

Environmental Information Regulations 2004

Decision Notice

Date: 10 March 2011

Public Authority: Babergh District Council
Address: Corks Lane
Hadleigh
Ipswich
IP7 6SJ

Summary

The complainant requested Babergh District Council's (the council's) letter of instruction to a firm of solicitors sent in 2002 together with a copy of their response some months later. The council said that it could not find the letter of instruction and withheld the response from the solicitors on the grounds that it was legally privileged. Initially it cited section 42 of the Freedom of Information Act 2000 but subsequently sought to rely on Regulation 12(5)(b) of the Environmental Information Regulations 2004 (the EIR) to withhold the requested information. The Commissioner finds that the requested information is environmental within the meaning of the EIR and engages Regulation 12(5)(b) with the public interest balanced against disclosure. The Commissioner therefore does not require the council to take any further action. However, he does find that the council breached Regulation 14(2) of the EIR by taking more than 20 working days to issue a refusal notice.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. On 24 April 1998 a land owner applied to the council for a Certificate of Lawful Existing Use or Development (CLEUD) in respect of a piece of land used for the purpose of taking off and landing small aircraft¹. The application was refused almost 5 years later and the reasons made public on 19 March 2003². The land owner did not exercise his right of appeal to the Secretary of State but instead made a further CLEUD application in 2004³. This application was also refused and no appeal was submitted. In or about 2005 the council issued an Enforcement Notice⁴ in relation to the land concerned which was upheld by the Planning Inspectorate in December 2006 following an appeal by the landowner⁵. In March 2008 the High Court issued an injunction⁶ in relation to the use of the land in question. For further information concerning the CLEUD application B98/05/0528/CEU, please refer to the Commissioner's Decision Notice dated 14 February 2011 in the case of [Babergh District Council FS50277289](#).
3. Put simply a CLEUD allows a local planning authority to grant a certificate saying that an existing use of or operation or activity on land, in breach of planning control or a planning condition, is lawful. For further information see '[Lawful Development Certificates – A User's Guide](#)'⁷ published by the Department for Communities and Local Government.

The Request

4. On 17 July 2009 the complainant contacted the council and requested:

¹ See Application Number: B98/05/0528/CEU
<http://planning.babergh.gov.uk/dcdatav2/AcolNetCGI.gov?ACTION=UNWRAP&RIPNAME=Root.PgeResultDetail&TheSystemkey=42364>

² See Refusal of Certificate of Lawful Use or Development dated 19/03/2003 under reference: B98/05/0528/CEU
<http://planning.babergh.gov.uk/dcdatav2/AcolNetCGI.gov?ACTION=UNWRAP&RIPNAME=Root.PgeResultDetail&TheSystemkey=42364>

³ See Application Number: B/04/01826/CEU
<http://planning.babergh.gov.uk/dcdatav2/AcolNetCGI.gov?ACTION=UNWRAP&RIPNAME=Root.PgeResultDetail&TheSystemkey=5972>

⁴ B/04/00254/ENF

⁵ APP/D3505/C/05/2001482

⁶ Claim No: HQ 07X04126

⁷ <http://www.communities.gov.uk/documents/planningandbuilding/pdf/developmentcertificates.pdf>

'Under the Freedom of Information Act, I seek copies of two documents please.

Both relate to an application for a Certificate of Lawful or Development under Babergh District Council Reference B98/05/0528/CEU.

*The application was made on 24th April 1998
The application was refused on 19th March 2003*

I understand that Babergh District Council outsourced some work relating to the determination of this application to Messrs STEELE, Solicitors of Norwich, Norfolk.

The documents I seek are.

1. A copy of the letter from Babergh District Council to STEELE Solicitors, requesting that they undertake the work.

2. The final reply from STEELE Solicitors, which includes any recommendation.

I am particularly interested in the dates that such letters were sent, together with any comments STEELE Solicitors may have made with regard to the legitimacy of a determination, which by law should take 8 weeks to resolve (with exceptions). This particular one took of 5 years'.

5. The council acknowledged the request quickly but explained that it might take some time to respond in full as it would have to undertake an extensive search to find the requested information which was quite old.
6. The council eventually responded on 1 October 2009 stating that it was withholding the requested information under section 42 of the Freedom of Information Act 2000 (the Act) as it fell within the definition of legal professional privilege. The council pointed out that Messrs Steeles, solicitors, were providing it with legal advice and the relationship between them was confidential and protected as was the advice, information and documents passing between them.
7. On 27 October 2009 the complainant requested an internal review as he was unhappy with the council's reply.
8. On 24 November 2009 the council responded by upholding its original decision to withhold the requested information under section 42 of the Act. It said that it had reviewed the request in the light of the

Commissioner's Guidance on Legal Privilege and decided that section 42 of the Act was engaged with the public interest favouring the information being withheld. However, the council did disclose that the date on which Messrs Steeles solicitors were instructed which was on or about 8 August 2002 and the date of their advice which was 7 October 2002.

9. On 30 November 2009 the complainant expressed his dissatisfaction with the outcome of the council's internal review and asked it to specify which factors it took into consideration and the weight given to them as part of the public interest balancing test.
10. The council responded on 3 February 2010 stating that legal professional privilege was covered by section 42 of the Act and Regulation 12(5)(b) of the EIR. The council then applied the EIR to the requested information and concluded that Regulation 12(5)(b) was engaged with the public interest favouring the withholding of the information.

The Investigation

Scope of the case

11. On 24 February 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the council's application of Regulation 12(5)(b) and the factors considered and weighed as part of the public interest test.
12. The council has confirmed to the Commissioner that the information requested in the first part of the complainant's request is not held.
13. In view of this the complainant has confirmed to the Commissioner that the scope of his complaint may be limited to the second part of his information request dated 17 July 2009, namely the response from Messrs Steeles, solicitors.

Chronology

14. On 19 March 2010 the Commissioner wrote to the council and requested a copy of the withheld information together with its arguments as to which exceptions it wished to apply to it.
15. On 26 March 2010 the council sent an acknowledgement stating it would locate and send the requested documents to the Commissioner.

16. The Commissioner asked the council for a copy of its document management and disposal policy together with its explanation as to why it took approximately six and a half months to fully respond to the complainant's request which was made on 17 July 2009.
17. On 18 May 2010 the council responded with a copy of the withheld information (comprising of the report/legal advice from Messrs Steeles, solicitors) together with the steps taken by it to locate the missing letter of instruction. The council also provided its Document Retention Policy and explained that the reason for the delay in responding to the complainant's request was due to its difficulty in locating the relevant file.

Analysis

Is the requested information 'environmental' and therefore covered by the EIR?

Regulation 2(1) of the EIR

18. Regulation 2(1) of the EIR defines 'environmental information as including:

'any information in written, visual, aural, electronic, or any other material form on –

the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites;...

.....

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements ... referred to in (a)...as well as measures or activities designed to protect those elements;....

19. The Commissioner notes that the requested information comprises of legal advice concerning the council's determination of a Certificate of Lawful Existing Use and Development (CLEUD) in respect of a piece of land used for flying activities.
20. The Commissioner is satisfied that this advice is information on the state of the elements, namely the land and landscape and a measure and/or an activity likely to affect these elements. He therefore

concludes that the information is environmental within the meaning of Regulations 2(1)(a) and 2(1)(c) of the EIR.

The relevant Regulations

Regulation 5(1) of the EIR

21. Under Regulation 5(1) of the EIR a public authority that holds environmental information is required to make it available on request.

Regulation 12(1) of the EIR

22. Subject to a presumption in favour of disclosure (in Regulation 12(2) of the EIR), a public authority may refuse to disclose environmental information if an exception under regulation 12(4) or (5) of the EIR applies and the public interest in maintaining that exception outweighs the public interest in disclosure (see Regulation 12(1) EIR).

23. Regulation 12(1) of the Regulations provides that:

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

*an exception to disclosure applies under paragraphs (4) to (5);
and*

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.'

Regulation 12(5)(b) of the EIR

24. Regulation 12(5)(b) of the EIR provides that:

'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 disciplinary nature; ...'

25. The council has argued that the information requested is legal advice which is subject to legal professional privilege and is therefore exempt from disclosure under Regulation 12(5)(b) of the EIR.

26. There is no specific exception within the EIR referring to information which is subject to legal professional privilege. However, both the Commissioner and the Information Tribunal have previously decided that Regulation 12(5)(b) encompasses such information.
27. In view of the above Commissioner considers that legal professional privilege is a key element in the administration of justice and a key part of the activities that will be encompassed by the phrase 'course of justice'. He therefore considers that the arguments put forward by the council are relevant to whether Regulation 12(5)(b) of the EIR is engaged or not.

Is Regulation 12(5)(b) of the EIR engaged?

28. The requested information comprises of a report dated 7 October 2002 provided to the council by a firm of solicitors in which legal advice is given to the council. The Commissioner has concluded that this is legal advice provided by a lawyer to his client. Furthermore, as there was no litigation ongoing or threatened at the time of the information request the Commissioner has concluded that only legal advice privilege as opposed to litigation privilege is relevant. Legal professional privilege safeguards confidentiality between professional legal advisers and clients to ensure that proper openness can be in place in relation to the preparation and provision of legal advice. See the Tribunal's decision in *Archer v Information Commissioner & Salisbury District Council* (EA/2006/0037), especially at paragraph 62.
29. The Commissioner has taken into account the recent Tribunal decisions in the cases of [Rudd and the Information Commissioner EA/2008/0020](#)⁸ and [Woodford and the Information Commissioner EA/2009/0098](#)⁹ in which it was decided that the exception in Regulation 12(5)(b) was intended to encompass all information subject to legal professional privilege.
30. In view of the above Tribunal Decisions the Commissioner finds that the disclosure of information subject to legal professional privilege would have an adverse effect on the course of justice as stated and referred to on the face of the Regulations. The Commissioner has seen

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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i254/J%20Rudd%20v%20ICO%20&%20Verderers%20of%20New%20Forest%20\(EA-2008-0020%20%5BFER0148337%5D\)%20Decision%2029-09-08.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i254/J%20Rudd%20v%20ICO%20&%20Verderers%20of%20New%20Forest%20(EA-2008-0020%20%5BFER0148337%5D)%20Decision%2029-09-08.pdf)

⁹ [http://www.informationtribunal.gov.uk/DBFiles/Decision/i388/EA-2009-0098%20Woodford%20v%20IC%20-%20Decision%2021-04-10%20\(w\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i388/EA-2009-0098%20Woodford%20v%20IC%20-%20Decision%2021-04-10%20(w).pdf)

the withheld information and is entirely satisfied that it consists of exchanges generated for the purposes of obtaining legal advice and is therefore subject to legal professional privilege.

31. Legal professional privilege protects the confidentiality of communications between a lawyer and a client. It has been described by the Information Tribunal, in the case of *Bellamy v the Information Commissioner and the 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'. (See paragraph 9).

32. 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'. (See paragraph 21).

33. The Commissioner has also noted the views of the Information Tribunal in *Rudd v ICO & The Vederers 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.' (See paragraph 29).

The Public Interest Test

34. Having concluded that the exemption in Regulation 12(5)(b) is engaged, the Commissioner has applied the public interest balancing

test set out in Regulation 12(1)(b) of the EIR. This requires him to decide in all the circumstances of the case whether the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the requested information

35. The Commissioner considers that there is always an underlying public interest in councils being accountable for and transparent in their actions. Consequently he accepts that disclosure could be said to be in the public interest if it adds to the public's understanding of the council's actions.
36. In addition to the presumption in favour of disclosure mentioned above, the Commissioner also accepts the fact that public funds are being spent by the council in relation to this matter is a public interest factor in favour of disclosure of the information. This is because he considers that there is a public interest in knowing whether public funds are being allocated and spent in an appropriate manner.
37. The Commissioner has also taken into account that a number of people are likely to be affected by the council's decision to refuse a Certificate of Lawful Existing Use or Development (CLEUD) in this case. He considers that it is generally in the public interest for people to be well informed about decisions which affect their lives.
38. The complainant has argued that the disclosure of the legal advice provided by Messrs Steeles in October 2002 would assist the public in understanding why the CLEUD application submitted on 24 April 1998 took almost 5 years to determine following the refusal issued by the council on 19 March 2003 and also what evidence was considered by the council in arriving at its decision and whether it was necessary to obtain legal advice. According to the complainant the application should have been determined within 8 weeks (or fairly soon thereafter with an agreed extension of time) as required by section 24(8) The Town and Country Planning (General Development Procedure) Order 1995¹⁰. The complainant believes that the delay in the council's determination was partly due to its negligence and partly due to it taking into account information that it was not entitled to consider as part of its decision making process.

¹⁰ **Section 24 Certificate of lawful use or development:** 8) 'The local planning authority shall give the applicant written notice of their decision within a period of eight weeks beginning with the date of receipt by the authority of the application and any fee required to be paid in respect of the application or, except where the applicant has already given notice of appeal to the Secretary of State, within such extended period as may be agreed upon in writing between the applicant and the authority'.

39. The complainant has argued that disclosure of the advice from Messrs Steeles would support or allay any suspicion that the council behaved dishonourably and/or in a biased way. The Commissioner accepts that there is a public interest in disclosing the information if it would address any suspicion of dishonourable or biased behaviour.

Public interest arguments in favour of maintaining the exemption

40. The Commissioner notes and agrees with the Information Tribunal in the case of Bellamy v The Information Commissioner [2006] UKIT EA in which it was stated;

'...there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest. It may well be that in certain cases, of which this might have been one were the matter not still live, for example where the legal advice was stale, issues might arise as to whether or not the public interest favouring disclosure should be given particular weight.'

41. The Commissioner is also mindful of the comments of Mr Justice Wyn Williams in the High Court decision of the Department for Business Enterprise and Regulatory Reform and Dermod O'Brien and the Information Commissioner (EWHC 164 (QB) when he observed that:

'The in-built public interest in withholding information to which legal professional privilege applies is acknowledged to command significant weight. (See paragraph 53)

Balance of the public interest arguments

42. The Commissioner has been guided over time by Tribunal decisions considering the weight to be given to the public interest arguments relating to legal professional privilege. He considers that whilst there is an inherent public interest in protecting legally privileged information the weight that both this and the public interest in disclosure should be afforded will vary from case to case depending upon a number of factors including:

The age of the advice

Whether the advice remains current

Whether the advice relates to the rights of individuals

The amount of money involved

The number of people affected

The existing transparency of a public authority's actions

Age of the advice

43. The advice in this case was provided in October 2002 which was almost five and a half years before the complainant made his information request. The council has argued that the age of the advice was not a determining factor in this case but has pointed out that it is still relevant to the site in question and its use. The Commissioner notes that the advice was provided some time ago but accepts it is still relevant today as the use of the site is still generating debate between the landowner, the pilots that use it, owners of the adjoining land and the council. The Commissioner recognises that the passage of time is one factor in favour of disclosure. However, he has not attached much weight to this in the present case as the advice is still relevant to the issues affecting the land in question.

Whether the advice remains current

44. The Commissioner also accepts that the advice was still live at the time of the request and would be relevant to any subsequent disputes regarding the use of the site. The Commissioner notes that the site is still subject to the terms of a High Court injunction issued in 2008. (See the paragraph on 'Background' above).
45. The Commissioner considers that although the advice was obtained some time ago it still remains relevant today. Accordingly, he has given weight to the public interest argument in allowing a council to obtain free and frank legal advice without fear of intrusion. This is particularly important as the legal advice is still relevant to current issues concerning the land in question. This is evidenced by the number of freedom of information requests made to the council in the last twelve months relating to the land.

Whether the advice relates to the rights of individuals

46. The Commissioner supports the Tribunal's decision in Fuller and the Ministry of Justice (EA/2008/0005) where it was said that the principles behind LPP; "...are as weighty in the case of a public authority as for a private citizen seeking advice on his position at law...". He therefore does not reduce the weight given to the public interest in maintaining the exception simply because the advice has been provided to a public authority rather than a private individual.

The amount of money involved

47. With regard to the amount of money involved, the Commissioner notes that the Information Tribunal in the case of Mersey Tunnel Users

Association v the Information Commissioner and Merseytravel - (EA/2007/0052) found that the public interest in disclosure outweighed the public interest in maintaining the exemption for legal professional privilege partly because of the substantial amount of money involved which ran to tens of millions of pounds. In this case the council has argued that that the information requested does not involve large amounts of public money which the Commissioner accepts. Accordingly he has concluded that little weight should be given to this argument in favour of disclosure.

The number of people affected

48. Similarly with regard to the number of people affected the Commissioner notes that in the Mersey Tunnel case the number of people involved was substantial (i.e. approximately 80,000 people per weekday). Contrasted with this, in the case of Gillingham v the Information Commissioner and the Crown Prosecution Service (EA/2007/0028) the Tribunal indicated that the number of people affected by a decision concerning a public footpath was not a significant factor to be taken into consideration. In this case the people affected would include the land owner, the pilots that use the site and the local residents who live nearby. The complainant has assessed the number of pilots affected to have been in the low hundreds. The Commissioner accepts that the numbers involved would not be substantial and in line with the Tribunal's decision in Gillingham, does not believe this to be a significant factor in favour of disclosure. He therefore affords little weight to this argument.

The existing transparency of a public authority's actions

49. In balancing the public interest arguments the Commissioner believes that weight should be given to the accountability and transparency of the council's actions. A number of differently constituted Tribunals have indicated that weight must be attached to a general principle of accountability and transparency. However, the Tribunal in the Foreign and Commonwealth Office case (EA/2007/0092) considered transparency and concluded that the sort of public interest which would be likely to undermine LPP would need to amount to:

"more than curiosity as to what advice the public authority has received. The most obvious cases would be those where there is reason to believe that the authority is misrepresenting the advice which it has received, where it is pursuing a policy which appears to be unlawful or where there are clear indications that it has ignored unequivocal advice which it has obtained..."

50. In the present case the Commissioner has not been presented with any persuasive evidence to suggest that the legal advice obtained was misrepresented or ignored or indeed that the council pursued an unlawful policy. The complainant believes that the council should have made its determination on the CLEUD application from the evidence available to it within the first 56 days of its presentation. He also believes that this determination should have resulted in the application being granted. He does not believe that the council can justify its decision to wait 4 years before taking legal advice which he considers is unfair. The complainant has expressed the view (without providing any substantial evidence to support it) that if the information passed to Messrs Steeles by the council included submissions made after September 2008 (i.e. after the expiry of the 56 day period) the council may have made its determination on evidence which it was not entitled to take into account. In his opinion this would not have been open, fair or within the law. The complainant believes that disclosure of the requested information would allow him the opportunity to assess the scope of the council's standards of behaviour and highlight any deliberate bias.
51. The Commissioner notes that the applicant who submitted the request for the CLEUD in 1998 under reference: B/98/0528/CEU (which is the subject of the legal advice from Messrs Steeles) did not appeal the council's refusal to grant this in 2003 by contacting the Secretary of State¹¹ nor did he lodge a complaint with the council regarding the time taken to reach its decision. Both of these avenues would have allowed the applicant (but not the complainant in this case) the opportunity to question the council's decision and the manner and speed with which it made it.
52. The Commissioner accepts that disclosure of the requested information might help the complainant to assess the quality of the council's standards in terms of file management and general efficiency and effectiveness in relation to its decision making processes. He has therefore attached some weight to the factor of accountability and transparency but not the substantial weight that would have been afforded if he had been presented with clear reasons to believe that misrepresentation or unlawful action might have taken place.
53. Having considered all of the above arguments, in particular, the strong in-built public interest in withholding information to which legal professional privilege and taking account of the fact that the advice although not recent is still live and that the underlying issue involves

¹¹ <http://www.communities.gov.uk/documents/planningandbuilding/pdf/developmentcertificates.pdf>

relatively small amounts of money and people, the Commissioner finds that the public interest in maintaining the exception, in all the circumstances of the case, outweighs the public interest in disclosure. The Commissioner must restrict his investigations to considerations that are relevant to the EIR. It is not his role to assist a complainant with a desire to pursue any perceived wrongdoing by a council. This is a matter for the relevant appeal body.

54. The Commissioner therefore concludes that the legal advice is excepted from disclosure on the basis of Regulation 12(5)(b) of the EIR.

Procedural Requirements

Regulation 14 of the EIR

55. Regulation 14(2) of the EIR provides that any refusal notice shall be issued as soon as possible and no later than 20 working days after the date of receipt of the request.
56. In this case the complainant submitted his information request by email on 17 July 2009. However, the council did not issue its refusal notice until 1 October 2009 when it cited section 42 of the Act. This was outside the 20 working days required by the EIR and consequently the Commissioner finds that the council is in breach of Regulation 14(2).

The Decision

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

It correctly cited Regulation 12(5)(b)

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

In that it failed to issue a refusal notice within 20 working days in breach of Regulation 14(2)

Steps Required

59. The Commissioner requires no steps to be taken.

Right of Appeal

60. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

61. 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.
62. 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 10th day of March 2011

Signed

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

Legal Annex

The Environmental Information Regulations 2004

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 12 - Exceptions to the duty to disclose environmental information

Regulation 12(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Regulation 12(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;

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 notice 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.