

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 12 May 2010

**Public Authority:** London Borough of Lambeth Council  
**Address:** Lambeth Town Hall  
Brixton Hill  
London  
SW2 1RW

### Summary

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The complainant made a request to the London Borough of Lambeth Council ('the Council') for the trial bundle and case file with regards to legal proceedings concerning a residential property within the borough. The Commissioner finds that the request should have been considered under the Environmental Information Regulations (EIR). The Commissioner has investigated the complaint and finds that regulation 12(5)(b) was engaged (apart from three documents) and the public interest in maintaining the exception outweighed the public interest in disclosure. The Commissioner requires the Council to disclose three documents.

### The Commissioner's Role

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1. 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

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2. This complaint is in relation to a request for information about a court case involving London Borough of Lambeth (Plaintiff). It related to part of

the structure of a residential property being destroyed on Monday 24<sup>th</sup> October 1988 as a result of a gas explosion. The Council brought a claim to recover monies due in respect of unpaid dangerous structures fees, for steps taken by the Council under Section 61(4) of the London Building Acts (Amendment) Act 1939, between 24 October and 29 October 1988 to remove immediate danger after the structure was damaged by the gas explosion. The trial was heard on 13 September 2001; the judgment was made the same day and drawn up by the court on 7 January 2002. Permission to appeal was refused. The matter was settled by consent order dated 13 September 2002. There are no current or intended proceedings in relation to this court case.

## The Request

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3. On 12 December 2008 the complainant made the following request:
  - (a) *Can I have a copy of the trial bundle and case file under the Freedom of Information Act 2000. I attach a copy of a letter from the solicitor who holds the file.*
    - i. *I have an occupational interest in... [Private address]...*
  - (b) *Mr...[named employee]...of planning enforcement said that a police officer told him that the police can't see behind the wall at...[private address]...*
    - i. *Who was the officer? Provide copies of all correspondence relating to... [Private address]...*
4. The Council provided a response to the complainant on 18 December 2008 in which it refused to disclose the information requested on the basis of the exemption contained in section 42 – Legal professional privilege.
5. The complainant requested an internal review of the Council's decision on 22 December 2008.
6. On 22 January 2009 the public authority responded with the details of the result of the internal review it had carried out. The Council upheld their original decision to refuse the request on the basis of the exemption contained in section 42. They also confirmed that Mr...[named employee]... did not speak to a police officer; instead he received a crime prevention survey, which the complainant already had a copy of.

## The Investigation

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### Scope of the case

7. On 10 February 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
  - The documents were produced for a public trial and therefore the Council could not claim legal professional privilege.
  - The third party in the trial is now deceased.
  - There is a great deal of public interest in this case as the Council appear to have written off several thousand pounds as a result of a settlement.
8. Part B of the complainant's request is not being considered for the purpose of this Decision Notice because information requested at Part B has been provided.

### Chronology

9. The Commissioner wrote to the public authority on 18 May 2009 outlining the complaint and his investigation. In this letter the Commissioner asked the Council to provide their arguments for applying section 42.
10. On 19 May 2009 the complainant wrote to the Commissioner to again outline his arguments for releasing the information, stating that the trial and verdict were held in public and therefore the public authority should release the trial bundle and case file.
11. The Council responded to the Commissioner in a letter dated 2 June 2009. In their response the public authority stated that due to the passage of time neither the public authority nor their solicitors held a copy of the entire trial bundle. The Council also provided their arguments for withholding information under section 42 in that their ability to seek and receive legal advice on the understanding of confidentiality within a privileged legal relationship was greater than the public interest in openness and transparency in this particular case. The public authority provided the Commissioner with a full index of the information they held in support of their refusal to supply the information requested. The Council also acknowledged that some of the information would be caught by the exemption for court records under section 32.

12. On 19 August 2009 the Commissioner wrote to the Council asking for a brief synopsis of the court case in question. The Commissioner felt that this complaint may actually be covered by the Environmental Information Regulations 2004, due to the reference made to building control issues in the public authority's response to the Commissioner dated 2 June 2009.
13. The public authority replied on 20 August 2009 and provided more information which has been summarised in the background section above. The Commissioner is therefore satisfied that the information requested should have been considered under EIR, the reasons for which are explained in the analysis section of this Decision Notice.

## **Analysis**

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### **Exceptions**

14. The full text of the relevant provisions of the Regulations referred to in this section is contained within the legal annex.
15. In considering whether the exception is valid, the Commissioner has taken into account that the EIR is designed to be applicant blind and that disclosure should be considered in its widest sense, which is to the public at large. If information were to be disclosed it would, in principle, be available to any member of the public

### **Is it environmental information?**

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

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

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

- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c)..."

17. The Commissioner considers that the phrase "any information...on" should be interpreted widely and that this is in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIRs enact.<sup>1</sup>
18. In this case the relevant part of the above definition is regulation 2(1)(c). This defines environmental information as information on 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. In this instance, the information in question covers building control issues that relate to the removal of an unsafe structure. Therefore the Commissioner believes that that the information in question is information on a measure, likely to affect the elements and factors referred to in (a) and (b). Therefore he is satisfied that the withheld information falls under the definition of environmental information for the purposes of EIR.

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<sup>1</sup> Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and , eventually, to a better environment.

## Exception

### Regulation 12(5)(b)

19. The Commissioner has considered that it is reasonable for the arguments the Council presented to be considered under Regulation 12(5)(b). Under this regulation a public authority can refuse to disclose information to the extent that its disclosure would adversely affect 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. In the case of *Kirkaldie v ICO & Thanet District Council* [EA/2006/0001] the Tribunal stated that,

“The purpose of this exception is reasonably clear. It exists in part to ensure that there should be no disruption to the administration of justice, including the operation of the courts and no prejudice to the right of individuals or organisations to a fair trial. In order to achieve this it covers legal professional privilege, particularly where a public authority is or is likely to be involved in litigation.”<sup>2</sup>

20. This exception is subject to a public interest test.
21. The Commissioner has also noted the views of the Tribunal in *Rudd v ICO & The Vederers of the New Forest* [EA/2008/0020], which stated that,

“...the Regulations refer to ‘the course of justice’ and not ‘a course of justice’. The Tribunal is satisfied that this denotes a more generic concept somewhat akin to ‘the smooth running of the wheels of justice’...Legal professional privilege has long been an important cog in the legal system. The ability of both parties to obtain frank and comprehensive advice (without showing the strengths or weaknesses of their situation to others) to help them decide whether to litigate, or whether to settle; and when to leave well alone, has long been recognized as an integral part of our adversarial system.”<sup>3</sup>

Therefore the Commissioner considers that legal professional privilege (LPP) is a key element in the administration of justice, and that advice on the rights and liabilities of a public authority is a key part of the activities that will be encompassed by the phrase ‘the course of justice’. The concept of ‘the course of justice’ is a broad one and covers information beyond information that attracts LPP. The Commissioner considers that the exception also covers principles that

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<sup>2</sup> EA/2006/0001, para 21.

<sup>3</sup> EA/2008/0020, para 29.

are also inherent in the section 32 exemption in the Freedom of Information Act for court records.

### **Is the exception engaged?**

22. In order to reach a view on whether the exception is engaged the Commissioner has first considered whether the requested information is subject to legal professional privilege. It is clear that the some information that falls within the scope of the request could be caught by LPP but the other information is more broadly classified as 'court records'.
23. Legal professional privilege protects the confidentiality of communications between a lawyer and client. It has been described by the Tribunal in *Bellamy v ICO & DTI* [EA/2005/0023] as, "a set of rules or principles which are designed to protect the confidentiality of legal or legally related communications and exchanges between the client and his, her or its lawyers, as well as exchanges which contain or refer to legal advice which might be imparted to the client, and even exchanges between the clients and their parties if such communication or exchanges come into being for the purpose of preparing for litigation."<sup>4</sup>
24. There are two types of privilege – legal advice privilege and litigation privilege. Litigation privilege will be available in connection with confidential communications made for the purpose of providing or obtaining legal advice in relation to proposed or contemplated litigation.
25. Advice privilege will apply where no litigation is in progress or being contemplated. In these cases the communications must be confidential, made between a client and professional legal adviser acting in their professional capacity and made for the sole or dominant purpose of obtaining legal advice. Communications made between adviser and client in a relevant legal context will attract privilege.
26. The Commissioner is satisfied that some of the information attracts LPP, both litigation privilege and legal advice privilege. Having assessed the information the Commissioner concluded that it is the public authority who is the party entitled to LPP and also considers that this privilege has not been waived in this case.
27. The information which has been withheld is in the form of both legal advice as described above, and court documents, including witness

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<sup>4</sup> EA/2005/0023, para 9.



statements, skeleton arguments, expert reports, and compensation claims concerning the Council's claim to recover monies due in respect of unpaid dangerous structures fees, as described in the background information section above. These documents were prepared for court proceedings rather than legal advice, however 12(5)(b) would remain the appropriate exception to such information.

28. Where the exception at 12(5)(b) is applied to information about Court Records, the exception should be considered in light of section 32 of the Freedom of Information Act 2000, which is the absolute exemption for Court Records, whilst also noting that the exception is subject the public interest test. The Commissioner has gone on to consider whether the disclosure of the withheld information would have an adverse affect on the course of justice.

### **Information covered by LPP**

29. In *Archer v ICO & Salisbury District Council* [EA/2006/0037] the Tribunal highlighted the requirement needed for the exception to be engaged. It explained that it is not enough that disclosure would simply affect the matters set out above; the effect must be "adverse" and refusal to disclose is only permitted to the extent of that adverse effect. It stated that it was also necessary to show that disclosure "would" have an adverse affect and that any statement that it could or might have such an effect was insufficient. The information is then subject to the public interest test and the Tribunal confirmed that the information must still be disclosed unless the public interest in maintaining the exception outweighs the public interest in disclosing the information.
30. In reaching a decision on whether disclosure would have an adverse affect it is also necessary to consider the interpretation of the word "would". It is the Commissioner's view that the Tribunal's comments in the case of *Hogan v ICO & Oxford City Council* [EA/2005/0026 & EA/2005/0030] in relation to the wording of "would prejudice" are transferable to the interpretation of the word "would" when considering whether disclosure would have an adverse affect. The Tribunal stated that when considering the term "would prejudice" that it may not be possible to prove that prejudice would occur beyond any doubt whatsoever. However, it confirmed that the prejudice must at least be more probable than not.
31. The Council has argued that disclosure would adversely affect the course of justice by:
- Affecting its ability to obtain legal advice on its legal rights and obligations.



- Disclosure would inhibit it from seeking and obtaining frank legal advice.
- Legal risks would not receive the analysis and mitigation they required.
- Any disclosure of instructions to Counsel would inhibit London Borough of Lambeth from fully explaining issues of concern in relation to future legal advice. This would undermine its relationship with Counsel.
- Disclosure could also affect its position on future cases.

32. In reaching a view on the Council's arguments the Commissioner has again noted the views of the Tribunal in *Rudd v ICO & The Vederers of the New Forest* [EA/2008/0020], in which the Tribunal considered whether the disclosure of legal advice obtained by the public authority would have an adverse affect on the course of justice. In that case the public authority argued that:

- It was currently engaged in litigation where the subject of the legal advice had been raised. Disclosure would adversely affect its ability to defend its legal rights by disclosing advice that was the subject of current and potential future litigation.
- It would adversely affect its ability to obtain legal advice in respect of other decisions or issues affecting the authority and its responsibilities.
- It would undermine the relationship between the authority and its lawyers, inhibiting the free and frank exchange of views on its rights and obligations.
- Disclosure would lead to the authority not speaking frankly in the future whilst seeking advice.
- Disclosure could lead to reluctance in the future to record fully such advice, or legal advice may not be sought – leading to decisions being made that would potentially be legally flawed.

33. After considering these arguments the Tribunal was satisfied that these matters related to the course of justice, and that disclosure would have an adverse affect upon them.<sup>5</sup>

34. The Commissioner has noted the views of the Tribunal as recorded above, and the similarities in the arguments presented by the public authorities in that case and this one. Although the court case described in the background section above has concluded, the Council feel that the release of the requested information could be prejudicial to them in any similar cases which may occur in the future.

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<sup>5</sup> EA/2008/0020, para's 33 – 34.

## Disclosure of the court records

35. The other information can be classed as 'court records' – documents that had been filed with the Court for the proceedings. Although this is an EIR case the Commissioner considers it relevant to note that court records are covered by the section 32 exemption in the Freedom of Information Act, which is an absolute exemption, not subject to the public interest test. It was clearly Parliament's intention that the separate access regime for court records should be respected under FOI, the regime for accessing court records is governed by the Civil Procedure Rules and Criminal Procedure Rules, where the Judge has the decision making power to decide whether court records should be disclosed. Parties involved in judicial proceedings have the expectation that such information will only be disclosed under the established judicial procedure. Disclosure of trial bundles by public authorities would generally undermine confidence in the judicial system, where the expectation is that disclosure is regulated by that system. The Commissioner notes that disclosure would not have an impact on the third party involved in the trial, as they are now deceased, but the general effects of the disclosure are enough to still conclude that the exception is engaged.
36. The Commissioner has considered the complainant's arguments that the information was considered in open court. The case of *Armstrong v the Information Commissioner and HMRC [EA/2008/026]*, where the applicant, an investigative journalist, requested documents referred to in court in the 2001 trial of Abu Bakr Siddiqui, illustrates the relevant principles that must be considered. The Tribunal were clear that "even if the ... information had entered the public domain by virtue of having been referred to during the Siddiqui trial in 2001, it does not necessarily follow that it remains in the public domain"<sup>6</sup>. The fact that the case was heard in open court does not preclude a finding that disclosure would adversely affect the course of justice. The complaint also states he has received some of the information in question as part of proceedings in another case but the Commissioner does not consider that this means the information is generally available to the public.
37. The Commissioner is satisfied that the disclosure of the withheld information would adversely affect the course of justice apart from the following documents listed in the index supplied by the Council - judgment, land certificate and newspaper cuttings. As this information is easily accessible the Commissioner finds that disclosure would not adversely affect the course of justice.

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<sup>6</sup> EA/2008/026 para 85

38. As regulation 12(5)(b) is subject to a public interest test the Commissioner has gone on to consider whether the public interest in maintaining the exception outweighs the public interest in disclosure.

### **The public interest test**

39. Regulation 12(1)(b) states that a public authority may refuse to disclose environmental information if –
- an exception to disclosure applies under paragraphs 12(4) or 12(5); and
  - in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.
40. The Commissioner notes that regulation 12(2) states that in dealing with a request for environmental information a public authority should apply a presumption in favour of disclosure.
41. The Commissioner believes that there is a strong public interest in disclosing information that allows scrutiny of a public authority's decisions. This, he believes, helps create a degree of accountability and enhances transparency of the way in which those decisions were arrived at. He believes that this is especially the case where the public authority's actions have a direct effect on the environment. He notes that to some extent, disclosure would enable the public to assess how the Council argued its case and whether their pursuit of the case represented good value for money.
42. The concept of legal professional privilege is based on the need to ensure that clients receive confidential and candid advice from their legal advisers after having full and frank disclosures. This is a fundamental principle in the legal system and there is a strong public interest in maintaining it.
43. The Information Tribunal has endorsed this principle. In its decision in *Bellamy v ICO & DTI* [EA/2005/0023] the Tribunal stated that, "...there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest. It may well be that in certain cases...for example where the legal advice was stale, issues might arise as to whether or not the public interest favouring disclosure should be given particular weight...it is important that public authorities be allowed to conduct a free exchange of views as to their legal rights

and obligations with those advising them without fear of intrusion, save in the most clear case..."<sup>7</sup>

44. The Council has made several submissions regarding the public interest in maintaining the exception:
- Disclosure would undermine the Council's position in future litigation.
  - It is in the public interest that the Council is entitled to a level playing field for any future litigation.
  - Any disclosure of instructions to Counsel would inhibit the Council from fully explaining issues of concern in relation to future legal advice. It is very much in the public interest that the Council maintains the ability to seek full and frank legal advice, without the inhibition disclosure would cause.
  - There is a strong element of public interest inbuilt in the privilege itself and this has long been recognised by the courts.
45. The Commissioner has noted the Tribunal's comments in *Foreign & Commonwealth Office v ICO* [EA/2007/0092], which was considering the public interest in relation to the section 42 exemption of the Freedom of Information Act 2000 (this provides an exemption for information to which a claim to legal professional privilege could be maintained in legal proceedings). During its deliberations the Tribunal said:
- "" ...what sort of public interest is likely to undermine [this]... privilege? ...plainly it must amount to more than curiosity as to what advice the public authority has received. The most obvious cases would be those where there is reason to believe that the authority is misrepresenting the advice which it has received, where it is pursuing a policy which appears to be unlawful or where there are clear indications that it has ignored unequivocal advice which it has obtained..."
46. The Tribunal went on to state that such arguments of misrepresentation should be supported by, "cogent evidence".<sup>8</sup>
47. Having considered the circumstances of the case and the withheld information the Commissioner has not found any evidence of the above factors. The Commissioner also notes that the complainant has not presented any such arguments.

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<sup>7</sup> EA/2005/0023, para 35.

<sup>8</sup> EA2007/0092, para's 29 and 33.

48. The Commissioner also considers that the factors in favour of maintaining the exception for the court records are very strong; there is a strong public interest in the public maintaining confidence in the existing systems for access to court records.
49. In respect of knowledge of the proceedings being in the public domain the Commissioner would highlight the observations of the Tribunal in the Armstrong case cited above: "knowledge obtained in the course of criminal trials is likely to be restricted to a limited number of people and such knowledge is generally short-lived"<sup>9</sup> and that "[e]ven if the information had previously entered the public domain, that is not in itself conclusive of whether the public interest weighs in favour of disclosure, it is merely one consideration to be weighed in the public interest balance" (paragraph 86)<sup>10</sup>. The Commissioner has not been presented with any evidence to suggest that there was significant information about the proceedings in the public domain at the time of the request. In this case, the fact that proceedings were heard in open court does not diminish the public interest in maintaining the exception.
50. After considering the above factors the Commissioner is satisfied that in this particular case there is a strong public interest in maintaining the exception under regulation 12(5)(b) of the EIR because of the strong inherent public interest in protecting the principles that underpin the course of justice. The passage of time since the proceedings (6 years) does not significantly diminish the public interest in maintaining the exception, both for the LPP information and court records.
51. The Commissioner has considered the circumstances of the case and has not accorded the public interest factors in favour of disclosure significant weight.
52. The Commissioner has concluded that the public interest in maintaining the exception outweighs the public interest in disclosing the information.
53. The full text of regulation 12 can be found in the Legal Annex at the end of this Notice.

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<sup>9</sup> EA/2008/026 para 85

<sup>10</sup> EA/2008/026 para 86

## The Decision

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54. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the EIR:

- The Council correctly withheld the information requested apart from the judgment, land certificate and newspaper cuttings.

55. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the EIR:

- The Council did not identify the correct access regime; consequently this led to further breaches of the legislation, specifically regulation 14(3).
- The Council breached regulation 5(1) – in that it failed to make available the judgment, land certificate and newspaper cuttings, to which the complainant was entitled.
- The Council breached regulation 5(2) – in that it failed to disclose this information within 20 working days of receipt of the request.

## Steps Required

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56. The Commissioner requires the Council to take the following steps to comply with the EIR:

Disclose the judgment, land certificate and newspaper cuttings to the complainant.

57. The Council must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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58. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court

(or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.



## Right of Appeal

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

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

Tel: 0845 600 0877

Fax: 0116 249 4253

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

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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

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

**Dated the 12<sup>th</sup> day of May 2010**

**Signed .....**

**Steve Wood**  
**Head of Policy Delivery**

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

## Legal Annex

### 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) 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.
- (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.