. However the Commissioner is satisfied that the information is between officers of the council and qualified legal professionals such that it would potentially be subject to legal professional privilege and that its disclosure would have an adverse effect on the course of justice or the ability of the council to carry out an inquiry of a criminal nature.

#### The public interest in disclosing the information

63. The Commissioner also notes that the public interest arguments he has considered in paragraphs 40 to 43 above are relevant to his consideration in respect of this exception.

64. Although this case primarily revolves around the private interests of individuals, he considers that there is a wider public interest in the disclosure of this information. It addresses the actions of the council in deciding not to take action against the complainants and how that reflects on its duty to protect the rights of the public to use any highway.
65. The Commissioner therefore recognises that there is a public interest in providing greater transparency on a council decision which some parties would argue allows sections of the highway to be blocked and the former ability to travel over that part of the land curtailed.
66. The Commissioner has therefore taken the above into consideration when making a decision on the application of the public interest test to this information.
67. The Commissioner has also taken into account the express presumption of disclosure provided by Regulation 12(2).

#### The public interest in maintaining the exception

68. Although he has not specifically considered whether the information is subject to legal professional privilege or not, he has taken into account that the advice and discussion is with legal professionals, discusses legal matters and that it would have an adverse effect on the factors relevant to the exception if it were to be disclosed.
69. The Commissioner has already established that the advice is relevant to the council's management of the highway and its functions under the Highways Act. A public authority must be able to seek legal guidance on the options it has when making decisions on a potential breach of rights over the highway by a landowner to ensure that the position it takes is robust, appropriate and would stand a good chance of winning in any legal action which was taken against it.
70. It is also imperative that an authority is free to seek full and frank advice and to discuss and consider its legal obligations when its actions could potentially affect a private landowner's intended use of his own property to a marked degree. Alternatively a failure to act when it was appropriate to would lead to other landowners' rights or abilities being curtailed.
71. The council also needed to discuss and seek advice on what legal rights or obligations it had in the circumstances, bearing in mind that it is not appropriate for it to involve itself in a purely private civil dispute if public rights were not infringed or affected. Were it to involve itself in

- such a dispute unlawfully this would be maladministration for which the council would be legally liable.
72. Such guidance, although informing the final decision, should not therefore generally be open to disclosure, as to do so could weaken or compromise the Council's legal position should its decision later be questioned in law. It could also affect others rights to defend their property rights through legal means.
  73. The Commissioner considers that authorities must have the ability to consider and address strengths and weaknesses in its position free from the fear that disclosure may be required and that its opponents could exploit its own legal advice to their own purposes when seeking to overturn a decision made by the council.
  74. If the ability to seek and discuss advice of this nature is weakened through the regular disclosure of such advice and/or discussion then concerns about this may result in a 'chilling effect'. Councils may become less likely to seek advice in the first instance, become inhibited in the questions they ask of their advisors (or vice versa), or the advice which is provided may and discussion may become less frank. Alternatively advice may be sought verbally rather than in writing and either no, or sparse records of the advice which is given, or the discussions which took place retained.
  75. The Commissioner does recognise that this argument is slightly weaker in this case as there is a reasonably strong counter argument. Clearly the council needed to ascertain whether highway rights were being affected, and if the only way to ascertain that was to discuss this with its legal department then it is highly unlikely that it would allow such a 'fear' to prevent it doing so to any great degree in the future. It is under a legal obligation to ensure that the highway is not obstructed and so it must take the steps necessary to ensure that it has confidence in its legal position.
  76. The Commissioner is also certain that the need for good records management to back the decisions of the council would mean it would be unlikely that it would refrain from recording the advice it was relying upon or the discussions it had in the future.
  77. Nevertheless there are strong public interest arguments in allowing a public authority to seek clarification of its legal standing in law in order to facilitate its decision making, free from the possibility that that advice or discussion might subsequently be disclosed to its or third parties detriment. It may then act from an informed position, with a robust legal basis for its actions without fear that its discussions,



including potentially the weak areas of its legal position, will be disclosed to parties who may seek to use that information against it.

78. The Commissioner is therefore satisfied that the public interest in maintaining the exception in this case outweighs the public interest in disclosing the information.
79. The Commissioner is therefore satisfied that public interest in maintaining the exception in this case outweighs the public interest arguments in withholding the information.

### **Procedural Requirements**

80. The Commissioner notes the authority's admission on review that it did not comply with the time requirements of the Regulations in that it did not provide the withheld information to the complainants within 20 working days. Accordingly he finds that the council breached Regulation 5(2) in failing to respond to the request within the correct time period.
81. The council also breached Regulation 5(2) in that it did not initially disclose information which it withheld under Regulation 12(4)(e) but which it subsequently decided to disclose after it carried out its review. This information was not therefore provided within 20 working days.
82. The council also breached Regulation 14(2) as it did not provide the complainant with a refusal notice within 20 working days.

### **The Decision**

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83. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Regulations:
  - The council correctly applied Regulation 13(1) to the information.
  - The council correctly applied Regulation 12(5)(f) to the information.
  - The council correctly applied Regulation 12(5)(b) to the information.
84. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the EIR:
  - The council breached Regulation 5(2) in failing to provide information to the complainant to which he was entitled within 20 working days.



- The council breached Regulation 14(2) in that it did not provide the complainants with a refusal notice within 20 working days.

## **Steps Required**

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85. The Commissioner requires no steps to be taken.

## **Other Matters**

86. The Commissioner finds above that some of the information which is held by the council is personal data belonging to the applicants and that Regulation 5(3) therefore applies. Accordingly the complainants may have a right under section 7 of the DPA to that information. He has therefore carried out an assessment of the council's response to the complainants under the Act and has provided the complainants and the council with a copy of his assessment.

## Right of Appeal

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87. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

88. 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.

89. 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 8<sup>th</sup> day of September 2011**

**Signed .....**

**Gerrard Tracey  
Principal Policy Advisor  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### **Regulation 5 - Duty to make available environmental information on request**

#### **Regulation 5(1)**

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

#### **Regulation 5(2)**

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

#### **Regulation 5(3)**

To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

#### **Regulation 5(4)**

For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

#### **Regulation 5(5)**

Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.

#### **Regulation 5(6)**

Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

### **Regulation 12(2)**

A public authority shall apply a presumption in favour of disclosure.

### **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;

(f) the interests of the person who provided the information where that person –

1. was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

2. did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

1. has not consented to its disclosure; or

### **Regulation 14(2)**

The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

### **Regulation 14(3)**

The refusal shall specify the reasons not to disclose the information requested, including –

(a) any exception relied on under regulations 12(4), 12(5) or 13; and

(a) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).