

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

Decision Notice

Date: 2 March 2010

Public Authority: Department for Culture, Media and Sport
Address: 2 -4 Cockspur Street
London
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Summary

The complainant submitted a number of requests to the Department for Culture, Media and Sport (DCMS) which focused on correspondence which the DCMS may have exchanged with HRH The Prince of Wales and representatives of His Royal Highness. The DCMS initially refused to confirm or deny whether it held information falling within the scope of the requests on the basis of section 37(2) of the Act – communications with the Royal Household. During the course of the Commissioner's investigation the DCMS dropped its reliance on section 37(2) and confirmed to the complainant that it did hold information falling within the scope of his requests, albeit that it could not provide the information because to do so would exceed the appropriate cost limit at section 12(1) of the Act.

The Commissioner has concluded that some of the information which would fall within the scope of the complainant's requests is environmental information as defined by the EIR. However, the Commissioner is satisfied that the DCMS is entitled to refuse to provide this environmental information because the requests are manifestly unreasonable. With regard to the non-environmental information the Commissioner is satisfied that to provide this information would exceed the cost limit at section 12(1). However, the Commissioner has concluded that the DCMS failed to provide the complainant with sufficient advice and assistance to that he could submit a refined request that could be fulfilled within the cost limit. The Commissioner has ordered the DCMS to provide this advice.

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

The Request

3. The complainant submitted an email to the Department for Media, Culture and Sport (DCMS) on 22 February 2006. This email contained a number of requests which focused on correspondence which the DCMS may have exchanged with HRH The Prince of Wales and representatives of His Royal Highness. The full text of this email is included in an annex which is appended to this Notice.
4. The DCMS contacted the complainant on 22 March 2006 and explained that it believed that section 37(2) was applicable to his requests but it needed to extend the time period for considering the balance of the public interest.¹
5. On 6 April 2006 the DCMS issued a refusal notice in which it confirmed that having considered the public interest test, it believed that the balance of the public interest favoured refusing to confirm or deny whether information was held under section 37(2).
6. On the same day the complainant asked for an internal review to be conducted.
7. The DCMS issued an internal review on 18 January 2007. With regard to requests 1 to 4 the DCMS explained that it did not hold lists of approaches made by The Prince of Wales or his representatives and under the Act it was not obliged to create new information, e.g. a list of approaches, in order to fulfil a request. (The DCMS noted that this should not be taken as confirmation that the DCMS held information relating to an individual approach.) With regard to requests 5 to 10 the DCMS explained that it believed that the public interest remained in neither confirming nor denying whether information was held on the basis of section 37(2). Finally the DCMS explained that it would exceed the cost limit at section 12 of the Act to establish whether it held information falling within the scope of requests 11 to 13.
8. Following the intervention of the Commissioner (details of which are given below) the DCMS contacted the complainant again in March 2009. The DCMS explained that it had reconsidered its position with regard to requests 5 to 10 and it was now prepared to confirm that it did hold information falling within the scope of these requests. However, the DCMS explained that it considered this information to be exempt from disclosure on the basis of sections 37(1)(a), 41(1) and 40(2) of the

¹ Section 37(2) of the Act allows a public authority to refuse to confirm or deny whether it holds information to which the exemptions contained at section 37(1) apply. Section 37(1)(a) states that information is exempt if it relates to communications with Her Majesty, with other members of the Royal Family or with the Royal Household. Section 37 is a qualified exemption and therefore subject to the public interest test.

Act. Furthermore, the DCMS maintained its position that under the Act it was not required to create a list of approaches to fulfil requests 1 to 4. The response did not make reference to the DCMS' position with regard to requests 11 to 13.

The Investigation

Scope of the case

9. The complainant first contacted the Commissioner on 23 January 2007 in order to complain about the DCMS' response to his requests. However, as is clear from the above, at the time this Notice is being issued, the DCMS has confirmed to the complainant that it holds information falling within the scope of the requests. That is to say, it has dropped its reliance on the exemption provided by section 37(2) of the Act and has confirmed that it actually holds information falling within the scope of these requests.
10. However, the DCMS has explained to the Commissioner that to fulfil the requests in their entirety, i.e. to provide all of the information it may hold which falls within the scope of them, would exceed the appropriate cost limit at section 12(1) of the Act. Furthermore, to the extent that any of the requested information was considered to be environmental information, the DCMS believed that regulation 12(4)(b) provides a basis upon which to refuse to provide such information.
11. Therefore the scope of this case for the purposes of this Notice is as follows:
 - Does any of the information which could fall within the scope of the requests consist of environmental information?
 - Can the DCMS rely on section 12(1) of the Act to refuse to provide all potentially disclosable information falling within the scope of the requests?
 - If any of the requested information is likely to be 'environmental information' is the DCMS entitled to refuse to supply this information on the basis of regulation 12(4)(b) because the requests are manifestly unreasonable?
 - Has the DCMS provided sufficient advice and assistance to the complainant in line with the duty at section 16 of the Act, and if applicable, the corresponding duty at regulation 9 of the EIR?

Chronology

12. The Commissioner contacted the DCMS on 19 February 2007 in relation to this complaint.
13. The Commissioner also contacted the Cabinet Office in order to discuss the issues relating to this case as a number of other government departments had received similar requests seeking details of correspondence with The Prince of Wales and the Cabinet Office was involved in co-ordinating the various public authorities' responses. (The Commissioner subsequently received a number of complaints about the responses provided by these public authorities.)
14. The DCMS provided the Commissioner with a substantive response to his letter of 13 February 2007 on 7 November 2007. As part of this response the DCMS provided the Commissioner with a list of the documents that it held which it believed fell within the scope of the complainant's requests.
15. In March 2008 representatives of The Royal Household, the Cabinet Office and the Commissioner's office met to discuss the issues raised by the various complaints the Commissioner had received involving requests for The Prince of Wales' correspondence with government departments.
16. On 7 July 2008 the Commissioner wrote to The Royal Household in order to seek further views on the application of the exemptions in these cases, in particular the refusal to confirm or deny whether information falling within the scope of the requests was in fact held.
17. The Commissioner received a response from The Royal Household in November 2008.
18. In December 2008 representatives of The Royal Household, the Cabinet Office and the Commissioner's office met again in order to further discuss the issues raised by these complaints.
19. On 27 January 2009 the Commissioner contacted the DCMS to explain that following discussions with the Cabinet Office and The Royal Household, it was his understanding that the DCMS was no longer refusing to confirm or deny whether it held information falling within the scope of some of the complainant's requests. The Commissioner therefore asked the DCMS to contact the complainant and confirm to him whether it held information falling within the scope of his requests.
20. As noted above, in March 2009 the DCMS contacted the complainant and confirmed that it did hold information falling within the scope of some of his requests albeit that it considered this information to be exempt from disclosure.
21. Also in March 2009 the DCMS provided the Commissioner with the information which it considered to fall within the scope of the complainant's requests, i.e. the information listed in its letter of 7 November 2007.

22. The Commissioner contacted the DCMS again on 29 July 2009 in order to clarify a number of issues in relation to the confirmation that had been provided to the complainant in March 2009. In particular the Commissioner asked the DCMS to clarify its position with regard to requests 11 to 13; i.e. whether it still believed that the fulfilment of these requests would exceed the cost limit and how this affected its apparent position that it could fulfil requests 5 to 10 within the cost limit, albeit that the information would be exempt.
23. The Commissioner contacted the DCMS again on 2 December 2009 in relation to the issues set out in his letter of 29 July 2009. In particular the Commissioner asked the DCMS to ensure that when responding to his letter of 29 July 2009 it took into account the broad scope of the complainant's requests. That is to say, some requests sought information dating back to 1997 (the date of the DCMS' inception) and some of the requests sought information dating back to 1992 (the date of the Department of National Heritage's inception). Although the DCMS had located some information, and indeed provided it to the Commissioner, it was not clear in locating this information whether the DCMS had in fact conducted sufficient searches to locate all relevant information falling within the scope of the requests. The Commissioner also noted that some of the information that the DCMS had located and provided to him might be environmental information and therefore the Commissioner asked the DCMS to consider how it would deal with these requests under the EIR as opposed to the Act.
24. The Commissioner received a response from the DCMS on 4 February 2010 which addressed the issues set out in his two previous letters. In this response the DCMS explained that when these requests were originally handled a search was not conducted for all of the information that may have fallen within the scope of the requests. Rather the only documents identified, and subsequently passed to the Commissioner in March 2009, were those which officials were already aware of from other cases. The DCMS explained that, having considered its position again, it still believed that to provide all of the information falling within the scope of the requests would exceed the appropriate cost limit and therefore it was entitled to refuse to fulfil the requests on the basis of section 12(1). The DCMS provided the Commissioner with an estimate of the time it would take to fulfil these requests in order to support its position. The DCMS also explained that it did not believe that it held any environmental information falling within the scope of the complainant's requests, although if the Commissioner did not agree with that conclusion, it would refuse to disclose the 'environmental information' on the basis of regulation 12(4)(b).

Analysis

Substantive Procedural Matters

What has the complainant actually asked for?

25. Before considering whether any of the information falling within the scope of these requests may be environmental information, the Commissioner has clarified

- the nature of the information which he considers to fall within the scope of the complainant's requests.
26. In the Commissioner's opinion, the requests submitted by the complainant can be separated into three separate types:
- The requests numbered 1 to 4 seek **lists of approaches** made by The Prince of Wales or his representatives to the DCMS or its predecessor;
 - The requests numbered 5 to 10 seek the **number of times** The Prince of Wales or his representatives contacted the DCMS or its predecessor; and
 - The requests numbered 11 to 13 seek various internal documents and pieces of correspondence.
27. The Commissioner notes that in early responses to the complainant and submissions to him, the DCMS suggested that it did not hold a list of any such approaches (or indeed a record of the number of approaches) and that to provide such information would involve the creation of new information and under the Act it was not required to create new information.
28. The Commissioner's position is that where a request is made for a schedule or list of documents, even if no schedule has been compiled, if the information which would be in the schedule is held, the request can and should be complied with unless the contents of the schedule, once compiled, would also be exempt. The Commissioner originally outlined this view in Decision Notice FS50070854 involving a request to the Foreign and Commonwealth Office. Therefore in the circumstances of this case the Commissioner believes that, as the DCMS holds correspondence from The Prince of Wales and his representatives, it is in a position to provide the complainant with a list of these approaches and confirm the number of such approaches, subject of course to the application of any exemptions.
29. As noted, the complainant's latter requests seek correspondence held by the DCMS. The Commissioner notes that the complainant has phrased his request in a particular way, namely 'Please provide all correspondence between the DCMS and any outside organisation or individual...**which relate** to approaches from the HRH The Prince of Wales or representatives acting on his behalf'.
30. The Commissioner notes that in some of the submissions he received from the DCMS it indicated that it did not believe that correspondence sent to it by The Prince of Wales actually fell within the scope of any of the complainant's requests.
31. The Commissioner wishes to clarify that in his opinion such a request, by seeking information which 'relates to correspondence' with the Prince of Wales or those who represent him does not exclude the actual correspondence itself. In other words these requests include correspondence between the DCMS and The Prince of Wales and those who represent him, as well as any information which relates to such correspondence. This is because, in the Commissioner's opinion it is clear that any request which seeks information which relates to particular correspondence also covers the correspondence itself.

Is any of the requested information environmental information?

32. Regulation 2(1) of the EIR defines 'environmental information' as any information in any 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 the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)'

33. The Commissioner considers that the phrase 'any information...on' should be interpreted widely in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIR enact. In the Commissioner's opinion a broad interpretation of this phrase will usually include information concerning, about or relating to the measure, activity, factor etc in question. In other words, information that would inform the public about the matter under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.

34. The Commissioner also finds support for this approach in two decisions issued by the Information Tribunal. The first being *The Department for Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth* (EA/2007/0072). In this case the Tribunal found:

'that the Decision Notice [in which the Commissioner has concluded that none of the requested information was environmental information] fails to recognise that information on 'energy policy' in respect of 'supply, demand

and pricing' will often fall within the definition of 'environmental information' under Regulation 2(1) EIR. In relation to the Disputed Information we find that where there is information relating to energy policy then that information is covered by the definition of environmental information under EIR. Also we find that meetings held to consider 'climate change' are also covered by the definition.' (Tribunal at paragraph 27).

35. In reaching this conclusion the Tribunal placed weight on two arguments advanced by Friends of the Earth (FoE), the first being that information on energy policy, including the supply, demand and pricing issues, will often affect or be likely to affect the environment and the second that term 'environmental information' should be interpreted broadly:

'23. Mr Michaels on behalf of FOE contends that policies (sub-para (c)) on 'energy supply, demand and pricing' often will (and are often expressly designed to) affect factors (sub-para (b)) such as energy, waste and emissions which themselves affect, or are likely to affect, elements of the environment (sub-para (a)) including, in particular and directly, the air and atmosphere and indirectly (in respect of climate change) the other elements.

24. He provides by way of simple and practical example, national policy on supply, demand and pricing of different energy sources (e.g., nuclear, renewable, coal, gas) has potentially major climate change implications and is at the heart of the debate on climate change. Similarly, national policy on land use planning or nuclear power has significant effect on the elements of the environment or on factors (e.g. radiation or waste) affecting those elements.

25. Mr Michaels further argues that the term 'environmental information' is required to be construed 'very broadly' so as to give effect to the purpose of the Directive. Recognition of the breadth of meaning to be applied has been recognised by the European Court of Justice, by the High Court and by this Tribunal in *Kirkaldie v Information Commissioner & Thanet District Council* EA/2006/001. The breadth is also recognised in the DEFRA guidance 'What is covered by the regulations'. It does not appear, Mr Michaels argues, that the Commissioner has adopted such an approach.'

36. Moreover in reaching this conclusion the Tribunal appeared to reject BERR's arguments that there must be a sufficiently close connection between the information and a probable impact on the environment before it can be said that the information is 'environmental information'.
37. The second Tribunal decision is *Ofcom v Information Commissioner and T-Mobile* (EA/2006/0078) which involved a request for the location, ownership and technical attributes of mobile phone cellular base stations. Ofcom had argued that the names of Mobile Network Operators were not environmental information as they did not constitute information 'about either the state of the elements of the environment....or the factors.....that may affect those elements.'

38. The Tribunal disagreed, stating at para 31 that:

‘The name of a person or organisation responsible for an installation that emits electromagnetic waves falls comfortably within the meaning of the words “any information...on....radiation”. In our view it would create unacceptable artificiality to interpret those words as referring to the nature and affect of radiation, but not to its producer. Such an interpretation would also be inconsistent with the purpose of the Directive, as expressed in the first recital, to achieve “... a greater awareness of environmental matters, a free exchange of views [and] more effective participation by the public in environmental decision making...”. It is difficult to see how, in particular, the public might participate if information on those creating emissions does not fall within the environmental information regime.’

39. The Commissioner accepts that from an objective point of view looking simply at the requests it is not necessarily clear that some of the information which would fall within the scope of the complainant’s requests would be environmental information. However, as noted above during the course of his investigation the Commissioner was provided with some of the information which could potentially fall within the scope of the complainant’s requests.

40. The Commissioner is satisfied that some of the requested information constitutes environmental information because it falls within the definition in regulation 2(1). However, the Commissioner cannot explain in this Notice why he has concluded that some of the requested information is environmental information without direct reference to the content of the information itself. He has therefore provided the DCMS with a confidential annex which explains why he has reached this decision.

41. Such a conclusion has an impact on the access regime under which the complainant can access the information that he has requested. Technically the Act provides a right of access to **all** requested information. However, any environmental information is exempt on the basis of section 39 and the right of access to such information is provided by the EIR. Therefore in the context of this case although the complainant’s right of access to all of the information falling within the scope of his requests is technically provided for by the Act, the actual access regime under which any environmental information may be disclosed is under the EIR.

42. The Commissioner has initially considered whether the cost of locating and retrieving all the potentially disclosable information would exceed the appropriate cost limit and therefore whether the DCMS can rely on section 12(1) of the Act.

Section 12 – cost of compliance exceeds appropriate limit

43. Section 1(1) of the Act provides applicants with a general right of access to information held by public authorities. This right is broken down into two parts: firstly the right to know whether information is held by a public authority - section 1(1)(a); and secondly, if information is held, to have that information provided – section 1(1)(b).

44. Section 12(1) of the Act provides that public authorities do not have to comply with a request where the estimated cost of responding to that request exceeds the appropriate limit as specified by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). However, section 12(2) confirms that a public authority must comply with the requirements of section 1(1)(a) of the Act unless the cost of simply confirming whether information is held would exceed the appropriate cost limit. Section 12(4) provides that, under the Regulations, when a public authority receives two or more requests about a similar issue the public authority can aggregate the cost of complying with these requests.

45. Section 4(3) of the Regulations sets out the basis upon which an estimate can be made:

'(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.'

46. The appropriate limit for central government departments such as the DCMS is £600, the equivalent to 24 hours' work.

The DCMS' position

47. The Commissioner understands that the DCMS' position is that although it can confirm, within the cost limit, that it does hold information falling within the scope of the requests, to locate and retrieve all of the relevant information falling within the scope of the requests would take longer than 24 hours.

48. In order to support this position the DCMS provided the Commissioner with an estimate of the cost which would be occurred in locating and retrieving the information falling within the scope of the complainant's requests. The Commissioner has reproduced this cost estimate later in the Notice. In providing this estimate the DCMS made the following points:

- The Prince of Wales or his representatives could have potentially written about any one of the policy areas that the department covered and

therefore it could only really exclude the files from its Human Resources and possibly Finance sections from any search for information.

- The DCMS has an electronic correspondence management database which was introduced in 2005. In order to search for earlier documents it would need to sift through its electronic filing area (where the details would be unsorted amongst other types of document).
 - It was possible that given the confidence that the DCMS attached to correspondence from The Prince of Wales, that some correspondence from His Royal Highness would not be logged on the DCMS' correspondence logging system and would instead be in paper files. Such files could be particularly hard to identify because the headings of the files would not necessarily suggest any link to His Royal Highness.
 - It is likely to be hard to identify representatives of The Prince of Wales, particularly as some may no longer be in post or may not currently be known to the DCMS. This would mean that it would not be sufficient to simply search electronically using the terms 'Prince of Wales' and 'Prince Charles'; relevant details could potentially be inside any document.
 - The DCMS will have a large number of documents that refer to The Prince of Wales, His Household or 'The Prince's Trust' in passing but which are not relevant to the request. When carrying out an electronic search for information it may be hard to exclude such documents from the search results.
 - The file indexing method used by the DCMS' records management storage centre does not provide any immediate method of sorting out HR and Finance files; this would have to be done manually.
49. Turning to the estimate itself, the DCMS explained that undertaking the three tasks identified at 4(3)(a) to (c) of the Regulations would essentially involve the same work; the bulk of the work involved would be in reading through files to identify relevant information and these three activities could effectively be done simultaneously. With regard to the activity at 4(3)(d), the DCMS suggested that the costs of extracting the information would be relatively minor in comparison and therefore this had not been factored into the cost calculation replicated below.
50. The DCMS explained that it believed that in order to fulfil the 13 requests it would have to undertake two searches:
- The first being all paper and electronic files, excluding HR and Finance division files, from DCMS from July 1997 to February 2006;
 - The second being all paper and electronic files, excluding HR and Finance division files, from the Department of National Heritage from 9 April 1992 to July 1997.
51. With regard to the electronic files, the DCMS explained that its IT section had confirmed that there were a total of 1,789,689 distinct documents on its current electronic filing system which was introduced in mid 2008 and 1,541,865 items on its previous electronic filing area. The new electronic system includes files created since 2008 as well as old documents transferred from the previous system. A portion of this could be reduced for HR and Finance documents. It

- would be very difficult to say how long it would take to skim though all of these documents but it would clearly be a massive amount of work to identify all relevant information.
52. The DCMS suggested that any remaining documents from the Department of Heritage would be likely to be paper files.
 53. With regard to the paper files, the DCMS explained that its Records Centre had stated that to separate out HR and Finance files and recall the remainder from its off-site storage area would cost:
 - National Heritage files: £48,006.90 + VAT (from a starting point of 20,280 files).
 - DCMS files: £32,695.10 + VAT (from a starting point of 13,819 files).
 54. The DCMS explained that once the sorted files were received the FOI team would need to read through them to assess whether they held any relevant information. It would also need to read through 25,000 registered files currently stored on site at the DCMS. The DCMS explained that its standard estimate is that it would take around 15 minutes to skim a registered file. Therefore to read through all 59,099 would take 14,775 hours which at £25 per hour equates to £369,375.
 55. This totals £450,077 plus an element of VAT, plus the substantial additional costs that would be involved for searching through electronic files.
 56. In addition, there could be a number of as yet unregistered paper files in desks and drawers around the department to check, although it would be difficult to provide an estimate of those costs with a reliable level of accuracy.
 57. In its submissions to the Commissioner, the DCMS explained that it considered the 13 requests to be substantially similar so that the cost of complying with the requests could be aggregated in line with 12(4) of the Act. However, the DCMS noted that it was clear that even if the requests were dealt with individually and not aggregated, it estimated that the cost limit would be met in simply fulfilling one of the requests.

The Commissioner's position

58. In considering estimates relied upon by public authorities in relation to section 12, the Commissioner has followed the approach of the Tribunal in *Alasdair Roberts v Information Commissioner* (EA/2008/0050) at paragraphs 9 to 13 in which the Tribunal confirmed that the approach of deciding whether an estimate was reasonable involved consideration of a number of issues, including:
 - A public authority only has to provide an estimate rather than a precise calculation;
 - The costs estimate must be reasonable and only based on those activities described in Regulation 4(3);
 - Time spent considering exemptions or redactions cannot be taken into account;

- Estimates cannot take into account the costs relating to data validation or communication;
 - The determination of a reasonable estimate can only be considered on a case-by-case basis; and
 - Any estimate should be 'sensible, realistic and supported by cogent evidence'.²
59. Based upon the DCMS' submissions the Commissioner understands that as the information covered by the requests is so closely related, in practice any search which aimed to identify the information needed to fulfil one request would be likely to identify information relevant to the other requests. Moreover, in order to be able to fulfil the requests for lists and numbers it would be first necessary to locate the relevant correspondence needed to fulfil the earlier requests. Therefore the explanation which is set out above effectively represents the process needed to fulfil any of the requests.
60. The Commissioner accepts that there is not a central contact point, for example Ministerial private offices, where correspondence with members of the Royal Family and associated documentation would be stored. Rather, as the DCMS explains it is the policy unit which is responsible for the subject matter of the correspondence which will hold such information. In light of this the Commissioner accepts that to identify information relevant to the requests would effectively involve the DCMS searching the records of all policy units within the DCMS.
61. Furthermore the Commissioner accepts that as not all of the information relevant to the complainant's requests would be held electronically both electronic and paper records would have to be searched in order to find all potentially relevant information.
62. With regard to the electronic records the Commissioner notes that the DCMS has not specified the time it would take to search all of the 1,789,689 distinct documents on its current electronic filing system. Rather it has simply asserted that to do so would involve a massive amount of work. The Commissioner accepts that public authorities do not need to provide a precise calculation as part of any estimate. Nevertheless the Commissioner would normally expect a public authority to include an estimate of the time taken to carry out the activities, in order to support ensure that an estimate was reasonable. For example, searching x number of documents would take y amount of time so that any estimate is at least supported by cogent evidence. Furthermore, the Commissioner assumes that as these documents are stored electronically then some sort of automated search or searches could be undertaken in order to identify relevant information (subject of course to the caveats listed in paragraph 48). Therefore the Commissioner is reluctant to accept, on the basis of the estimate for the electronic records alone, that to locate, extract and retrieve the relevant information from them would exceed the cost limit of £600. This is not because he does not believe that carrying out such activities would take less than

² [Alasdair Roberts v Information Commissioner \(EA/2008/0050\)](#)

- 24 hours but rather because the DCMS has failed to provide a reasonable estimate.
63. Nevertheless as explained above, the Commissioner accepts that to locate all of the potentially relevant information the DCMS would also need to search its paper records. Again, in the Commissioner's opinion the DCMS' estimate with regard to the paper records is not without some ambiguity. It is not clear how the costs of £48,006 + VAT and £32,695.10 + VAT were arrived at, for example: were the activities listed in the Regulations the only ones taken into account and was the time charged for these activities at the rate of £25 per hour? Furthermore the Regulations do not allow a public authority to include the cost of VAT in any estimate.
64. However even if these costs are disregarded as part of the estimate, the Commissioner accepts that to gather the relevant information from the paper files, once they have been located, would exceed the cost limit. This is because to review 59,009 files in order to locate and extract the relevant information would clearly take more than 24 hours.
65. On this basis alone the Commissioner is prepared to accept that the DCMS has provided a reasonable estimate which demonstrates that it would take more than 24 hours to gather the information needed to fulfil these requests. The DCMS is therefore entitled to rely on section 12(1) to refuse to comply with these requests.
66. The above analysis is based upon the cost of providing all disclosable information which falls within the scope of the requests, including any which might be environmental information. However, in the Commissioner's opinion in the circumstances of this case it is clear that in order to determine which access regime a piece of information falls under, the DCMS must be in a position to actually examine that information. Therefore before it can make a determination as to how much of the information is environmental information it must have first located, retrieved and extracted all of the requested information. Therefore the Commissioner is satisfied that the DCMS can include in the estimate needed to support the application of section 12(1), the time it would take to carry out the activities listed in the Regulations in order to locate and retrieve all potentially disclosable information.

Regulation 12(4)(b) – manifestly unreasonable

67. As noted above the Commissioner believes that some of the withheld information falling within the scope of the requests is environmental information and therefore the DCMS cannot rely on 12(1) to withhold this information. Instead the DCMS has argued that such information is exempt from disclosure on the basis of the exception contained at 12(4)(b) of the EIR which states that a public authority can refuse to disclose information if:

‘the request for information is manifestly unreasonable’

68. Again, for the reasoning set out above, the Commissioner accepts that before the DCMS is in a position to provide the environmental information falling within the

scope of the requests, it must first determine what environmental information it holds and before it does that it must locate all of the information falling within the scope of these requests. Therefore in relation to whether the DCMS can rely on regulation 12(4)(b) the decision the Commissioner effectively has to reach is whether fulfilling the requests in their entirety would place a burden on the DCMS that is manifestly unreasonable.

69. In determining the threshold needed to engage this exception the Commissioner has taken into account the comments of the Information Tribunal in *DBERR v The Information Commissioner and Platform* (EA/2008/0096) which stated that:

‘It is clear to us that the expression [manifestly unreasonable] means something more than just “unreasonable” The word “manifestly imports a quality of obviousness. What is in issue, therefore, is a request that is plainly or clearly unreasonable.” (paragraph 31)

70. In determining whether the cost of complying with a request would be manifestly unreasonable the Commissioner will use the Regulations as a starting point to ascertain what costs or diversion of resources would be involved in answering a request. This does not mean however that a request exceeding the appropriate limit will necessarily be manifestly unreasonable under regulation 12(4)(b). Again the Commissioner notes the comments of the Tribunal in *Platform*:

‘Regulation 12(4)(b) is quite different. There is no “appropriate limit” to act as a cut off point. It is the request that must be “manifestly unreasonable”, not just the time required to comply with it, nor indeed any single aspect of it. In our view, this means that Regulation 12(4)(b) requires the public authority to consider the request more broadly. This does not mean that the time required to comply with a request is irrelevant. Rather, it is one factor to be considered along with others when assessing whether a request is “manifestly unreasonable”.’ (paragraph 36)

71. And:

‘We note that recital 9 of the Directive calls for disclosure of environmental information to be “to the widest extent possible”. Whatever the reasons may be, the effect is that public authorities may be required to accept a greater burden in providing environmental information than other information.’ (paragraph 39)

72. For the reasons set out above the Commissioner accepts that fulfilling the requests would involve considerable expense and significantly exceed the fees limit in the Act. Furthermore, the Commissioner accepts that searching for this information will involve disruption across all areas of the DCMS because all business areas, except HR and Finance, will need to be searched in order to ensure that all relevant information is located. Although the Commissioner notes that the DCMS is a large central government public authority and he therefore considers it unlikely that fulfilling the requests would actually prevent the DCMS from carrying out its core functions, the Commissioner believes that fulfilling these requests would result in an unreasonable diversion of the DCMS’ resources away

from its core functions. Allied with the broad nature of the requests and the very high cost in fulfilling them, this means that the requests can correctly be classed as manifestly unreasonable and thus the DCMS can rely on regulation 12(4)(b) to refuse to answer them.

Public interest test

73. However, regulation 12(4)(b) is qualified and therefore subject to the public interest test at regulation 12(1)(b) which states that information can only be withheld if, in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosing the information

74. There is an inherent public interest in disclosure of information to ensure that the government is accountable for, and transparent about, its decision making processes.
75. Moreover, there is a specific public interest in disclosure of information which would increase the public's understanding of how the Government interacts with the Royal Family, and in particular in the circumstances of this case, the Heir to the Throne. This is because the Monarchy has a central role in the British constitution and the public is entitled to know how the various mechanisms of the constitution operate. This includes, in the Commissioner's opinion, how the Heir to the Throne is educated in the ways of government in preparation for his role as Sovereign.
76. Disclosure of the information may allow the public to understand the influence (if any) exerted by The Prince of Wales on matters of public policy. If the withheld information demonstrated that the public authority or government in general had placed undue weight on the preferences of The Prince of Wales then the public interest in disclosure would be stronger.
77. Conversely, if the withheld information actually revealed that The Prince of Wales did not have undue influence on the direction of public policy, then there would be a public interest in disclosing the information in order to reassure the public that no inappropriate weight had been placed on the views and preferences of The Heir to Throne. In essence disclosure could ensure public confidence in respect of how the government engages with The Prince of Wales.
78. These two arguments could be seen as particularly relevant in light of media stories which focus on the Prince of Wales' alleged inappropriate interference in matters of government and political lobbying.
79. Linked to this argument is the fact that disclosure of the withheld information could further public debate regarding the role of the Monarchy and particularly the Heir to the Throne. Similarly, disclosure of the information could inform broader debate surrounding the reform of the British constitutional system.

Public interest arguments in favour of maintaining the exception

80. The Commissioner considers that there are compelling arguments in favour of maintaining the exception because of the public interest in protecting the integrity of the EIR and ensuring that they are used responsibly.
81. There is a public interest in the public authority being able to carry out its core functions without the distraction of having to comply with requests that would impose a significant burden in both time and resources. The Commissioner is also mindful of the fact that the DCMS' ability to comply with other more focused requests for information would be undermined if it had to routinely deal with wide ranging requests for large amounts of information covering a timeframe of a number of years.

Balance of public interest arguments

82. The Commissioner recognises that the appropriate limit is not a barrier to the disclosure of information under the EIR. However, he considers that the appropriate limit is a useful benchmark for assessing the costs involved in responding to requests for information. Had the DCMS' estimate of the costs it expects to incur in dealing with this request only just exceeded the appropriate limit the Commissioner would have been more inclined to decide that the public interest in maintaining the exception does not outweigh the public interest in disclosure. However, it is clear that in this case the costs of complying with the request would considerably exceed the appropriate limit and therefore the public interest in protecting the ability of the public authority not to be diverted from its core functions, is stronger.

Procedural Matters

Section 16 – advice and assistance

83. Section 16(1) of the Act requires public authorities to provide advice and assistance, so far as it would be reasonable to expect the public authority to do so, to applicants who propose to make, or have made, requests for information.
84. Section 16(2) of the Act states that a public authority in relation to the provision of advice and assistance, will have complied with the requirements of section 16(1) of the Act if it has conformed with the code of practice issued under section 45 of the Act.³
85. Paragraph 14 of the section 45 code of practice sets out what advice and assistance should be offered to applicants whose requests are refused on the basis of section 12(1) of the Act. This paragraph suggests that public authorities should consider providing an indication of what information is available within the cost limit and also consider advising the applicant that by reforming or re-focussing their request, some information may be available within the cost limit.

³ [Section 45 Code of Practice](#)

86. The Commissioner is conscious that the DCMS' handling of these requests is somewhat involved given the decision to withdraw the initial reliance on section 37(2) during the course of the Commissioner's investigation and then to rely on section 12(1), and in the alternative regulation 12(4)(b). However, due to the way in which the requests have been handled the Commissioner has concluded that the DCMS did not provide the complainant with sufficient advice and assistance, in line with its duty at section 16 of the Act, in order to allow him to submit a refined request that could be fulfilled within the cost limit. This remains relevant despite the fact that the DCMS maintain that such information would still be exempt from disclosure on the basis of sections 37(1)(a), 40(2) and 41(1) of the Act. The DCMS has therefore breached section 16(1) of the Act.
87. In order to rectify this, the Commissioner requires the DCMS to provide the complainant with sufficient advice and assistance so that he can submit a refined request which can be handled within the cost limit. Such advice and assistance could include suggesting to the complainant that he reduce the time period of his request to cover a few months; explain which policy areas could be searched within the cost limit; and/or browse through the material already published on its website to help him identify more precise questions that could be answered within the cost limit.

Regulation 9 – advice and assistance

88. Regulation 9(1) places the same requirements on a public authority as section 16(1) of the Act when the information being requested consists of environmental information. For the reasons set out above the Commissioner believes that the DCMS has breached regulation 9(1) and must provide sufficient advice and assistance in order to ensure that it complies with this requirement of the EIR.

Procedural Requirements

89. Part I of the Act includes a number of procedural requirements with which public authorities must comply.
90. Section 10(1) requires a public authority to comply with the requirements of section 1(1) of the Act within 20 working days following the date of receipt.
91. Section 17(1) of the Act requires a public authority to provide an applicant with a refusal notice stating the basis upon which it has refused a request for information. Section 17(5) requires that such a notice which cites section 12 of the Act be provided within 20 working days of the request.
92. In handling this request the DCMS failed to confirm to the complainant within 20 working days of the date of the request that it held information of the nature requested. This constitutes a breach of sections 1(1)(a) and 10(1) of the Act.
93. Furthermore the DCMS failed to provide the complainant with a refusal notice citing section 12(1) of the Act within 20 working days of the request. This constitutes a breach of section 17(5) of the Act.

Regulation 14 – refusal to disclose information

94. By failing to respond to the request under the EIR the public authority breached regulation 14(2) and 14(3) which provide that a refusal of a request must be made no later than 20 working days and shall specify the reasons not to disclose the information, including details of the exception relied on and matters the public authority took into consideration with respect to the public interest.

The Decision

95. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- The DCMS is entitled to refuse to provide the requested information on the basis of section 12(1) of the Act.
 - To the extent that the requested information falls within the scope of the EIR, the DCMS is entitled to refuse to provide this information on the basis of regulation 12(4)(b) of the EIR.
96. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- The DCMS breached sections 1(1)(a) and 10(1) by failing to confirm within 20 working days of the date of the request that it held information of the nature requested.
 - The DCMS also breached section 17(1) by failing to issue a refusal notice citing section 12(1) within 20 working days of the request.
 - These procedural failings also constitute a breach of regulations 14(2) and 14(3) of the EIR.
 - The DCMS also breached section 16(1) of the Act and regulation 9(1) of the EIR by failing to provide sufficient advice and assistance to allow the complainant to submit a refined request which could be answered within the cost limit.

Steps Required

97. The Commissioner requires the DCMS to provide the complainant with sufficient advice and assistance so that he can submit a refined request which can be fulfilled within the cost limit specified at section 12(1) of Act.
98. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Right of Appeal

99. 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 served.

Dated the 2nd day of March 2010

Signed

**Graham Smith
Deputy Commissioner and Director of Freedom of Information**

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

Annex – text of request

‘1...A list of all approaches made by HRH The Prince of Wales to the DCMS during the lifetime of the department. This should include the date the Prince contacted the Department (for whatever reason) as well as the nature of the matter under discussion. These approaches could have been made by the Prince in person, by email, by telephone or by post.

2...A list of all approaches made by HRH The Prince of Wales to the Department of National Heritage. This should include the date the Prince contacted the Department (for whatever reason) as well as the nature of the matter under discussion. These approaches could have been made by the Prince in person, by email, by telephone or by post.

3...A list of all approaches made by representatives or employees of HRH The Prince of Wales to the DCMS. This should include the date the representatives/employees contacted the Department, as well as details about the nature of the approach and the issues involved. These approaches could have been made in person, by emails, by telephone or by post.

4...A list of all approaches made by representatives or employees of HRH The Prince of Wales to the Department of National Heritage. This should include the date the representatives/employees contacted the Department as well as details about the nature of the approach and the issues involved. These approaches could have been made in person, by email, by telephone or post.

5...How many times has HRH The Prince of Wales personally contacted any civil servant in the employ of the DCMS or any member of the Department's ministerial team. Please provide details of these approaches, the dates they happened and the issues concerned.

6...How many times have representatives acting on behalf of the Prince of Wales personally contacted any civil servant in the employ of the DCMS or any member of the department's ministerial team? Please provide details of these approaches, the dates they happened and the issues concerned.

7...How many times did HRH The Prince of Wales contact any civil servant in the employ of the Department for National Heritage or any member of that department's ministerial team. Could you please provide further details about the nature of this contact, the issues involved and the date(s) it occurred.

8...How many times did representatives of the HRH The Prince of Wales contact any civil servant in the employ of the Department for National Heritage or any member of that Department's ministerial team? Could you please provide further details about the nature of this contact, the issues it involved and the date(s) it occurred.

9...How many times has HRH The Prince of Wales met with a senior member of staff from the DCMS or a member of the Department's ministerial team. Could

you please provide details of these meetings, including the dates they took place, the venue they were held and the nature of the topics under discussion?

10...How many times did The Prince of Wales held [sic] private talks (of any kind) with a senior member of staff from the Department for National Heritage or any member of MAFF's ministerial team [the reference to MAFF was included in error]. Could you please provide details of these meetings, including the dates they took place, the venue they were held and the nature of the topics under discussion?

11...Please provide all internal documents held by the DCMS, its predecessor and any associated body or agency which falls under its control which relates in any way whatsoever to approaches from the Prince of Wales and or representatives acting on his behalf. These documents should include, among other things, all department minutes, memos, emails, telephone transcripts, letters and reports which touch upon this matter.

12...Please provide all correspondence between the DCMS and any outside organisation or individual (including other government departments) which relate to approaches from HRH The Prince of Wales or representatives acting on his behalf.

13...Please provide all correspondence between the Department for National Heritage and any outside organisation or individual (including other Government Departments) which relate to approaches from HRH The Prince of Wales and or representatives acting on his behalf.'

Legal Annex

Freedom of Information Act 2000

General Right of Access

Section 1(1) provides that -

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

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Effect of Exemptions

Section 2(1) provides that –

“Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that either –

(a) the provision confers absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information

section 1(1)(a) does not apply.”

Section 2(2) provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 12(2) provides that –

“Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.”

Duty to provide Advice and Assistance

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Communications with Her Majesty.

Section 37(1) provides that –

“Information is exempt information if it relates to-

- (a) communications with Her Majesty, with other members of the Royal Family or with the Royal Household, or
- (b) the conferring by the Crown of any honour or dignity.”

Section 37(2) provides that –

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).”

Personal information.

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of 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 this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Information provided in confidence.

Section 41(1) provides that –

“Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

Section 41(2) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”

Environmental Information Regulations 2004

Regulation 2(1) In these Regulations –

“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);

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 9 - Advice and assistance

Regulation 9(1) A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

Regulation 9(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall –

- (a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and
- (b) assist the applicant in providing those particulars.

Regulation 9(3) Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.

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

Regulation 12(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

Regulation 12(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.