

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

**Decision Notice**

**Date: 24 May 2011**

**Public Authority:** The Department for Environment and  
Climate Change  
**Address:** 3 Whitehall Place  
London  
SW1A 2AW

**Summary**

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The complainant made a number of requests to the Department for Environment and Climate Change (the "DECC") on 18 May 2010 relating to the primary and secondary legislation and other prescribed rules, regulations, and procedures governing the acquisition of land rights and the acquisition of other permissions, in connection with high voltage overhead powerlines. The DECC refused to comply with the requests under section 14(1) of the Freedom of Information Act 2000 as it deemed the requests vexatious. The Commissioner considers that section 14(1) was applied correctly to some of the requests: however he has found that some of the requests were for environmental information. During the course of the Commissioner's investigation the DECC applied regulation 12(4)(b) of the Environmental Information Regulations 2004 to the parts of the request for environmental information as it deemed those requests to be manifestly unreasonable. The Commissioner considers that regulation 12(4)(b) was applied correctly to the environmental information. The complainant subsequently made another request for information relating to the same subject matter on 16 June 2010. The DECC did not respond to this request. The Commissioner considers that the request of 16 June 2010 was for environmental information and requires the DECC to respond to this request under the appropriate legislation.

## The Commissioner's Role

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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.
2. 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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3. The DECC explained that the complainant's latest requests relate to high voltage overhead electricity lines and the legal rules, legislation and procedures which govern their installation, maintenance and removal, including acquisition of land rights. It explained that the latest requests also raise a number of technical and safety related questions relating to electricity lines, and a number of administrative questions relating to the number of staff at the Department working on electricity line-related matters and the source of the Department's legal advice.
4. It explained that on 20 December 2006 it had informed the complainant that her repeated requests for information on the same subject matter were to be treated as vexatious under section 14(1) of the Act. This decision was upheld at internal review and was confirmed informally by the ICO in 2007. Whilst the DECC did not exist in 2006, where the DECC is mentioned in relation to this time, for the purposes of this DN this relates to its predecessor.
5. It explained that the requests submitted on 18 May 2010 were for much the same information as the previous requests.

## The Request

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6. The complainant made a number of requests to the DECC on 18 May 2010. The requests were contained in pages 6 to 14 of the third of three ring bound folders sent by the complainant to the DECC. Due to the voluminous nature of the requests the Commissioner has not detailed these in this notice. The Commissioner is however satisfied that the requests were for information relating to the primary and secondary legislation and other prescribed rules, regulations, and procedures governing the acquisition of land rights and the acquisition of other permissions, in connection with high voltage overhead powerlines.
7. The DECC responded to the requests on 3 June 2010. It refused to comply with the requests as it stated they were vexatious under section 14 of the Act.
8. On 16 June 2010 the complainant asked the DECC to conduct an internal review. She also made another request for information relating to the same subject matter. The further request was as follows:

“What I would also like to put on record is the fact that, when I was in the West Country recently, I noticed powerlines made up of two parallel overhead lines and even three parallel overhead lines. I took the structures to be 132 Kv lines. What I would wish to put on record (were the Information Commissioner to issue a decision notice requiring information to be provided to me) is an additional but related request for information on the maximum tolerance figures for such parallel lines. I would refer you to the tolerance figures set out in document PG.2.9, S.I. No. 640 and other related recorded information as referred to in my request document.”
9. On 9 August 2010 the DECC wrote to the complainant with the outcome of the internal review. It upheld its application of section 14 in relation to the requests of 18 May 2010. It did not however respond to the new request made on 16 June 2010.

## The Investigation

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### Scope of the case

10. On 16 August 2010 the complainant contacted the Commissioner to complain about the way her requests for information had been handled. The complainant specifically asked the Commissioner to consider the DECC's application of section 14(1). The Complainant also asked the Commissioner to consider the DECC's lack of response to her request of 16 June 2010.
11. During the course of the Commissioner's investigation the DECC recognised that some of the requested information was environmental information. It explained that it still wished to withhold this information under regulation 12(4)(b) as it stated that the requests for environmental information were manifestly unreasonable. The Commissioner will therefore also consider the application of regulation 12(4)(b) to the environmental information.

### Chronology

12. On 9 February 2011 the Commissioner wrote to the DECC to ask it for further submissions in relation to its application of section 14(1). The Commissioner also asked the DECC to consider whether some of the requested information was environmental information, and therefore whether it should have been dealt with under EIR.
13. On 9 March 2011 the DECC responded to the Commissioner. It provided further submissions in relation to its application of section 14(1) to some of the requested information. It did however state that some of the requested information was environmental information but explained that this information was still being withheld under regulation 12(4)(b) as the requests for the environmental information were manifestly unreasonable. In relation to the request of 16 June 2010 the DECC explained that it did not believe it was appropriate to respond to this request until the Commissioner had made a decision in relation to the requests of 18 May 2010.

## Analysis

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### Requests of 18 May 2010

### Freedom of Information Act 2000

#### Section 14(1)

14. Section 14(1) of the Act states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

The full text of section 14 is available in the Legal Annex at the end of this notice.

15. The Commissioner issued revised guidance entitled “Vexatious or repeated requests” in December 2008 as a tool to assist in the consideration of when a request can be treated as vexatious. The guidance sets out key questions for public authorities to consider when determining if a request is vexatious which are set out below:

i) whether compliance would create a significant burden in terms of expense and distraction

ii) whether the request is designed to cause disruption or annoyance

iii) whether the request has the effect of harassing the public authority or its staff

iv) whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable

v) whether the request has any serious purpose or value

16. The guidance indicates that an affirmative response to all of the questions is not necessary for a request to be deemed vexatious. However it states that to judge a request as vexatious, a public authority should usually be able to make persuasive arguments under more than one of the above headings.

17. The Commissioner further notes that the Information Tribunal in *Hossack v Department for Work and Pensions (EA/2007/0024)*, at paragraph 11 stated that the threshold for finding a request

vexatious need not be set too high as the consequences are much less serious than the finding of vexatious conduct in other legal contexts.

18. In *David Gowers v Information Commissioner* (EA/2007/0114, paragraph 27) the Information Tribunal noted that when considering section 14:

“ The proper inquiry must be as to the likely effect of the request on a reasonable public authority. In other words, the standard to be applied is an objective one”

In doing so the Commissioner can therefore consider the context and history of a request in addition to the request itself in relation to one or more of the five factors listed in paragraph 15.

19. The Commissioner has considered whether the DECC has provided sufficient arguments in support of any of the criteria above in its application of section 14(1) in this particular case. In doing so he has taken note of all of the correspondence and contact between the complainant and the DECC from April 2005 up to the date of the request.

**Would complying with each request create a significant burden in terms of expense and distraction?**

20. The DECC has explained that the complainant's requests are set out on pages 6 to 14 of the third of three ring bound folders which the complainant sent to it. It has provided the Commissioner with this information. It has further explained that it contained around 50 separate requests for information
21. The DECC has explained that some of the questions are exceptionally wide, for example it stated that question 3(a)(ii) of the request asks for all the recorded information which the DECC holds on wayleaves. To put this into context it explained that the DECC handles hundreds of wayleave cases each year.
22. The DECC explained that the requests raise numerous questions relating to a wide variety of issues. It explained that requests for information are intermingled with past requests, copies of previous correspondence from the DECC and other material. It said that the exercise of working through the detail of these various documents in order to establish specifically what

- information is being requested due to the number of requests and the way in which they have been presented and then to determine whether or not it holds the information would require a considerable amount of time and resource. In order to comply with the requests staff would have to investigate various matters, conduct historical research and seek legal advice. It explained that collating the requested information (if held) would take many days, incur considerable expense, and would lead to a number of staff being drawn away from their usual responsibilities for an unreasonable amount of time.
23. The DECC also made the point that these requests were not the first requests made on these issues by the complainant. The DECC explained that the latest requests had changed very little and were very similar in nature to and equally voluminous as previous requests made and therefore would have been equally burdensome to respond to.
  24. The Commissioner has considered the public authority's argument that because of the way the requests are presented it would take a considerable amount of time and resource for it to establish specifically what information was being requested. The Commissioner notes that the requests were located in the third of three bound folders sent to the DECC and that therefore the public authority would have to read through a considerable amount of text before reaching the requests, and in order to understand their full context. Once located however, he considers the requests to be clear and concise and to adequately identify the information the complainant wished to obtain. He therefore considers the issue is not so much one of time needed to establish what is being requested, as time required to read and absorb background context and information. He has taken this time into account when considering whether each request would create a significant burden in terms of expense and distraction.
  25. The Commissioner accepts that the requests taken together are extremely voluminous and to comply with the requests would create a significant burden in terms of expense and distraction. He also accepts that each individual request would meet this criteria. This is because even if some of the requests taken in isolation would not impose a significant burden, taking into account the overall context of the past requests made, and the likelihood that responding to any individual request would lead to

further requests being made in relation to the same subject matter in the future, the burden of dealing with each individual request would be significant.

**Are the requests designed to cause disruption or annoyance?**

26. The DECC suggested that it is clear that such a broad and detailed set of requests are likely, because of their nature, to cause disruption and the complainant should be aware of the likely effect of the requests. It said that over the years, the DECC has made considerable efforts to explain to the complainant the work it does and the regime it adheres to: it has also provided the complainant with all of its guidance documents. It explained that it has given the complainant advice as to how she could revise her requests in order to reduce their scope so that they are a manageable size and could reasonably be resubmitted for it to address. The DECC said that the complainant has ignored this advice and persists in producing long, complex and burdensome requests in a quest for what is essentially the same information.
27. The Commissioner accepts the public authority's submissions that the requests have the effect of causing disruption, and that this could be reduced if the complainant submitted fewer, or less complex, requests. However, he does not accept that the complainant's apparent expectation that the public authority should continue to respond to her numerous and complex requests necessarily means that the requests are designed to cause disruption or annoyance. The public authority has not provided the Commissioner with any evidence that the intention behind the requests is to disrupt its work. From the context of the requests the Commissioner considers that it is more likely that the requests are designed to elicit information that the complainant thinks will assist her, than that they are designed to cause disruption or annoyance. Upon consideration of the arguments presented by the DECC, the Commissioner therefore concludes that although the requests did have the effect of disrupting the DECC, there is no evidence that they were designed specifically to have this effect or to cause annoyance.



**Could the requests fairly be seen as obsessive or manifestly unreasonable?**

28. In the Commissioner's view, the test to apply here is one of reasonableness. In other words, would a reasonable person describe the requests as obsessive or manifestly unreasonable? The Commissioner's guidance suggests that;
- "It will be easier to identify these requests when there has been frequent previous contact with the requester or the request forms part of a pattern, for instance when the same individual submits successive requests for information. Although these requests may not be repeated in the sense that they are requests for the same information, taken together they may form evidence of a pattern of obsessive requests so that an authority may reasonably regard the most recent as vexatious."
29. The DECC has explained that land belonging to the complainant was the subject of a 'necessary' (compulsory) wayleave in connection with the consent in 1998 of a new North Yorkshire Moors overhead line. It explained that she was subsequently refused access to her land by National Grid and lost a subsequent court action in 2002. The DECC suggested that the pattern of requests relate to the outcome of this court case. The DECC explained that it had come to this conclusion as the complainant appears to refer to her own land at question 5(v). It also said that the scope of the requests are so wide, including questions about long repealed as well as current legislation and also the complainant also asks questions which seem to intend to find faults in what the DECC has done.
30. The Commissioner considers that as the requests are based around the same or similar issues as the court case relating the compulsory wayleave over land belonging to the complainant, it is reasonable to conclude that the requests stem from this.
31. The DECC further explained that the complainant's request of 18 May 2010 forms part of a wider pattern of requests for similar information over a number of years. Since the introduction of the Act in 2005, the complainant has made a number of FOI requests and engaged in lengthy and voluminous correspondence with the Department on a similar subject matter. It explained that there was also some correspondence pre-dating the Act that relates to the same subject matter as the

- FOI requests. It said that during this time the Department expended considerable resources and effort answering the complainant's enquiries but eventually concluded that the correspondence amounted to a pattern of obsessive requests. It explained that the complainant was notified on 20 December 2006 that the Department considered her latest requests at that time as vexatious. It explained the complainant had previously complained to the Commissioner in 2007 in relation to the Department's decision to apply section 14(1). A formal decision was not taken in this case, however the Commissioner's initial view was that it was likely section 14(1) had been applied appropriately in that case. The Commissioner advised the complainant that any further requests for information should be clear, simple and concise, which mirrored advice previously given by the Department. It explained that the complainant's requests of 18 May 2010 were set out towards the end of three ring bound documents which meant that they were not simple to locate. The Department concluded that the substance of the 18 May requests differed very little from the previous requests and therefore formed part of a pattern of obsessive requests.
32. The DECC further explained that the administrative burden that would be placed on it in complying with the requests would be considerable as outlined above. It reiterated that responding to the requests would require a number of members of staff to be taken away from their usual duties for a considerable amount of time which would create a significant distraction from the DECC's core functions and would impose a significant administrative burden. The DECC stated that this contributes to the conclusion that not only is the requests are obsessive but are also clearly manifestly unreasonable in light of their broad scope.
  33. In reaching his decision on this criteria the Commissioner has taken into account that the complainant appears to be making numerous and time consuming requests in order to pursue an issue which has already been considered and adjudicated upon independently of the public authority. As the court action was completed in 2002, the outcome of which was not in the complainant's favour, the fact that the complainant continues to seek information about this issue supports the argument that the requests are obsessive.
  34. The Commissioner has also taken into account that the complainant continues to submit requests that require the public

- authority to read lengthy background documents, despite the public authority highlighting the difficulties that this approach causes them. Whilst the Commissioner does not accept that this is evidence of any deliberate intention by the complainant to disrupt the work of the public authority, he does accept it as evidence to support the case that the requests, including the way in which they are made, are manifestly unreasonable.
35. In conclusion, taking into account that the underlying issues have already been independently considered, the previous FOI requests on the same or similar issues as those surrounding the court case, and correspondence prior to the introduction of the Act on the same issue, along with the voluminous nature of the latest requests, the Commissioner accepts that they can fairly be characterised as obsessive and manifestly unreasonable.
- Do the requests lack any serious purpose or value?**
36. The DECC has explained that as the court case involving the complainant's land has completed and did not find in her favour, this demonstrates that continuing to pursue the same or similar issues pertinent to this matter has no serious purpose or value.
37. The Commissioner considers that in order to accept the public authority's argument that the requests lacked any serious purpose or value he would first need to establish that the motives behind the request were not serious. He does not think that the public authority has evidenced that this is the case and, taking into account the context of the requests, his view is that it is more likely that the complainant is genuinely trying to pursue an issue that is of importance to her. The Commissioner does not therefore accept that the requests have no serious purpose or value. However, having said that, he does accept that the value of the requests is diminished by the fact that the underlying issues have been already been independently investigated and adjudicated upon.
38. The Commissioner considers that in this case the requests would cause a significant burden in terms of expense and distraction and could fairly be seen as obsessive or manifestly unreasonable. He considers the value of the requests to be limited and finds that the serious purpose behind them is not sufficient to outweigh his other findings. He therefore concludes that section 14(1) was correctly applied to the extent that the requests were not for environmental information.

## **Environmental Information Regulations**

### **Regulation 12(4)(b) – Manifestly Unreasonable**

39. During the course of the Commissioner's investigation, the DECC accepted that some of the information requested was environmental information.
40. In relation to the requests which were for environmental information the DECC relied upon the same arguments made in relation to the application of section 14(1) of the Act. These arguments have been detailed above. The Commissioner is satisfied that the submissions put forward in support of the application of section 14(1) also demonstrate that the requests for environmental information are manifestly unreasonable under regulation 12(4)(b).
41. The Commissioner has therefore gone on to consider the public interest test in relation to the application of regulation 12(4)(b) to the environmental information.

### **Public interest arguments in favour of disclosing the requested information**

42. The DECC has recognised that there is a public interest in greater transparency as it makes the government more accountable to the electorate, increases trust and enables public contribution to policy making to be more effective.
43. The Commissioner also considers that as the DECC has stated that it handles hundreds of wayleave cases every year, there is a strong public interest in disclosure of some of the requested information, due to the large number of people that wayleaves may affect. Disclosure of some of the requested information could enable the public to understand decisions which may affect many individuals personally and enable individuals to challenge decisions made where appropriate.

### **Public interest arguments in favour of maintaining the exemption**

44. The DECC has explained that to provide the information on the scale that has been requested, given that very little has changed in nature from the previous correspondence which was equally , voluminous, would involve a significant cost and diversion of

resources from the DECC's other work. It stated that this would be manifestly unreasonable and would not be in the public interest.

### **Balance of the public interest arguments**

45. In the circumstances of the case the Commissioner considers that there is a strong public interest in openness, transparency and accountability. He considers that in this case as the DECC handles hundreds of wayleaves cases every year this issue must affect a reasonably large number of individuals and therefore this strengthens the public interest arguments in favour of disclosure. He also accepts that the placing of powerlines is in an issue of public interest because of public concerns about environmental impacts, health and safety issues and potential impact on land values and property prices.
46. The Commissioner also considers however that there is a strong public interest in not putting an unreasonable burden upon the DECC, which would have significant implications in terms of cost and diversion of resources, in pursuance of a matter that has already been heard and adjudicated upon in front of a court. In this case as the request was particularly voluminous in nature this significantly strengthens the public interest arguments in favour of maintaining the exception.
47. In this case the Commissioner considers that these requests would impose a very significant burden upon the DECC, which would not be proportionate in the circumstances of the case, and therefore the public interest in favour of maintaining the exception outweighs the public interest in disclosure.

### **Regulation 14(1) – refusal to disclose information**

48. Regulation 14(1) states that a refusal under regulation 12 shall be made in writing no later than 20 working days after the date of receipt of the request. Furthermore under Regulation 14(3) it states that the refusal should specify the reasons not to disclose the information requested.
49. As the DECC did not acknowledge that the request included environmental information until the Commissioner's investigation had begun, it did not comply with regulation 14(1).

## Request of 16 June 2010

### Access Regime

50. Regulation 2 of the EIR defines environmental information as being any information 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).”*

51. The full text of regulation 2 can be found in the Legal Annex attached to the end of this notice.

52. The Commissioner notes that the request relates to tolerance figures for wayleaves for a particular type of over head

- powerline. A wayleave is a contractual license for which an annual payment is made in advance to the owner and/or occupier to cover the financial impact of having equipment on their land (in this case equipment for overhead power lines). The Commissioner's understanding is that the tolerance allows electricity companies some scope when agreeing the actual positioning of the overhead line across an objector's land to accommodate the owner's wishes. The Commissioner considers that this is information which relates to a measure (as set out in regulation 2(1)(c) above) likely to affect the elements of the environment (in this case the land).
53. Regulation 5 of the EIR places a public authority that holds environmental information under a duty to make that information available on request, unless an exception applies. The full text of regulation 5 is available in the Legal Annex attached to the end of this notice.
54. As the information requested on 16 June 2010 is environmental information, the DECC must respond to this request under the EIR.

## **The Decision**

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55. The Commissioner's decision is that the public authority correctly withheld the information requested on 18 May 2010, which is not environmental information, under section 14(1) of the Act. In relation to the information requested on 18 May 2010 which is environmental information, it correctly applied regulation 12(4)(b) of the EIR in order to withhold this information.
56. However the Commissioner considers that the DECC breached regulation 14(1) in its handling of the requests of 18 May 2010.
57. The Commissioner's decision is that the public authority did not deal with the request of 16 June 2010 in accordance with the EIR in that it failed to properly consider the request under this legislation.

## **Steps Required**

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58. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- To respond to the request of 16 June 2010 under the EIR by either providing the requested information or issuing an appropriate refusal notice in accordance with the requirements of regulation 14.
59. The public authority 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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60. 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.

## **Other matters**

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61. The Commissioner would highlight that it is not correct to refuse to respond to a request for information until the outcome of an investigation by the Commissioner into another request. All requests for information should be dealt with independently within the timescales set out within the Act or the EIR and should not be delayed due to investigations pending by the Commissioner.



## Right of Appeal

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62. 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)

63. 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.

64. 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 24<sup>th</sup> day of May 2011**

**Signed .....**

**Lisa Adshead  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### Freedom of Information Act 2000

#### General Right of Access

##### **Section 1(1) provides that -**

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

##### **Section 2(3) provides that –**

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
  - (i) subsection (1), and
  - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
  - (iii) section 41, and
  - (iv) section 44"

## **Vexatious or repeated requests**

### **Section 14 states that –**

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

## **Environmental Information Regulations**

### **Exceptions to the duty to disclose environmental information**

#### **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.

(6) For the purposes of paragraph (1), 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, 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 purposes 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.

## **Refusal to disclose information**

### **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.