

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

Decision Notice

Date: 25 March 2010

Public Authority: Mid Sussex District Council
Address: Oaklands Road
Haywards Heath
West Sussex
RH16 1SS

Summary

The complainant requested information concerning the decision by the council's contractors that a planned housing development and relief road was not viable.

The council initially refused disclosure of the information under section 36 of the Act but during the Commissioner's investigation it was withheld via regulation 12(5)(f) of the EIR.

The Commissioner found the council to have applied the exception at regulation 12(5)(f) incorrectly but that the arguments it submitted fell under regulation 12(5)(e). He found the exception at 12(5)(e) to be engaged in respect of part of the information and that the public interest in maintaining the exception outweighed the public interest in disclosure. He found that the exception at 12(5)(e) was not engaged in respect of the remainder of the information and ordered its disclosure. The Commissioner identified some items of third party personal data within the information and that the condition at regulation 13(2)(a)(i) required redaction of that information prior to disclosure.

The Commissioner found that the council had failed to comply with regulations 5(1), 5(2) and 14(3)(a) of the EIR.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

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

Background

2. The council and neighbouring authorities planned a major development in East Grinstead comprising 2,500 houses and an A264 / A22 relief road extending into Surrey and East Sussex. A consortium of developers including Barratt Homes, Linden Homes, Persimmon Homes and Taylor Wimpey had been contracted to carry out the work but subsequently informed the council that it was no longer possible to deliver the development.

The Request

3. On 28 October 2007 the complainant requested the following information from the council:

"I understand that the Barton Wilmore Consortium have withdrawn their proposal for mass development at East Grinstead. Or alternatively:

- *if not the whole consortium then one or more members of it;*
- *if they have not withdrawn it then that they have expressed major reservations about it or other major changes in their position in regard to it;*
- *if not from the scheme in its entirety then from important parts of it (eg any change in the proposed quantum of house building).*

I shall be grateful to receive under the FOI Act all documents in the council's possession with a material bearing on all and any of the above events and on the council's reaction to them. Such documents should include:

- *internal discussions between MSDC officers & councillors*
- *discussions between MSDC and WSCC officers*
- *discussions between MSDC officers and the GOSE.*

In documents I include minutes of internal and external meetings, letters, papers, notes of telephone conversations and all other records"

4. In a refusal notice of 21 November 2007 the complainant was informed that the information was exempt via section 36(2)(b) (i) and (ii) of the Act (prejudice to effective conduct of public affairs). The complainant appealed and in an internal review of 19 December 2007 the council upheld its decision to withhold the information.

The Investigation

Scope and chronology of the case

5. The complainant wrote to the Commissioner on 27 December 2007 to complain about the council's refusal to disclose the information.
6. On 28 January 2009 the Commissioner requested a copy of the information from the council in order to ascertain whether the exemption had been applied correctly.
7. The council supplied the Commissioner with copies of correspondence and minutes of meetings concerning the development and the reasons for withdrawal by the consortium. Upon examination of the information the Commissioner considered it to be environmental as defined in regulation 2(1) of the Environmental Information Regulations (EIR). This was because it related to planning matters and activities which have a direct impact on the use of land and landscape. He therefore asked the council to address the request under the EIR.
8. The council reconsidered the request under the EIR and on 25 February 2009 it submitted its view to the Commissioner that the information was subject to the exception at regulation 12(5)(f).

Analysis

Procedural matters

9. (a) The council refused the applicant's request under the Act and not the EIR. It consequently breached regulation 14(3)(a) by failing to specify in its refusal notice the EIR exception relied on.

(b) It also breached regulations 5(1) and 5(2) by failing to communicate requested information to the complainant within the statutory time for compliance.

Exceptions

10. The council relied on the exception at regulation 12(5)(f) in order to withhold the information. In support of the exception the council submitted that the consortium's views should not be disclosed as they were confidential for reasons of commercial sensitivity. This is in effect an argument for the application of the exception at regulation 12(5)(e). Whilst the council did not declare reliance on regulation 12(5)(e) the Commissioner considered the authority's argument in terms of that exception before turning his attention to the council's engagement of regulation 12(5)(f).

Regulation 12(5)(e)

11. The exception at regulation 12(5)(e) allows commercial or industrial information which is subject to the common law of confidentiality to remain confidential in order to protect a legitimate economic interest. The exception covers information created by the public authority and provided to a third party and also information jointly created or agreed between the public authority and a third party.
12. The council's central argument was that the consortium's views contained within the information were supplied on the basis that they were commercially sensitive and confidential. The Commissioner advised the council that whilst that some of the consortium's correspondence requested confidentiality, requests by contractors for non disclosure do not of themselves confer confidentiality. The Code of Practice issued under the EIR makes clear that a public authority cannot contract out of its obligations under the EIR and should not accept information in confidence unless it is necessary to do so.
13. The withheld information is divided into financial and non financial elements of information and the Commissioner has tested the appropriateness of the exception at regulation 12(5)(e) in relation to each of these components. He has applied the following tests:
 - (i) Is the information commercial or industrial in nature?
 - (ii) Is the information subject to a duty of confidence provided by law?
 - (iii) Is confidentiality required to protect a legitimate economic interest?
 - (iv) Would that legitimate economic interest and thereby its confidentiality be adversely affected by disclosure?
14. With reference to the test at 13(i) the Commissioner is satisfied that both the financial information and the non financial information are commercial in nature. Both sets of information concern the commercial viability of the development.
15. With reference to the test at 13(ii) for a duty of confidence to be owed the information must:
 - (a) have been imparted in circumstances which create an obligation of confidence and
 - (b) have the necessary quality of confidence.
16. The Commissioner considers that a duty of confidence is owed by the council in relation to the information that has been shared by the consortium. Whilst he has observed that in some of the correspondence the consortium has requested confidentiality, with regard to the minutes of the meetings between the council and consortium there are no statements or requests for confidentiality. However, the Commissioner considers that there would have been an expectation of confidence on the part of those involved in these meetings, that is, both council and consortium, and he therefore considers that all the information was imparted in circumstances which created an obligation of confidence. He also considers that all the information has the necessary quality of confidence as it is not trivial and its detail is unlikely to be available from sources outside those present at the meetings.

17. With reference to the test at 13(iii) the Commissioner firstly considered whether confidentiality is required to protect the legitimate economic interests of the consortium and council in relation to the financial elements contained within the information.
- (a) With regard to the consortium the Commissioner considers that there are legitimate economic interests requiring the protection of confidentiality in respect of items of financial information which have been withheld. This is because these particular items comprise commercially sensitive information concerning the developers' pricing breakdown which would unfairly benefit competitors if disclosed into the public domain.
 - (b) With regard to the council the Commissioner considers that there are also legitimate economic interests requiring the protection of confidentiality in respect of financial information which has been withheld. This is because the particular information concerns land values which if released into the public domain would disadvantage the council if the sale or purchase of that land became central to future commercial negotiation.
 - (c) The council submitted the argument that if developers thought financial figures might be disclosed to the benefit of competitors, developers would refuse to supply such figures in their proposals to the council. If this should occur the council maintained that it would be unable to submit viable development proposals to the Planning Inspectorate. According to the council, elements of its proposals would then be considered unsatisfactory by the Planning Inspectorate and the authority's core strategy might then fail despite considerable investment. The Commissioner is not persuaded by this argument. In his view it is unlikely that a developer would conceive of submitting a bid without including the necessary costings as this would effectively exclude the developer from the bidding process. Projects placed for tender by public authorities are a lucrative business for developers and it is unlikely therefore that they would willingly exclude themselves in this manner from this source of revenue. Furthermore, the Commissioner holds the view that developers wishing to enter public sector contracts already understand that as a result of freedom of information and environmental information legislation there is a greater degree of public scrutiny of such contracts than those in the private sector. He believes that developers recognise the presumptions in favour of disclosure provided by the legislation and that they are aware of the provisions allowing the withholding of information where disclosure would be prejudicial to their commercial interests.
18. Secondly with reference to the test at 13 (iii) the Commissioner considered whether confidentiality is required to protect the economic interests of both the council and consortium in relation to the non financial information that has been withheld.
- (a) With regard to the council the authority did not supply any evidence as to why it considered disclosure of the non financial information would adversely affect its economic interests and thereby require the protection of confidentiality.

(b) With regard to the consortium the Commissioner asked the council to explain how it had concluded that disclosure of the non financial information was commercially sensitive and thereby requiring the protection of confidentiality. In response the council submitted the argument that release of the information would disclose the thinking of the developer to a potential rival who may be able to use the information to promote its own scheme over that of the incumbent developer.

19. The Commissioner is not persuaded by the council's argument at 18(b):

(i) The council failed to identify any aspect of the consortium's thinking which might be used by a potential rival or explain how a particular aspect could be utilised to benefit a rival's scheme.

(ii) On the basis that the contract for this particular scheme had already been awarded to the incumbent developer, the Commissioner is not persuaded by the suggestion that another developer might consider it feasible to submit its own scheme or that the contractual circumstances would warrant the consideration of such promotion over that of the incumbent's.

(iii) The argument supplied by the council did not originate from the consortium itself. The Commissioner expects a public authority to provide evidence from the third party if it is argued that the latter's economic interests are at risk. He considers it insufficient for a public authority to speculate about potential harm to a third party's interests without those arguments genuinely reflecting the concerns of the third party itself.

(iv) The council failed to demonstrate that disclosure of the non financial information 'would' have the adverse effect alleged by the authority. The Commissioner advised the council of the required approach as delineated by the Information Tribunal in *Archer v the ICO and Salisbury District Council (EA/2006/0037)* but the council failed to supply the necessary evidence in support:

'... it is not enough that disclosure should simply (have an effect) ... the effect must be "adverse". Second, refusal to disclose is only permitted to the extent of that adverse effect. Third, it is necessary to show that disclosure "would" have an adverse effect - not that it could or might have such effect. Fourth, even if there would be an adverse effect, the information must still be disclosed unless "in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information". All these issues must be assessed having regard to the overriding presumption in favour of disclosure. The result, in short, is that the threshold to justify non-disclosure is a high one.'

20. With reference to the test at 13(iv):

(a) In relation to the non financial information the council failed to demonstrate that there are legitimate economic interests relating to either the consortium or the public authority which require the protection of confidentiality. In the absence of any evidence on this point the Commissioner is unable to conclude that the exception at regulation 12(5)(e) is engaged. Because the exception is not

engaged in respect of the non financial information he is not required to consider the public interest test in relation to its disclosure.

- (b) In relation to the financial information the Commissioner considers that as the first three elements of the test cited at paragraph 13 of this notice have been established, it follows that disclosure into the public domain would adversely affect the confidential nature of that information by making it publicly available and would consequently harm the legitimate economic interests of both parties. He therefore concludes that the exception at regulation 12(5)(e) is engaged in respect of the financial information.

21. As the exception is engaged in relation to the financial information the Commissioner has proceeded to consider whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosure. In doing so he has given consideration to the detriment that disclosure would cause to the economic interests of the parties involved and the extent to which there is a wider public interest in preserving the principle of confidentiality. Whilst there is an inherent public interest in preserving confidentiality the Commissioner is cautious about placing significant weight on the generic argument. In the context of the exception at 12(5)(e) he considers that arguments concerning the undermining of confidentiality will carry more weight when related to the specific circumstances of the case.

Public interest arguments in favour of disclosing the financial elements of the information

22. (i) Regulation 12(2) of the EIR requires the public authority to apply a presumption in favour of disclosure.
- (ii) Disclosure allows public scrutiny of decisions made by the council on behalf of its residents. It informs public debate and creates confidence in public decision making.
- (iii) Disclosure increases transparency concerning the use of public resources in respect of the development and its postponement.
- (iv) Disclosure allows greater public participation in decisions affecting the future development of the local environment. There is a particularly strong public interest in public participation in planning matters.

Public interest arguments in favour of maintaining the exemption

23. (i) Disclosure would allow the contractors' competitors access to commercially sensitive information. Disclosure of the developers' pricing breakdown would assist commercial rivals and adversely affect the developers' ability to compete for other projects in the open market. There is a strong public interest in maintaining a fair and competitive business environment.
- (ii) The disclosure of commercially sensitive information would undermine confidentiality between the council and the current contractors. The repercussions

of disclosure would adversely affect the authority's prospects of forging successful commercial partnerships with other contractors in the future. It is important that the council is able to secure best value by attracting a variety of tenders for future works. Companies would be reluctant to bid for contracts however lucrative if the council is perceived to be untrustworthy or irresponsible in its handling of commercially sensitive information.

- (iii) The publicising of land valuations arising from disclosure would be financially disadvantageous to the authority and ultimately its council tax payers in circumstances where the sale and purchase of land is subject to market negotiation.

Balance of the public interest arguments

24. The Commissioner considers that the public interest in the transparency of the council's future intentions regarding the development and its postponement has already been addressed to an extent by the provision of council statements and press releases. He also considers that the additional transparency afforded by disclosure of the non financial elements of the information would not in this instance be augmented to any significant degree by disclosure of the financial elements.
25. The Commissioner does not consider that it would be in the public interest to disclose information which could undermine the council's future negotiating position, nor would it be in the public interest to release information which would ultimately be detrimental to its council tax payers.
26. The Commissioner has weighed the competing public interest arguments and has concluded that in relation to the financial elements of the information the public interest in maintaining the exception at regulation 12(5)(e) outweighs the public interest in disclosure.

Regulation 12(5)(f)

27. The council relied on the exception at regulation 12(5)(f) in order to withhold the information. As indicated earlier in this Notice the arguments submitted by the council fall under the exception at regulation 12(5)(e) rather than 12(5)(f) and these arguments have been addressed above. The Commissioner has, however, gone on to consider whether the exception at regulation 12(5)(f) has any additional application.
28. Regulation 12(5)(f) applies to information where disclosure would have an adverse effect upon:
- (a) the interests of a person who voluntarily provided the information to the public authority
 - (b) where that authority is not entitled to disclose that information apart from under the regulations

(c) where the provider has not consented to the authority disclosing it.

29. The purpose of the exception at 12(5)(f) is to protect the voluntary supply to public authorities of information that might not otherwise be made available. In such circumstances a public authority may refuse disclosure when it would adversely affect the interests of the provider. It is clear from the wording of the exception that the public authority's interests are excluded from consideration. Much of the information to which the exemption has been applied was internally created and not supplied by a person or organisation separate to the authority. The information submitted by the consortium resulted from its contractual obligation to supply this to the public authority, and was therefore not provided voluntarily. The Commissioner therefore does not consider that regulation 12(5)(f) has been applied appropriately and that the exception is not engaged.
30. As the exception at 12(5)(f) is not engaged the Commissioner has not considered the public interest test in respect of this.

Regulation 13

31. The Commissioner's review of the information identified that it contains some items of third party personal data in so far as individuals can be identified from the information. These items of personal data are therefore subject to the exception at regulation 13(2)(a)(i) of the EIR.
32. 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. In the Commissioner's view the condition at regulation 13(2)(a)(i) is satisfied. This condition prevents release of information to the public if the disclosure contravenes any of the data protection principles in the Data Protection Act 1998 (DPA). The text of regulation 13 is set out in the legal annex of this notice.
33. For the exception at 13(2)(a)(i) to apply the requested information must fall within the definition of personal data. 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 that 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. It 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.

Having reviewed the information the Commissioner is satisfied that the items of information he has identified fall within the description of personal data as defined by the DPA.

34. In his view, disclosure of the information would contravene the first data protection principle which requires that personal data is processed fairly and lawfully. Release of information under the EIR has to be considered as a

disclosure to the wider world and not to the requestor alone. In assessing whether disclosure would be fair, the Commissioner will consider factors such as whether the information relates to an individual's private or public life, whether any harm is likely to be caused by disclosure, what the reasonable expectations of the individual are with regard to disclosure, and whether there would be an unwarranted invasion of privacy. In this instance the Commissioner believes that disclosure would be unwarranted and unfair, as the third parties concerned would not have had any expectation that their personal information would be released into the public domain. He therefore considers these items of information to be exempt from disclosure.

The Decision

35. The Commissioner's decision is that the council dealt with the financial elements of the requested information in accordance with the requirements of the EIR.

However, the Commissioner has also decided that the non financial elements of the requested information were not dealt with in accordance with the EIR:

- The council failed to comply with its obligations under regulations 5(1) and 5(2) which require that environmental information shall be made available on request and no later than 20 working days after receipt of request.
- The council incorrectly applied the exception at regulation 12(5)(f) in respect of both elements of the requested information.
- The council breached regulation 14(3)(a) of the EIR by failing to specify in its refusal notice the EIR exception relied on.

Steps Required

36. The Commissioner requires that the council shall within 35 calendar days of the date of this Decision Notice disclose the information requested by the complainant after redacting third party personal data and certain financial items of information from the documentation. The Commissioner has informed the council of the particular items to be redacted in a separate letter.

Failure to comply

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

Right of Appeal

38. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 25th day of March 2010

Signed

**Anne Jones
Assistant Commissioner**

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

Legal annex

Environmental Information Regulations 2004

Regulation 2 states that:

(1) In these Regulations -

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

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;

(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c);

Regulation 5 states that:

(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 a 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 states that:

- (1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if -
 - (a) an exception to disclosure applies under paragraphs (4) or (5); and
 - (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
- (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 the 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) 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 these 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 13 states that:

- (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 of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations

would contravene -

- (i) any of the data protection principles; or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and 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^[7] (which relate 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 that Act and, in all the 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 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.
- (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 that 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 that Act.

Regulation 14 states that:

- (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.

Freedom of Information Act 2000

Section 36 states that:

(1) This section applies to-

- (a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and
- (b) information which is held by any other public authority.

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
 - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
 - (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

(3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).

(4) In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable opinion of a qualified person".

(5) In subsections (2) and (3) "qualified person"-

- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
- (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,
- (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
- (d) in relation to information held by the House of Commons, means the Speaker of that House,
- (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,

- (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
 - (g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,
 - (h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means-
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the Assembly First Secretary,
 - (i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,
 - (j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,
 - (k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,
 - (l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means-
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,
 - (m) in relation to information held by the Greater London Authority, means the Mayor of London,
 - (n) in relation to information held by a functional body within the meaning of the Greater London Authority Act 1999, means the chairman of that functional body, and
 - (o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means-
 - (i) a Minister of the Crown,
 - (ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or
 - (iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.
- (6) Any authorisation for the purposes of this section-
- (a) may relate to a specified person or to persons falling within a specified class,
 - (b) may be general or limited to particular classes of case, and
 - (c) may be granted subject to conditions.
- (7) A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion-
- (a) disclosure of information held by either House of Parliament, or
 - (b) compliance with section 1(1)(a) by either House, would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.