

## **Environmental Information Regulations 2004**

### **Decision Notice**

**Date: 2 February 2012**

**Public Authority:**      **The University of East Anglia**  
**Address:**                **Norwich**  
                                     **NR4 7TJ**

**Complainant:**         **Mr S McIntyre**  
**Address:**                **smcintyre25@yahoo.ca**

### **Summary**

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The complainant made a request to the University of East Anglia (the University) for eight particular documents. The University provided the complainant with the information requested at points 2 and 4 of the request but applied regulation 6(1)(b), regulation 12(4)(d) and regulation 12(5)(f) to withhold some of the requested information. It also applied regulation 12(4)(a) as some of the requested information was not held. The Commissioner considers that the University correctly applied regulation 6(1)(b) to point 3 of the request (apart from one sentence contained within that document), regulation 12(4)(a) to points 5, 6, 7 and 8 of the request, regulation 12(4)(d) to the one sentence in the document relevant to point 3 of the request to which regulation 6(1)(b) does not apply and regulation 12(5)(f) to point 1 of the request.

### **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.

## **The Request**

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2. The complainant made a request to the University on 5 April 2010. The complainant requested the following documents:
  1. Wahl\_MBH\_Recreation\_JClimLett\_Nov22.pdf
  2. Wahl-Ammann\_3321\_Figures.pdf
  3. Wahl\_Ammann\_3321\_Final\_21Feb.doc
  4. Wahl\_Ammann\_3321\_Final\_21Feb-Revision1.doc
  5. AW\_Editorial\_July15.doc
  6. AR4SOR\_BatchAB\_Ch06\_ERW\_comments.doc
  7. Ch06\_SOD\_Text\_TSU\_FINAL\_2000\_12jul06\_ERW\_suggestion s.doc
  8. Ch06\_SOD\_Text\_TSU\_FINAL\_2000\_25jul06KRB-FJRV\_ERW\_suggestions.doc
3. On 2 June 2010 the University responded to the request for information. In relation to documents 1 and 3, it refused to provide this information as it stated it was withheld under regulation 6(1) (information which is publicly available), regulation 12(4)(d) (unfinished documents) and regulation 12(5)(f) (impact on the voluntary supply of information). It provided the complainant with documents 2 and 4. Finally in relation to documents 5, 6, 7, and 8 it stated that these documents were not held under regulation 12(4)(a).
4. As the complainant was dissatisfied with the response he had received, on 13 July 2010 he asked the University to carry out an internal review.
5. On 10 August 2010 the University wrote to the complainant with the outcome of the internal review. It upheld its original decision.

## **The Investigation**

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### **Scope of the case**

6. On 31 January 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the University dealt with points 1, 3, 5, 6, 7 and 8 of the request in accordance with the Regulations.

### **Chronology**

7. On 4 February 2011 the Commissioner wrote to the University. The Commissioner asked the University to provide him with the information requested at points 1 and 3 of the request. The Commissioner also asked the University to provide further submissions in support of the exceptions applied.
8. On 7 March 2011 the University responded to the Commissioner. It provided him with a copy of the information requested at points 1 and 3 of the request. It also provided further submissions in support of the application of the exceptions in this case.
9. On 6 April 2011 the Commissioner wrote to the University again to ask for further submissions in relation to the application of the exceptions in this case.
10. On 25 May 2011 and 21 June 2011 the University provided further submissions to the Commissioner.

### **Analysis**

#### **Substantive Procedural Matters**

##### **Points 5, 6, 7 and 8 of the Request**

11. The exception under 12(4)(a) was applied to points 5, 6, 7 and 8 of the request as the University explained that it did not hold any information falling within the scope of these requests. The complainant asked the Commissioner to investigate whether the University had correctly dealt with these parts of his request.

12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
13. The University has explained that its records management policy is in line with Joint Information Systems Committee (JISC) guidance which recommends that records are designated as such. It said that it would not be the University's policy to designate the requested emails as records worthy of retention. It explained that such emails were personal communications between academics relating to work outside the normal ambit of University business and therefore would not be considered as justifying retention. It said that the vast majority of emails are deleted as being transitory operational notes and not records of University activity. It explained however that it had no record of the destruction of the documents nor of the date of destruction. The University said that it is possible that copies could have been made and held in other locations however it explained that all possible locations were searched and the requested emails were not found. It also said that in 2006 the common practice was for Climate Research Unit (CRU) based material to be copied only onto local PCs and not to be held centrally, however the searches conducted at the time of the request included local workstations.
14. The University explained that [named individual] searched his personal PC located within the CRU as the original requested correspondence was only sent to him. Upon internal review the University carried out further searches. An initial search in April 2010 was made on [named individual's] Windows PC to confirm the prior findings. [second named individual] and [named individual] searched together using the Windows "Search" facility, searching "All files and folders" on the local disk. They also searched for the filenames as listed in the request itself.

15. The University confirmed that to reduce the chance that anything was missed, the search was redone on [named individual's] Windows PC on 3 August 2010. It explained that by this point, the CRU email service had been transferred to Exchange Service with emails retained centrally and so both the local drive (c:) and the network drives (U: central filestore for f023) and (S: cru-vfs for f023) were searched. It said that once again the Windows "Search" facility was utilised searching "All files and folders" on these disks. The following three search terms were also used:

- AW\_Editorial
- AR4SOR\_BatchAB\_Ch06\_ERW
- Sod\_Text\_TSU\_Final\_2000

It explained that because the search facility matches partial filenames, these search terms would match the required files as well as similar files.

16. It said that a search was also conducted on another network drive. As far as the University is aware [named individual] only uses this for programs and data rather than emails, attachments and documents, but it explained that it seemed appropriate to search there for completeness. It said that this search produced no matches.

17. The University said that although it was not anticipated to find any of the attachments as [second named individual] was not a recipient of the original emails, a search was conducted of [second named individual's] Windows PC on 3 August 2010. It confirmed that no matches were found there either.

18. The University confirmed that after consultation with relevant staff, the requested information was not held manually. The University also confirmed that that there was no business purpose for which the requested information should be held and no statutory obligation upon the University to hold the information.

19. The Commissioner asked the University whether the requested information could be held on University back up servers currently in the possession of the police. The University explained that it is possible the requested information could be held on the back up

server but it has no record of the contents of the server and therefore it does not know. It did not know when the back up servers would be returned. The Commissioner has considered regulation 3(2) and he has concluded the back up server is not in the possession of the public authority and it is not held by the police on behalf of the public authority. He makes this finding as it is clear that the University does not have any control over the server, which is being held as potential evidence in an investigation. The Commissioner notes that the Tribunal has recently issued its decision in the case of Keiller (EA/2011/0152) and that the Tribunal found that the back up server was held under EIR. The case in question here is different to Keiller as the information request was made after the server was taken by the Police. In Keiller the server was held at the time of the request but was taken by the police subsequently.

20. The University finally confirmed that on the basis of the evidence it had provided, it was satisfied that it had carried out diligent and thorough searches and that it has found that the requested information is not held.

21. In relation to this information the complainant has suggested that:

*"These were attachments to emails from [third named individual] to [named individual] that were the subject of Jones' delete-all-emails request. At the hearings of the Science and Technology Committee, MP Stringer asked Vice Chancellor Acton "Are all the emails now available and can be read? Acton said "Yes". If so, then the University must hold the documents that they had refused on the basis that they did not hold the documents and appeal their refusal on this basis."*

The Commissioner therefore asked the University to respond to this.

22. The University explained that:

*"In his testimony in front of the Select Committee, the Vice-Chancellor was merely stating that no emails had been deleted as a result of, or subsequent to, an email from Prof. P. Jones of 28 May 2008 that suggested such an action. The documents at the heart of this present request, and the emails to which they were attached, all date from 2006. It is highly likely, even good*

*records management practice, that such emails and attachments would have been deleted in the normal course of business between 2006 and 2008, well in advance of any request for either the emails or the attached documents.*

*The Vice-Chancellor was not aware of this request, or these documents, when he made his comments before the Select Committee, nor were his comments directed at these documents. The question and the answer pertained to an entirely different set of documents within a different time frame."*

23. UEA also confirmed that the recipient of the emails to which the requested information was attached has confirmed that whilst the emails were copied and saved onto private storage attachments were not. UEA confirmed that nonetheless the recipient did search all private storage to determine whether any of the requested information was located there. The recipient confirmed that the requested information was not held in his personal storage.
24. Taking into account all of the arguments put forward in this case, the Commissioner considers on the balance of probabilities the information relevant to points 5, 6, 7 and 8 of the request is not held by the University.

## **Exceptions**

### **Points 1 and 3 of the request**

#### **Regulation 6(1)(b)**

25. Regulation 6(1)(b) states that:

"Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

(b) The information is already publicly available and easily accessible to the applicant in another form or format."

26. In relation to the information withheld relevant to points 1 and 3 of the request, the University has explained that these withheld documents were unfinished as they were earlier drafts of which

- the final versions have now been published. The University has explained that the information contained within the requested drafts can be obtained from the final published documents.
27. In particular the University stated that in relation to the information requested at point 1 of the request, this "is an early and short draft of a much longer draft later produced and subsequently published. While it is substantially different in length, the concepts within the paper are all dealt with in an expanded fashion in the final paper." In relation to point 3 of the request, it stated that this "is on the other hand virtually identical in length and overall content to the final published version of the paper as a pdf file entitled 'Appendix B\_Wahl&Ammann 2007\_final'. The only changes are contained within Appendix 1 in the draft document are a slight change in the wording and the addition of a paragraph within the section entitled 'Measures of Reconstruction Performance at Interannual Time Scales' ".
28. In relation to point 3 of the request, the University went on to explain that:
- "All the information that is within the article text of the withheld paper is available within the published paper. Indeed the published paper has some additional text within the first Appendix but the article itself is identical. The published version is the version intended by the authors to be publicly scrutinised and we feel that all the text within the withheld drafts is in fact, ... "publicly available and easily accessible to the applicant in another form or format", as stipulated in Regulation 6(1)."*
29. In relation to point 1 of the request the Commissioner considers that there are significant differences between the published document and the withheld information. The Commissioner does not consider that the information relevant to point 1 of the request is already publicly accessible and therefore the University was incorrect to apply this exception to the information relevant to point 1 of the request.
30. In relation to point 3 of the request, after considering the University's submissions, the withheld information and the final published version, the Commissioner considers that it does appear that all of the information contained in the withheld document is contained in the later published version which is



accessible to the complainant. The only difference relates to one sentence contained in Appendix 1 and the Commissioner also acknowledges that the published version contains additional information. As the published document contains all of the information from the withheld document (apart from the one sentence highlighted above) the Commissioner considers that it is easily accessible to the complainant and therefore Regulation 6(1) was correctly applied to the information requested at point 3 of the request. However the Commissioner considers that the difference to the one sentence contained in Appendix 1 is not easily accessible and therefore section 6(1) does not apply to this information.

31. As the Commissioner considers that Regulation 6(1) was correctly applied to the information requested at point 3 of the request (apart from the one sentence highlighted above) he has not gone on to consider the other exceptions applied in relation to this information. He has however gone on to consider the other exceptions applied to the sentence contained in the information requested at point 3 of the request to which regulation 6(1) is not applicable and the information requested at point 1 of the request.

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

32. Regulation 12(5)(f) states that:

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect –

- (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.

33. In this case the University has argued that the authors of the requested documents provided this information to the University and that those authors were not under or could not be put under any legal obligation to provide the information, the University is not entitled to disclose it and the authors have not consented to disclosure. The Commissioner accepts this position and has therefore gone on to consider whether disclosure would adversely affect the interests of the authors who provided the information to the University.

### **Point 3 of the request**

34. In relation to the sentence from the information relevant to point 3 of the request to which regulation 6(1) is not applicable, the University has explained that "the adverse effect is that the release of preliminary information effectively misrepresents the work of the author where it is clear ... from longstanding academic practice that it is the final version of a work that is to be reviewed and adjudged." The Commissioner notes the general arguments relating to the release of draft documents, however he asked the University for more specific arguments as to why disclosure of this particular sentence alone would misrepresent the work of the authors in this case.

35. The University explained that the documents were different, in that there was more than a rewording of one sentence, the published document also contained further additional information. The Commissioner would reiterate that he acknowledges that the final published version also contains additional information, however the University has correctly argued that other than this the withheld draft is identical to the final published version apart from the rewording of one sentence. Therefore the Commissioner required specific arguments as to why disclosure of the particular sentence alone would have the adverse affect described.

36. As the University failed to explain why disclosure of this one sentence alone would have such an adverse effect he does not consider that he has sufficient arguments to uphold the application of regulation 12(5)(f) to this one sentence contained in Appendix 1 of the document relevant to point 3 of the request.

### **Point 1 of the request**

37. In relation to the information requested at point 1 of the request again the University argued that the adverse effect of disclosure of draft documents is that the work of the author would be misrepresented. In this case the University has explained that this "is an early and short draft of a much longer draft later produced and subsequently published. While it is substantially different in length, the concepts within the paper are all dealt with in an expanded fashion in the final paper." The Commissioner therefore considers that this information is different to the information that was requested at point 3 of the request as the withheld document is not a virtually identical crossover to the final published document. In relation to point 1 of the request, as the final published article significantly expands on the information contained in the requested draft he does accept that disclosure of this draft could misrepresent the author's final publicised position. If the author's publicised standpoint were undermined by disclosing earlier thinking this may adversely affect the interests of the author.
38. As the Commissioner considers that regulation 12(5)(f) is engaged in this case in relation to point 1 of the request he has gone on to consider the public interest test.

### **Public interest arguments in favour of disclosure**

39. It is clear that there is a strong public interest in understanding the issues surrounding the science of climate change and enabling involvement in that debate. There is a public interest in disclosing information which may demonstrate further how published thinking on a specific piece of climate change research has developed. He notes that the research covered by the request has international importance. The Commissioner also notes the considerable public debate about the validity of different scientific techniques used to assess climate change. The activities of certain scientists at UEA have raised legitimate public interest questions to be asked about climate science in general and the work of UEA. There is a strong public interest in disclosure. However, the Commissioner also notes that were a number of independent inquiries and studies<sup>1</sup> following

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<sup>1</sup> <http://www.uea.ac.uk/mac/comm/media/press/CRUstatements/independentreviews>

The Berkeley Earth Surface Temperature (BEST) study (October 2011)

"climategate" and they did not call the validity of the climate science at UEA into question. The Commissioner must acknowledge the work of these expert inquiries and he finds that cannot give further weight to the public interest in disclosure given the external validation of UEA's work.

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

40. The University has explained in this case that, *"...research is enhanced by early knowledge of other researchers' plans, ideas and forthcoming results and publications. The free exchange of ideas and opinions as well as initial research findings is clearly dependant on trust. If our collaborators feel that they are not able to rely on us to respect the confidence they expect they will no longer be prepared to share the ideas, results or frank opinions on scientific issues prior to their publication. This will severely limit our participation in cutting-edge research and could only lead to our eventual isolation as researchers."*
41. It went on to explain that, *"This is an issue not only for this University but also for the entire academic sector within the United Kingdom. Disclosure of draft documents would have a chilling effect on the willingness of other academics to work with the United Kingdom. In another matter, we recently received exactly such representations from the IPCC TSU based in Geneva, Switzerland in which they explicitly noted that release of such material would "...force us to reconsider our working arrangements with those experts who have been selected for an active role in WG1 AR5 from your institution and others within the United Kingdom."*
42. It finally explained that, *"Research is a vital component of both the financing and work of any University. Anything that prejudices the practice of research is harmful to a University both in terms of finances and reputation. The voluntary supply of*

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- Deutsche Bank report (September 2010)
  - Muir Russell Review (July 2010)
  - US Environmental Protection Agency (July 2010)
  - Lord Oxburgh Scientific Assessment Panel (April 2010)
  - Parliamentary Science and Technology Select Committee (March 2010)

*draft documents for review, comment and revision is core [to] the process of peer-review and the essence of how research publication is conducted. To cut off the supply of such documents would remove much of the ability of academics to conduct peer-review confidentially, and thereby reduce the level of such activity. Quality of papers will diminish and the role of UK-based academics in the progress of research would be restricted. A university that does not participate in peer-review is not conducting serious research; funding will dry up, academics will depart for institutions where they can carry out peer-review, and the reputation of the University as a force in research will be lost."*

43. The University has also sought the views of YoungSuk 'Y.S.' Chi, Chairman of Elsevier Management Committee. It explained that Elsevier Management Committee is one of the worlds leading academic publishers. It has suggested that Mr Chi has a central view of the academic publishing process and has provided his views on the release of any draft or preliminary papers. His view is that disclosure of any draft documents would hinder the peer review process within the academic field as authors will be less likely to share unfinished and unpublished ideas and concepts at an early stage.

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

44. The Commissioner considers that whilst there is a strong public interest in the disclosure of information which could further public understanding of climate change, the University has provided very strong arguments to demonstrate that disclosure of the information withheld in relation to point 1 of the request would have a significant chilling effect upon the sharing of draft research in the peer review process. The Commissioner considers that as the withheld draft in this case is significantly different to the later published version this adds considerable weight to this argument and therefore adds significant weight to the public interest in favour of maintaining the exception.
45. The Commissioner considers that in this case the public interest in favour of maintaining the exception outweighs the public interest in disclosure.

### **Regulation 12(4)(d)**

46. The Commissioner will finally consider the application of regulation 12(4)(d) to the sentence contained in the information requested at point 3 of the request to which regulation 6(1) and regulation 12(5)(f) is not applicable.

47. Regulation 12(4)(d) states that:

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

(d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data;

48. In this case the Commissioner accepts that this sentence was unfinished for the purpose of this exception as it was reworded in the final published version.

49. The Commissioner will therefore consider the public interest arguments in this case.

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

50. The Commissioner considers that there is a public interest in disclosing information which may demonstrate further how published thinking on climate change has developed. This is an issue which is relevant to the whole population and therefore there is a very strong public interest in disclosing information which may enhance debate and understanding in this area.

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

51. The University relied on substantially the same public interest arguments it had provided in relation to the application of regulation 12(5)(f) above to the information relevant to point 1 of the request.

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

52. The Commissioner has given significant weight to the argument that disclosure would have a general chilling effect upon the peer

review process. However as this relates to disclosure of a single sentence which was worded differently in the draft, and the University has not provided any specific argument as to why disclosure of this particular sentence alone would have the chilling effect described he has given slightly less weight to this argument. The Commissioner finds that the public interest in disclosing this one sentence is not very strong, beyond the general arguments cited above. He finds that the public interest in maintaining the exception outweighs the public interest in disclosure.

## **The Decision**

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

- It correctly applied regulation 12(4)(a) to points 5, 6, 7 and 8 of the request.
- It correctly applied regulation 6(1) to point 3 of the request apart from one sentence contained within Appendix 1 of that document.
- It correctly applied regulation 12(5)(f) to point 1 of the request.
- It correctly applied regulation 12(4)(d) to the one sentence contained within Appendix 1 of the document relevant to point 3 of the request

## **Steps Required**

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54. The Commissioner requires no steps to be taken.

## Right of Appeal

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55. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

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

Website: <http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm>

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

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

Signed ..... 

**Steve Wood**  
**Head of Policy Delivery**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**



## Legal Annex

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### **Regulation 5 - Duty to make available environmental information on request**

#### **Regulation 5(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.

#### **Regulation 5(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 5(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.

#### **Regulation 5(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.

#### **Regulation 5(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 the standardised procedure used.

### **Regulation 5(6)**

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

## **Regulation 6 - Form and format of information**

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### **Regulation 6(1)**

Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

- (a) it is reasonable for it to make the information available in another form or format; or
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.

### **Regulation 6(2)**

If the information is not made available in the form or format requested, the public authority shall –

- (a) explain the reason for its decision as soon as possible and not later than 20 working days after the date of receipt of the request for the information;
- (b) provide the explanation in writing if the applicant requests; and
- (c) inform the applicant of the provisions of regulation 11 and the enforcement and appeal provisions of the Act applied by regulation 18.

## **Regulation 12 - Exceptions to the duty to disclose environmental information**

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### **Regulation 12(1)**

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

- (a) an exception to disclosure applies under paragraphs (4) or (5); and
- (b) in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

### **Regulation 12(2)**

A public authority shall apply a presumption in favour of disclosure.

### **Regulation 12(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.

### **Regulation 12(4)**

For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that –

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;

- (d) the request relates to material which is still in course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

### **Regulation 12(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 –
  - ii. was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;
  - iii. did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and
    - i. has not consented to its disclosure; or
- (g) the protection of the environment to which the information relates.

### **Regulation 12 (6)**

For the purpose of paragraph (1), a public authority may respond to a request by neither confirming or denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).

### **Regulation 12(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.

### **Regulation 12(8)**

For the purposes of paragraph (4)(e), internal communications includes communications between government departments.

### **Regulation 12(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).

### **Regulation 12(10)**

For the purpose of paragraphs (5)(b), (d) and (f), references to a public authority shall include references to a Scottish public authority.

### **Regulation 12(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.