

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 29 January 2008

Public Authority: Welsh Assembly Government (formerly the "National Assembly for Wales")
Address: Assembly Buildings
Cathays Park
Cardiff
CF10 3NQ

Summary

1. The complainant requested details of subsidies paid to all farmers in Wales under the Common Agricultural Policy. The public authority initially refused the information citing the exemptions at sections 40 and 44 of the FOI Act or, in the alternative, the exceptions at regulations 12(3) and 12(5)(e) of the Environmental Information Regulations 2004. The Commissioner's decision is that the information requested is 'environmental information' within the definition in regulation 1(1) and therefore the request should have been treated under the regulations. The Commissioner's decision is that none of the exceptions cited apply, and accordingly the public authority should now disclose the information to the complainant.

The Commissioner's Role

2. The Environmental Information Regulations (the "regulations") 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 regulations shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Act are imported into the regulations.

The Request

3. On 5 July 2005, the complainant requested the following information from the public authority:

- *Details of recipients of subsidies [under the Common Agricultural Policy] and the amounts they receive for the financial years 2002-03 and 2003-04.*
4. On 13 July 2005 the public authority issued a refusal notice to the complainant, stating that the information was exempt by virtue of the exemptions at sections 40 and 44 of the FOI Act. The notice further stated that, although the public authority did not consider the information to be 'environmental', the information would nonetheless be exempt by virtue of regulation 13(2) and regulations 12(5)(e).
 5. On 19 July 2005 the complainant wrote to the Commissioner to complain about the public authority's response to his request.

The Investigation

Scope of the case

6. On 19 July 2005 the complainant contacted the Commissioner to complain about the way his/her request for information had been handled. The complainant specifically drew the Commissioner's attention to the disclosure of equivalent information for England by the Rural Payments Agency.

Chronology of the case

7. On 15 November 2005 the Commissioner contacted the public authority to seek further information about the reasons for refusal. The public authority responded on 21 November 2005.
8. On 10 January 2006 the Commissioner wrote to the public authority to explain that, in his preliminary view, the exemptions at section 40 and 44 of the Act do not apply in this case, for the reasons set out below. The Commissioner invited the public authority to comment on these preliminary views and consider releasing the information on a voluntary basis.
9. The public authority responded on 6 February 2006, raising further issues in relation to the application of the section 40 exemption.
10. On 19 July 2006 representatives of the Commissioner met with staff from the public authority to discuss the issues central to this case, which related to whether disclosure would contravene any of the data protection principles.
11. On 14 August 2006 the public authority wrote to the Commissioner to explain in more detail the public authority's objections to disclosure. In particular, the public authority was concerned that disclosure of the information withheld would contravene the first data protection principle.
12. Following further correspondence, on 7 July 2007 the Commissioner wrote to the public authority, setting out his view that disclosure of the information requested in this case would not contravene any of the data protection principles. The

public authority replied on 16 October, providing further detailed arguments to support its position that disclosure would contravene the data protection principles.

13. On 17 December 2007 the public authority placed a notice in its newsletter, 'Gwlad', advising subsidy recipients that the Commissioner was minded to order the disclosure of the names and amounts of subsidies for the years 2002/03 and 2003/04. The notice advised recipients that, should they believe that they would suffer specific harm as a result of this disclosure, they should contact the public authority. Gwlad is sent to a range of people in the farming community, including past and present recipients of subsidies.
14. This consultation with data subjects ended on 14 January 2008. The public authority advised that only one response was received but that it raised no issues beyond those already considered below.

Findings of the case

15. The Common Agricultural Policy is a system of European Union agricultural subsidies and programmes. It is administered by the public authority in Wales and by the Rural Payments Agency in England.
16. The requested information relates to the financial years 2002-03 and 2003-04 and therefore constitutes historical data only. At that time, applicants for CAP subsidies completed a form which contained the following notice:

"The information in this application and any other related information may be passed by the relevant Agricultural Department(s) in confidence to duly authorised agents of the EC for the purposes of verifying its accuracy, evaluating the Scheme(s) covered by this application, or to assist in wider areas of work within the relevant Agricultural Departments; and

"I understand that information provided in this Application will be used in the processing of European Community based aid schemes."
17. In 2005-06 a new grant known as the Single Payment Scheme was introduced. The application form for the new scheme contained an updated notice stating that requests for the disclosure of information provided would be considered in accordance with the public authority's Code of Practice on Public Access to Information. Applicants were asked to sign a declaration that they were aware that information about themselves and the subsidies they receive may be made publicly available.
18. Data relating to the Single Payment Scheme have been disclosed by the public authority since May 2006 and can be found on the authority's website.

Analysis

19. The Commissioner has considered the public authority's response to the complainant's request for information.

Access regime

Is the requested information 'environmental information'?

20. The Commissioner has considered whether the information requested falls within the definition of environmental information as set out in regulation 2(1).
21. It is the Commissioner's view that the Common Agricultural Policy and its associated schemes and programmes are policies affecting or likely to affect the elements of the environment, and therefore fall within the definition at regulation 2(1)(c). The element of the environment at regulation 2(1)(a) most affected or likely to be affected by these policies is land.
22. Accordingly, as the information requested is information on policies affecting or likely to affect one of the elements of the environment listed in subsection (a), the Commissioner considers that the information is environmental within the definition at regulation 2(1).

Exceptions

Regulation 13

23. Regulation 12(3) provides that personal data relating to third parties shall not be disclosed otherwise than in accordance with regulation 13. Regulation 13 contains identical wording to the exemption at section 40 of the FOI Act. All the sections of the regulations and the Act mentioned in this Notice are reproduced in full in the legal annex to this Notice.

Does the information requested constitute 'personal data'?

24. Section 1(1) of the Data Protection Act 1998 ("DPA") states that:

"personal data" means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual"

25. The public authority has argued that information relating to those recipients of subsidies who are sole traders or partnerships constitutes the personal data of those individuals.

26. The request for information in this case is for the names of recipients and the amounts of subsidy received. In the case of businesses, this will not normally constitute personal data. However, in the case of sole traders and partnerships, the Commissioner agrees with the public authority's view that this information consists of the personal data of those individuals.

Would disclosure contravene any of the data protection principles?

27. The eight data protection principles are set out in schedule 1 of the DPA. The public authority has argued that disclosure would contravene the first data protection principle, which states:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”*

28. The data in this case do not fall within the definition of sensitive personal data, and so in order for the processing to be compatible with the first principle, the data must be processed fairly and lawfully, and at least one condition at schedule 2 must be met. Each of these issues is dealt with separately below.

Is the processing ‘fair’?

29. The first principle requires personal data to be processed fairly. Sections 1 to 4 of part II of schedule 1 of the DPA provide an interpretation of the requirements of the first principle (known as the ‘fair processing requirements’). If disclosure is not in compliance with the fair processing requirements, then it is unfair. However, there is also a more general requirement for fairness.

30. The public authority has argued that the disclosure of the information requested would be unfair because the fair processing notice provided to applicants for CAP subsidy (as set out in paragraph 18, above) was restrictive and did not provide for the authority to disclose the information to other parties except in very limited circumstances. Disclosure would therefore breach the fair processing requirements.

31. The public authority believes that paragraph 2(1)(a) of part II of schedule 1 of the DPA prevents disclosure of this information. This section states:

“Subject to paragraph 3, for the purposes of the first data protection principle personal data are not to be treated as processed fairly unless –

- (a) in the case of data obtained from the data subject, the data controller ensures so far as practicable that the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3)”*

32. The information at sub-paragraph 3 includes (at paragraph (c)) ‘the purpose or purposes for which the data are intended to be processed’.

33. The public authority has further argued that the restrictive nature of the fair processing notice created a legitimate expectation among applicants that their personal data would not be disclosed except in certain limited circumstances, and would only be disclosed 'in confidence' to restricted third parties. Disclosure to the public domain under the Act or the regulations would not have been expected and would therefore contravene the general requirement for data to be processed fairly.

The fair processing requirements

34. The Commissioner does not believe that a restrictive fair processing notice, drafted prior to the introduction of the FOI Act, can have the effect of allowing public authorities to withhold information that would otherwise be disclosed under the Act. In this instance, the purpose for which the information was collected, as set out in the fair processing notice, was for the administration of the CAP subsidy schemes.
35. Disclosure of the information requested in this case would constitute processing of personal data for the purpose of enhancing public understanding of the administration of CAP subsidies, paid out of public funds, and improving the transparency and accountability of the expenditure of public money. Whilst this is not specifically stated in the fair processing notice, the Commissioner does not see this purpose as being incompatible with that set out in the fair processing notice – namely 'the processing of European Community based aid schemes'.
36. The Commissioner considers that the effect of paragraphs 2(1)(a) and 2(3)(c) is to place a requirement on data controllers to ensure that the purposes for which data are intended to be processed are communicated to the data subjects. However, this is only the case 'so far as practicable'.
37. The Commissioner notes that these issues were considered by the Information Tribunal in the case of the Corporate Officer of the House of Commons vs the Information Commissioner and Norman Baker MP (EA/2006/0015 and 0016). The Tribunal noted (at paragraph 75 of its reasons for decision) that the wording of paragraph 2(1)(a) "... only requires that the data controller "ensures so far as practicable" that data subjects are provided with the information in sub-paragraph (3), so there is no absolute requirement."
38. The Commissioner's view is that the test of fairness is broader than consideration of the fair processing requirements alone, and that compliance or otherwise with those does not constitute an absolute indicator of either fairness or unfairness.

The general requirement for processing to be 'fair'

39. In relation to the general requirement of fairness in the first principle, regard must be had to the legitimate expectations of the data subjects, and also to the effect of the disclosure on the interests of the individual. However, the Tribunal recently stated (at paragraph 78 of the Baker decision) that:

"... we find that when assessing the fair processing requirements under the DPA that the consideration given to the interests of data subjects, who are public officials

where data are processed for a public function, is no longer first or paramount. Their interests are still important, but where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives.”

40. The Commissioner accepts that the data subjects in this case are not public officials but they are recipients of public funds and he considers that there should have been an expectation that information relating to CAP subsidies would be subject to scrutiny. The Commissioner notes that there has been a public debate for many years on the merits of the CAP system and there is a strong public interest in ensuring that the system is being administered fairly. At the time of the request in this case, similar information had been provided about recipients of CAP subsidy in England, and there had been considerable media coverage of this disclosure.
41. The Commissioner believes that matters of payments out of public funds engage concerns about ensuring that the right payments are made and only to those eligible, and there is therefore an element of legitimate public interest in ensuring appropriate transparency.
42. In terms of judging 'fairness', the Commissioner also draws a distinction between matters which impinge on a person's business circumstances and those which are intrinsically personal in that they relate to an individual's private life. In this case the disclosure of a subsidy from public funds to support an individual's business would not unduly infringe the individual's private and personal interests. It would not equate to revealing someone's personal income, as subsidies are not means-tested or paid in relation to personal circumstances.
43. The Commissioner therefore believes that disclosure of the amount of CAP subsidy and the names of the recipients would not be unfair given that this information derives from individuals' business activities, and the wider benefits of transparency in such subsidies to businesses.

Is the processing 'lawful'?

44. In terms of lawfulness, the public authority has argued that disclosure would be unlawful by virtue of section 6 of the Human Rights Act 1998 ("the HRA"), section 107 of the Government of Wales Act 1998 ("GOWA1998"), sections 80 and 81 of the Government of Wales Act 2006 and article 9 of EC Regulation 3508/92. As the Government of Wales Act 2006 had not become law until after the request was made and the complaint received, the Commissioner has not considered its relevance in this Notice.

HRA, GOWA1998 (section 107)

45. Section 107 of the Government of Wales Act 1998 states that the Assembly shall only act in accordance with the provisions of the HRA. Section 6 of the HRA places a duty on public authorities to uphold the rights contained in the European Convention of Human Rights ("the ECHR"). The key issue here is whether disclosure of the information in this case would breach Article 8 of the ECHR.

46. Article 8 establishes a right to respect for private and family life, home and correspondence. This right is 'qualified' and therefore it is necessary to balance the protection of individual rights with the interests of the wider community. Any restriction on this right must be proportionate.
47. As the Commissioner has decided that disclosure of the information requested would not be unfair, he does not believe that disclosure would breach any individual's right to privacy, as set out in Article 8 of the ECHR. However, even if Article 8 is engaged in this case, it is possible to argue that disclosure would still be lawful if to do so is both necessary and proportionate. After due consideration the Commissioner therefore decides that disclosure in this case does not constitute a breach of the Article 8 rights of those in receipt of subsidies.
48. In reaching this view the Commissioner is mindful of the Information Tribunal's decision in the case of Bluck vs Information Commissioner (EA/2006/0090). In that case, the Tribunal has stated (paragraph 31) that "... we do not believe that the effect of the Human Rights Act is to elevate to the level of a directly enforceable legal prohibition the general terms of Article 8."

EC Regulation 3508/92 and GOWA1998 (section 106)

49. Section 106 of the Government of Wales Act 1998 provides that Welsh Ministers have no power to do any act incompatible with Community obligations. The Community obligation cited by the public authority is article 9 of EC Regulation 3508/92, which states:

"The Member States shall take the measures necessary to ensure protection of the data collected."
50. The public authority has cited the case of R vs MAFF ex parte Fisher (Case C-369/98) to support its assertion that disclosure in this case would breach EC Regulation 3508/92. However, the Commissioner notes that the European Court of Justice, in its judgement in the Fisher case (paragraph 33), stated:

"... the provisions of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ... provide criteria that are suitable for application by the competent authority in making that assessment."
51. Directive 95/46/EC is incorporated into UK law by the Data Protection Act 1998. It therefore follows that, if the disclosure does not contravene any of the data protection principles as set out in the Data Protection Act, then it will not contravene the Directive and hence will be in accordance with Article 9 of EC Regulation 3508/92.

The common law of confidence

52. A final consideration in terms of lawfulness is whether the information was provided by the data subjects to the data controller in confidence. The fair processing notice referred to above states that the information in the application and other related information could be provided 'in confidence' to selected third parties for limited purposes. The information requested is the names of the data subjects and the amounts of subsidy received. The Commissioner does not believe that such information would have the necessary quality of confidence for its disclosure to constitute a breach of the common law of confidence, and that therefore no obligation of confidence exists in this instance.

Does a Schedule 2 condition apply?

53. Finally, the first data protection principle would be contravened unless at least one of the conditions of Schedule 2 of the DPA is met. The public authority does not believe that any of the conditions in Schedule 2 are met in this case. However, the Commissioner considers that the condition at section 5(c) of Schedule 2 is applicable. The public authority's administration of the CAP subsidy schemes falls within the definition of "the exercise of any functions of the Crown, a Minister of the Crown or a government department". Condition 5(c) states:

"The processing is necessary –

*...
(c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, ..."*

54. It is also likely, on the basis of the Information Tribunal's decision in the Baker case (EA/2006/0015 and 0016), that condition 6(1) is met. However, it is only necessary for one of the conditions in Schedule 2 to be met for the processing to be in accordance with the first principle. Condition 6(1) states:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."

Regulation 12(5)(e)

55. Regulation 12(5)(e) provides an exception for information, the disclosure of which would adversely affect the confidentiality of commercial information, where the such confidentiality is provided by law to protect a legitimate economic interest.
56. The public authority has argued that the information is commercial and relates to the legitimate economic interests of the data subjects. The authority argues that it is protected by the common law of confidence and also by article 9 of EC Regulation 3508/92.
57. The Commissioner has considered the matter of EC 3508/92 and the common law of confidence in relation to lawfulness and the first data protection principle

(above). He does not believe that the effect of EC 3508/92 is to prevent disclosure and therefore does not consider that it applies in relation to regulation 12(5)(e).

Section 44 FOI – prohibitions on disclosure

58. During the course of the investigation, the public authority stated that the information requested was also exempt by virtue of section 44 of the FOI Act.
59. However, the regulations do not contain an equivalent exception to section 44 of the FOI Act. Indeed, regulation 5(6) specifically disregards 'any enactment or rule of law that would prevent the disclosure of information' in accordance with the regulations.
60. Nevertheless, the Commissioner has considered the arguments set out by the public authority in relation to section 44 in his analysis of whether disclosure would be 'lawful' in accordance with the first data protection principle (as set out above).

The Decision

61. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the regulations, because it applied the exceptions at regulations 12(3) and 12(5)(e) inappropriately.

Steps Required

62. The Commissioner requires the public authority to take the following steps to ensure compliance with the regulations:
 - Provide the complainant with the information requested
63. The public authority must take the steps required by this notice within 35 calendar days from the date of this notice.
64. 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

65. 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 29th day of January 2008

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Regulation 2 - Interpretation

Regulation 2(1) In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on

–

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (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);

“historical record” has the same meaning as in section 62(1) of the Act;

“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

“responsible authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“Scottish public authority” means –

- (a) a body referred to in section 80(2) of the Act; and
- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

“transferred public record” has the same meaning as in section 15(4) of the Act; and

“working day” has the same meaning as in section 10(6) of the Act.

Regulation 2(2) Subject to paragraph (3), “public authority” means –

- (a) government departments;
- (b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding –
 - (i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or
 - (ii) any person designated by Order under section 5 of the Act;
- (c) any other body or other person, that carries out functions of public administration; or
- (d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment.

Regulation 2(3) Except as provided by regulation 12(10) a Scottish public authority is not a “public authority” for the purpose of these Regulations.

Regulation 2(4) The following expressions have the same meaning in these Regulations as they have in the Data Protection Act 1998(b), namely –

- (a) “data” except that for the purposes of regulation 12(3) and regulation 13 a public authority referred to in the definition of data in paragraph (e) of section 1(1) of that Act means a public authority within the meaning of these Regulations;
- (b) “the data protection principles”;
- (c) “data subject”; and

(d) "personal data".

Regulation 2(5) Except as provided by this regulation, expressions in these Regulations which appear in the Directive have the same meaning in these Regulations as they have in the Directive.

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 5(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.

Regulation 5(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.

Regulation 5(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.

Regulation 5(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

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 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 12(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) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- (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.

Regulation 12 (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).

Regulation 12(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.

Regulation 12(8) For the purposes of paragraph (4)(e), internal communications includes communications between government departments.

Regulation 12(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).

Regulation 12(10) For the purpose of paragraphs (5)(b), (d) and (f), references to a public authority shall include references to a Scottish public authority.

Regulation 12(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 - Personal data

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.

Regulation 13(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.

Regulation 13(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.

Regulation 13(4) In determining whether anything done before 24th 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.

Regulation 13(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.