

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

### Decision Notice

**Date: 24 September 2009**

**Public Authority:** Brighton & Hove City Council  
**Address:** Kings House  
Grand Avenue  
Hove  
BN3 2LS

**Complainant:** Mr Michael Ray  
**Address:** 24 Brangwyn Drive  
Brighton  
East Sussex  
BN1 8XD

### Summary

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The complainant requested a copy of a memorandum sent to the City Planner from members of the planning department expressing concern about pressure put on planning staff in relation to the King Alfred development at Brighton & Hove. The complainant also asked for a copy of the City Planner's response.

The council withheld the information via regulations 12(4)(e) and 13(1) of the EIR. The complainant appealed and in addition requested a copy of any other documents relating to what the council did in response to the memorandum. On review the council maintained that the exceptions at 12(4)(e) and 12(5)(f) applied to both requests.

During the Commissioner's investigation the council declared that exceptions at 12(5)(b) and 12(5)(f) also applied to the first request.

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

### 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 information

2. The King Alfred planning application was for a mixed use development on the seafront at Hove to be constructed by the Karis / Ing consortium. The development consisted of 750 residential units in twin towers and eight other buildings, a sports and swimming centre, retail outlets, restaurants and cafes, public spaces, GP surgery, police office and basement car parking. The cost of the development was estimated to be £270 million.
3. Some weeks before the council decision was made to approve the scheme a number of the authority's planning officers expressed their professional concern about the development in a memorandum to the assistant director of city planning.
4. The assistant director responded with a paper containing proposals supplied by the head of the council's legal section.

## The Request

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5. On 6 September 2007 the complainant requested the following information from the council:  
  
*'a copy of the communication signed by members of the planning department and sent to the City Planner at the beginning of March 2007 expressing concern about the pressure put on planning staff in relation to the King Alfred. Please also supply a copy of the City Planner's response.'*
6. In a refusal notice of 30 October 2007 the complainant was informed that the information was exempt by virtue of the exceptions at regulations 12(4)(e) and 13(2)(a)(i) of the Environmental Information Regulations.
7. The complainant appealed on 5 November 2007 against the decision to withhold the information. He submitted that the information would not be exempt on data protection grounds if the names of the officers concerned were redacted and that the public interest required disclosure in respect of the exception at 12(4)(e). In addition he asked that *'any other documents relating to what the council did in response to the memorandum'* be supplied.
8. The council's internal review of 7 December 2007 considered both requests. It maintained that the exception at 12(4)(e) and additionally that at 12(5)(f) applied to both requests. Its initial decision to withhold the information via 13(2)(a)(i) was not maintained.

## The Investigation

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### Scope and chronology of the case

9. The complainant wrote to the Commissioner on 17 December 2007 to complain about the council's refusal to disclose the requested information and also about the council's delay in dealing with his request.
10. On 30 January 2009 the Commissioner requested a copy of the withheld information from the council in order to ascertain whether the Regulations had been applied appropriately. The withheld information in relation to the first request comprised the memorandum from the planning officers as detailed in the request, two emails in response from the assistant director and a response from the council's head of law.
11. On asking for a copy of the withheld information in relation to the second request, the council replied that no 'other documents' were held. However, it did not inform the complainant of this at the time. The relevant exception in relation to the second request should have been that at regulation 12(4)(a) (information not held) and not 12(4)(e) or 12(5)(f).
12. On 17 June 2009 the council declared that the communication from the head of its legal section was now considered to be 'legal advice' and therefore also exempt from disclosure by virtue of regulation 12(5)(b). It also reintroduced the exception at regulation 13(1) in respect of all the withheld information.

### Findings of Fact

13. The information withheld by the council comprised the planning officers' memorandum, two emails in response from the assistant director of city planning and a communication containing proposals from the head of the council's legal section.

### Analysis

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#### Procedural matters

14. The council failed to comply with regulation 14(2) by issuing a refusal notice later than 20 working days after the date of request.
15. The council sought to rely upon exceptions it had not cited to the complainant. In seeking to rely on the exceptions at regulations 12(5)(b) and 13(1) it failed to comply with regulation 14(3)(a) by its failure to specify the reasons not to disclose the information in respect of those exceptions.
16. The council failed to comply with regulation 14(3)(b) by failing to specify to the complainant the public interest arguments it had considered in relation to the exceptions at 12(5)(b) and 12(5)(f).

## Exceptions

### Regulation 12(4)(e)

17. The council relied on the exemption at regulation 12(4)(e) in order to withhold the requested information.
18. The Commissioner is satisfied that the information falls within the scope of regulation 12(4)(e). However, he has considered the names of individual planning officers under regulation 13 instead; see below. His analysis of the information withheld under regulation 12(4)(e) therefore excludes those names.
19. Regulation 12(4)(e) states that a public authority may refuse to disclose information to the extent that the request involves the disclosure of internal communications. Regulation 12 states that a public authority may refuse to disclose environmental information if (a) an exception to disclosure under (4) or (5) applies; and (b) if in all the circumstances of the case the public interest in maintaining the exception outweighs the public interest in disclosing the information. Regulation 12(2) of the EIR directs public authorities to apply a presumption in favour of disclosure.
20. The Commissioner considered the public interest arguments put forward by the council in favour of maintaining the exception and those in favour of disclosure.

### Public interest arguments in favour of maintaining the exception

21. In its arguments to the Commissioner the council submitted that:
  - (a) disclosure would discourage planning officers from raising concerns or participating in free and frank discussion for fear that at some later date their views would be publicly disclosed. The council maintained that this would have a detrimental effect on the quality of the decision making process and in turn affect the public interest.
  - (b) disclosure would inhibit planning officers from challenging an approach or a perceived view and inhibit their ability to receive formal re-assurance of a position.
  - (c) disclosure of views expressed could be taken out of context and used by others to influence the development process in an attempt to gain advantage and undermine the local planning policy framework. For instance:
    - (i) the views of planning officers could be used as material considerations in the planning appeal process in the formal setting of an appeal.
    - (ii) the views could be used to undermine a planning officer's negotiating position on a development proposal.
    - (iii) the views could be used to present the planning officer as biased at consultative events such as public meetings.
  - (d) disclosure of a view held at a point in time could set a precedent that in turn could impair trust between the local planning authority (the council) and other stakeholders in the planning process.
  - (e) a fundamental component of the planning process is the compilation of a report which summarises the positive and negative aspects of a proposal and submits a

corporate recommendation to the planning committee. Public knowledge of an officer's view that differed from the corporate recommendation could influence the debate at committee stage and call into question the weight given to considerations which had been taken into account in framing the recommendation.

(f) the planning committee's decision to go ahead with the scheme was made in March 2007. If wider disclosure of the information took place now it could mislead the public and undermine confidence in the planning process. For example, concerns expressed in the information are not examined in detail or resolved in the documentation.

(g) the planning application was controversial and the subject of a considerable amount of debate

(h) disclosure has the potential to impact negatively on the thinking and actions of stakeholders involved in subsequent schemes on the same site and on proposals in other locations which may raise similar issues.

22. With reference to the council's submission at 21(a):

(i) The Commissioner is not persuaded by the authority's generalised use of the 'chilling effect' argument. The council proposes that disclosure will result in a future loss of frankness which will affect the quality of all future council decision making. However, it does not explain how disclosure in this particular instance might have such a wide ranging effect. The Information Tribunal has given little weight in its decisions to general arguments about wide ranging 'chilling effects' which are not specifically related to the information in question. In *Foreign and Commonwealth Office v Information Commissioner (EA/2007/0047)* for instance, the tribunal adopted two points of general principle which were expressed in the decision of *HM Treasury v Information Commissioner (EA/2007/0001)*. These were, '*that it was the passing into the law of the FOIA that generated any chilling effect, no civil servant could thereafter expect that all information affecting government decision making would necessarily remain confidential... Secondly, the tribunal could place some reliance in the courage and independence of civil servants, especially senior ones, in continuing to give robust and independent advice even in the face of a risk of publicity.*'

(ii) Whilst there may be occasions when the Commissioner might accept that a wider 'chilling effect' could occur, he does not accept such arguments as general 'arguments of principle'. In his view a public authority needs to make a convincing case as to why disclosure of the information in question would have this wider effect. In this instance the council failed to provide the necessary arguments or evidence to support the case.

(iii) The Commissioner considers that the reverse of the council's argument can in fact apply. This is that far from producing a 'chilling effect' leading to poorer quality decision making, the knowledge that the content of discussion might be subject to future disclosure could actually lead to a more informed and better quality discussion taking place. For instance, in this particular instance, it could be argued that if the council had been aware that the planners' concerns and the council's response would be disclosed in the future, that awareness might have led to a different and improved outcome.

## 23. With reference to the council's argument at 21(b):

The submission at 21(b) constitutes a speculation on the part of the authority rather than a reasoned argument against disclosure. It fails to address how or why disclosure of the information might result in the alleged inhibition and fails to provide any evidence to substantiate the council's opinion.

## 24. With reference to the council's argument at 21(c):

In the Commissioner's view the possibility that information may be taken out of context by the public is not a valid ground for a public authority to refuse disclosure. If there was any likelihood that the information might be taken out of context then the solution would be for the council to provide some form of explanation or for the council to put the information into a proper context rather than withhold it. His view is consistent with the Tribunal's decision in *Baker v Information Commissioner & DCLG (EA/2006/0043)* which stated that:

*'the strength of the argument in favour of disclosure and against maintaining the exemption is that disclosure will enable the public to form a view on what exactly happened and not on what it can otherwise only guess at.'*

(i) In its argument at 21(c)(i) the council suggested that the information could be used to undermine the local planning framework in the event of a formal planning appeal. In the Commissioner's view, if the professional concerns of the planning officers are valid then usage of the information would arguably be in the public interest rather than the reverse. If they were found to be invalid then the proper course of action would be for the authority to explain this to the public rather than withhold those concerns.

(ii) In 21(c)(ii) the council provided no evidence to support the suggestion that the concerns expressed by planning officers could be used to undermine a planning officer's negotiating position on a development proposal. The concerns expressed in this instance relate solely to a specific development. They are not applicable to development proposals in general.

(iii) In 21(c)(iii) the council failed to demonstrate how the concerns expressed by planning officers might be used to present those officers as biased at consultative events such as public meetings. The council provided no evidence or supporting argument to substantiate that contention.

## 25. With reference to the council's argument at 21(d):

(i) The Commissioner does not agree that disclosure of a view held at a point in time would set a precedent which in turn could impair trust between the planning authority and other stakeholders in the planning process. This is similar to the argument at 21(c)(ii) which attempts to suggest a common transference of issues from the specific to the general. In the Commissioner's view, every decision to disclose information is specific to the particular facts and circumstances under consideration. His view is endorsed by the High Court judgment in *Export Credits Guarantee Department v Friends of the Earth (17 March 2008)* which commended as a statement of principle that, 'Whether there may be significant indirect and wider consequences from the particular, disclosure must be considered case by case'.

(ii) The Commissioner considers that even in the event that the content of the information were to affect public trust as suggested by the council, rather than trust in the planning authority being impaired by disclosure, it is more likely that trust would suffer if the public deemed that safety and environmental concerns had been concealed by the council.

26. With reference to the council's argument at 21(e):

The Commissioner is not persuaded by this argument. If the concerns expressed by the planning officers do not warrant serious consideration then there is no reason for the authority to fear disclosure. If they do warrant serious consideration then presumably that consideration should be addressed in the corporate report. If the consideration is sufficiently addressed in the report there would be no reason for the authority to fear additional exposure elsewhere. Alternatively, if the concerns warrant serious consideration but are not addressed in the report then there would be a strong public interest case for disclosure elsewhere and the weight given to considerations which had been taken into account in framing the report's recommendation should be called into question.

27. With reference to the council's argument at 21(f):

(i) The Commissioner is not persuaded by this argument. It is similar to the argument at 21(c) which supposes that disclosure of the information will be taken out of context by the public. As with that argument, if there was any likelihood that the information might be taken out of context, then the solution is for the council to provide some form of explanation or for it to place the information into proper context rather than withhold it.

(ii) It is also similar to its argument at 21(d) which purports that trust in the planning authority would be impaired by disclosure. As with that argument, the Commissioner considers it more likely that confidence in the planning process would be undermined if the public believed that professional concerns had been concealed by the council.

28. With reference to the council's argument at 21(g):

In the Commissioner's view the fact that the planning application was controversial and the subject of public debate are important reasons for enabling full disclosure of the available information. If there are concerns about the development these should be addressed. In such circumstances it is entirely in the public interest that full transparency and disclosure of all the relevant issues are afforded and that the information is not restricted to that which the authority alone might decide as being fit for public consumption.

29. With reference to the council's argument at 21(h):

The Commissioner does not accept this argument. If the concerns expressed by the planning officers are legitimate then it is in the public interest that stakeholders who may become involved in similar schemes on the same site or in other locations should not be prevented from knowing about those concerns. With regard to stakeholders who may become involved in dissimilar schemes there is no reason on the part of the authority to fear disclosure as, again (see 24(ii)), the concerns relate specifically to a particular development and are not applicable to development schemes in general.

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

30. The Commissioner considers that public interest arguments in favour of disclosure include the following:
- (a) Disclosure enables a greater public understanding of the decisions made by the council. It allows the public to see the 'fuller picture' concerning its decision making and affords transparency of debate in the planning process.
  - (b) It provides public accountability for the decisions that are taken by the council.
  - (c) It promotes public participation in matters relating to the environment and allows the public and local businesses to have a say in how their area is developed.
  - (d) The maintenance of high standards in the area of local authority planning is essential to ensure the right balance between building development and environmental sustainability. It is not in the public interest for standards to be lowered.
  - (e) The professional concerns of planners involved should be investigated properly. There should be proper accountability to the public in terms of both process and outcomes in this regard.
  - (f) The council's subsidy of the development is substantial. It is particularly important that any concerns as to the appropriateness of the application are made fully transparent when significant costs to the council tax payer are involved.
  - (g) The matter has been reported extensively in the media. Local newspapers have publicised the council's acknowledgement that planning officers had complained to the city planner about the development decision. The fact that the issue has already been widely reported weakens arguments against disclosure which are based on the detrimental effect that public disclosure may have on the council.
  - (h) There is a strong inherent public interest in releasing environmental information. It is increasingly recognised that in order to protect the environment it is important for people to have access to environmental information to be able to participate in environmental decision making and have access to justice. In the words of the European Directive (2003/4/EC):

*'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.'*

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

31. The Commissioner has weighed the competing public interest arguments in this case and has concluded that the public interest in maintaining the exception at regulation 12(4)(e) does not outweigh the public interest in disclosure.

## Regulation 12(5)(b)

32. When the information was withheld the council did not consider any part of it to be 'legal advice'. Nor did the council consider that any of the information was 'legal advice' when it came to review the matter. It was only during the Commissioner's investigation that the council proposed that the paper supplied by the head of its legal section was 'legal advice'.
33. The Commissioner is not obliged to consider exceptions which have been raised before him for the first time. The Tribunal in the case of *Department for Business, Enterprise and Regulatory Reform v ICO and Friends of the Earth (EA/2007/0072)* concluded that he may exercise his discretion to do so. In this instance the Commissioner has agreed to consider the late exception.
34. The council relied on the exemption at regulation 12(5)(b) in order to withhold the paper supplied by the head of its legal section. It submitted to the Commissioner that disclosure of the paper would adversely affect the course of justice or the authority's ability to conduct enquiries of a disciplinary nature. It maintained that because the communication was 'legal advice' it was subject to legal professional privilege.
35. There is no specific exception within the Regulations referring to information that might be subject to legal professional privilege. However, the Tribunal has previously decided that regulation 12(5)(b) can encompass such information. In the case of *Kirkaldie v the ICO and Thanet District Council - EA/2006/001*, the Tribunal considered that the regulation, "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 rights of individuals or organisations to a fair trial." It continued that to do this, the exception, "covers legal professional privilege, particularly where a public authority is or is likely to be involved in litigation".
36. To assess whether the 12(5)(b) exception is engaged on grounds that the information is legal advice protected by legal professional privilege the Commissioner has applied the following test:
  - (a) does the information constitute legal advice? - if so
  - (b) is the legal professional privilege that is claimed, advice privilege or litigation privilege?
  - (c) would disclosure of the information adversely affect the course of justice or the ability of the council to conduct an inquiry of a disciplinary nature?
37. Because the Commissioner's analysis of the council's application of the 12(5)(b) exception necessarily includes references to some of the withheld information, it has been detailed in a confidential schedule. The schedule has been supplied to the public authority only at this stage.
38. The Commissioner's decision is that the exception at regulation 12(5)(b) is not engaged.

### **Regulation 12(5)(f)**

39. The council relied on the exception at regulation 12(5)(f) in order to withhold the information. It maintained that both the employees and the employer involved in the exchange of correspondence were subject to the protection afforded by the exemption.
40. Regulation 12(5)(f) applies to information where disclosure would have an adverse effect upon:
  - (a) the interests of a person who voluntarily provided the information to the public authority
  - (b) where that authority is not entitled to disclose that information apart from under the regulations and
  - (c) where the provider has not consented to the authority disclosing it.
41. The purpose of the exception at 12(5)(f) is to protect the voluntary supply to public authorities of information that might not otherwise be made available. In such circumstances a public authority may refuse disclosure when it would adversely affect the interests of the provider. It is clear from the wording of the exception that the public authority's interests are excluded from consideration. The information to which the exemption was applied was internally created and not supplied by a person or organisation separate to the authority. The Commissioner therefore does not consider that regulation 12(5)(f) has been applied appropriately and in his view the exception is not engaged.
42. Because the exception at 12(5)(f) is not engaged the Commissioner is not required to consider the public interest test in respect of this.

### **Regulation 13(2)(a)(i)**

43. During the course of the Commissioner's investigation the council submitted that regulation 13 applied in order to withhold the information. Its reason was that the correspondence constituted personal data of which the applicant was not the data subject. It maintained that disclosure would be unfair and contravene the first data protection principle because the planning officers and assistant director had not contemplated that their views would be disclosed. Whilst the council did not specify the relevant sub section in its argument to the Commissioner, the exception that applies is at 13(2)(a)(i).
44. The Commissioner asked the council whether it had asked the individuals involved for their views on disclosure of the correspondence. The council stated that it had not requested their views.
45. At the Commissioner's request the council agreed to canvass the views of the individuals that were still employed by the authority and provide the responses to the Commissioner. The council received responses from eight of the individuals involved. The Commissioner found that six of these had either declared no objection to disclosure or requested that their names be redacted prior to disclosure. Two expressed a preference for non disclosure.

46. In the Commissioner's view, the correspondence constitutes personal data in so far as individuals can be identified by name from the information.
47. The first data protection principle states that personal data shall be processed fairly and lawfully. In considering whether disclosure of individuals' names would be unfair, the Commissioner has taken into consideration the reasonable expectations of the individuals as to what would happen to their personal data. Whilst several of the planning officers declared no objection to disclosure some have asked that their names be redacted. The Commissioner has therefore decided that it would be consistent with the first data protection principle to redact all the planning officers' names. The number of officers who signed the memorandum however should be disclosed by the council.
48. The Commissioner considers that public identification of the planning officers will not be possible if their names are redacted and in that event the remainder of the information would not constitute their personal data. This analysis is consistent with the judgment of the House of Lords in *CSA v Scottish Information Commissioner (2008) UKHL 47* where it was agreed that anonymising data in this way so that individuals are no longer identifiable enables the information to be released.
49. In light of the above, the Commissioner finds that regulation 13(2)(a)(i) provides an exception to disclosure for the names of the planning officers. In his opinion disclosure of these names would not increase the public's understanding of the matter in question. However, with regard to the two senior officers who responded to the memorandum on behalf of the council, the Commissioner considers it fair for the names and job titles of those employed by public authorities at senior management levels to be disclosed. The Commissioner observes that the council has already acknowledged the name and job title of one of these individuals (the assistant director) in the local press. There are references within the information to other individuals who hold senior posts in the council which the Commissioner also considers fair to be disclosed.

## The Decision

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50. The Commissioner's decision is that the council did not deal with the request for information in accordance with the EIR. It failed to comply with its obligations under regulation 5(1) which requires that environmental information shall be made available on request.

The council incorrectly applied the exceptions at regulations 12(4)(e), 12(5)(b), 12(5)(f) and 13(2)(a)(i) in order to withhold the information. However, the names of the planning officers cited in the correspondence were correctly withheld under regulation 13(2)(a)(i).

The council incorrectly concluded that the public interest favoured withholding the information to which the exception at regulation 12(4)(e) was engaged.

The council failed to meet the requirements of regulation 5(2) by not disclosing the information within 20 working days of receipt of the request.

The council failed to comply with regulation 14(3) by seeking to rely upon exceptions it had not cited to the complainant.

## **Steps Required**

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51. The Commissioner requires that the council shall within 35 calendar days of the date of this decision notice disclose the memorandum dated 2 March 2007 expressing the planning officers' concern, the two emails in response from the assistant director and the paper from the head of the council's legal section that was enclosed. The names of the planning officers are to be redacted from the correspondence.

## **Failure to comply**

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52. 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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53. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@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 served.

**Dated the 24th day of September 2009**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex

### Environmental Information Regulations

#### Regulation 2 states that:

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

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

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

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

(d) reports on the implementation of environmental legislation;

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

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

#### Regulation 5 states that:

(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to a standardised procedure used.

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

**Regulation 9** states that:

(1) A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

(2) Where a public authority decides that an applicant has formulated a request in too general a manner, it shall –

(a) ask the applicant as soon as possible and in any event no later than 20 working days after the date of receipt of the request, to provide more particulars in relation to the request; and

(b) assist the applicant in providing those particulars.

(3) Where a code of practice has been made under regulation 16, and to the extent that a public authority conforms to that code in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with paragraph (1) in relation to that case.

(4) Where paragraph (2) applies, in respect of the provisions in paragraph (5), the date on which the further particulars are received by the public authority shall be treated as the date after which the period of 20 working days referred to in those provisions shall be calculated.

(5) The provisions referred to in paragraph (4) are –

(a) regulation 5(2);

(b) regulation 6(2)(a); and

(c) regulation 14(2).

**Regulation 12** states that:

(1) Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

(a) an exception to disclosure applies under paragraphs (4) or (5); and

(b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

- (2) A public authority shall apply a presumption in favour of disclosure.
- (3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.
- (4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –
- (a) it does not hold that information when an applicant's request is received;
  - (b) the request for information is manifestly unreasonable;
  - (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
  - (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
  - (e) the request involves the disclosure of internal communications.
- (5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –
- (a) international relations, defence, national security or public safety;
  - (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
  - (c) intellectual property rights;
  - (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
  - (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
  - (f) the interests of the person who provided the information where that person -
    - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
    - (ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
    - (iii) has not consented to its disclosure; or
  - (g) the protection of the environment to which the information relates.

**Regulation 13** states that:

- (1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.
- (2) The first condition is –
  - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –
    - (i) any of the data protection principles; or
    - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and
  - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998<sup>[7]</sup> (which relate to manual data held by public authorities) were disregarded.
- (3) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of that Act and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.
- (4) In determining whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.
- (5) For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that –
  - (a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded; or
  - (b) by virtue of any provision of Part IV of the Data Protection Act 1998, the information is exempt from section 7(1)(a) of that Act.

**Regulation 14** states that:

- (1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.
- (2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.
- (3) The refusal shall specify the reasons not to disclose the information requested, including –
  - (a) any exception relied on under regulations 12(4), 12(5) or 13; and
  - (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).
- (4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.
- (5) The refusal shall inform the applicant –
  - (a) that he may make representations to the public authority under regulation 11; and
  - (b) of the enforcement and appeal provisions of the Act applied by regulation 18.