

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

Decision Notice

Date 27 May 2008

Public Authority: Department for Transport
Address: Zone 1/28
Great Minster House
76 Marsham Street
London, SW1P 4DR

Summary

The complainant requested information relating to Luton Airport and the South East and East of England Regional Air Services Study ("SERAS"). Specifically he requested any information provided to Ministers as a basis for decisions on which options to take forward for Luton Airport for appraisal in stage two of the SERAS study, together with any records of the Ministers' decisions and the reasons for them. The Department for Transport (the "DfT") refused to disclose the information and cited section 35 of the Freedom of Information Act 2000 (the "Act"). During the investigation of the case the Commissioner informed the DfT that the withheld information was environmental information, and should have been dealt with under the Environmental Information Regulations 2004 (the "EIR"). Subsequently the DfT informed the Commissioner that it was relying upon regulation 12(4)(e) of the EIR to withhold the information in question. After investigating the case the Commissioner decided that the exception was engaged, but that the public interest in maintaining the exception did not outweigh the public interest in disclosure, and therefore the withheld information should be disclosed. The Commissioner also decided that the DfT had not met the requirements of regulation 14(3)(a) and (b).

The Commissioner's Role

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 Act are imported into the EIR.

The Request

2. On 29 May 2005 the complainant contacted the DfT and requested the following information under the Act,

“...information provided to Ministers as a basis for decisions on which options to take forward for appraisal in Stage Two of the SERAS study, and the records of those decisions and the reasons for them.”

The complainant indicated that he was seeking information which related to Luton Airport.

3. On 16 June 2005 the DfT wrote to the complainant and refused to disclose the requested information, relying upon the exemption listed at section 35(1)(a) or (b) of the Act. In relation to the public interest test the DfT wrote,

“We believe that there is a need to protect the formulation of Government policy to ensure this process remains able to deliver effective government and to ensure decision making is based on the best advice available. Government needs to be able to engage in free and frank discussion of policy, both internally and with key stakeholders.”

4. The complainant contacted the DfT on 4 August 2005 and requested an internal review of this decision. In this letter he wrote,

“The unexplained decisions taken between Stages 1 and 2 for all of the airport sites and the failure to document them in the SERAS Stage 2 Findings Report has always been a subject for comment among those with an interest in the process leading to the White Paper. However, it is only at Luton that the reasons for those decisions remain pertinent because of the Secretary of State’s decision to revive the option for expansion using the current runway at that late stage, an option which, in three different guises, had been comprehensively rejected for SERAS Stage 2 and the subsequent public consultation.”

5. In a letter dated 14 September 2005 the DfT informed the complainant that it had carried out an internal review and that it had upheld the original decision to withhold the information under section 35(1)(a) or (b) of the Act. The DfT informed the complainant of his right to complain to the Commissioner.

The Investigation

Background

6. SERAS was set up by the Government in 1999 to examine the future development of Air Transport in the South East and East of England. The study reported in two stages: stage 1 examined various options for providing extra capacity at airports, and stage 2 examined some of these options in more detail. In July 2002 the Government started a public consultation on the proposals which had been worked on in more detail in SERAS stage 2. The results of this were fed into the Government's White Paper, "*The Future of Air Transport*," published in December 2003. This set out a strategic framework for the development of airport capacity in the UK over the next 30 years, against the wider context of the air transport sector. The White Paper did not itself authorise or preclude any particular developments. However, it was intended to set out the Government's policy framework which was to inform future planning applications and to allow public bodies, airport operators and airlines to plan ahead with a degree of certainty.¹

Scope of the case

7. The complainant contacted the Commissioner on 17 October 2005 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the DfT's refusal to disclose the requested information.
8. During the course of the investigation the DfT identified several documents which fell under the scope of the complainant's request. However, it informed the Commissioner that the complainant had already been provided with three of the documents during the course of a judicial review he was party to. Further to this the Commissioner notes that these documents are now available on the DfT's website.² Therefore the Commissioner has focused his investigation on the remaining documents.

Chronology

9. On 12 February 2007 the Commissioner contacted the DfT and asked for copies of the withheld information and an explanation of its use of section 35.
10. In a letter dated 26 March 2007 the DfT provided copies of the withheld information, together with further arguments as to its use of section 35.
11. On 4 May 2007 the Commissioner informed the DfT that after considering the withheld information he believed that it was environmental information, and therefore fell within the scope of the EIR. He asked the DfT to provide further

¹ <http://www.dft.gov.uk/about/strategy/whitepapers/air/>

² <http://www.dft.gov.uk/foi/responses/2005/sept/2001serasstudy/>

- submissions as to why it believed that the requested information was exempt from disclosure under the EIR.
12. The DfT emailed the Commissioner on 25 May 2007 and apologised for the delay in responding. It informed him that it intended to respond by 8 June 2007.
 13. On 27 June 2007 the Commissioner contacted the DfT as he had not received a response. He asked the DfT to provide a substantive response by 11 July 2007.
 14. The Commissioner emailed the DfT again on 16 July 2007 and informed it that he had still not received a response. He asked the DfT to provide a response by 23 July 2007.
 15. The Commissioner did not receive a response, and on 2 October 2007 he contacted the DfT and informed it that unless he received a response by 4 October 2007 he would issue an Information Notice.
 16. In a letter dated 2 October 2007 the DfT provided a substantive response to the Commissioner and informed him that it believed that regulation 12(4)(e) applied to the withheld information. It provided the Commissioner with its submissions as to why it believed that that exception applied.
 17. The Commissioner wrote to the DfT on 4 March 2008, and asked whether it had any further submissions it wished to make before he proceeded to a decision notice.
 18. The DfT wrote to the Commissioner on 17 April 2008 and provided further submissions to support its use of regulation 12(4)(e).

Analysis

Procedural matters

19. The DfT initially dealt with the request under the Act and applied the exemption at section 35 of the Act to withhold the information in question. The Commissioner has viewed the withheld information and has found that it is environmental information as defined by regulation 2(1) of the EIR.
20. Regulation 2(1) 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 elements of the environment referred to in (b) and (c);
21. In reaching a view on whether the withheld information was environmental information the Commissioner considered the information itself.
22. The withheld information comprises a number of documents related to the decisions on which options to take forward for Luton Airport for appraisal in stage two of the SERAS study. These documents include information on the following areas:
- i. existing capacity and future demand for air transport,
 - ii. likely economic effects of the proposed development,
 - iii. the commercial and financial viability of different options being considered,
 - iv. environmental implications of the proposals such as the impact on climate change, air pollution and noise and discussions of possible action to protect the environment,
 - v. transport infrastructure changes necessary for access to the airport,
 - vi. impact on local land use,
 - vii. health and safety issues, and
 - viii. possible timescales for development.
23. In the Commissioner's view the withheld information is environmental information as it falls within regulation 2(1)(c) of the EIR. It is information about policies, plans

and activities – in this case the expansion of Luton Airport – which are likely to affect some of the elements and factors referred to in regulation 2(1)(a) and (b) as well as measures or activities designed to protect some of those elements. The expansion of Luton Airport would be likely to affect elements of the environment referred to in regulation 2(1)(a) such as air, atmosphere, land and the landscape. The information also contains discussions concerning measures and activities which might protect the air, land and landscape. In addition, these policies, plans and activities would be likely to affect factors referred to in regulation 2(1)(b), particularly noise and emissions, which would be likely to affect the elements of the environment referred to in 2(1)(a), such as air and land.

24. As well as constituting environmental information under regulation 2(1)(c), some of the withheld information falls within regulation 2(1)(e), as it constitutes cost-benefit and other economic analysis and assumptions used within the framework of the activities referred to in 2(1)(c). Some of it also comes within regulation 2(1)(f), as it is information on the state of human health and safety as affected by matters referred to in 2(1)(c).

Regulation 14

25. Regulation 14 states that if a request for environmental information is refused, this refusal should be made in writing in no later than 20 working days after the date of the request. Regulation 14(3)(a) states that the refusal must specify any exception being relied upon under regulations 12(4), 12(5) or 13.
26. By failing to deal with the request under the correct legislation and therefore failing to issue a refusal notice which meets the requirements above the DfT has breached the requirements of regulation 14(3)(a).
27. The full text of regulation 14 can be found in the Legal Annex at the end of this Notice.

Exception claimed

Regulation 12(4)(e)

28. During the course of the investigation the Commissioner determined that the withheld information is environmental and should have been dealt with under the EIR. The Commissioner explained this to DfT and sought further submissions in relation to any of the exceptions under regulations 12(4) and 12(5) of the EIR.
29. Subsequently the DfT accepted that the withheld information is environmental, and informed the Commissioner that it sought to rely on regulation 12(4)(e). It also provided the Commissioner with arguments as to why it believed that the public interest in maintaining the exception outweighed the public interest in disclosure.
30. Regulation 12 states that a public authority may refuse to disclose environmental information if: (a) an exception to disclosure under 12(4) or 12(5) applies, and, (b)

in all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosing the information.

31. Regulation 12(4)(e) states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. After considering the withheld information the Commissioner accepts that it consists of internal communications for the purposes of regulation 12(4)(e), and that therefore the disclosure of the withheld information would involve the disclosure of internal communications. As such the Commissioner believes that the exception is engaged. He has gone on to consider the public interest test.

Public Interest Test

32. Regulation 12(1)(b) states that in order to withhold the requested information in all circumstances of the cases, the public interest in maintaining the exception outweighs the public interest in disclosure.
33. The Commissioner notes that regulation 12(2) provides that in dealing with a request for environmental information a public authority should apply a presumption in favour of disclosure.
34. During the course of the investigation the DfT stated that it had considered the public interest factors both for maintaining the exception and for disclosing the information and had found that the public interest favoured maintaining the exception.
35. In reaching this decision the DfT considered that there was a public interest in disclosure where information exists relating to sensitive environmental matters. It also argued that increasing the availability of information used by the Government to make decisions would allow for more effective and informed public contribution to the policy making process. Finally it considered that there was a public interest in promoting a spirit of openness and transparency.
36. In favour of maintaining the exception the DfT argued that regulation 12(4)(e) recognises the importance of allowing government policy and decision making to proceed in the self contained space needed to ensure that it is done well. There needs to be a free space in which officials, Ministers and airport operators can consider policy options outside of the public arena and use imagination without fear that potential policy options will be held up to public criticism before they are sufficiently developed to justify informed debate. The withheld information was produced during the process of formulating Government policy which resulted in the publication of the White Paper on air transport in 2003.
37. The DfT was also of the view that, in producing the White Paper, the Government gave detailed consideration to a large number of potential policies in relation to different airports and different issues. It believed that it would be unhelpful at this stage, and prejudicial to policy making, for the detail of these considerations to be placed in the public domain as some of the issues that had to be considered during this process were of a highly sensitive and controversial nature.

38. The DfT also argued that disclosure could reveal to the informed reader confidential policy and /or commercial priorities of the Government and its stakeholders, leading to civil service principles being called into question, including but not limited to, impartiality and collective responsibility. It has not provided any further arguments in order to support this argument.
39. The Commissioner notes that the withheld information consisted of a number of different elements including factual elements, discussions of issues under consideration, and the provision of advice and expression of views on particular issues. He believes that the arguments for maintaining the exception falling into the first two categories are generally weaker than for information falling in the latter category. The impact of the disclosure of factual information and descriptions of the issues under consideration are not likely to have the same potential inhibiting effect as the disclosure of advice and particular views. The Commissioner considers that generally there is a strong public interest in the disclosure of factual information which has been used to provide an informed background to decision making.
40. The Commissioner notes the Information Tribunal's comments in *Friends of the Earth v The Information Commissioner and Export Credit Guarantee Department (EA/2006/0073)* that the degree of justification in protecting a safe space for policy deliberations would be stronger in circumstances which related to the early stages of policy formulation.³ It endorsed the view of the Tribunal in *Department for Education and Skills v The Information Commissioner and The Evening Standard (EA/2006/0006)*, and said that,
- “...the timing of a request is of paramount importance in the sense that the earlier the request in relation to the process of policy making or formulation, the greater the consideration that should be afforded to whether the particular exception or exemption should be maintained.”⁴
41. The Commissioner acknowledges that the timing of a request is a very important consideration in this type of situation where different policy options are being examined and debated. He believes that once a decision has been made on the policy to which the information relates, the risk of disclosure prejudicing the policy process is likely to be reduced. This in turn would reduce the public interest in withholding the information.
42. In this case the withheld information relates to meetings and decisions which took place in 2001 – approximately four years prior to the request being refused by the DfT. The Commissioner has also noted that the withheld information relates to decisions as to which options to take forward into SERAS stage 2, and that this fed into the Government's White Paper, which was published in December 2003 – approximately 18 months prior to the request being refused by the DfT.

³ EA/2006/0073, para 57.

⁴ EA/2006/0073, para 60.

43. The Commissioner has also noted that the DfT has not provided him with any detailed evidence as to why the disclosure of any particular part of the withheld information would have been likely to cause harm to the free space needed to allow Ministers, officials and air operators to consider policy options.
44. In the absence of such evidence, and given the age of the information (which predates the public consultation which began in July 2002) and the time that had elapsed between the publication of the White Paper and when the DfT issued its refusal notice, the Commissioner cannot see any significant public interest in withholding the information in order to protect a free space for policy deliberations. Furthermore the Commissioner is also of the view that it would not inhibit free and frank discussion in the future for the public to know that a decision reached in 2001, on a matter of substantial public interest, had been arrived at only after a careful consideration which incorporated alternative options.
45. The DfT also argued that there had been considerable public consultation and debate around the publication of the White Paper, and that public consultation and debate was only useful and appropriate at this stage.
46. The Commissioner does not accept that the public's interest in government policies and their attempts to influence such policies would or should be limited to periods prior to those policies being announced. Once a policy has been announced there will still often be significant debate over the issues concerned and the disclosure of information related to policy formation can be valuable in helping to inform that continued debate.
47. In addition, the DfT contended that some of the assumptions that may have been relied on during the policy making process might, with the benefit of hindsight, appear to have been mistaken. During the policy making process these assumptions had to be accepted in good faith and it is only recently that it has been able to reflect on their veracity. To reopen these assumptions to scrutiny at this stage would be potentially a retrograde step in policy terms, as policy has built on and also progressed on from decisions that were founded on them. To release information of this sort would give scope to challenge several years of Government policy and undermine the basis on which it has been necessary for Government to proceed in this area. This, the DfT argued, would not be in the public interest.
48. The Commissioner does not accept that there is a public interest in withholding information because it may reveal that assumptions on which government policy were based were incorrect and therefore bring into question those policies. He believes that, where this is the case, there is a stronger argument for the disclosure of information as this would help to ensure transparency in relation to the decision making process and could lead to policies being corrected where they are based on false assumptions.
49. The DfT suggested that the data and issues discussed in the withheld information in question reflected the position at the time and were no longer either so relevant or accurate. Disclosure of the withheld information could mislead or otherwise misrepresent the latest thinking of government and policy officials.

50. The Commissioner does not believe that the fact that information may be inaccurate or misleading is a legitimate basis for withholding the information in question. In such circumstances it is advisable for a public authority to release the information accompanied by a statement which puts it into context and corrects any errors which the public authority believes are contained within it.
51. The DfT argued that it was in the public interest to protect the commercial interests of the airport operator, as disclosure of the withheld information might jeopardise these interests. It went on to state that the disclosure of the withheld information might, "prejudice and complicate the discussions between the airport freeholder and operator, and it would compromise the commercial sensitivities of any future development." It argued that it would not be in the public interest for the Government to jeopardise the legitimate business interests of its stakeholders by its actions.
52. The DfT also argued that the withheld information related to the economic rationale for the future expansion of Luton Airport. The airport operator had recently withdrawn its Master Plan for future development of the airport, and was in confidential discussions with the airport freeholder about future development. Therefore, the DfT argued, the withheld information was of particular sensitivity.
53. The DfT went on to state that the airport operator had yet to publish its final Airport Master Plan, and that as the withheld information contained considerable detail about the various development options considered by Ministers, disclosure of the withheld information prior to the publication of the final Master Plan, "...could severely prejudice the operator's position and restrict the options available to it in finalising its Master Plan...thereby undermining its business and operations, particularly its future operations, at the airport."
54. In addition the DfT argued that the withheld information contained detailed information relating to Luton Airport and to the airport operator's business and operations, and disclosure of this information, "would be prejudicial to the operator's interests." The DfT has not provided the Commissioner with any further submissions in relation to this point.
55. Finally, the DfT has pointed out that the delivery of government policy in relation to the expansion of airports is very reliant on the cooperation of the airport operators. The DfT's view is that the release of material provided in response to confidential discussions with those airport operators would significantly prejudice future discussions and the effectiveness of relationships with the operators of Luton Airport, and, in turn, other operators.
56. The Commissioner is not persuaded by these arguments. At the time that the DfT made its final decision regarding the request the information that was withheld was approximately four years old. The Commissioner believes that any sensitivity regarding that information was likely to have been significantly reduced by this passage of time. Furthermore the Commissioner has noted that although there was a considerable amount of information contained within the withheld information, the DfT did not identify which specific pieces of information were

likely to cause which particular harm if disclosed. Nor did it explain why, in each case, this would be likely to happen. It is therefore not readily apparent what harm might have been caused by the disclosure of specific pieces of the withheld information. In the absence of this detailed evidence, and bearing in mind the comments of the Tribunal as listed at paragraph 40 above, the Commissioner is not persuaded that disclosure of the withheld information could have caused any of the harm outlined by the DfT above.

57. The Commissioner has gone on to consider the public interest in favour of disclosing the information.
58. The Commissioner is aware that the future of air transport has been an issue on which there has been a very large amount of public interest and discussion. The Government's policies in this area have a wide ranging impact on people's lives, the economy, and the environment.
59. As the most densely populated region of the UK, the South East was likely to be most seriously affected by the expansion of air transport provision, particularly in terms of pressures on land use and impact on local communities.
60. The development of Luton Airport has the potential to have a major impact on the communities affected by it. There would be significant effect on local towns and villages, the local landscape and on people's lives caused by the large amounts of additional traffic, noise and emissions.
61. The possible expansion plans at Luton Airport were clearly a complex issue with many differing factors and arguments needing to be taken into account by the Government before reaching a final decision on the correct options to choose to take forward to SERAS stage 2 and, subsequently, the White Paper. In assessing the public interest the Commissioner has taken note of the comments of the Information Tribunal in its decision *in Lord Baker v The Information Commissioner and The Department for Communities and Local Government (EA/2006/0043)* that,

“...we consider that full disclosure of the deliberations underlying a decision on a complex matter is arguably more important than in a simple one, where the issues may be more immediately evident.”⁵
62. There has also been considerable public debate about the options for Luton Airport which were taken forward into SERAS stage 2, and were referred to in “*The Future of Air Transport*” White Paper. There were two options taken forward for the possible development of Luton Airport from stage 1 to stage 2 of SERAS – a new 3000m runway built 200m south of and parallel to the existing runway, and a new 3000m runway on a NNE-SSW alignment – and both these options were taken forward into the public consultation stage. However, the White Paper, published in December 2003, introduced a third option which had not been included in the public consultation – that the existing runway could be extended to 3000m and parallel taxiways created. This aspect of the White Paper relating to

⁵ EA/2006/0043, para 22.

Luton Airport was subject to a judicial review in 2004-2005. In considering these points the Commissioner has been mindful of the objectives of the Council Directive 2003/4/EC – especially that increased public access to environmental information contributes to a greater public awareness of environmental matters, and increased public involvement in environmental decision making.

63. The complainant has argued that,

“The key point here is that the option for Luton which appeared in the [‘The Future of Air Transport’] without thorough prior examination in the SERAS stage 2 and without consultation with the public was the basis of all three options for Luton which had been dropped by Ministers in July 2001 between SERAS stages 1 and 2. It is my view that there is a very strong public interest in understanding what had changed between July 2001 and December 2003 which caused Ministers to reverse their earlier decision and to try and impose an option which had not been subject of proper consideration and public scrutiny in the meantime.”

The complainant has argued that the withheld information would help increase public understanding of this issue. The Commissioner accepts that there is a strong public interest in understanding the options considered by the Ministers in deciding which options to take forward into SERAS stage 2.

64. On a broader level the issues relating to the general development of airports and increasing their capacity are relevant to the debates on emissions into the environment and global warming.
65. The disclosure of the withheld information would be of assistance in providing a wide range of interested parties with more information on the factors and arguments considered by the Government before it decided to support the options listed in the White Paper. This would have allowed a more informed debate and consequently have helped to further the public interest in the understanding of and participation in the public debate on significant issues of the day. It would also have furthered the public interest in promoting accountability and transparency by public authorities for decisions taken by them as it would have provided further information on the rational behind the Government’s decision to support particular options for the future development of Luton Airport. This in turn would have helped to increase public confidence that all relevant factors had been considered fairly and appropriately.
66. The public interest would also be served by disclosure as it could bring to light information, not previously in the public domain, about the impact future development plans could have on public health and safety, as well as the impact on the physical elements of the environment.
67. After considering the various arguments the Commissioner has formed the view that although the exception is engaged the public interest in maintaining the exception is outweighed by the public interest in disclosing the information. He has therefore decided that the withheld information is not exempt from disclosure under regulation 12(4)(e).

68. The full text of regulation 12 can be found in the Legal Annex at the end of this Notice.

The Decision

69. The Commissioner's decision is that the DfT has not dealt with the request in accordance with the EIR in that:
- it incorrectly applied regulation 12(4)(e) to the withheld information.
 - it failed to supply an adequate refusal notice in breach of regulation 14(3)(a).

Steps Required

70. The Commissioner requires the DfT to disclose to the complainant a copy of the withheld information to ensure compliance with the EIR.
71. The DfT must take the steps required by this notice within 35 calendar days of the date of this Notice.

Failure to comply

72. 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

73. 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@dca.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 27th day of May 2008

Signed

**Nicole Duncan
Head of FOI Complaints**

**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 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 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.