

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

### **Decision Notice**

**Date: 29 March 2010**

**Public Authority:** Queen's University Belfast  
**Address:** Belfast  
BT7 1NN

**Complainant:** Mr Douglas J Keenan  
**Address:** The Limehouse Cut  
London  
E14 6NQ

### **Summary**

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The complainant requested electronic data relating to tree ring research (dendrochronology). The public authority confirmed that it held the requested information but refused to provide it citing section 12 of the Act. The Commissioner indicated to the public authority that the withheld information fell within the definition of environmental information under the EIR. The public authority subsequently cited the exceptions at regulations 12(4)(d), 12(4)(b), 12(5)(c) and 12(5)(e) to refuse the information. The Commissioner finds that none of the exceptions is engaged and the withheld information should therefore be disclosed. The Commissioner also recorded a number of procedural breaches in the public authority's handling of the request.

### **The Commissioner's Role**

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

## Background

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2. Tree ring dating or dendrochronology dates wood from archaeological sites and determines past climates. When a tree is cut concentric rings signify each year during which the tree grew and the thickness of the rings gives an indication of the weather conditions affecting the tree. Thick rings indicate years in which the climatic conditions for the tree were good, eg warm and lots of rainfall, whereas thin rings indicate the opposite. For this reason tree rings are useful in studies of global warming.
3. Tree ring data is published on the internet in the International Tree Ring Data Bank (ITRDB), which currently holds tree ring data from over 1500 sites around the world. The latter is maintained by the National Oceanic and Atmospheric Administration (NOAA) Palaeoclimatology Programme and World Data Centre for Palaeoclimatology and is freely accessible on the following website:

<http://www.ncdc.noaa.gov/paleo/treering.html>

4. One of the world's leading centres for tree ring research is Queen's University, Belfast (QUB) and its research is useful in terms of studying global climate over thousands of years. QUB has stated that a substantial proportion of its tree ring data has been published on the ITRDB.

## The Request

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5. On 10 April 2007 the complainant requested the following information from QUB:

*"I request the following data, for each tree that has been used in any way in any publication by any current faculty member of the Department of Archaeology and Palaeoecology who (i) was wholly or partially responsible for measuring the widths of the tree's rings and (ii) was a faculty member at the time of measuring:*

*\*widths of the rings of the tree;  
\*list of the years in which the tree rings grew (if known);*

*\*description of precise location of where the tree was found.*

*It might be that this request is exempt from the FOI Act because the data being requested is environmental information. If you believe that to be so, process my request under the Environmental Information Regulations."*

6. On 24 April 2007 the complainant contacted QUB as he had not received any acknowledgement of his request. QUB advised the complainant that an acknowledgment had been sent to him on 16 April 2007.
7. The complainant did not receive any further response from QUB, and on 21 May 2007 he contacted the Commissioner to complain that QUB had not responded to his request. The Commissioner took no further action at this stage.
8. On 22 May 2007 QUB provided a substantive response to the complainant confirming that although the requested information was held, it was not held in the format requested. QUB advised that to provide the data in the format requested would exceed the "appropriate limit" (in this case £450) and thus refused to disclose the information citing section 12 (cost of compliance) of the Act. However QUB advised the complainant that a substantial amount of statistical data on tree ring research could be found on the ITRDB and was freely accessible.
9. On 24 May 2007 the complainant requested an internal review. This was acknowledged on 25 May 2007 and QUB stated that, in accordance with its internal review procedures, QUB would consider his complaint on an informal basis in the first instance and provide a response in due course.
10. On completion of the "informal" review, QUB wrote to the complainant on 21 June 2007 upholding its original decision.
11. On 13 July the complainant requested a formal review of his complaint. On 24 July 2007 QUB acknowledged the request for a formal review but advised that there would be a delay in conducting the review due to the absence of relevant staff.
12. On 15 August 2007 the complainant was advised that he would receive the outcome of the internal review no later than 30 September 2007.

13. On 26 September 2007 QUB responded to the complainant acknowledging procedural failings in handling his request but nonetheless upholding its original decision to refuse the request on the grounds of cost.
14. On 24 October 2007 the complainant contacted the Commissioner again to complain about the way his request had been handled. On this occasion the complainant referred to repeated delays throughout the process of his request. However, he also complained that QUB ignored some of the issues raised in his request for internal review. The complainant also alleged to the Commissioner that QUB was "acting with wilful intent to avoid conforming with the FOI Act".
15. In his complaint to the Commissioner, the complainant indicated the view that his request could be "largely fulfilled" by providing a copy of the electronic data held by QUB.
16. While the case was awaiting allocation and in an attempt to refine his earlier request by focussing on information held electronically, the complainant submitted two further requests to QUB on 15 May 2008 for:

*"I request copies of files that  
(1) are stored in electronic form by the university,  
(2) hold data that was obtained by the university's  
Palaeoecology Centre (or its predecessors);  
(3) contain measurements of the widths of tree rings or  
ancillary information, such as the years in which the rings  
grew, species of the trees, descriptions of the locations of  
where the trees were found etc."*

*"I request the data about tree rings that has been obtained by  
the university's Palaeoecology Centre (or its predecessors)  
and that is held in electronic form by the university. This data  
might include the widths of the tree rings, the years in which  
the rings grew (if known), species of the tree, a description of  
the location of where the tree was found, etc."*

17. QUB responded to these requests on 10 June 2008, again refusing to release the information citing section 12 of the Freedom of Information Act.

## The Investigation

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### Scope of the case

18. The complainant contacted the Commissioner on 15 July 2008 to complain about the way his requests had been handled by QUB. The complainant remained of the view that QUB had acted wrongly in refusing his requests, and asked the Commissioner to investigate.
19. The Commissioner notes the complainant's suggestion that his request could be answered by provision of the data held electronically by QUB. Furthermore in discussions with the complainant it was clear that he was seeking data held electronically. Therefore the Commissioner is of the view that the withheld information in this case is the data held electronically by QUB. On this basis the Commissioner's investigation focused on the refined requests made by the complainant, and the Commissioner's decision relates to the electronic information held by QUB. However the Commissioner has also considered the handling of both requests by QUB.

### Chronology

20. On 15 October 2008 the Commissioner wrote to QUB regarding the way in which it had handled both of the complainant's requests. The Commissioner also asked for QUB's representations regarding its application of section 12 of the Act.
21. On 18 November 2008 QUB provided detailed clarification regarding the costs involved in processing the request together with the basis of the costs calculation under section 12.
22. At this stage it appeared to the Commissioner that QUB may have correctly relied on section 12 to refuse the request. On 1 December 2008 the Commissioner wrote to the complainant to set out his preliminary view and to explore the scope for informal resolution of the complaint.
23. On 22 December 2008 the complainant contacted the Commissioner to discuss his complaint and was advised that a letter from the Commissioner had been sent on 1 December advising of the outcome of the investigation. The complainant

stated that he had not received this correspondence and the Commissioner re-sent his letter.

24. On 16 January 2009 the complainant contacted the Commissioner to advise that he was not happy with how his case had been handled. The complainant indicated that he did not agree with the Commissioner's preliminary views, and asked that the Commissioner reconsider the case. In particular the complainant maintained to the Commissioner his view that the requested information was environmental.
25. The Commissioner agreed to review the complaint in light of the comments put forward by the complainant. On further consideration it appeared to the Commissioner that the requested information was in fact environmental information, and that the request ought to have been considered under the EIR. On 19 February 2009 the Commissioner contacted QUB to explain this, and to request an inspection of the withheld information.
26. On 26 February 2009 the Commissioner visited QUB and inspected the information held. The Commissioner also established the medium in which the information was held (hard or electronic copy) and the time taken to transfer the information onto disk. During the inspection QUB stated that it did not consider the requested information to be environmental but agreed to consider the applicability of exceptions under the EIR and respond to the Commissioner accordingly.
27. On 24 March 2009 QUB responded to the queries raised by the Commissioner in his correspondence of 19 February 2009. QUB stated that having revisited the complainant's requests under the EIR, its decision was still to withhold the information.
28. QUB argued that the requested information should be withheld under the following exceptions:
  - Regulation 12(4)(d) – information that is unfinished or in the course of completion,
  - Regulation 12(5)(c) – intellectual property rights, and
  - Regulation 12(5)(e) – commercially confidential information.
29. QUB also contended that there was "negligible" public interest in disclosing the requested information given that it did not

relate to issues of national/regional debate, public safety or decisions taken by QUB that directly affected the public. However the risk of harm to QUB through disclosure of the information was of greater significance.

30. Following a change in the Commissioner's staff a further review of the case was undertaken. On 23 November 2009 the Commissioner sought additional representations from QUB regarding its application of the exceptions cited. In particular the Commissioner queried why, having initially refused the request on the grounds of cost under section 12 of the Act, there was no mention of costs or time considerations when the request had been considered under the EIR.
31. On 21 December 2009 QUB provided further clarification of its reasoning behind applying the exceptions to the withheld information. QUB also advised the Commissioner that it now sought to rely on the exception at regulation 12(4)(b) on the grounds that the request was manifestly unreasonable. Finally, QUB provided a copy of a sample data set, to demonstrate to the Commissioner how the information was held and organised electronically and how in this format it would be meaningless to the complainant.

## **Findings of Fact**

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32. QUB has advised the Commissioner that it holds electronic data on 11,000 individual tree samples. This information is also held in manual files. QUB has explained to the Commissioner that there are usually between 50 and 500 measurements of individual growth rings for each sample. This is held electronically, on floppy disks.

## **Analysis**

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### **Substantive procedural matters**

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

33. The Commissioner notes that QUB initially refused the request for the information because it considered it exempt under section 12 of the Act.

34. However the Commissioner's decision is that the information is environmental information falling within Regulation 2(1) of the EIRs. Regulation 2(1)(a) provides 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’.
35. The Commissioner does not believe that it is necessary for information to have a direct effect on the environment for it to be environmental, only that it needs to be linked to the relevant parts of regulation 2(1). He considers that the phrase “any information...on” should be interpreted widely and in line with the purpose expressed in the first recital of the Council Directive 2003/4/EC, which the EIRs enact.<sup>1</sup>
36. The Commissioner's view, in line with the purpose expressed in the first recital of the Directive, is that “any information ...on...” will usually include information concerning, about or relating to the element in question. In other words information that would inform the public about the element under consideration and would therefore facilitate effective participation by the public in environmental decision making is likely to be environmental information.
37. The information in this case is the tree ring research data that consists of the measurements of tree rings collected over a 40 year period. The tree ring measurements detail not only the age/growth of the trees but also provide an indication of the climatic conditions in which the growth occurred. As such this information clearly relates to the state of the elements of the environment ie water, soil, land, landscape and natural sites. The Commissioner is therefore satisfied that information regarding tree ring research falls within the definition of

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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.

environmental information for the purposes of the Regulations as provided in Regulation 2(1)(a).

## **Exceptions claimed**

### **Regulation 12(4)(b) – manifestly unreasonable request**

38. Regulation 12(4)(b) provides that a public authority may refuse to disclose information to the extent that the request is manifestly unreasonable.
39. While the EIR does not define the term 'manifestly unreasonable', the Commissioner takes the view that 'manifestly' implies that a request should be obviously or clearly unreasonable. Although there is no specific exception in relation to the cost limit for compliance under the EIR, a request may be deemed manifestly unreasonable where complying with the request would incur unreasonable costs for the public authority or an unreasonable diversion of resources.
40. The Commissioner notes that, despite the fact that QUB's refusal of the request under the Act was under the corresponding provision (section 12), QUB did not seek to rely on the exception at regulation 12(4)(b) until 21 December 2009. At this late stage of the Commissioner's investigation QUB sought to argue that the complainant's request was manifestly unreasonable because of the time it would take to extract, copy, collate and prepare the information for release.
41. QUB initially advised the Commissioner that the raw data it held spanned a period of 40 years and comprised a range of formats, including 9000 electronic files held on disks, field notebooks and paper files. As part of its initial arguments for refusal of the request, QUB had stated that the requested data was held electronically on 150 disks and manually in paper files. QUB's initial estimate for the time taken to comply with the request was 12 months of full-time work for one person.
42. However, the complainant argued that he was aware that not all of the requested information was computerised, that it might contain ancillary information not pertinent to his request and that the information might not be in the format he had specified. Nonetheless he believed that his request could have been largely fulfilled by providing him with a copy of the electronic information held and that to produce this

copy would take only a matter of hours. This led to the complainant submitting the second and third requests as set out at paragraph 16 above.

43. QUB had stated that there were approximately 150 disks of data, but at the inspection of 26 February 2009 the Commissioner noted that there were in fact only 67 disks, which contained 150 folders of relevant data. The Commissioner examined a sample of the disks, and established that the raw data, approximately 11,000 tree measurement samples, was held electronically in an average of 20-60 folders per floppy disk.
44. Although QUB had argued that copying this information would be extremely time consuming, the Commissioner established during the inspection that on average it would take approximately 5 minutes to transfer the data folder to folder using Notepad. Accordingly, the Commissioner estimated that it would take approximately 12.5 hours to complete the transfer of all disks and make a copy. The Commissioner is of the view that this would not constitute a significant burden on QUB.
45. QUB also emphasised that even if a copy of the raw data was produced for the complainant, it would be meaningless to the requestor and could not be put to any meaningful purpose. However the Commissioner does not consider this to be a valid consideration when assessing information for possible disclosure under the EIR. There is no requirement for an applicant to demonstrate how they would be able to use any information provided.
46. The Commissioner has carefully considered QUB's arguments, but is of the view that QUB failed to demonstrate that the request was in fact manifestly unreasonable. The Commissioner is not satisfied that compliance with the request would constitute a significant burden, nor is he satisfied that QUB properly considered the application of this exception. Therefore the Commissioner's decision is that the exception at regulation 12(4)(b) is not engaged, and consequently the Commissioner is not required to consider the public interest test.

#### **Regulation 12(4)(d) – unfinished or incomplete information**

47. Regulation 12(4)(d) provides that a public authority may refuse to disclose information where the request relates to

material which is still in the course of completion, to unfinished documents or to incomplete data. This exception is class-based, so there is no requirement to demonstrate prejudice or adverse effect, although there is still a requirement to consider the public interest.

48. QUB stated that the information requested (the raw tree ring data held electronically) is currently being used in ongoing research which would result in future publications. Furthermore the data is used to update and develop new tree ring chronologies, the results of which are ultimately published via the internet on the ITRDB. QUB stated that it was planning to make the requested information available via the internet in a 'meaningful, controlled scientific and managed way' within the next 12 months, thus mitigating the risks of misinterpretation.
49. However, the Commissioner considers that the exception at regulation 12(4)(d) can not be applied in this way. QUB has advised that the raw data was collected over a period of 40 years, and is now being used for research. This does not suggest to the Commissioner that the data is unfinished or incomplete, rather that, whilst the research utilising this data is ongoing ie the analysis of the data, the data itself has already been collected and is therefore not unfinished or incomplete.
50. In light of the lack of detailed arguments put forward by QUB, the Commissioner can not be satisfied that the exception is in fact engaged. The Commissioner notes that QUB did provide arguments as to why it considered disclosure of the raw data would have a "significant and adverse effect on the viability of the University's Dendrochronology research programme". However it appears to the Commissioner that QUB does not fully understand how this exception is engaged as its arguments for withholding the information centred on the prejudice to QUB from disclosure. Therefore the Commissioner must conclude that QUB has not demonstrated that the exemption is engaged.
51. As the Commissioner finds that the exception at regulation 12(4)(d) is not engaged there is no requirement for the Commissioner to consider the public interest test.

### **Regulation 12(5)(c) – intellectual property rights**

52. Regulation 12(5)(c) states that a public authority may refuse to disclose information to the extent that its disclosure would adversely affect intellectual property rights. The Commissioner is of the view that this exception is intended to protect the interests of the holder of an intellectual property right and is not intended to protect intellectual property rights in principle.
53. Accordingly, in order to engage the exception, it is necessary to demonstrate that QUB hold intellectual property rights in respect of the raw tree ring data and that an adverse effect to those rights would arise as a result of disclosure of that data.
54. The Commissioner notes that QUB sought to introduce reliance on this exception in its letter of 24 March 2009. QUB argued to the Commissioner that the requested data had been subject to significant labour, skill and judgement on the part of the individuals who had prepared it over almost 40 years. QUB further argued that the data was used as a tool for undertaking research into dendrochronology in Ireland and for teaching students and this research included “very significant know-how and confidential information”. Accordingly QUB was of the view that disclosure of the requested information would adversely affect QUB’s ability to protect and maintain this know-how, thereby impacting on its academic research and expertise in this area.
55. QUB also argued to the Commissioner that the intellectual property rights of the University’s dendrochronology research are central to the attraction of external funding and that although much of the raw tree ring data is available through the ITRDB, the release of the raw data requested by the complainant would seriously impact on QUB’s ability to attract funding to undertake further research or submit publications to peer reviewed journals.
56. The Commissioner notes that Article 2, paragraph viii of the World Intellectual Property Convention (WIPO) Convention (1967)<sup>19</sup>, states that ‘Intellectual Property’ includes:

*“... the rights relating to – literary, artistic and scientific works ... protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields”.*

57. Having carefully considered QUB's representations the Commissioner is not persuaded that QUB does in fact hold intellectual property rights in relation to the withheld information. Whilst the research that was undertaken and published by QUB using the data as a tool might well attract intellectual property rights, it is unclear to the Commissioner as to how the raw tree ring measurement data itself could attract such rights.
58. The Commissioner notes that he did offer QUB a number of opportunities to provide detailed arguments, but the Commissioner has not received clear argument or evidence in support of the application of the exception under regulation 12(5)(c). Instead the focus of the argument he has received which purports to support the application of this exception, is in relation to the protection of QUB's ability to commercially exploit the data ie use it to attract funding to undertake further research, through preventing access.
59. In light of the above, the Commissioner is of the view that QUB has not established how the withheld information attracts intellectual property rights nor has QUB provided sufficient argument or evidence on the application in the present circumstances of the principles and practice of intellectual property law. Therefore the Commissioner can not be satisfied that the exception at regulation 12(5)(c) is engaged, and he is not required to consider any public interest arguments in relation to this exception.

### **Regulation 12(5)(e) – commercially confidential information**

60. Regulation 12(5)(e) states that a public authority may refuse to disclose information:
- “to the extent that its disclosure would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.”
61. For this exception to apply, a public authority must prove that the withheld information satisfies the following elements:
- Is the information commercial or industrial in nature?

- Is the information subject to confidentiality provided by law?
  - Is the confidentiality provided to protect a legitimate economic interest?
  - Would the confidentiality be adversely affected by disclosure?
62. Accordingly, the Commissioner must first consider whether or not the data constitutes commercial or industrial information. The Commissioner considers that for information to be commercial in nature it will need to relate to a commercial activity, either of the public authority or a third party. Commercial activity generally involves the sale or purchase of goods or services for profit, and thus in this instance the Commissioner considers that the raw data could be viewed as commercial information as it is commercially exploited by the University.
63. Being satisfied that the information is of a commercial nature, the Commissioner then considered whether it is subject to confidentiality provided by law. The Commissioner considers that this will include confidentiality imposed on any person under the common law duty of confidence, contractual obligation or statute. Whilst there is no requirement under Regulation 12 (5)(e) for information to have been obtained from another person, the Commissioner considers that no confidentiality can attach to information generated by a public authority itself if it has not been shared with a third party.
64. The Commissioner has therefore considered how QUB obtained the information in this case. The Commissioner notes that QUB advised the complainant in its letter of 22 May 2007, that the information relates to research undertaken by QUB's Department of Archaeology and Palaeoecology. This suggests that the research was undertaken by QUB staff, and that QUB collected the data for itself. The Commissioner is not persuaded that the raw data attracts a duty of confidence provided by law as it is primary information generated by QUB itself and not shared with a third party. The information does not have the quality of confidence.
65. The Commissioner therefore considers that the information is not subject to confidentiality provided by law. It follows that the exception at regulation 12(5)(e) can not be engaged. Therefore there is no requirement to consider any adverse effect arising from its disclosure, nor is the Commissioner required to consider the public interest test.

66. As the Commissioner is not satisfied that any of the exceptions are engaged in relation to the withheld information, the Commissioner finds that QUB wrongly withheld the information set out at paragraph 32 above from the complainant.

### **Procedural requirements**

#### **Regulation 5(2) – duty to make environmental information available**

67. The complainant made his initial request to QUB on 10 April 2007. However, he did not receive a substantive response until 22 May 2007, 32 working days after the date of the receipt of the request. In addition, the Commissioner has found that none of the exceptions cited by QUB were in fact engaged, so the information ought to have been disclosed to the complainant. In failing to disclose the information requested within 20 working days of receipt of the request, QUB breached regulation 5(2) of the EIR.

#### **Regulation 11(4)**

68. The complainant requested a review of QUB's response to his request on 24 May 2007. Whilst he was informed of the outcome of the public authority's informal review on 21 June 2007, when the complainant requested a formal review on 13 July 2007 QUB did not respond until 26 September 2007, 54 working days after the receipt of the representations.
69. The Commissioner notes that the EIR does not provide for a two-stage internal review process. Regulation 11 states that a public authority must consider representations made by the complainant, and must respond to these within 40 working days of receipt of the complainant's correspondence, If the complainant remains dissatisfied he may then appeal to the Commissioner. Therefore the Commissioner finds that QUB breached regulation 11(4) of the EIR.
70. The Commissioner is mindful that he has raised concerns about QUB's internal review procedures in previous complaints made under the Act. Therefore the Commissioner expects that QUB will review its procedures, to ensure they meet the requirements of the EIR and the Code of Practice issued under section 45 of the Act.

## **Regulation 14**

71. The initial refusal of the request was made under the provisions of the Act, with exceptions from the EIR only being cited following the intervention of the Commissioner. As the complainant was not informed which of the EIR exceptions were considered to apply and was not informed of his right to make representations to the public authority under regulation 11 or of the enforcement and appeal provisions of the Act imported by regulation 18, the public authority failed to comply with regulations 14(3)(a) and (b) and 14(5)(a) and (b).

## **The Decision**

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72. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Environmental Information Regulations in the following respects:
- The public authority wrongly applied the exceptions at regulations 12(4)(b), 12(4)(d), 12(5)(c) and 12(5)(e) in relation to the withheld information.
  - The public authority failed to comply with the requirements of regulations 5(2), 11(4), 14(3)(a) and (b) and 14(5)(a) and (b).

## **Steps Required**

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73. The Commissioner requires QUB to disclose the withheld information as set out at paragraph 32 above within 35 calendar days of the date of this Notice.

## **Failure to comply**

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74. 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) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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75. 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)

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 29<sup>th</sup> day of March 2010**

Signed .....  .....

**Graham Smith**  
**Deputy Commissioner and Director of Freedom of Information**

**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.

**Regulation 11** states that:

- (1) Subject to paragraph (2), an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of these Regulations in relation to the request.
- (2) Representations under paragraph (1) shall be made in writing to the public authority no later than 40 working days after the date on which the applicant believes that the public authority has failed to comply with the requirement.
- (3) The public authority shall on receipt of the representations and free of charge -
  - (a) consider them and any supporting evidence produced by the applicant; and
  - (b) decide if it has complied with the requirement.
- (4) A public authority shall notify the applicant of its decision under paragraph (3) as soon as possible and no later than 40 working days after the date of receipt of the representations.
- (5) Where the public authority decides that it has failed to comply with these Regulations in relation to the request, the notification under paragraph (4) shall include a statement of -
  - (a) the failure to comply;
  - (b) the action the authority has decided to take to comply with the requirement; and

(c) the period within which that action is to be taken.

**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.