

Environmental Information Regulations 2004

Decision Notice

Date: 11 November 2009

Public Authority: Liverpool City Council
Address: Municipal Building
Dale Street
Liverpool
L2 2DH

Summary

The public authority charged the complainant to view environmental information at its headquarters in the context of local authority searches for encumbrances on land. This case relates specifically to charging in relation to elements 1 (f), (g) and (h) from the CON29R form. He complained to the Commissioner about the charging. The Commissioner has considered this case and has determined that Regulation 8(2)(b) has been contravened in this instance. The Council cannot therefore charge to inspect this information at its headquarters and the Commissioner upholds the complaint.

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. The complainant represents a company who provide information to their customers about property and land issues. When a property or piece of land is purchased or leased, a request for a search is sent to the authority in whose area the property is situated. This is to check any matters affecting the property or land registered as a local land charge, or any other information held by the Council that a prospective purchaser would like to know.

3. This is done by submitting an application for an Official Search on form LLC1, and the local authority will search the register and disclose any entries on schedules. The register is updated every day. In almost all cases the search will be accompanied by a questionnaire, Enquiries of Local Authorities (known as form CON29R). Together the two searches are known as the Local Search.
4. The CON29R form is a contractual document containing an agreed list of standard enquiries of the local authority in part 1. Optional enquiries that may be asked if they are considered to be relevant are in Part 2.
5. A statutory requirement is placed on all local authorities within England and Wales to generate, maintain and regularly update a Local Land Charges Register and to provide local searches. This obligation is found in section 3 of the Local Land Charges Act 1975.
6. An individual dealing with such a transaction normally has three choices. They can approach the Council directly so that a qualified member of its staff produces a report for a fee, or they can employ a specialist company to do the work for a fee or they can go to the Council's offices themselves and find out the information that they require for a fee. The complainant's company is a specialist company.
7. The Council introduced a charging regime from 9 April 2009 and information is available at its premises if the individual is prepared to pay a set fee. The process involves completing a personal search first that carries a statutory fee of £11. The requester then can request additional information and the fee that is charged is contained within a schedule of fees and is administered by the Council's Land Charges team.
8. In relation to the elements that the Commissioner is considering the information is held in a case management system (called M3) that is with the public authority's building control team. Once the requester has paid the Land Charges Team they are issued a receipt. They then take this receipt and are allowed to access M3 to retrieve the data. The Commissioner believes that the M3 process is akin to an inspection process, albeit on a terminal at the Council's Offices.

The Request

9. The complainant and public authority do not have a record of the original request for information, however the request was made orally on 4 and 6 April 2009 and to inspect information corresponding to the CON29R form for ten properties and in particular elements 1(f), (g) and (h) of a specific application on those properties. The EIR does not have any requirement for the request to have been made in writing and therefore oral requests are valid. This is confirmed in paragraphs 2, 8, 15 and 27 of the Regulation 16 Code of Practice and in the second paragraph of the Commissioner's external guidance entitled 'Making a request for information – a guidance for applicants.' This guidance can be found at the following link:

http://www.ico.gov.uk/upload/documents/library/environmental_info_reg/practical_application/fep115_eir_guide_for_applicants_v2_for_pub.pdf

10. The Commissioner will only consider cases where there is evidence of a request against specific properties. He can not issue legally binding notices on general principles. These three enquiries from the CON29R form are worded as follows:

'Which of the following relating to the property have been granted, issued or refused or (where applicable) are the subject of pending applications:

- (f) building regulation approval.*
- (g) A building regulation completion certificate.*
- (h) Any building regulations certificate or notice issued in respect of work carried out under a competent person self certified scheme?'*

11. On 14 April 2009 the complainant wrote to the public authority to complain about its policy of charging to access environmental information. He explained that in his view all the information was environmental and that it was not allowed to charge for inspection by virtue of the EIR. He explained that he wanted to inspect this information free of charge and/or be provided with the information as he required.

12. On 23 April 2009 the complainant made a specific complaint about being charged £9.48 to access answers 1 (f), (g) and (h) of the CON29R form. He was charged the following to access the information that answers to these enquiries (made to the Building Control business unit) in accordance with the charging regime mentioned in paragraph 7 above:

(f) £3.98.

(g) £3.98.

(h) £1.52.' [Making a total of £9.48 for (f) – (h) inclusive.]

He said that he believed that the Environmental Information Regulations stated that accessing this information cannot be charged for and therefore that the charges are illegal. He invited the Council to remove the charges. The Commissioner has taken as his scope only the elements cited in this letter.

13. On 7 May 2009 the complainant once again submitted a letter saying that the information that he has requested should be made available free of charge by virtue of Regulation 8(2) of the EIR. He reiterated that he wanted to be able to use the M3 computer free of charge. He explained that he would continue to make these payments under protest and will take action in the future to ensure that they are repaid.

14. On 21 May 2009 the Council provided its detailed response about this issue. It said that it agreed that the majority of the information that was being sought was Environmental Information and is subject to the EIR.
15. It commented that it accepted that Regulation 8(2) meant that the Council was not able to charge an applicant to access public registers or lists of environmental information held by it. It said that this was reflected in the schedule of fees which the Council made publicly available. However, it informed the complainant that it disagreed that the EIR prevented it from charging applicants any kind of fee. It said that its position was that:
 - It can charge for making environmental information available, provided the charges are reasonable;
 - When levied, the Council charges the actual cost incurred by the Council in producing the information;
 - The Council can charge for photocopying information;
 - The Council can charge a market based charge where information is provided on a commercial basis and the charge is necessary to ensure the information continues to be collected and published; and
 - The Council can charge fees based on another statutory provision provided the fee is reasonable. In this case the Council can apply the charging provisions of the Local Authorities (England) (Charges for Property Searches) Regulations 2008. The Council can calculate its fees structure for access to property records according to the sections of that Act. The Council also provides free access to some information, as directed by that Act or in situations where the Council has decided that would be a reasonable response, e.g. providing information about Radon affected areas for free.
16. It also informed the complainant that the Council when creating its fees structure did not consider:
 - Fees and charges set by other Councils.
 - Officer time and effect on staff workload [unless allowed by the Local Authorities (England) (Charges for Property Searches) Regulations 2008].
 - The legal significance of the documents in question.
17. Finally it informed the complainant that this was its final response in relation to this issue and informed him that the next stage was for him to go to the Commissioner if he was dissatisfied.
18. On 19 June 2009 the complainant expressed his dissatisfaction about the response from the Council and informed it that he expected this information to be provided for free. On 22 June 2009 the Council reiterated that the last response

was its final response on this issue and provided the Commissioner's contact information again.

The Investigation

Scope of the case

19. On 24 June 2009 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 following point:
 - That access to building control information is environmental information and therefore cannot be charged for.
20. He did not specifically make reference to the right to inspection in his complaint form, however the correspondence dated 14 April 2009, 23 April 2009 and 7 May 2009 makes it clear that the difficulty was being charged to access the information and he wants to be able to inspect it without charge. In this investigation, the Commissioner has therefore focussed only on whether the public authority was correct to charge for inspection of the information.
21. He will firstly determine if the information requested is environmental information and therefore falling within the scope of the EIR. If it is, he will then decide whether that information should be made available for inspection free of charge.

Chronology

22. On 25 June 2009 the Commissioner contacted the complainant by telephone and asked for him to provide additional documents so that the Commissioner can understand the nature of what was requested from the Council. The complainant explained to the Commissioner what the numbers of the CON29R form meant and his view that it was environmental information. The Commissioner will consider this issue in full detail in the 'Analysis' section of this Notice.
23. On 26 June 2009 the Commissioner contacted the public authority by telephone and asked to be provided with a copy of the relevant charging scheme alongside a copy of all the correspondence that was exchanged with the complainant on this issue. It did this the same day.
24. Also on 26 June 2009 the Commissioner contacted the complainant by telephone. He asked the complainant to indicate to him how his company accessed information and exactly what it was that had been requested. The complainant provided the Commissioner with this information the same day.
25. On 16 July 2009 the Commissioner issued publicly available guidance about charging for property search information and access under the EIR and Freedom of Information Act. This can be found at the following link:

http://www.ico.gov.uk/upload/documents/library/environmental_info_reg/practical_application/fep116_property_searches_and_eir_v1.pdf

26. On 17 July 2009 the Commissioner wrote to the Council and invited it to reconsider its position in light of the guidance. He also asked for an explanation about how a complainant can access the information that he was considering. On the same day the public authority informed the Commissioner that it was actively considering what approach it would take in light of the guidance and would inform the Commissioner as soon as it had reconsidered its position.
27. On 31 July 2009 the public authority wrote to the complainant and said that its position had not changed. It copied this letter to the Commissioner. It also said that it would make detailed submissions at a later date after receiving relevant advice. The Commissioner replied on the same day asking for the explanation that he asked for on 17 July 2009 and for any additional arguments to be provided by a set date.
28. On 4 August 2009 the public authority telephoned the Commissioner. It provided the Commissioner with the explanation he needed and consolidated what was said in an email. It said that it needed more time to develop its arguments than the Commissioner originally offered. The Commissioner agreed to extend the deadline to the end of the month. On 6 August 2009 the Commissioner wrote to the public authority to ask for it to take into account of his Decision Notice FER0240911 when constructing its arguments.
29. On 4 September 2009 the public authority provided its final detailed arguments to the Commissioner. It voiced the following arguments, which will be considered in the analysis section of this notice:
 - The Commissioner's earlier guidance dated 26 January 2009 allows reasonable charging when information is provided on a commercial basis and the charge is necessary to ensure such information continues to be collected and published. The new guidance dated 16 July 2009 contradicts this position and the Council continues to rely on the earlier guidance.
 - While the Council agrees that the majority of the information requested is Environmental, it does not believe that all of it is. Therefore the obligation to allow inspection cannot be imposed to any of the information since some of it is not environmental information.
 - The Commissioner has not considered that in this case the information that has been requested contains personal data that should not be released. It is therefore not possible to allow unfettered access as the information must be redacted prior to inspection for the Council to comply with its obligations under the Data Protection Act.
 - That the Commissioner should consider every case on a case by case basis and that the other Decision Notices should not influence this case.

- The Commissioner should consider the issue of reuse for Commercial purposes. It said that it believed it was unacceptable for the information to be reused after receiving the right to inspect it under the EIR. It stated that the 'Re-Use of Public Sector Information Regulations 2005' should apply and as these mention the Environmental Information Regulations specifically; it would be necessary for the complainant to obtain a license from it.
- It stated that it suggested a two stage process. It said it would consider access could allowed via an inspection under the EIR but believed that the Council could advise at this time that it does not consent to reuse. This would mean that an application for reuse would need to be made under the Re-Use of Public Sector Information Regulations 2005 and the Council could then charge a reasonable fee. Any complaint about the charging could then be made to the Office of Public Sector Information.

Finding of fact

30. The Local Authorities (England) (Charges for Property Searches) Regulations 2008 were enacted to allow local authorities to charge for property related functions.

Analysis

Substantive Procedural Matters

31. The Commissioner has first considered whether the request made by the complainant is a request to inspect environmental information as defined by the EIR.
32. The Commissioner considers that the information requested for inspection, to obtain the relevant answers to the questions 1(f), (g) and (h) above falls within the Regulation 2(1)(c): 'measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures designed to protect those elements. In order to answer the three questions it is necessary to inspect environmental information. The Council have stated this information is held in their M3 case management system. The Commissioner considers that this system will hold predominantly environmental information. The information which is inspected is clearly a measure or plan on an activity (a building plan) affecting or likely to affect one or some of the elements referred to in Regulation 2(1)(a). Alternatively it is information on the operation of the building control legislation that is likely to affect the elements. The elements in Regulation 2(1)(a) that the Commissioner believes are likely to be affected are the land, soil and landscape. In some potential EIR cases the Commissioner has found it relevant to look at specific building measures in question but in this case, given the general nature of the request he does not consider it relevant to do so, as a class of information building control information is predominantly environmental.

33. The Commissioner has considered the public authority's argument that there is possibly information contained in answers to the questions 1(f), (g) and (h) that is not environmental and does not agree that this is so.
34. The Commissioner has also considered the public authority's argument that the information contains third party personal information that would need to be withheld by virtue of Regulation 13 and this would make unfettered access impossible. The Commissioner does not accept this argument. This is because any personal data contained in the requested information would not be exempt under Regulation 13. The Commissioner considers that permitting members of the public inspection of any such personal data would be in accordance with the data protection principles contained in schedule 1 to the Data Protection Act 1998. With respect to the first of these principles, the Commissioner considers that inspection of the data would be fair and lawful as, given the context, the relevant data subjects would have a reasonable expectation that information submitted as part of a planning process would be available for inspection. Indeed, legislation allows for inspection by members of the public of information of the type requested e.g. The Town and Country Planning (General Development Procedure) Order 1995 (SI 419 1995) provides for the provision of a public register of planning applications. The Commissioner is also required to find a schedule 2 condition is satisfied when finding that processing complies with the first data protection principle. In this case the Commissioner believes that condition 6(1) is satisfied. He believes that there is a legitimate interest in the public having access to planning information. This information is required in conveyancing and to understand the nature of the property that is being purchased. The Commissioner believes that the processing in this case is necessary and does not cause an unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the data subject. The Commissioner has also not been provided with any convincing arguments as to why it would be necessary to disclose any significant personal data, particularly phone numbers or email addresses, as part of the inspection process. He therefore finds that Regulation 13 cannot be correctly applied in this instance.

Regulation 5, Regulation 6 and Regulation 8

35. The complainant has made a request to inspect certain information from which he can obtain the answers to questions on the CON29R form.
36. Regulation 5(1) provides that environmental information shall be made available upon request. In broad terms Regulation 6(1) provides that where an applicant requests the information in a particular form or format the public authority is, subject to certain qualifications, obliged to comply with that preference. Regulation 8 provides that a public authority can make a reasonable charge for complying with a request but then specifies two particular situations where the information has to be made available free of charge.
37. The first issue that has to be addressed is whether regulation 6 does provide a right to inspect information. It is the Commissioner's view that although regulation 6(1) may appear to be primarily concerned with the particular physical form or

format in which the information is provided, it should be interpreted broadly and does provide a right to request the inspection of environmental information. Analysis of the Directive and the Implementation Guide to the Aarhus Convention (the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice on Environmental matters from which the Directive derives) lend support to this:

- Art 3(5) of the Directive refers to arrangement for insuring that the right of accessing information “can be exercised effectively, such as ...establishment & maintenance” of facilities for the examination of the information required”
- Recital 15 of the Directive refers to arrangements to “guarantee that the information is effectively and easily accessible.”
- The Implementation Guide specifically states that a public authority “must allow” an applicant to examine the original documentation subject to the two caveats which are replicated in 69(1) (a) and (b). As already stated regulation 6(1)(b) provides that a public authority need not comply with an applicant’s request for the information to be made available in a particular form or format where “the information is already publicly available and easily accessible to the applicant in another form or format”

38. The Commissioner believes it is clear from the interpretive aids quoted above that the Directive anticipated the EIR would provide a right to inspect Environmental Information and this supports his broad interpretations of Regulation 6.
39. Having established that Regulation 6 does provide a right to inspect environmental information it is then necessary to consider whether either of the qualifications to this right are relevant to this situation. Regulation 6(1)(a) provides that a public authority is not required to comply with an applicant’s stated preference as to form or format where it is reasonable to make the information available in another form or format. The public authority has not provided any grounds for claiming it is reasonable to make the information available in the form or format it intends to. However for the avoidance of doubt the Commissioner would not accept that it is reasonable for a public authority to avoid allowing the inspection of a record merely to justify charging for making information available. It is also the Commissioner’s view that refusing to make information available for inspection would be counter to the general policy principles of EIR, i.e. making environmental information as easily accessible as possible. Therefore there needs to be good grounds for making the information available through alternative means.
40. In the Commissioner’s view, an authority cannot use Regulation 6(1)(b) to refuse a request to inspect information because the information is available by following the standard land search procedures, for Regulation 6(1)(b) to apply the information must be both publicly available and easily accessible to the applicant. In the Commissioner’s view this criteria is not satisfied by the requirement for an applicant to submit a CON29R form and pay the requisite fee.

41. The Commissioner therefore finds that the Council would be incorrect in relying on 6(1) (b) as a basis for refusing the complainant's request to inspect the requested information.
42. The Commissioner further notes that Regulation 8(1) provides that, subject to paragraph (2) where a public authority makes environmental information available in accordance with Regulation 5(1) the authority may charge the applicant for making the information available. Regulation 8(2) states that a public authority shall not make a charge for allowing an applicant (a) to access any public registers or lists of environmental information held by the public authority; or (b) to examine the information requested at a place which the public authority makes available for that examination. The right to inspect information should therefore be free.
43. It follows that he believes that the public authority's understanding of Regulation 8(2)(b) as expressed in paragraph 15 of this Notice was not correct. The Commissioner believes that the public authority's analysis of Regulation 8(2)(b) is premised on the basis that it is related to 8(2)(a) only. The Commissioner's view is that instead Regulation 8(2)(b) applies to all information requested under Regulation 5. Such an approach is fully consistent with Article 5(1) of European Directive 2003/4/Econ Access to Environmental Information.
44. The Commissioner agrees with the public authority that every case he considers must be done on a case by case basis. However the principles that he applies can be transferred between cases and in this case there is nothing in the facts of this case that has led to him changing his position.
45. The Commissioner has considered his guidance dated 26 January 2009 that was used to support the public authority's position. The Commissioner notes that the guidance states on page 2 that nothing can be charged to inspect the information in situ and this Decision Notice simply reaffirms that this is so. Additionally the Commissioner does not consider his guidance of January 2009 contradicts his property search guidance of July 2009. The Commissioner does not agree that the property search information fits with the definition of "information provided on a commercial basis" and that the charge "is necessary to ensure the information is collected and published". This type of scenarios refers to trading funds such as the Ordinance Survey or bodies such as the Met Office, where the information generation and publication is clearly a commercial activity.
46. The scope of the case and his jurisdiction dictates that the Commissioner is only able to consider matters of access to information; in this case whether the information can be inspected without charge. The public authority states that there may be restrictions imposed on further reuse and that this issue is regulated by the Office of Public Sector Information (OPSI). The Commissioner cannot comment on re-use charging and would recommend the public authority contacts OPSI for guidance on this issue.

The Decision

47. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the EIR. The Council breached the requirements of Regulation 5(1) and Regulation 6(1) as it failed to make the requested information available for inspection on request, without charging a fee.

Steps Required

48. The Commissioner notes that the complainant paid the charge asked for and was allowed to inspect the information subsequently. He does not therefore need to order the same information to be made available again.
49. The Commissioner does not consider that he has the power to order a refund but recommend that the Council does so. It is open to the complainant to take further steps to recover the fees charged.

Right of Appeal

50. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 11th day of November 2009

Signed

**Steve Wood
Assistant Commissioner**

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

Legal Annex

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on

–

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

“historical record” has the same meaning as in section 62(1) of the Act;

“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

“responsible authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“Scottish public authority” means –

- (a) a body referred to in section 80(2) of the Act; and
- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

“transferred public record” has the same meaning as in section 15(4) of the Act; and
“working day” has the same meaning as in section 10(6) of the Act.

Regulation 2(2) Subject to paragraph (3), “public authority” means –

- (a) government departments;
- (b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding –
 - (i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or
 - (ii) any person designated by Order under section 5 of the Act;
- (c) any other body or other person, that carries out functions of public administration; or
- (d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment.

Regulation 2(3) Except as provided by regulation 12(10) a Scottish public authority is not a “public authority” for the purpose of these Regulations.

Regulation 2(4) The following expressions have the same meaning in these Regulations as they have in the Data Protection Act 1998(b), namely –

- (a) “data” except that for the purposes of regulation 12(3) and regulation 13 a public authority referred to in the definition of data in paragraph (e) of section 1(1) of that Act means a public authority within the meaning of these Regulations;
- (b) “the data protection principles”;
- (c) “data subject”; and

(d) "personal data".

Regulation 2(5) Except as provided by this regulation, expressions in these Regulations which appear in the Directive have the same meaning in these Regulations as they have in the Directive.

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 6 - Form and format of information

Regulation 6(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

- (a) it is reasonable for it to make the information available in another form or format; or
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.

Regulation 6(2) If the information is not made available in the form or format requested, the public authority shall –

- (a) explain the reason for its decision as soon as possible and not later than 20 working days after the date of receipt of the request for the information;
- (b) provide the explanation in writing if the applicant requests; and
- (c) inform the applicant of the provisions of regulation 11 and the enforcement and appeal provisions of the Act applied by regulation 18.

Regulation 8 - Charging

Regulation 8(1) Subject to paragraphs (2) to (8), where the public authority makes environmental information available in accordance with regulation 5(1) the authority may charge the applicant for making the information available.

Regulation 8(2) A public authority shall not make any charge for allowing an applicant –

- (a) to access any public registers or lists of environmental information held by the public authority; or
- (b) to examine the information requested at the place which the public authority makes available for the examination.

Regulation 8(3) A charge under paragraph (1) shall not exceed an amount on which the public authority is satisfied is a reasonable amount.

Regulation 8(4) A public authority has notified an applicant under paragraph (4) that advance payment is required, the public authority is not required –

- (a) to make available the information requested; or
- (b) to comply with regulations 6 to 14,

unless the charge is paid no later than 60 working days after the date on which it gave the notification.

Regulation 8(6) The period beginning with the day on which the notification of a requirement for an advance payment is made and ending on the day on which that payment is received by the public authority is to be disregarded for the purpose of determining the period of 20 working days referred to in the provisions in paragraph (7), including any extension to those periods under regulation 7(1).

Regulation 8(7) The provisions referred to in paragraph (6) are –

- (a) regulation 5(2);
- (b) regulation 6(2)(a); and
- (c) regulation 14(2).

Regulation 8(8) A public authority shall publish and make available to applicants –

- (a) a schedule of its charges; and
- (b) information on the circumstances in which a charge may be made or waived.

Regulation 13 - Personal data

Regulation 13(1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.

Regulation 13(2) The first condition is –

- (a) in a case where the information falls within any paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the

- disclosure of the information to a member of the public otherwise than under these Regulations would contravene –
- (i) any of the data protection principles; or
 - (ii) section 10 of the Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998(a) (which relates to manual data held by public authorities) were disregarded.

Regulation 13(3) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of the Act and, in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.

Regulation 13(4) In determining whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

Regulation 13(5) For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that –

- (a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded; or
- (b) by virtue of any provision of Part IV of the Data Protection Act 1998, the information is exempt from section 7(1)(a) of the Act.