

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

Decision Notice

Date: 22 November 2010

Public Authority: Department for Communities and Local Government
Address: Eland House
Bressenden Place
London
SW1E 5DU

Executive Agency: Planning Inspectorate
Address: Temple Quay House
2 The Square
Bristol
BS1 6PN

Summary

The complainant asked to see legal advice provided to the Planning Inspectorate (PINS) relating to a planning matter. PINS refused to provide it relying on Regulation 12(5)(b) of the Environmental Information Regulations (EIR). The Commissioner decided that the Regulation 12(5)(b) exception is engaged and the public interest in maintaining the exception outweighs the public interest in the disclosure of the withheld information. However he has also found that the delay in PINS' response beyond the limit of 20 working days breached Regulation 14(2).

The Commissioner's Role

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 (SI 2004 No.3391) (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

3. An applicant submitted a planning application to the local planning authority on 24 April 2009 which was refused on 24 June 2009. In an appeal made on 9 July 2009, the appellant expressed a preference for the appeal to proceed via the use of written representations. The planning application was for the temporary erection of an anemometer mast (the mast) approximately 80 metres tall to stand for a period of three years from the date of erection on land at Fring, Norfolk. The mast was to be located some five kilometres from the Norfolk Coast Area of Outstanding Natural Beauty. There was significant local concern regarding the application itself and that there might, in time, be a further application for a much larger and permanent wind turbine farm development.
4. Planning applications that are refused by the local planning authority can be the subject of a planning appeal determined by an inspector appointed by the Secretary of State for Communities and Local Government. On appeal, the Planning Inspectorate (PINS) decide the planning appeal procedure which can be by way of an inquiry, a hearing or written representations. PINS publishes a set of indicative criteria ("Criteria for Determining the Procedure for Planning Appeals" - the indicative criteria) to guide interested parties about the factors it is likely to take into account in deciding the procedure for any given planning appeal.
5. In this matter, the local planning authority, Kings Lynn & West Norfolk Borough Council (the Council), told PINS that it felt that the appeal should be heard either via a public inquiry or at the very least through an informal hearing in order to address the issues in a public forum. PINS told Henry Bellingham MP, who had made representations on behalf of the complainant, on 6 August 2009 that its criteria indicated that the Council was in the best position to indicate if a hearing or inquiry might be required. The procedure to be adopted is a decision for PINS. In the event, PINS decided, contrary to representations from the Council and members of the public, that the appeal could appropriately proceed by way of written representations. PINS said that as the issues raised went

mainly to the impact of the development on the visual amenity with no indication that cross examination would be necessary, the issues could be dealt with by written representations.

6. The complainant, as well as seeking to make oral representations to the planning inspector and cross examine other witnesses on local issues, also advanced arguments that certain aspects of European law might be relevant to this matter and should also be the subject of oral representations and cross examination.
7. On 14 August 2009 PINS sought legal advice about some of the representations being made to it. On 18 August 2009 PINS received legal advice (the legal advice).
8. On 17 August 2009 the Council told PINS that the representations from members of the public highlighted a broad range of legitimate concerns that it believed should be properly tested through a public inquiry process. For these reasons it formally requested that PINS reconsider its stance on this issue and resolve to determine the appeal through either a hearing or public inquiry. On 24 August 2009 PINS told the complainant that the written representations procedure would be used.
9. On 1 December 2009 PINS told a named firm of solicitors acting for the complainant and other interested persons (the solicitors) that it had taken legal advice which supported the use of written representations.

The Request

10. The Commissioner noted that PINS is not itself a public authority under the Act, but an executive agency of the Department of Communities and Local Government (DCLG) which is responsible for PINS. Therefore, the public authority in this case is DCLG not PINS. However, for the sake of clarity, this decision notice refers to PINS as if it were the public authority.
11. On 10 December 2009 the complainant asked to see the legal advice PINS had referred to in its letter to the solicitors of 1 December 2009.
12. On 14 January 2010 the complainant contacted the Commissioner to complain that PINS had not responded within 20 working days as it was required to do.
13. On 18 January 2010 PINS responded refusing to provide the information. In refusing to disclose the legal advice PINS relied on the exception contained in EIR Regulation 12(5)(b) and the balance of the public

interest. PINS said that this was a matter in which the legal advice it had received might be relied upon in any subsequent litigation.

14. On 19 January 2010 the complainant wrote to PINS saying that it had not responded within 20 working days and so was in breach of the EIR. He asked for an internal review of PINS' decision not to disclose its legal advice. PINS acknowledged the request on 26 January giving a target date to reply of 17 February.
15. On 1 February 2010, following a complaint from the complainant, the Commissioner drew PINS' attention to his published guidance on the time for compliance for requests for information made under the EIRs.
16. On 15 February 2010 PINS issued the appeal decision by the planning inspector; he allowed the appeal and granted planning permission for the temporary erection of the mast.
17. On 22 February 2010 the complainant told PINS by email that its 17 February target date had been missed; PINS acknowledged this email later the same day but gave no further response.
18. On 11 March 2010 (and within the 40 working days permitted under the EIR for responding to internal review requests) PINS wrote to the complainant maintaining its decision not to disclose its legal advice and relying on Regulation 12(5)(b). PINS explained its reasoning in some detail and referred to relevant case law relating to that exception and to the corresponding exemption at section 42 of the Act. PINS apologised for its breach of Regulation 14(2) in failing to respond within 20 working days of the request. PINS said that at the date of the request, the planning appeal had not been determined and added that litigation might still be considered in this matter. PINS did not refer to the views of the Council regarding the appeal procedure.

The Investigation

Scope of the case

19. On 10 May 2010 the complainant contacted the Commissioner and asked him to consider PINS' delay in responding and its refusal to disclose the legal advice it had received.
20. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of the EIR.

Chronology

21. In his correspondence to the Commissioner of 10 May 2010 the complainant informed him that it was in the public interest for PINS to disclose its legal advice. He also complained that delays by PINS had disadvantaged him in considering whether or not to appeal the planning inspector's decision within the statutory six week time limit for seeking relief by way of judicial review.
22. On 21 May 2010 the Commissioner told PINS that he had received the complaint.
23. On 24 May 2010 the complainant made further representations to the Commissioner.
24. On 3 June 2010 the Commissioner began his investigation. On 14 June PINS provided him with full representations. PINS provided the withheld information in confidence to enable the Commissioner to consider its content and confirmed that the information withheld constituted confidential legal advice. PINS said that the advice remained pertinent to similar issues in future and, in its view, the possibility of legal action remained given the nature and tone of the communications.
25. On 18 June 2010 the complainant provided the Commissioner with further additional representations as to why he believed that disclosure was in the public interest. He reminded the Commissioner that the Council had told PINS that the mode of appeal should be changed but its view had been ignored thereby denying local residents a fair hearing. The complainant said that his decision not to seek judicial review had been difficult as he believed that he had a strong case; however there had been a huge financial deterrent and he could not afford to run the risk of losing. He said that he saw no current prospect of litigation and added that 1,500 residents of the villages of Docking, Fring and Bircham were affected by the development. He submitted further evidence on 21 June.
26. On 22 June 2010 the Commissioner asked PINS to clarify the context in which legal advice had been sought, the matters considered by the person giving the advice and the relationship between the advice and the published PINS guidance.
27. On 23 June 2010 PINS said in evidence to the Commissioner that its decision to adopt the written representations procedure had been based on the relevant planning issues raised by the parties and the indicative criteria. It was not the case that PINS did not follow its legal advice, nor that it had not considered the Council's concerns when deciding on written representations.

28. On 29 June 2010, answering queries from the Commissioner, PINS made further detailed representations saying that the note to the indicative criteria set out circumstances in which written representations **may not** [PINS emphasis] be suitable, not will never be suitable; PINS said that it had not agreed with the reasons the Council gave for requesting a hearing and had considered written representations to be an appropriate disposal. PINS said that its legal advice had been sought in the context of the potential for European law to impact on the matter. It stated that it had acted entirely properly in reaching a decision on procedure and its decision had been reached in accordance with the indicative criteria. It explained that issues regarding the Council's handling of the planning application and the complainant's belief that the appeal needed to be considered on the basis of a wind turbine farm rather than the temporary mast were not relevant factors in determining the appeal. PINS said that its decision on choice of procedure had been open to judicial review as had the inspector's decision; it did not accept as justified the complaint regarding its determination of the appeal procedure.
29. On 14 July 2010 the Commissioner invited the complainant to accept informal resolution of his complaint based on the Commissioner's preliminary view that the EIR exception at Regulation 12(5)(b) was engaged and that the public interest in maintaining the exception outweighed the public interest in disclosing the information. This the complainant declined to do.

Findings of fact

30. PINS confirmed that the complainant's representations and their relevance to the substantive planning appeal matter had been considered by the planning inspector when he had determined the planning appeal.
31. By way of a concession to local concerns, PINS extended by three weeks, to 18 September 2009, its original deadline for written representations to be submitted to it.

Analysis

Substantive Procedural Matters

32. PINS decided that the information requested met the definition of environmental information as set out in Regulation 2(1)(c) of the EIR being information on measures and activities affecting the state of the environment. The Commissioner decided from his own consideration of

the facts of this matter that PINS' decision had been correct in this respect.

33. EIR Regulation 5(2) requires that environmental information should be made available on request as soon as possible and, subject to the Regulation 5(1), not later than 20 working days after the date of receipt of the request. In the event of a refusal Regulation 14(2) requires that the refusal should be made no later than 20 working days after the date of receipt of the request. PINS took from 10 December 2009 until 18 January 2010 to refuse the request which exceeded, by three working days, the time limit of 20 working days. It follows that PINS breached Regulation 14(2).

Exceptions

34. EIR Regulation 12(5)(b) allows a public authority to withhold information the disclosure of which would adversely affect the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature.

Regulation 12(5)(b)

35. The complainant's request was for legal advice; PINS refused to disclose it, relying on Regulation 12(5)(b) and saying that it considered that the information requested attracted legal professional privilege (LPP), specifically legal advice privilege. Advice privilege applies where no litigation is in progress. In these cases, the communications must be confidential, made between a client and professional legal adviser acting in their professional capacity and made for the sole or dominant purpose of obtaining legal advice. Communications made between adviser and client in a relevant legal context will attract privilege. For the exception to apply, there must be an adverse affect in its disclosure and the public interest in withholding the information must exceed that in disclosure.
36. There is no specific exception within the Regulations referring to information that might be subject to LPP, however, the then Information Tribunal has previously decided that Regulation 12(5)(b) can encompass such information. In *Kirkaldie v Information Commissioner and Thanet District Council (EA/2006/001)*, the Tribunal considered that the regulation:
"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 rights of individuals or organisations to a fair trial."
It concluded that in order to do this, the exception covers LPP.

37. A public authority that relies on Regulation 12(5)(b) to withhold information is required to demonstrate that disclosure of the information 'would adversely affect' the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an enquiry of a criminal or disciplinary nature. The Tribunal in the case of *Archer v Information Commissioner and Salisbury District Council EA/2006/0037* held that it must be satisfied that disclosure "would" have an adverse affect not that it "could" or "might". The definition of " would" in the context of the phrase "would prejudice" was considered in the case of *Hogan and Oxford City Council v Information Commissioner EA/2005/0026 and EA/2005/0030* where the Tribunal held that "would" must be demonstrated as more probable than not. The Tribunal has agreed with the Commissioner that the *Hogan* definition of "would" is transferable to the EIR. The Commissioner has therefore considered whether or not PINS in this instance has demonstrated that sufficient probability of adverse effect would arise from disclosure of the information.
38. In this matter, if PINS were to be required to disclose its legal advice then that would adversely affect its ability to protect its position in any relevant proceedings. At the date of the request, on 10 December 2009, the planning appeal had not been determined and would not be determined for some weeks. After determination it would have been open to interested parties to seek relief from the High Court by way of judicial review. It would have been unfair and have put PINS at a disadvantage in preparing for any proceedings there might have been to have to disclose in advance confidential advice that was legally professionally privileged. The Commissioner has seen, even now that the likelihood of legal proceedings relating to the Fring mast appeal has diminished with the passage of time, that the withheld information might still be relevant to future proceedings for any subsequent planning application relating to the Fring area or to possible applications for anemometer masts elsewhere.
39. PINS considered waiving its' legal advice privilege but decided that it would not be appropriate.
40. The Commissioner therefore found that the Regulation 12(5)(b) exception is engaged and that the threshold of adverse affect has been met.
41. This means that the matter then turns on the balance of the public interest as set out in EIR Regulation 12(1)(b). Regulation 12(2) sets out a presumption in favour of disclosure but it will still be proper to refuse to disclose information if an exception applies and, in all the circumstances

of the case, the public interest in maintaining the exception outweighs that in disclosure.

Public interest arguments in favour of disclosing the requested information

42. The Commissioner has reviewed the content of the information being withheld and has received extensive representations from both the complainant and PINS which he has taken into account in reaching his decision. He considered the balance of the public interest as matters stood at the date of the information request, 10 December 2009.
43. There is a public interest in public authorities being accountable for the quality of their decision making and ensuring that decisions have been made on the basis of good quality legal advice is part of that accountability.
44. Transparency in the decision making process and access to the information upon which decisions have been made can enhance accountability. The complainant raised concerns that, in not disclosing the information requested, PINS' decision taking process had not been fully transparent and yet 'openness' was, he said, a PINS 'watchword'; he considered that PINS should have been concerned to be seen to be utterly impartial. However the Commissioner has seen that PINS' approach had not generally lacked transparency as PINS' letters, such as that of 6 August 2009 to Henry Bellingham MP, have set out its position in detail.
45. Other factors that favour disclosure of advice include furthering public debate, while additional weight may be added if, in a particular case, there is: a large amount of money involved; a large number of people affected; and/ or a lack of transparency in the public authority's actions.
46. The only case to date where the Tribunal has found that the public interest factors in maintaining LPP were outweighed by those in favour of disclosure is the case of the *Mersey Tunnel Users Association and the Information Commissioner and Merseytravel (2008 EA/2007/0052)*. This case concerned the operator's (now Merseytravel) running of the Mersey Tunnel at a loss in the 1970s and 1980s with the deficit being made up from a levy on the five district councils of Merseyside. In the Merseytravel case, the total repayment was in the region of £70 million. The decision of Merseytravel to repay the councils rather than reducing the toll fees impacted upon all the users of the Mersey Tunnel (approximately 80,000 people per weekday) and to a lesser extent all the council tax paying residents of the five districts of Merseyside (approximately 1.5 million people). In this instance the Commissioner

has seen that the sums of money and numbers of people involved are, compared to *Merseytravel*, relatively small.

47. The Commissioner has taken into account evidence from the complainant that there were some 1,500 relevant local residents and evidence from him and the Council of a high level of public concern in nearby communities. The Commissioner understands that many people believed that their environment would be adversely affected by the proposed mast; he understands too the wider public interest in exploring alternative sources of energy. The Commissioner sees these as reasons for ensuring that all relevant information is made available within the boundaries set by the EIR exceptions.
48. The complainant wanted to test by cross-examination the legal arguments in PINS' case, including the applicability of European law as it related to planning matters which PINS had considered but rejected. PINS' selection of the written representations procedure denied him this opportunity although he was still able to submit written representations on legal and any other matters.
49. When examining the content of the withheld information, the Commissioner saw, in one aspect of the content, a further factor which he decided favoured disclosure and which he took into account when determining the balance of the public interest. His reasoning necessarily requires reference to the content of the withheld information and has therefore been included in a confidential annex, annex 2, which is to be sent to PINS only.

Public interest arguments in favour of maintaining the exemption

50. Previous decisions by the courts and the Commissioner indicate clearly the very considerable weight that is collectively attached to maintaining LPP and ensuring the integrity of the confidential lawyer client relationship.
51. The information requested was confidential communications between client and lawyer for the dominant purpose of providing legal advice. At the time of the request, litigation was not in progress but, given the nature and tone of communications, the possibility of litigation was not fanciful but a realistic prospect. The complainant had argued that PINS was wrong in planning law, and had contemplated litigation if PINS did not change its mind over the method of appeal. PINS was taking its own advice against the prospect of a possible judicial review of a planning decision. Disclosing the information would have revealed aspects of PINS' case and put it at a disadvantage at law relative to an opponent not subject to the EIR who would not have had to reveal their position. In

addition, lack of access to PINS' legal advice was not a barrier to the complainant's own access to the courts.

52. In relation to the appeal regarding the mast, the proposal being considered by the inspector was for the temporary erection, for a period of three years, of a single mast rather than a major permanent change in the amenities of the nearby communities. Any inconvenience to residents would be temporary unless a further planning procedure, an independent process, should point to further change.
53. PINS said that disclosure would adversely affect its' ability to obtain such advice in the future and would in turn adversely affect its ability to manage assets effectively and make future decisions. Disclosure of legal advice would therefore lead to prejudice in PINS' ability to seek advice on its legal rights and obligations.

Balance of the public interest arguments

54. The Commissioner's view, as regards the application of the public interest test, is that there will always be a strong element of public interest inbuilt into the LPP exception. However it is not absolute and where there are equal or weightier countervailing factors, then the public interest in maintaining the exception does not outweigh the public interest in disclosing the information. The public interest in allowing public authorities to discuss their legal rights and obligations with their legal advisors in confidence is very strong. This is so strong that there have been very few instances where the Commissioner has found that the factors in favour of maintaining LPP were not outweighed by those in favour of disclosure. One such case was in respect of an enforcement notice request relating to requests for the Attorney General's advice on the legality of the war in Iraq. The only case to date where the then Tribunal has found that the public interest factors in favour of maintaining LPP were outweighed by those in favour of disclosure is *Merseytravel* where the determining factors were the very large numbers of people who were affected by the matter and the large sums of public money involved. Another factor in *Merseytravel* was what the then Tribunal saw as a lack of transparency. In the current matter the numbers of people and the sums of money involved are small. Moreover PINS have been transparent about the reasons for their decision and have only withheld LPP information.
55. The Commissioner has seen that the views of the then Information Tribunals (now the First Tier Tribunal (Information Rights)) have been strongly to maintain LPP, as for example in the case of *Bellamy (Bellamy v Information Commissioner and Secretary of State for Trade and Industry, EA/2005/0023)* where the Tribunal said:

"...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 interest....it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case..."

56. The concept of LPP and the rationale behind the concept is that ensuring frankness between lawyer and client goes to serve the wider administration of justice. Additional weight may be added to the public interest in maintaining the exception and withholding the advice if the advice is: recent, live and is still being relied upon. At the time of the request, the advice was four months old and therefore recent; it was also still being relied upon by PINS and so was still live. These factors points strongly to maintaining the exception.
57. The complainant wanted to test PINS' case by cross-examination. In this he was representing a residents' group but also residents of the area and visitors to it generally, some of whom might also have wished to contribute to the decision making process. He was denied this opportunity by PINS' selection of the written representations procedure although he did still have the opportunity to submit written representations on legal and other matters. He accepted that he could have mounted a legal challenge by way of judicial review but chose not to do so. He said that the cost burden of going to law would bear more heavily on him and his supporters, essentially because the costs of taking action would be a personal burden on him and other individuals, whereas PINS had the full resources of a government department and its legal team available to it.
58. It would have been helpful to the complainant, and to members of the public generally on grounds of greater transparency, to have a full understanding for the legal basis of the case that PINS would mount before deciding if legal action was appropriate and without having to launch action and rely on disclosure as part of the litigation process, by which time costs would have been incurred by the complainant and court time taken. The Commissioner accepted that as a factor favouring disclosure, as outlined in the confidential annex 2.
59. The complainant said that his inability to know the substance of PINS' legal advice put him at a disadvantage in considering his options in respect of the appeal. However he was receiving expert legal advice of his own at the time of his request which mitigated any disadvantage he experienced as a result of not being able to access PINS' legal advice. Non-disclosure of PINS' legal advice did not form a barrier to the complainant considering his own options.

60. In conclusion, the Commissioner does believe that the additional disclosure of PINS' legal advice would have provided further transparency about its decision on the choice of appeal procedure. However, for the reasons set out above, the Commissioner found that in the circumstances of this case the factors favouring disclosure of the legal advice given to PINS do not outweigh the strong public interest that is built into the LPP exception in maintaining the confidentiality of the relationship between lawyer and client.

The Decision

61. The Commissioner decided that the delay in PINS' response beyond the limit of 20 working days breached Regulation 14(2).

62. However the Commissioner has also decided that the Regulation 12(5)(b) exception is engaged and that the balance of the public interest favours the maintenance of the exception.

Steps Required

63. The Commissioner requires no steps to be taken.

Other Matters

64. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter:

65. PINS did not complete its internal review until 11 March 2010, which was part way through the six weeks' statutory period for appealing the planning inspector's decision. The complainant decided not to appeal the inspector's decision but, as he did so for reasons of cost and not because of PINS' delays, it follows that no harm resulted directly from delays in PINS' handling of the complainant's request.

Right of Appeal

66. 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

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 sent.

Dated the 22nd day of November 2010

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex 1 - Legal Annex

2. - (1) In these Regulations - ...

"the Directive" means Council Directive 2003/4/EC[4] 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;

Duty to make available environmental information on request

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.

(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.

Representations and reconsideration

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

Regulations in relation to the request.

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

(3) The public authority shall on receipt of the representations and free of charge -

(a) consider them and any supporting evidence produced by the applicant; and

(b) decide if it has complied with the requirement.

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

Exceptions to the duty to disclose environmental information

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.

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

...

(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;

...

Refusal to disclose information

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.

(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.

...