

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

### Decision Notice

8 December 2008

**Public Authority:** University of Salford  
**Address:** Salford  
Greater Manchester  
M5 4WT

### Summary

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The applicant made a number of requests for information relating to a report entitled, "Research into aerodynamic modulation of wind turbine noise." The University refused to disclose the information requested, and cited regulations 12(5)(e) and (f) in relation to three of the requests. The complainant requested an internal review of this decision. After carrying out an internal review the University upheld its previous decision. During the investigation the University informed the Commissioner that it also sought to rely upon regulations 13(1) and 13(2)(a)(i) to withhold some of the information. After investigating the case the Commissioner decided that the University could not rely upon regulations 12(5)(e) and (f) as the withheld information was information on emissions. However, the Commissioner partially upheld the University's use of regulations 13(1) and 13(2)(a)(i). Therefore he believes that the withheld information should be disclosed in a redacted format. The Commissioner also believes that the University did not meet the requirements of regulations 5(1), 5(2) and 14(1).

### The Commissioner's Role

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1. The Environmental Information Regulations 2004 (the "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

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2. In a letter to the University of Salford (the "University") dated 15 August 2007 the complainant requested the following information:
- (a) The names and locations of the 27 wind farms identified as 'A' to 'AA' in Table 1 of the report by the University of Salford for the Department for Business, Enterprise and Regulatory Reform entitled, "Research into aerodynamic modulation of wind turbine noise."
  - (b) The names and locations of 4 wind farms identified as first, second, third and fourth site in sections 4.1 to 4.4 of the report.
  - (c) The survey responses received from Local Authorities to the Scoping Survey and Detailed Survey referred to in the report.
  - (d) Documentary evidence of the 'personal knowledge' used to determine whether AM is a factor at any wind site as referred to on page 15 of the report.
  - (e) Any correspondence or minutes relating to this report.

These requests are referred to as requests (a) to (e) throughout the rest of this Notice.

3. In a letter dated 13 September 2007 the University provided a response. It informed the complainant that as the information he had requested was environmental information it had dealt with his request under the EIR. In relation to requests (a) to (c) it informed the complainant that it considered this information was exempt under regulations 12(5)(e) and (f). It also provided an explanation as to why it believed that the public interest in maintaining these exceptions outweighed the public interest in disclosure. It informed him that it did not hold any information relating to request (d). It also informed the complainant that request (e) was, "far too broad for us to be able to appropriately deal with," and cited regulation 12(4)(c). It went on to state that,

"By way of advice and assistance under Regulation 9 I would be grateful if you could refine this request, describing more specifically the information that you seek. If you need any guidance on this matter, please feel free to contact me."

The University did not provide any information as to the application of the public interest test to regulation 12(4)(c). Finally the University informed the complainant of his right to an internal review, and his right to complain to the Commissioner.

4. The complainant requested an internal review in a letter dated 15 October 2007. In relation to requests (a) to (c) he questioned its use of the exceptions. He drew

the University's attention to regulation 12(9) of the EIR and pointed out that this stated that the exceptions cited by the University could not be used to withhold information on emissions. In relation to request (e) the complainant refined his request, and asked for:

- (f) Correspondence relating to the peer reviewing of the report.
- (g) Dates of meetings, attendees and minutes related to the production and peer reviewing of the report.
- (h) Emails related to the report from University of Salford computer servers to/from Malcolm Hayes.
- (i) Emails related to the report from University of Salford computer servers to/from DTI/BERR.

The complainant stated that he was seeking information from between 2 August 2006 and 10 August 2007. These requests are referred to as requests (f) to (i) throughout the rest of this Notice.

- 5. In the request for an internal review the complainant did not query the University's response to request (d), and therefore the Commissioner has not considered this request any further.
- 6. The University carried out an internal review, and provided its response in a letter dated 13 November 2007. In this letter it stated that the review had been conducted by the University's Registrar and Secretary, and that,

“...the decision of the Registrar and Secretary was to uphold the decision not to provide you with the information requested.”

The University did not provide any further arguments as to why it believed that the information requested was exempt from disclosure, nor did it refer specifically to requests (f) to (i).

## The Investigation

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### Scope of the case

- 7. The complainant contacted the Commissioner on 19 November 2007 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the University was correct to withhold the information he had requested.
- 8. During the course of the investigation the complainant informed the Commissioner that he only wished to complain about the University's handing of requests (a) to (c). Therefore the Commissioner has not considered the University's responses to requests (e) to (i) any further.

9. Although it was not raised by the complainant, the Commissioner has also considered whether the University complied with the requirements of regulation 14 when dealing with this request.

## Chronology

10. The Commissioner wrote to the University on 5 June 2008. In this letter he asked the University to provide him with a copy of the withheld information. In relation to requests (a) to (c) he asked for its submissions as to why it believed that this information was exempt from disclosure. He also drew the University's attention to regulation 12(9), which prevents public authorities from citing regulations 12(5)(d) to (g) in relation to information relating to information on emissions, and asked it for further submissions as to why it believed that this did not prevent it from citing the exceptions it was relying upon. The Commissioner also asked questions regarding the University's refusal to provide information relating to requests (f) to (i). He asked for a response within twenty working days.
11. The University responded to the Commissioner in a letter dated 4 July 2008 and informed him that it was unable to respond within the specified time period. It asked for an extension to the deadline.
12. The Commissioner responded in a letter dated 9 July 2008. He agreed an extension to the deadline for response until 25 July 2008.
13. In a letter dated 25 July 2008 the University provided the Commissioner with a copy of the withheld information – in relation to requests (a) to (c). It also provided further submissions to support its use of regulations 12(5)(e) and (f) and argued that it was able to cite these exceptions as regulation 12(9) applied in this case, as it did not believe that the withheld information did not relate to emissions.
14. The University also informed the Commissioner that it believed that the withheld information contained personal data, and as such it was also relying upon regulation 13. Finally, the University also provided submissions as to its position regarding requests (f) to (i).
15. In a letter dated 5 August 2008 the Commissioner wrote to the University again, and asked further questions regarding its refusal to provide information relating to requests (f) to (i). He asked it to confirm whether its response to the complainant dated 13 November 2007 (see paragraph 6 above) had been intended as a response to all of the complainant's requests – requests (a) to (i) – or whether it only related to requests (a) to (c).
16. In a letter dated 12 August 2008 the University provided the Commissioner with a copy of a letter from it to the complainant dated 12 December 2007 (not previously supplied to the Commissioner), which related to requests (f) to (i). In relation to requests (f), (h) and (i) the letter reiterated that the request was formulated in too general a manner, and stated that the University continued to rely upon regulation 12(4)(c). The University provided further details as to why it considered that this exception applied. It also provided advice as to how the

complainant could refine his request. The University did, however, provide information in relation to request (g).

17. Consequently the Commissioner wrote to the complainant on 15 August 2008, and drew his attention to the letter from the University dated 12 December 2007. He asked the complainant to clarify whether he also wished to complain about this response (i.e. the University's refusal to provide the information specified in requests (f) to (i)), or whether he only wished to complain about its responses to requests (a) to (c).
18. In a letter dated 21 August 2008 the University provided further submissions to support its position regarding requests (f) to (i).
19. In a letter dated 15 September 2008 the complainant wrote to the Commissioner and confirmed that he only wished to complain about the University's responses to requests (a) to (c). Therefore, as stated above, the Commissioner has not considered the University's responses to requests (f) to (i) any further.
20. The Commissioner wrote to the University in a letter dated 26 September 2008 and informed it that he was focusing his investigation on requests (a) to (c). He noted that it had now also cited regulation 13 and asked it to confirm which part of the regulation it was relying upon. He also asked it to provide further submissions to support its use of this exception. He asked the University to respond within ten working days.
21. The University responded in a letter dated 7 October 2008, and confirmed that it was relying upon regulation 13(2)(a)(i), as it believed that the disclosure of the information in question would be in breach of the first principle of the Data Protection Act 1998 (the "DPA"). It provided further arguments to support this view.

## Findings of fact

22. The University was commissioned by DEFRA and the Department for Business, Enterprise and Regulatory Reform to produce a report in order to establish the levels and nature of the reported noise complaints received across the UK relating to noise issues from wind farms, both historic and current, and determine whether Aerodynamic Modulation is a significant effect; and to review and understand the level of knowledge/understanding that exists throughout the world on Aerodynamic Modulation, and whether Aerodynamic Modulation can be predicted. The report, "Research into Aerodynamic Modulation of Wind Turbine Noise," was published in July 2007.<sup>1</sup>

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<sup>1</sup> <http://www.berr.gov.uk/files/file40570.pdf>

## Analysis

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### Is it environmental information?

23. The definition of "environmental information" is set out in EIR regulation 2 (1). This states that:

"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 the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)..."

24. The Commissioner considers that the phrase "any information...on" should be interpreted widely and that this is in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIRs enact.<sup>2</sup>
25. The information requested in this case is centred on noise generated by windfarms and the effect this has on the environment. It is accepted by all parties

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<sup>2</sup> Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and , eventually, to a better environment.

in this case (including the Commissioner) that this information falls within the definition of environmental information set out in (b) above, as it is information on factors affecting or likely to affect the elements of the environment referred to in (a) above. However, it is disputed by the University that this information relates to information on emissions.

### **Does this information relate to information on emissions?**

26. This is a fundamental question in this case, as the University has sought to rely upon regulations 12(5)(e) and (f) to withhold the requested information, and regulation 12(9) states that:

“To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs 5(d) to (g).”

Therefore, if the information in question relates to information on emissions, the University will not be entitled to refuse to disclose that information under two of the exceptions it has sought to rely upon.

27. In its letter to the Commissioner dated 25 July 2008 the University provided detailed arguments as to why it did not believe that the withheld information was information on emissions:

“The definition of environmental information in regulation 2(1)(b) of the EIRs lists ‘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)’. If noise is a sub-species of emission then I consider the two items would not be given equal prominence in that list. If noise is an emission the list might read ‘substances, energy, radiation or waste, including radioactive waste, emissions (including noise) discharges...etc’

To the extent that there may be reliance placed upon the IPCC (96/61/EC) Directive’s interpretation of the term ‘emissions’ and the reference to that definition in the United Nations’ Aarhus Convention Guidance I would refer you to the...Tribunal’s decision no EA/2006/0078... In that decision, at paragraph 35, the Tribunal clearly states the definition of environmental information in the Aarhus Convention is not the same as that in the EIR Directive; in particular the decision refers to the fact that the Article 2(1)(b) of Directive 2003/4 (the EIRs Directive) includes the word emissions but the Aarhus convention does not. Hence the implementation guidance for the Aarhus convention, on the term ‘emissions’ should not be automatically applied to the EIRs Directive or the EIRs as that guidance was restricted to the Aarhus Convention... Any differences between the Aarhus Convention and the EIRs are deliberate.

In conclusion on this point, the interpretative principle to be applied is that outlined above, taking its lead from the statutory interpretation principle of *expressio unius est exclusio alterius* (to express one thing is to exclude another). If noise was intended to be classed as an emission it would not have been mentioned separately alongside the term 'emission' in the EIRs Directive.”

The Commissioner is not persuaded by the University's arguments here. He believes that regulation 2(1)(b) should be read as saying that noise can also be characterised as an emission. He believes that it is possible that information can be characterised as being within more than one of the factors listed in this section (e.g. substances, energy, noise, radiation and waste). Furthermore the Commissioner is not persuaded by the University's reference to *expressio unius est exclusio alterius* (i.e. The express mention of one thing excludes all others). He believes that whilst items not on a list in a statute are assumed not to be covered by the statute; sometimes a list in a statute is illustrative, not exclusionary. This is usually indicated by a word such as "includes". In this instance he notes the wording of regulation 2(1)(b), as listed at paragraph ... above.

28. In reaching a view on this the Commissioner has been mindful of the views expressed by the Tribunal in *OFCOM v ICO & T-Mobile* [EA/2006/0078]. In that case the Tribunal considered whether information relating to radio wave energy, transmitted from a mobile phone transmitter, could be considered to be information relating to information on an emission. In reaching a decision on this the Tribunal stated,

“It is conceivable that those drafting the Directive did intend the word "emissions" to have a narrower meaning for the purposes of regulation 12(5)(e) than would normally be applied to it. However, no guidance appears in the Directive to assist us in deciding whether it should be interpreted in that way. The 16th recital suggests that the grounds for refusal to disclose should be interpreted in a restrictive way. It follows that any exception to such a ground should be given a broad interpretation. Against that background we believe that we should only apply the more restrictive meaning if we are given clear guidance to that effect. We do not believe that we are provided with such guidance by the Implementation Guide. The Aarhus Convention itself does not cross refer to the definition in the IPPC directive. Even if it did it need not necessarily follow that the same definition should be adopted (again without any direct cross reference to it) for the purposes of interpretation of either the Directive or the EIR. Although recital 5 of the Directive states that it is intended that it be broadly consistent with the Aarhus Convention, there is no suggestion that the Directive is intended to implement the terms of the Convention in the same way that a national measure, such as the EIR, is intended to implement a Community Directive and thereafter to be interpreted in a manner that complies with it. Nor is there any provision within the Aarhus Convention itself, or among its recitals that indicates what meaning should be applied to the word. For all of these reasons we conclude that "emissions" in both sub paragraph (b) of the definition of environmental



information and regulation 12(9) should be given its plain and natural meaning and not the artificially narrow one set out in the IPPC Directive. As we have indicated it is accepted, on that basis, that radio wave radiation emanating from a base station is an emission.”<sup>3</sup>

The Commissioner finds the comments of the Tribunal persuasive. In particular he has noted the Tribunal’s statement that the definition of emissions, “should be given its plain and natural meaning...”

29. In considering the ‘plain and natural’ meaning of the word emission the Commissioner has considered the definitions in the Oxford English Dictionary of the words emission and emit. It defines the word ‘emission’ as ‘something emitted’, and the verb ‘emit’ as (amongst other things): “Give off, send out from oneself or itself, (something imponderable, as light, sound, scent, flames, etc.)”
30. In this case the withheld information is information relating to the noise waves emanating from certain windfarms. Bearing this in mind, and considering this alongside the ‘plain and natural’ meaning of the word emission, the Commissioner believes that the withheld information in this case relates to information on emissions. In reaching this view he has noted that the Tribunal in *OFCOM v ICO & T-Mobile* found that information relating to radio wave radiation emanating from a base station was also information on emissions.

#### **Procedural matters**

##### **Regulation 14**

31. Regulation 14(1) states:

“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 shall comply with the following provisions of this regulation.”

32. Regulation 14(3) states:

“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).”

33. During the investigation of this case the University informed the Commissioner that it sought to rely upon regulation 13(1) and 13(2)(a)(i) to withhold some of the information subject to this request. This exception had not previously been cited to the complainant. In failing to inform the complainant of one of the exceptions it was seeking to rely upon, the University failed to meet the requirements of

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<sup>3</sup> EA/2006/0078, para 25.

regulation 14(1) – as it had failed to comply with the provision laid out in regulation 14(3)(a) to inform the applicant of any exception relied upon.

34. The full text of regulation 14 can be found in the legal annex at the end of this Notice.

## Exceptions

### Regulations 12(5)(e) and 12(5)(f)

35. The University has relied upon regulations 12(5)(e) and (f) to withhold the information requested by the complainant. It has provided arguments to the complainant, and the Commissioner, as to why it believes that these exceptions are engaged, and why it believes that the public interest in maintaining these exceptions outweighs the public interest in disclosure.
36. However, as stated above, regulation 12(9) states that if environmental information relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under any of the exceptions listed in regulation 12(5)(d) to (g).
37. Bearing this in mind, and as the Commissioner has considered that the withheld information relates to information on emissions, the University cannot rely upon the exceptions in regulations 12(5)(e) or (f) that it has sought to apply.
38. The full text of regulation 12 can be found in the Legal Annex at the end of this Notice.

### Regulation 13

39. The Commissioner has gone on to consider the University's application of regulation 13 to the withheld information.
40. Regulation 13(1) provides an exception for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in regulations 13(2) or 13(3) is satisfied.
41. One of the conditions, listed in regulation 13(2)(a)(i) is where disclosure to any member of the public would contravene any of the data protection principles as set out in the DPA.
42. The full text of regulation 13 can be found in the legal annex at the end of this Notice.
43. Therefore, for this exception to apply the requested information must fall within the definition of personal data. If it is established that the requested information is personal data, it is then necessary to consider whether disclosure would breach any of the data protection principles.

44. In this case the University is seeking to rely upon regulations 13(1) and 13(2)(a)(i) to withhold some of the requested information, as it believes that disclosure of this information would be in breach of the first data protection principle.
45. The Commissioner has first considered whether any of the withheld information is the personal data of third parties.

**Is the requested information personal data?**

46. Personal data is defined in section 1 of the DPA as data which relates to a living individual who can be identified:
  - from that data or,
  - from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller or any other person in respect of the individual and includes any expression of opinion about the individual and any indication of intentions of the data controller or any other person in respect of the individual.
47. In its letter to the Commissioner dated 25 July 2008 the University argued that the withheld information contained personal data as,

“The windfarm sites are generally small with only one or two properties within range and therefore the individuals who made the comments would be identifiable if the addresses if the windfarms were made public. This therefore makes these comments personal data under the definition in section 1 of the Data Protection Act 1998. It is my view that release of this information would be likely to cause damage and distress to the people who submitted the comments...”

The University did not go on to specify whether it believed that some or all of the withheld information contained personal data. Therefore the Commissioner has considered the application of this exception to the withheld information as a whole.

48. The withheld information can be categorised into two groups:
  - the names and locations of certain windfarms – requests (a) and (b), and
  - the survey responses received from Local Authorities, which contain some detail of complaints received by those authorities regarding windfarms – request (c).
49. In relation to the first category of information, the Commissioner does not believe that this is personal data. These are names and locations of certain windfarms which local authorities have received complaints about. Whilst the Commissioner notes the University's comments that some of these windfarms only have 'one or two properties within range', the Commissioner is not persuaded that this would, in itself, be enough to identify the identities of the individuals who had made complaints. Therefore, the Commissioner is not persuaded that the information relating to requests (a) and (b) is personal data.

50. The Commissioner has gone on to consider the second category of information. These survey responses contain some details of complaints received by local authorities about certain named windfarms. The Commissioner notes that some of these responses do contain information from which individual people could easily be identified, as at times individuals are named. This would, in turn, link the details of the complaint to an individual person.
51. Therefore, in relation to this information, the Commissioner believes that this amounts to the personal data of these individuals, as they can be clearly identified from this information.
52. Further to this, some of the survey responses – although they do not contain the names of complainants – do contain identifying information. This identifying information consists of:
- the names of individual properties,
  - the distance and/or compass direction from the property to the windfarm, and/or
  - other geographical locators – such as landmarks – which could lead to the identification of the property of the complainant.
53. In relation to the first bullet point it is obvious that the individual property could be identified from this.
54. In relation to the other two bullet points the Commissioner has considered whether individual properties can be identified from this information. In considering the likelihood of identification of the property the Commissioner has noted that many of these windfarms are located in rural areas, where there are small numbers of properties in the vicinity. Given this the Commissioner considers that it would be a fairly easy task to combine this identifying information, together with the location of the windfarm, and a detailed map, in order to identify the properties in question.
55. The Commissioner has gone on to consider whether an individual property being identified could lead to the identification of an individual person. In reaching this decision the Commissioner has been mindful of his technical guidance on 'Determining what is personal data.' He has especially noted the comment that,
- “Sometimes it is not immediately obvious whether an individual can be identified or not, for example, when someone holds information where the names and other identifiers have been removed. In these cases, Recital 26 of the Directive states that, whether or not the individual is nevertheless identifiable will depend on ‘all the means likely reasonably to be used either by the controller or by any other person to identify the said person’.”<sup>4</sup>

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[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)

56. The Commissioner has considered whether this information, together with other information which is publicly available (and therefore 'likely reasonably to be used'), could lead to individual complainants being identified from the identities of individual properties. Given what other information is also publicly available, for example through the electoral role register, the Commissioner believes that an individual address, on its own, is enough to identify an individual. Therefore he is satisfied that the details of the complaints contained in the survey responses, where they contain information from which an individual property can be identified, can be linked to individual people. As such he is satisfied that the survey responses, where the details of the complaints contain this 'identifying information', is the personal data of these complainants.
57. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of any of the data protection principles.

### **Would disclosure breach the DPA principles?**

58. In its letter to the Commissioner dated 7 October 2008 the University argued that it believed that the disclosure of the withheld information would be in breach of the first data protection principle. The University argued that disclosure would be unfair because:
- disclosure would be likely to cause unnecessary and unjustified distress to the persons to whom the information relates;
  - notwithstanding the fact that the information was passed on to the University from local authorities, the third parties have an expectation that the information would not be passed on to others; and
  - the information was provided to the University on the understanding that it would be treated in confidence.
59. The Commissioner has therefore considered whether the disclosure of this information would be in breach of the first data protection principle.
60. The first data protection principle requires, amongst other things, that personal data is processed fairly and lawfully. The Commissioner has first considered whether disclosure of this information would be fair.
61. In considering this the Commissioner has been mindful of the nature of the information itself. This contains the details of complaints made by private citizens to local authorities regarding what they perceived to be nuisances caused by nearby windfarms. The very nature of these complaints means that they are often a sensitive issue for the complainant, who may consider these nuisances to be intrusive and disruptive of their family life.
62. Furthermore, the Commissioner does not believe that these individuals would have any expectation that the details of their complaints, together with their identities, would be placed into the public domain by way of disclosure under the EIRs.

63. Given this, and bearing in mind his responsibilities under Article 8 of the Human Rights Act 1998 (right to privacy and a family life), the Commissioner believes that the disclosure of this information would be unfair, and in breach of the first principle of the DPA.

**Can the information be anonymised?**

64. The Commissioner has gone on to consider whether this information can be anonymised.
65. Although he has accepted that some of the windfarms may be located in remote areas the Commissioner believes that it is reasonable to assume that most, if not all, of these windfarms will have more than one property located nearby. Furthermore he notes that he has not been provided with any evidence by the University that these windfarms have only one property lying within range.
66. Having considered the information in question, the Commissioner believes that if the following were redacted it would not be possible to identify individual people/properties:
- the names of individuals,
  - the names of individual properties / address details (including telephone numbers),
  - the distance and / or compass direction from individual properties to windfarms, and
  - other geographical locators, namely details of landmarks, which could lead to the identification of the property.
67. Therefore the Commissioner finds that if this information was redacted from the withheld information, this remaining information would not amount to personal data.
68. This analysis is consistent with the decision of the House of Lords in *CSA v Scottish Information Commissioner* [2008] UKHL 47, in particular the Commissioner relies on the speech of Lord Hope, at paragraphs 24-25 of the judgment. Lord Hope made it clear that rendering data anonymous in such a way so that the individual is no longer identifiable, would enable the information to be released without having to apply the data protection principles. If this could be achieved then the anonymised information could be released, as it would no longer be personal data.
69. Consequently the Commissioner finds that regulations 13(1) and 13(2)(a)(i) provide an exception to disclosure for the information listed at the bullet points in paragraph 66 above.

## The Decision

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70. The Commissioner's decision is that the University dealt with the following elements of the request in accordance with the EIR:
- The University correctly withheld the information detailed in paragraph 66 above under regulation 13.
71. However, the Commissioner has also decided that the University did not deal with the following elements of the request in accordance with the EIR:
- Regulation 5(1) requires that a public authority that holds environmental information shall make it available on request. In failing to make environmental information available on the basis of the exceptions contained in regulations 12(5)(e) and 12(5)(f) the University failed to meet the requirements of regulation 5(1).
  - In failing to disclose this information within 20 working days of receipt of the request, the University failed to meet the requirements of regulation 5(2).
  - The University also failed to meet the requirements of regulation 14(1), by failing to comply with the provision laid out in regulation 14(3)(a), as during the course of the investigation it sought to rely upon an exception it had not cited to the complainant.

## Steps Required

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72. The Commissioner requires the University to take the following steps to ensure compliance with the EIR:

The University should disclose the information requested by the complainant (as set out in requests (a), (b) and (c) at paragraph 2 above) in a redacted format, with the information detailed in paragraph 66 above redacted.

73. The University must take the steps required by this Notice within 35 calendar days of the date of this Notice.

## Failure to comply

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74. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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

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

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

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 8th day of December 2008**

**Signed .....**

**Steve Wood  
Assistant Commissioner**

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



## Legal Annex

### 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.
- (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.
- (3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.
- (4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.
- (5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.
- (6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

### 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.
- (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.
- (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.
- (4) Where paragraph (2) applies, in respect of the provisions in paragraph (5), the date on which the further particulars are received by the public authority shall be

treated as the date after which the period of 20 working days referred to in those provisions shall be calculated.

- (5) The provisions referred to in paragraph (4) are –
- (a) regulation 5(2);
  - (b) regulation 6(2)(a); and
  - (c) regulation 14(2).

## **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 circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
- (2) A public authority shall apply a presumption in favour of disclosure.
- (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.
- (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.
- (5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –
- (a) international relations, defence, national security or public safety;
  - (b) course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
  - (c) intellectual property rights;
  - (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
  - (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
  - (f) the interests of the person who provided the information where that person–

- (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
  - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from the Regulations to disclose it; and
  - (iii) has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.
- (6)** For the purpose of paragraph (1), a public authority may respond to a request by neither confirming or denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).
- (7)** For the purposes of a response under paragraph (6), whether information exists and is held by the public authority is itself the disclosure of information.
- (8)** For the purposes of paragraph (4)(e), internal communications includes communications between government departments.
- (9)** To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs (5)(d) to (g).
- (10)** For the purpose of paragraphs (5)(b), (d) and (f), references to a public authority shall include references to a Scottish public authority.
- (11)** Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is withheld by virtue of these Regulations unless it is not reasonably capable of being separated from the other information for the purpose of making available that information.

### **Regulation 13**

- (1)** To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.
- (2)** The first condition is –
- (a) in a case where the information falls within any paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –
    - (i) any of the data protection principles; or

- (ii) section 10 of the Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998(a) (which relates to manual data held by public authorities) were disregarded.
- (3) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of the Act and, in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.
- (4) In determining whether anything done before 24<sup>th</sup> October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.
- (5) For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that –
- (a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded; or
- (b) by virtue of any provision of Part IV of the Data Protection Act 1998, the information is exempt from section 7(1)(a) of the Act.

#### **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.
- (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.
- (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).
- (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.

- (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.