

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

### **Decision Notice**

**Date: 25 October 2010**

**Public Authority:** Department of Transport  
**Address:** Great Minster House  
76 Marsham Street  
London  
SW1P 4DR

### **Summary**

---

The complainant requested all the relevant recorded information (including communications) that the public authority held about the statutory basis for local user discounts on toll roads. The public authority responded that it believed the costs limit was exceeded. The Commissioner has carefully considered this case and has decided that the information, where held, is likely to be partially environmental. For those elements that are not environmental information he is satisfied that section 12(1) has been applied appropriately by the public authority. This is because all the recorded information could not be located within the costs limit. For those elements that are environmental information he has concluded that the public authority is entitled to rely on the exception found in Regulation 12(4)(b) [the request is manifestly unreasonable] and that the public interest in maintaining the exception outweighs the public interest in disclosure. He has found that appropriate advice and assistance was provided, but there were procedural breaches of section 17(5) of the Act and Regulations 14(1), 14(2) and 14(3) of the EIR. However, he does not find that any remedial steps need to be taken.

### **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.
3. This request raises matters that need to be considered under both pieces of legislation.

## Background

---

4. Some toll roads allow local users who use the road many times in respect to their business to pay less money each time. The request was for all communications on the statutory basis that allows this.
5. The Commissioner is aware that the complainant knows of 'The A282 (Dartford Thurrock Crossing Scheme) Order 2008 No 1951'. Paragraph 5 of this Order provides the Secretary of State (or his agents) can enter into agreements under which local residents can pay less. The complainant is not satisfied that this information answers his request in respect to the Dartford-Thurrock Crossing and thus the Commissioner has investigated whether any other information is held that is embraced in the scope of his investigation.

## The Request

---

6. On 22 May 2009 the complainant requested the following information:  

*'I want a copy of all information (including communications) that the DfT has on the issue of the statutory basis for local user discounts i.e. giving any discount or concession to user of any tolled (including road user charges) road or crossing based on where the user lives or works or their business is based. "Any" includes the Dartford Crossing, Mersey Tunnels and the so called "Mersey Gateway".'*
7. On 12 and 14 August 2009 information was provided by the public authority that gave some detail about why it believed it had statutory authority to offer local user discounts at the Dartford –Thurrock crossing. This corresponded to the information in paragraph 5 above.

8. On 20 August 2009 the complainant received a response to his request for information. It explained that it estimated that cost of complying with the request would exceed the costs limit of £600. It therefore relied on the exclusion found in section 12(1) of the Act. It provided its details about how to request an internal review.
9. On 26 August 2009 the complainant responded and requested an internal review. He explained that a previous case had gone to the Information Tribunal and held that the information was environmental and should be dealt with under the Environmental Information Regulations. He said that he believed that some of the information he sought was environmental in this case as well and the response should have said so. He explained that the public authority was also under a continuous duty to provide advice and assistance and that it had not done so in this case.
10. On 24 September 2009 the public authority communicated the results of its internal review to the complainant. It explained that it upheld its original position in relation to the substance of the request. It explained that it believed that the work required would exceed £600 and provided additional reasons. It explained that there were two public consultations for the Dartford-Thurrock crossing along with a large amount of information including correspondence with residents. It explained that there may be relevant information held by the site operator, the Highways Agency and its central office. It stated that it believed it would cost well over £600 to search for relevant information. It also explained that it understood that the information might be environmental information. In that case it explained that the request was in its view formulated in a too general manner (so that the exception in 12(4)(c) was alluded to). It explained that the public interest determination favoured the maintenance of the exception. It invited the complainant to call it in order to refine the information request and to enable them to process it. It also provided the Commissioner's details as the next forum of appeal.

## **The Investigation**

---

### **Scope of the case**

11. On 20 November 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- He has made a number of requests for this information and the public authority was being obstructive;
  - That the aim of a number of toll roads is for local residents to receive local user discounts and that such a scheme was introduced on 15 November 2008 for the Dartford – Thurrock Crossing;
  - He (and his group) has doubts about the legal authority to give discounts on a tolled road on the basis of where a person lives;
  - That the way the public authority has interpreted the request is nonsensical;
  - That the arguments raised in the internal review response are irrelevant;
  - That the public interest arguments weren't stated and can only apply if a valid exception was applied by the public authority. In his view the public authority hadn't cited a valid exception and even if it had he believed that the public interest favoured disclosure;
  - That a substantial number of people are affected by tolls and it is unreasonable for the public authority to keep its position secret about this matter; and
  - That the discounts appear graduated to appease people opposing the tolls rather than being based on the law.
12. On 11 April 2010 the complainant confirmed to the Commissioner that he was now prepared to limit his complaint to embrace only the Dartford-Thurrock and Mersey Gateway tolls.
13. The public authority has explained that its position in respect to both the original request and by reference to the narrowed complaint is that the costs limit would apply [section 12(1) under FOIA] and/or the request would be either manifestly unreasonable or formulated in a too general manner under the EIR [Regulation 12(4)(b) and (c)]. This is because both the request and the narrowed complaint ask for all information on the two toll schemes. The Commissioner has considered the narrowed complaint first. In the event that the narrowed complaint is too broad and/or manifestly unreasonable, it would follow that the request (which embraces the same information as the narrowed complaint) would also either exceed the costs limit or be manifestly

unreasonable. He has therefore used the public authority's subsequent analysis of the narrowed complaint to demonstrate and base his decision on whether the public authority had correctly determined that the request of 22 May 2009 would exceed the costs limit or was manifestly unreasonable. In doing so the Commissioner has also considered whether the request could be limited to the two crossings.

## **Chronology**

14. 7 December 2009: The Commissioner wrote to the public authority to explain that he had received an eligible complaint.
15. 20 January 2010: The public authority provided the Commissioner with its original arguments about why it had taken that position it had.
16. 25 January 2010: The Commissioner telephoned the complainant. He explained that the case was allocated and asked whether there was a way he could refine his request in order for the information that he wants to be found. He explained that objectively the wording may embrace a lot of information. The complainant explained the background of the case and that he would have a careful look to see how he could refine it.
17. 26 January 2010: The complainant replied to the Commissioner. He explained the background in detail and reiterated that he believed that the public authority had read the request wrong. He stated that there were only a few local discount schemes and the information should be easy to find. He explained that it was unlikely to be voluminous.
18. 27 January 2010: The Commissioner contacted the public authority to discuss what sort of advice and assistance could be offered to help narrow the request down with a view to finding an informal resolution. The public authority explained that a more specific time period or type of document may be possible.
19. The Commissioner then wrote to the complainant to set out how the case would progress. He asked for the complainant to provide him with a copy of the emails dated 12 August 2009 and 14 August 2009 that he had referred to in his complaint form.
20. 28 January 2010: The Commissioner wrote to the public authority. His letter was designed to enable the public authority to provide enough information about whether the information, if held, would constitute environmental information and to discuss what sort of advice and assistance he believed would be appropriate in this case.

21. 1 February 2010: The complainant provided the Commissioner with the emails that he asked for.
22. 8 February 2010: The complainant provided further submissions. He explained that he was concerned that the Commissioner had not decided what regime his request fell into immediately and that he was not prepared to approach the public authority to narrow down his request because he considered it already related to a small area. He explained that he believed that the public authority was being obstructive because it did not want the information to which his request relates to be released because it would undermine its plans to charge in the Mersey Gateway crossing.
23. 9 February 2010: The Commissioner wrote to the complainant. He confirmed that he had carefully considered whether it was possible to determine which regime was correct for this case and he believed that he could only do so by making the enquiries set out in his letter to the public authority dated 28 January 2010. He explained that this was because he did not have adequate evidence to establish this immediately.
24. 25 February 2010: The public authority issued a response to the Commissioner's letter dated 28 January 2010. It provided a sample of the information that would need to be searched to allow the Commissioner to make an informed decision about which regime applies. It explained that it also believed that the exception found in 12(4)(b) applied [manifestly unreasonable] and provided the Commissioner with its public interest arguments about this.
25. 5 March 2010: The Commissioner wrote to the complainant. He confirmed that he had determined that some of the information was environmental and some was not. He explained that he had been researching the background of the case and asked the complainant to explain why the information mentioned in paragraph 5 was inadequate and whether after considering this information carefully he wished for the case to continue. He also sent a reminder to the complainant on 26 March 2010.
26. 4 April 2010: The complainant explained that he had already considered the information referred to in paragraph 5 above carefully and in his view it did not answer his request. He explained that the request related to other crossings including the Mersey Gateway crossing and that he wished for the case to continue.

27. 9 April 2010: The Commissioner wrote to the complainant. He explained that the email seems to be saying that the complainant would consider narrowing his complaint to the Mersey Gateway crossing and asked whether this was the case.
28. 11 April 2010: The complainant replied that he was prepared to limit his complaint to only the Dartford – Thurrock and Mersey Gateway crossings.
29. 12 April 2010: The Commissioner wrote to the public authority about its reliance on the costs limit and the exceptions it was applying. He also explained that the complainant was prepared to narrow his complaint to the two crossings.
30. 29 April 2010: The Commissioner received detailed submissions from the public authority about its position. These arguments will be considered in detail in the analysis section below.

## Analysis

---

### Substantive Procedural Matters

*Is any of the requested information environmental information?*

31. This question matters as information that is environmental information must be considered under the EIR and not the Act. It therefore is a portal to a different legislative regime. The EIR has different provisions particularly with regard to the cost thresholds. Instead of the exclusion under the Act [set at £600], there are specified exceptions in the EIR that do not cover the same ground and have a public interest element.
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 paragraph 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 believes that wherever possible the decision as to whether requested information is environmental information should be made on a review of the actual information that has been identified as held by the public authority as falling within the scope of the request, rather than on the wording of the requests itself. However, in some cases it is not always possible to review a copy of the requested information. Such a scenario can include where the requested information is not in fact held (but could be environmental information if it were held) and scenarios such as this case where the public authority cannot in fact provide the requested information because, in its opinion, to do so would exceed the fees limit at section 12 of the Act.

40. In such scenarios where the public authority has not been able to extract and provide the Commissioner with all of the requested information, he considers the following points in order to assess what access regime(s) the requested information falls under:

- Whether a sample of the information could be provided.
- Does the wording of the request suggest that the EIR would apply (e.g. a request for information about waste disposal)?
- Does the context of the request suggest EIRs would apply? (e.g. if the complainant has been corresponding with a public authority about a proposed building development and then asks for all for

copies of correspondence between the public authority and the building contractor)?

- How does the public authority hold the information and for what purpose is it held (e.g. information is held by the planning department in a planning file)?
41. The Commissioner accepts that from an objective viewpoint some of the information which falls within the scope of the requests would be environmental information by virtue of regulation 2(1)(c). For information to be environmental information via regulation 2(1)(c) the Commissioner considers that:
- The information itself must be **on** a measure or activity; and
  - The measure or activity (not the information itself) must affect or be likely to affect the elements and factors in 2(1)(a) or (b).
42. The threshold of 'likely to affect' is one where the likelihood need not be certain, but it must be more substantial than remote.
43. In the Commissioner's opinion the request does embrace some information about a measure – the management of traffic flow [through charging money] on set roads – which would be likely to affect one or more of the factors in regulation 2(1)(a). This is because the management of the use of the road is likely to affect the land and the air and the atmosphere. The Tribunal in *Mersey Tunnels Users Association and the Information Commissioner and Halton Borough Council* [EA/2009/0001] has previously adjudicated that some information about the tolling of roads is indeed environmental information. The Commissioner appreciates that this request is slightly more remote than the Tribunal's case but believes that it is still partly environmental information.
44. The Commissioner has been provided with a small sample of the sort of information that would need to be assessed to consider whether information falls within the scope of the request. In analysing this information the Commissioner has concluded that a portion of this information cannot be sufficiently linked back by regulation 2(1) and is not therefore environmental information. He believes that this is the case because there is a good chance that relevant information about the local user discount scheme would embrace matters that do not relate to the environment. Therefore although the Commissioner could theoretically take a holistic approach and conclude that all of the information falling within the request is environmental information, to do so would be technically incorrect because he is aware that a proportion of the information is likely to be non-environmental information.

45. 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.
46. The Commissioner, therefore, has initially considered whether to locate and retrieve all potentially disclosable information would exceed the appropriate cost limit and therefore whether the Department of Transport can rely on section 12(2) of the Act. He will then go on to consider whether the environmental information alone can be provided separately under the EIR or whether an appropriate exception can be cited.

## Section 12

47. Section 12(1) indicates that the public authority is not required to comply with a request for information if the authority estimates that the total cost of complying with the request would exceed the 'appropriate limit'.
48. Section 12(2) provides that a public authority can refuse a request if the cost of complying with section 1(1)(a) alone (that is the cost of confirming or denying whether the information requested is held) would exceed the 'appropriate limit'.
49. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") provide that this cost limit for central government public authorities is £600. This is calculated at the rate of £25 per hour, providing an effective time limit of 24 hours. If a public authority estimates that complying with a request would exceed 24 hours, or £600, section 12(2) provides that the request may be refused.
50. The Information Tribunal (the 'Tribunal') in *Quinn v Information Commissioner & Home Office* [EA/2006/0010] explained this point in this way (at paragraph 50):

*'The fact that the rules drafted pursuant to s.12 have the effect of defining what is a reasonable search and the amount of time*

*and money that a public authority are [sic] expected to expend in order to fulfil their obligations under the Act, serves as a guillotine which prevents the burden on the public authority from becoming too onerous under the Act.'*

51. In this case the public authority's position is that it could well hold information relevant to the request. However, it is unable to say for certain, or know the scope of how much information it holds without checking inside all its files about the two toll roads. If it does hold the information then it would be likely to be within the files. Its position therefore is that in order to process the request and acquire all the relevant information would take work that would exceed the limit set in the costs regulations. Its view therefore is that section 12(1) applies and no work should be required to be done.
52. The Commissioner is therefore required to consider the application of section 12(1) in this instance.
53. For clarity, there is no public interest element to consider when looking at section 12(1). It serves merely as the costs threshold and does not provide any statement about the value of any request for information.
54. The Commissioner's investigation into the application of section 12(1) has three parts. The first part is to explain what the public authority's position is in this case. The second considers whether it was reasonable for the public authority to base its estimate on obtaining information from its files and whether the search can be narrowed down. If it was, then the third part would consider whether the section 12(1) estimate is reasonable to see whether the exclusion has been correctly applied.

#### *The public authority's position*

55. The public authority initially explained that the word '**any**' crossing led to it requiring to check the records of at least fifteen schemes and there was no way to do that without exceeding the costs limit. It confirmed that all tolled and charged crossings have unique statutory bases. As explained above, the Commissioner and the complainant agreed that the search could be narrowed to two crossings Mersey Gateway and Dartford – Thurrock. This notice focuses only on those two crossings in order to demonstrate how these costs have been calculated. However, both of these crossings have different statutory bases and if the cost limit is exceeded for these two crossings alone, then it would also be exceeded for all the crossings together as defined in the complainant's request of 22 May 2009.

56. The public authority has now stated that in its view the request containing the words 'all documentation (including communications)' would require it to undertake work that is considerably in excess of the costs limit in order to establish what it holds that is relevant to the request. It explained that in its view it was phrased too broadly and that it believed the costs limits have been appropriately applied.
57. It has supplied considerable information about the various roads to the complainant in the past; including a considerable volume of information about local user discounts and some information about their statutory basis outlined in paragraph 5 in this Notice. It had also published a large amount of information about the consultations on its website for both the Dartford-Thurrock and Mersey Gateway crossings.
58. The complainant has told the Commissioner that this information does not address his concerns. The public authority explained that it was not apparent what else could be found. In the Commissioner's view the information that was provided does provide some information that falls within the scope of the request, however, there is no way of knowing whether it provides all the information held without undertaking further searches.
59. The public authority also explained that the Dartford-Thurrock crossing consists of a large volume of records. It explained that there were two public consultations about the crossing. There were also a large number of documents about the systems to support the operation of the scheme and also correspondence with members of the public often about the legality of the scheme. It explained that it believed that there would be numerous references to the local user discount scheme within the general correspondence because the scheme was the then Minister's preference. This would mean that little information could be discounted and all information would need to be checked to consider whether it was relevant to the request about the statutory basis of local user discounts.
60. In addition information that could be relevant to the request is held in a number of locations. The first point of call would be the site operator, then the Highways Agency (an executive agency of it) and also the central records of the public authority itself.
61. The complainant has argued that it is self evident what he wants and the public authority should easily be able to find it and that it is being obstructive. The Commissioner having considered the volume and nature of the information believes that the public authority is correct that the request is worded so that it embraces 'all documentation' about the set matter. He therefore feels it is reasonable that the public

authority checks all the records which might contain information that is relevant to the request although he will carefully consider whether there are reasonable alternatives to narrow down the search in the analysis section below.

62. For the Mersey Gateway crossing it explained that there was an ongoing inquiry taking place. It explained that it was fairly certain that it did not hold relevant recorded information about the statutory basis of the proposed scheme. This was because at the time of the request the details of the scheme had not been decided. It acknowledged that it had entered into correspondence with the relevant council but that the statutory basis of the scheme was not one of the things that it believed to have been discussed yet. However, in order to confirm it would be required to check through all the relevant correspondence about the crossing.
63. The complainant was not satisfied that the public authority has exchanged no correspondence about the statutory basis of local discounts for the crossing. The Commissioner therefore considers that it is reasonable that the correspondence about it should be checked and will also consider whether there are any reasonable alternatives than looking at each record below.

*Are there any reasonable alternatives that can narrow down the search in the circumstances of this case?*

64. The complainant has argued that the reliance on the costs limit was neither credible nor well considered. In addition the complainant believed that the information would be known and would not necessitate a search through all of the records.
65. When considering this issue the Commissioner has received guidance from the Information Tribunal in the case *Alasdair Roberts v the Information Commissioner* [EA/2008/0042]. In this case, the complainant offered a number of suggestions as to how the requested information could be extracted from a database that contained the elements of what was requested. The Tribunal concluded that none of the ways suggested would have brought the request under the costs limit. However at paragraph 15, the Tribunal also made the following more general comments on alternative methods of extraction:

*“(a)...the complainant set the test at too high a level in requiring the public authority to consider all reasonable methods of extracting data;*

*(b) that circumstances might exist where a failure to consider a less expensive method would have the effect of preventing a public authority from relying on its estimate... "*

66. Those circumstances were set out at paragraph 13 where it was said:

*"...it is only if an alternative exists that is so obvious to consider that disregarding it renders the estimate unreasonable that it might be open to attack. And in those circumstances it would not matter whether the public authority already knew of the alternative or had it drawn to its attention by the requestor or any other third party..."*

67. The Commissioner has therefore considered whether there is an alternative that exists that is so obvious to consider that it renders the estimate unreasonable in this case.

68. The Commissioner has first considered the nature of the records that are held for the Dartford – Thurrock Crossing.

69. In relation to the central records the public authority has an estimated 1735 records. Whilst it knows that this information relates to the Dartford-Thurrock Crossing, it has no idea whether relevant recorded information is held about the statutory basis of the local user's discount. The information is not catalogued in any way that would enable it to find just the information that the complainant appears to want as for its own purposes it only needs to hold the legislative and policy documents together for a set project. It does not need to cross reference the different statutory basis of local user discounts as in its view the statutory basis of every crossing is not comparable.

70. In relation to the Highways Agency there is a diverse range of records held that may contain relevant information. There are 132 files about the charging orders and/or the local discount scheme. There are a number of emails of various members of staff that worked on the project whose emails may contain relevant information that is sought. The public authority has explained that the local residents' scheme was not treated as being a separate project from the charging order and were filed together. It would require an experienced individual to check through these papers to identify the information the complainant may want.

71. The Highways Agency also holds considerable information about enquiries from the public and its responses to them. It has eight members of staff who are employed to respond to enquiries and this forms a significant part of their role. These enquiries are often about



the legal basis of charges generally and its records would need to be checked to look for information about people questioning the statutory basis of local user discount schemes. It explained that this information is kept on an electronic casework system, however, its purpose is to measure performance in terms of time taken to respond. There are eleven compulsory fields on this system but they do not include tolling or charging. Free text searching is possible, but this requires the member of staff to enter relevant information in the free text field and there is no obligation to do so.

72. The Commissioner has also asked whether the public authority held a procedures manual or something similar which could address the question of the statutory basis of local user discounts. The public authority explained that it did not hold anything of that description.
73. The Commissioner has also asked whether the public authority held identifiable separate legal advice or something similar about this matter too. The public authority explained that it did not believe that it did and the only way to definitively tell would be to go through all the records.
74. The Commissioner also asked whether the public authority could suggest the narrowing down of the search by document type. The public authority explained that it could not suggest any document type that would satisfy the complainant and noted that the complainant has considerable knowledge about the schemes already and believed that the information he wanted was readily identifiable. The Commissioner can understand that given that each side disagrees about the fundamental properties of the information that has been requested that there was no possibility of narrowing it down to document type when this matter remained unresolved.
75. Given that it believed that work required searching through its central records and the Highways Agency's records in order to confirm or deny whether it held relevant information for the complainant's request to exceed the costs limit, the public authority did not consider it necessary to contact the operator as well. Furthermore, the Highways Agency has also confirmed that the search would be a very considerable undertaking for the operators too. Given the breadth of the request and the fact that all information held would need to be looked at, the Commissioner believes that the public authority's position in this matter is acceptable in this case.
76. The Commissioner has considered the complainant's view that it was obvious what he wanted and someone would know where to find the information that was sought within the costs limit. The Commissioner

believes that the finding of **all** documentation (including correspondence) of even only two schemes is not an easy undertaking. Indeed the Commissioner believes that the breadth of the request would necessitate full searches of all the records that may contain relevant information in the circumstances of this case.

77. Having considered all the relevant evidence above, the Commissioner is satisfied that there are no reasonable alternatives to checking all the records that may contain relevant information in this case. He will therefore go on to consider the public authority's cost estimate and whether it is reasonable in this case.

*What is the estimate of the public authority and is it reasonable in this case?*

78. The issue of what constitutes a reasonable estimate was also considered in the Tribunal case of *Alasdair Roberts v the Information Commissioner* [EA/2008/0042] and the Commissioner endorses the following points made by the Tribunal at paragraphs 9 -13 of the decision:

- *"Only an estimate is required"* (i.e. not 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."*

79. The activities referred to in Regulation 4(3) are:

*"(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."*

80. The public authority confirmed when creating its final estimate for the Commissioner that it had only taken into account the four permitted

activities outlined in paragraph 79 above. However, it did explain that it was difficult to identify a representative sample in respect to the Highways Agency files without checking them all and therefore asked the Commissioner to understand the factual matrix of this situation when looking at the estimate.

81. The public authority explained its position for the files it held centrally first:

- 1718 electronic files. Five minutes for each to do activities (a) to (d) above. Total time for the electronic files of **143 hours**.
- 17 hard copy files. Thirty minutes for each to do activities (a) to (d) above. Total time for manual files is **8.5 hours**.
- Total time estimate for the central files is **151.5 hours**.

82. It also detailed its estimate for the files held by the Highways Agency:

- 25 Registered Dartford Charging Order Files and Dartford Order files (9 to be recovered from its archives). Estimate total time to do activities (a) to (d) above was **15 hours**.
- 107 'local discount' files on group electronic hard drive. Estimate of total time to do activities (a) to (d) above was **7.5 hours**.
- Review of SHARE (Sharing Highways Agency Records Electronically) its new filing system for any further files that may have been transferred to it – difficult to estimate without undertaking the task.
- Retrieval and review of two team leaders emails who were responsible for the project– 2 x 7.5 hours = **15 hours**.
- Review of short term secondees' emails who was responsible for the project = **15 hours**.
- Review of other members of the teams emails – around **6 hours**.
- Review of the casework system to deal with enquiries – unclear without undertaking the work.
- Total time estimate is a minimum of **58.5 hours** (not including those activities where it is unknown how long it would take).

83. The public authority also explained that there would also be considerable work that would need to be undertaken by the site operator and this would take more time. In addition it estimated that it had 919 files for Mersey Gateway and to go through those (at five minutes a file) would take another estimated 76 hours to do only the activities allowed.

84. The public authority has therefore estimated that the work that would be required to be undertaken would be in excess of 275 hours (over £5000 doing only the relevant activities). Given the breadth of the request and the fact that relevant information could be in numerous locations the Commissioner accepts that to find all the required information the public authority would have to undertake a manual search of all the files and all of the electronic information held in those locations. The public authority has provided a logical explanation of how this search would be undertaken and the Commissioner is persuaded that the sheer volume of information would necessitate a search taking far in excess of the 24 hour limit (that makes up the £600 limit).
85. On the basis of the above the Commissioner accepts that the public authority has provided estimates that are sensible, realistic and supported by cogent evidence and moreover support the conclusion that the cost of fulfilling the request would significantly exceed the £600 limit. He therefore accepts that the public authority is entitled to rely on section 12(1) and not process the request further under the Act.
86. The Commissioner recognises that the public authority can only rely on section 12(1) to refuse to disclose the non-environmental information and the above analysis is based upon the cost of providing **all** of the information which falls within the scope of the request. This is because technically section 8 prescribes that one can make a valid Freedom of Information request for environmental information. It would then be for the public authority to consider carefully whether this information was environmental and if so, whether section 39 would apply. It follows that the Commissioner is satisfied that the public authority 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 under the Act.

### **Regulation 12 of EIR**

87. As noted above the Commissioner believes that some of the information falling within the scope of the request is environmental information and therefore the public authority cannot rely on section 12 of the Act to withhold this information. Instead the public authority has argued in its most recent correspondence that such information is exempt from disclosure on the basis of either of the exceptions contained at 12(4)(b) [manifestly unreasonable] and 12(4)(c) [the request is formulated in too general a manner and the public authority has provided appropriate advice and assistance] of the EIR. The

exceptions both have a public interest component and to apply require that the public interest in maintaining the exemption outweighs that in disclosing the information (with a presumption of disclosure). The Commissioner has initially considered the public authority's reliance on regulation 12(4)(b).

88. As noted above, the Commissioner accepts that before the public authority is in a position to provide the environmental information falling within the scope of the request, 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 this request. Therefore in relation to whether the public authority can rely on regulation 12(4)(b) the decision the Commissioner effectively has to reach is whether fulfilling the request in its entirety would place a burden on the public authority that is manifestly unreasonable.
89. 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)

90. 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)

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)

91. For the reasons set out above the Commissioner accepts that fulfilling the request 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 a number of areas of the public authority as they will all need to be searched in order to ensure that all relevant information is located. Although the Commissioner notes that the public authority is a large central government public authority and therefore considers it unlikely that fulfilling the request would actually prevent the public authority from carrying out its core functions, he believes that fulfilling this request would result in an unreasonable diversion of the public authority's resources away from its core functions. Allied with the broad nature of the request and the high cost in fulfilling it, this means that he is satisfied that the request can be correctly be classed as manifestly unreasonable and thus the public authority is entitled to find that Regulation 12(4)(b) is engaged in this case.

### **Public interest test**

92. As explained above the exception is subject to a public interest test. Under Regulation 12(1)(b) information may only be refused if an exception applies and 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) explains that the public authority must apply a presumption of disclosure when considering the information. Mindful of the presumption in favour of disclosure, the Commissioner has considered the public interest in favour of maintaining the exception specified in Regulation 12(4)(b) and whether, in all of the circumstances of this case, it outweighs the public interest in disclosing the information.

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

93. The first public interest argument that favours disclosure is that specific to EIR there is a presumption that information should be disclosed by public authorities (Regulation 12(2)).
94. The public authority in its submissions to the Commissioner considered the following arguments in favour of disclosure:

- There is a public interest in the details of schemes which relate to toll charges.
  - It is important that the public are informed about environmental issues so they can contribute to debate on an informed basis.
95. The Commissioner accepts these arguments and notes that public confidence is necessarily dependent on transparency and on the demonstration by a public authority that it has satisfied all applicable laws and acted with clear probity.
96. The Commissioner notes that in addition it is important to promote accountability in how public funds are generated in this case. He notes that the charges may have an impact on the environment, and disclosure of any information held about the statutory basis of local user discount schemes may aid understanding of the decisions taken. The information in question may enable the public gain a greater understanding on the legal basis of its approach and enhance the wider public debate about toll roads.
97. In *Pugh v Information Commissioner v Ministry of Defence* [EA/2007/0055], the Information Tribunal said that there may be an argument in favour of disclosure where the subject matter of the requested information would affect “a significant group of people”.
98. As the toll roads do affect most people local to their areas, it is clear that the subject matter of the requested information would affect “a significant group of people”. This argument therefore must be considered as a factor that favours the disclosure of the information
99. In summary the Commissioner has considered the combined weight of the following factors he regards as relevant in relation to the public interest in disclosing the information:
- The presumption that favours disclosure;
  - The potential improvement in accountability;
  - Transparency of the public authority's action; and
  - The number of people who are affected by the charges.

*Public interest arguments in favour of maintaining the exception*

100. The public authority in its submissions to the Commissioner explained that the following public interest factors favour the maintenance of the exception in this case:

- The volume of the information held is extremely large and located in several diverse places.
  - A great deal of information relevant to this request is already in the public domain.
  - Given that the remaining material is of less interest to the public as a whole, it would not be a good use of resources to locate, retrieve, read and extract all that information which falls only within the scope of the request. This would constitute an unreasonable diversion of resources.
  - The information that has been published has been presented in the most beneficial way to the audience. However, much of the remaining material is not likely to be suitable for immediate release or publication, and to undertake the work required to do that would not be sufficiently beneficial to the public interest to justify it.
  - Until or unless the applicant contacts it to discuss a narrowed request, it would not be helpful to either him or the authority to make assumptions about what could be most usefully released within an appropriate resource limit.
101. The Commissioner is sympathetic to the arguments around volume and the amount of resources that would need to be expended to determine whether appropriate information is held in this case. He believes that it is unreasonable to expend at least 275 hours work to provide such limited information particularly in times where resources are stretched. Indeed the request exceeds the costs limit of the Act which provides similar protection to the public authority by at least a factor of eight. He notes that the public authority has offered to help the complainant narrow down his request and the complainant has indicated an unwillingness to do so.
102. The Commissioner also feels 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.
103. He also notes that there is considerable 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 public authority's 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.

104. The Commissioner initially had reservations about the public authority's contention that the interests of accountability can be reduced by the provision of related information. His normal view is that the information that has not been provided will provide additional accountability above and beyond the information already in the public domain. The complainant has explained that he is aware of most of the information available but still believes his specific request has unique value. Having looked at the circumstances of this case the Commissioner is satisfied that the public authority has been accountable in this case and because there is a great deal of information in the public domain about both the crossings he is satisfied that the interests of accountability are mitigated in this particular case. He notes that the information in paragraph 5 which is directly relevant to the request has been provided to the public and the complainant in respect to the Dartford-Thurrock crossing and the fact that relevant information is unlikely to have been held at date of the request (as the plans hadn't developed to that stage) for the Mersey Gateway as additional reasons why the work need not be undertaken for reasons of accountability.
105. However, the Commissioner is not convinced by the rationale of the arguments around audience as referred to in paragraph 100, bullet point 4 by the public authority. His view is that it is open for the public authority to provide an explanation alongside the information where it believes that it may be liable to being misunderstood, but there is no weight to be found in any arguments about withholding it for that reason.
106. In summary the Commissioner has considered the combined weight of the following factors he regards as relevant in relation to the public interest in withholding the information:
- The quantity of work that would be required in this case;
  - The need to maintain the integrity of the EIR and that the Regulations are used responsibly;
  - The necessity that the core functions of the public authority are not undermined substantially by wide-ranging requests; and
  - The amount of information that is in the public domain about the two crossings and how on the facts of this case it mitigates the need for further accountability and transparency.

### *Balance of public interest arguments*

107. 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 public authority's 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 to not be diverted from its core functions, is stronger.
108. The Commissioner has therefore found that the public authority is entitled to rely on Regulation 12(4)(b) and the request in its context has been correctly defined as being manifestly unreasonable.
109. The Commissioner has not addressed the use of Regulation 12(4)(c) in the light of the fact that he has accepted the application of Regulation 12(4)(b).

## **Procedural Requirements of the Act**

### **Section 16 – duty to provide advice and assistance**

110. Section 16(1) (full copy in the legal annex) provides an obligation for a public authority to provide advice and assistance to a person making a request, so far as it would be reasonable to do so. Section 16(2) states that a public authority is to be taken to have complied with its section 16 duty in any particular case if it has conformed with the provisions in the Section 45 Code of Practice in relation to the provision of advice and assistance in that case.
111. Whenever the cost limit has been applied correctly, the Commissioner must consider whether it would be possible for the public authority to provide advice and assistance to enable the complainant to submit a new information request without attracting the costs limit in accordance with paragraph 14 of the Code. The guidance suggests that:

*'...the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by*

*reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee<sup>1</sup> (Para 14)'.*

112. In its internal review issued on 24 September 2009 the public authority after applying the costs limit explained that the complainant had the opportunity to refine his request and could call it to discuss how this could be done.
113. The Commissioner as noted above has considered how it would have been possible to limit the request at the time of compliance in considerable detail. When considering reasonable alternatives above, he notes that the possible suggestions that could bring the request down into appropriate limits were not adequate.
114. In addition he notes that he has agreed with the complainant to narrow down his complaint to only two crossings, the Dartford -Thurrock and Mersey Gateway and even having taking this approach it is still considerably in excess of the fees limit. The Commissioner has also asked the complainant whether he wanted to contact the public authority and refine his request and on 8 February 2010 the complainant confirmed that he did not wish to do so.
115. The Commissioner has also considered the nature of the request and agrees with the public authority that the complainant has considerable specific knowledge and that it would not help to even try and make any assumptions about how to make the request fit within the costs limits in this case. In any event it is apparent that even narrowing the request to only two crossings of interest would still exceed the costs limit.
116. Having considered the circumstances, the Commissioner considers that the public authority did offer reasonable advice and assistance in the circumstances of this case. He has therefore found that the public authority has not breached section 16(1) of the Act in this instance.

### **Section 17(5) – providing a relevant refusal notice within the time of statutory compliance**

117. Section 17(5) explains that a public authority must issue such a notice stating the fact that it was relying on section 12(1) within 20 working days. As it has failed to do this, it breached section 17(5) of the Act in this case.

---

<sup>1</sup> Freedom of Information Act, Section 45 Code of Practice:

## **Procedural Requirements of the EIR**

### **Regulation 9 – advice and assistance**

118. Regulation 9(1) places additional requirements on the public authority to provide advice and assistance to the complainant in respect to the information that is environmental. The Commissioner has considered the advice and assistance provided in this case and whether it corresponds with its obligation in Regulation 9. The full text of Regulation 9 is provided in the legal annex to this notice.
119. The obligation is to provide advice and assistance where it is reasonable. The Secretary of State has issued the Regulation 16 Code of Practice. This Code of Practice outlines the sort of advice and assistance that is to be expected but is not exhaustive. The Commissioner has considered the Code and its application to the facts of this case.
120. He has concluded that the Code does not provide for relevant advice and assistance that can be applied on the facts of this case. As indexes are not held of the information that has been requested they cannot be provided on the facts of this case. As explained in paragraphs 113 to 116 he believes that there is no additional advice and assistance that can be regarded as reasonable in this case.
121. He therefore finds that the public authority fulfilled its obligations under regulation 9(1).

### **Regulation 14(1)**

122. Regulation 14(1) imposes an obligation on a public authority to issue an appropriate notice in writing that complies with the other parts of the Regulation. As the public authority failed to issue such a notice before its internal review, it breached Regulation 14(1).

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

123. Regulation 14(2) imposes an obligation on a public authority to issue an appropriate notice when it receives a request for environmental information and is refusing to provide information within 20 working days. The public authority failed to provide its refusal notice in twenty working days and therefore breached Regulation 14(2).

## Regulation 14(3)

124. Regulation 14(3) requires the notice issued within 20 working days to explain why it was not disclosing the information and to cite the appropriate exception under the EIR. The public authority failed to cite the exception it would later rely on [Regulation 12(4)(b)] before the Commissioner's investigation and therefore breached regulation 14(3).

## The Decision

---

125. The Commissioner's decision is that the public authority complied with the following substantive provisions of the legislation:

- It was entitled to rely on section 12(1) in relation to all the requested information and was therefore excluded from the duty to process the request because of costs.
- To the extent that the requested information falls within the scope of the EIR, the public authority is entitled to refuse to provide the information on the basis of Regulation 12(4)(b) of the EIR. This is because the exception was engaged and the public interest favoured the maintenance of the exception.
- The public authority provided reasonable advice and assistance and complied with its obligations under both section 16 of the Act and under Regulation 9 of the EIR.

126. However, the Commissioner has also decided the public authority failed to comply with the following procedural elements of the legislation;

- It breached section 17(5) as it failed to issue an appropriate notice within 20 working days.
- It breached Regulation 14(1) because it failed to issue an appropriate refusal notice under the EIR in compliance with that regulation
- It breached Regulation 14(2) because it failed to issue an appropriate refusal notice under the EIR in 20 working days.
- It breached Regulation 14(3) because it failed to specify in 20 working days that it was going to rely on Regulation 12(4)(b).

## Steps Required

---

127. The Commissioner requires no steps to be taken.

## Other matters

---

128. Although it does not form part of this Decision Notice the Commissioner wishes to also highlight the following matter of concern. The refusal notice dated 20 August 2009 was both late and wholly inadequate. While it is not necessary to provide a breakdown of how the costs calculation has been arrived at under the legislation, the Commissioner believes that it is good practice to provide such a breakdown particularly in other cases where it would be possible to narrow down the request. He would hope that the public authority will amend its procedures to explain its position better in cases such as this one in the future.

## Right of Appeal

---

129. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 25<sup>th</sup> day of October 2010**

**Signed .....**

**Pamela Clements  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## 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."

#### *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(2)** provides that –

"Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) 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."

**Section 10(4)** provides that –

"The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations."

**Section 10(5)** provides that –

"Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner."

**Section 10(6)** provides that –

"In this section –

"the date of receipt" means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

"working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom."

### ***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."

**Section 12(3)** provides that –

“In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.”

**Section 12(4)** provides that –

“The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.”

**Section 12(5)** – provides that

“The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

### ***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”.

**Section 16(2)** provides that -

“Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.”

### ***Refusal of Request***

**Section 17(1)** provides that -

“A public authority which ... 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.”

**Section 17(3)** provides that -

“A public authority which ... is to any extent relying:

- on a claim that 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, or
- on a claim that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information

must either in the notice under section 17(1) or in a separate notice within such

time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, on a claim that 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, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

***Environmental information.***

**Section 39(1)** provides that –

“Information is exempt information if the public authority holding it-

- (a) is obliged by regulations under section 74 to make the information available to the public in accordance with the regulations, or
- (b) would be so obliged but for any exemption contained in the regulations."

**Section 39(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)."

**Section 39(3)** provides that –

"Subsection (1)(a) does not limit the generality of section 21(1)."

### **The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004**

#### **The appropriate limit**

**3.** - (1) This regulation has effect to prescribe the appropriate limit referred to in section 9A(3) and (4) of the 1998 Act and the appropriate limit referred to in section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.

(3) In the case of any other public authority, the appropriate limit is £450.

#### **Estimating the cost of complying with a request - general**

**4.** - (1) this regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request-

(a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act<sup>[3]</sup>, and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(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.

### **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.

#### ***Regulation 14 - Refusal to disclose information***

**Regulation 14(1)** If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

**Regulation 14(2)** The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

**Regulation 14(3)** The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).

**Regulation 14(4)** If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

**Regulation 14(5)** The refusal shall inform the applicant –

- (a) that he may make representations to the public authority under regulation 11; and
- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.