

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 28 March 2007

**Public Authority:** Milford Haven Port Authority  
**Address:** Gorsewood Drive  
Milford Haven  
Pembrokeshire  
SA73 3ER

### Summary

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1. The complainant requested information, later narrowed down to two documents, about risk assessments carried out in relation to the development in Milford Haven of two Liquefied Natural Gas (LNG) terminals. The Port Authority withheld the information by virtue of the exceptions at regulations 12(5)(b), (e) and (f). The Commissioner's decision is that, in relation to the first document, none of the exceptions cited are engaged. In relation to the second document, the Commissioner has decided that the exception at regulation 12(5)(e) is engaged, but that the public interest in disclosure outweighs the public interest in maintaining the exception. Accordingly, the Commissioner finds that the Port Authority applied the regulations inappropriately in seeking to withhold the information. The Port Authority also initially breached the requirements as set out in regulations 5(2) and 14(2).

### The Commissioner's Role

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2. The Environmental Information Regulations (the 'regulations') 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 regulations 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 regulations.

### The Request

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3. The complainant initially requested information from the Port Authority on 23 December 2004. This request was wide-ranging but included a specific request for:

*“... a copy of any risk assessments on which MHPA’s advice [to the planning authorities on the safety of LNG shipping in Milford Haven] is based.”*

4. The regulations did not come into force until 1 January 2005, and so the complainant repeated his request on 7 January. The Port Authority responded on 18 March, providing some information but stating that “... I remain to be convinced that they [the regulations] apply to us as a port.”

## The Investigation

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### Scope of the case

5. On 22 April 2005 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 or not the Port Authority is considered a ‘public authority’ for the purposes of the regulations.
6. After initial investigation by the Commissioner, the Port Authority accepted that it was a public authority within the definition set out at regulation 2(2). However, the Port Authority argued that the information requested did not constitute ‘environmental information’, and later argued that the information requested was exempt.
7. During the course of his investigation the Commissioner has considered whether the information requested constitutes ‘environmental information’ within the definition at regulation 2(1), whether the procedural matters as outlined in the regulations were followed and whether the Port Authority applied the regulations appropriately by seeking to rely on the exceptions at regulation 12(5)(b), (e) and (f).

### Chronology

8. The complainant was initially only seeking the Commissioner’s determination on whether the Port Authority is classed as a public authority for the purposes of the regulations. This is especially important because the Port Authority is not a public authority for the purposes of the Freedom of Information Act 2000 and therefore no other access to information regime applies to the information requested by the complainant.
9. On 14 November 2005 a member of the Commissioner’s staff wrote to the Port Authority informing it of his decision that the Port Authority is a public authority for the purposes of the regulations, by virtue of regulation 2(2)(c), which defines a public authority as ‘any other body or other person, that carries out functions of public administration’. The Port Authority accepted this but, in a telephone conversation with a member of the Commissioner’s staff on 15 November 2005, stated that none of the information requested constitutes environmental information.

10. The complainant was informed of the Commissioner's decision and indicated that he wished to pursue his complaint, on the grounds that the Port Authority had still not released any information in response to his request. The complainant further stated that he had made additional requests for information, dated 21 June and 10 November 2005.
11. These additional requests were for ten named documents which related to risk assessments carried out either by or on behalf of the Port Authority in relation to the development of the two LNG terminals at Milford Haven, together with:  
  
*"... any subsequent marine risk assessments undertaken by or on behalf of MHPA in relation to the proposed LNG terminals at Milford Haven."*
12. The Commissioner considers that the requests of 21 June and 10 November were essentially a narrowing of the original request of 7 January 2005. Accordingly, the Commissioner has dealt with this complaint on the basis that the request was for the ten named documents together with any subsequent risk assessments carried out by or on behalf of the Port Authority.
13. On 24 March 2006 the Commissioner provided the Port Authority with his preliminary views about what information, captured by the request, constituted environmental information within the definition at regulation 2(1). The Port Authority was asked to revisit its earlier conclusions in the light of these views and either issue a valid refusal notice in accordance with regulation 14 or provide to the complainant such information as it considered to be environmental and not covered by any of the exceptions.
14. On 26 June 2006 the Port Authority wrote to the complainant stating that it was prepared to extract what it believes to be environmental information from the documents requested, but that it would charge for doing so. In addition, the Port Authority provided a copy of one of the documents requested. On 14 July the Port Authority provided a cost estimate of £400 for making the information available.
15. On 27 July 2006 the complainant narrowed his request down to just two named documents (the 'amended request'), and signalled his willingness to pay the reasonable costs of providing this information. The two documents in question are entitled 'Explosion and Gas Release from LNG Carriers', by Gordon Milne (the 'Milne report') and 'Qatargas II Project: Milford Haven Marine Concept Risk Assessment', provided to the Port Authority by South Hook LNG Terminal Company Ltd (the 'Qatargas II report'). After receiving no response the complainant wrote again to the Port Authority on 11 September.
16. On 28 September 2006 the Port Authority wrote to the complainant confirming that it held the two documents that were subject to the amended request. However, the Port Authority stated that the exceptions at regulation 12(5)(b), (e) and (f) applied to the two documents, and the public interest in maintaining these exceptions outweighed the public interest in disclosure.

17. On 10 October the Port Authority provided to the Commissioner those extracts of the Qatargas II report it considered to consist of environmental information. At this time the Port Authority, despite stating in its refusal notice of 28 September 2006 that the Milne report was exempt, stated that it did not consider any of the report to consist of environmental information within the definition at regulation 2(1).

## Analysis

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### Is the information requested 'environmental information'?

18. The definition of environmental information is provided in regulation 2(1). All relevant extracts from the regulations are set out in the legal annex at the end of this Notice.
19. The Commissioner has examined the Milne report in the light of the definition at regulation 2(1). The report was commissioned by the Authority to assess the risk of explosion and gas release from LNG carriers. It presents scenarios based on available evidence and testing and is not specific to Milford Haven. The Port Authority has argued that, while the report does contain information on the characteristics of LNG, it does not relate specifically to its impact upon the state of the elements of the environment.
20. Whilst he acknowledges that the arguments in this case are finely balanced, the Commissioner believes that the report does fall within the definition of environmental information contained in regulation 2(1)(b). This is because the report deals with potential scenarios that involve 'releases into the environment', that are 'likely to affect' the elements of the environment referred to in regulation 2(1)(a), principally the air and atmosphere.
21. The Commissioner has further looked at whether the Milne report in its entirety consists of environmental information, or whether it would be possible for the Port Authority to extract only those elements of the report that fall within the definition of environmental information. However, it is the Commissioner's view that, as the vast majority of the report consists of environmental information, it would be impossible to redact any non-environmental information without diluting the meaning of the information. Accordingly, the Commissioner believes that the Port Authority should treat the whole report as falling within the jurisdiction of the regulations.
22. The Qatargas II report is a risk assessment identifying hazards, consequences and possible mitigating measures relating to the use of Milford Haven for importing LNG. Such hazards include environmental, financial and other problems. The Port Authority has accepted that some information within the report falls within the definition at regulation 2(1)(f). This is because some information relates to the state of human health and safety, as it is affected by the state of the elements of the environment referred to in (a), particularly the air and atmosphere. The Commissioner also considers the report to fall within the

definition of environmental information at regulation 2(1)(c). However, the Port Authority maintains that the whole report is exempt by virtue of the exceptions discussed below.

23. The Commissioner agrees with the identification provided on 10 October 2006 by the Port Authority of those parts of the report which fall within the definition of environmental information. Accordingly, in considering what exceptions, if any, apply to the Qatargas II report, the Commissioner has only considered those elements of the report that have been identified by the Port Authority as environmental information.

### **Procedural matters**

24. Regulation 5 places a duty on public authorities to make environmental information available on request. Regulation 14 sets out what a public authority must do when refusing a request for environmental information.
25. The Commissioner notes that the Port Authority is not subject to the Freedom of Information Act 2000 and, at the date of the request, there was genuine uncertainty about whether it was subject to the regulations. He further acknowledges that the Port Authority did make some effort to provide information to the complainant.
26. However, the complainant's original request for information was dated 7 January 2005 and although some information was subsequently disclosed, no valid response was issued until the fees notice service on 14 July 2006. The complainant's amended request was dated 27 July 2006 and no valid refusal notice was issued until 28 September 2006. Accordingly, the Commissioner finds that the Port Authority breached its obligations under regulations 5(2) and 14(2).

### **Exceptions**

27. In its refusal notice, dated 28 September 2006, the Port Authority cited the exceptions at regulation 12(5)(b), (e) and (f). However, regulation 12(9) states that information relating to emissions cannot be exempted by virtue of the exceptions at regulation 12(5)(d) to (g). The Commissioner has considered the applicability of regulation 12(5)(b) and then considered whether the information requested relates to emissions, before addressing the applicability of the exceptions at regulation 12(5)(e) and (f).

### **Regulation 12(5)(b) – 'course of justice'**

28. The Port Authority has claimed that the disclosure of the information requested would adversely affect the course of justice. The context of this claim is the ongoing litigation being pursued against Pembrokeshire County Council and the Pembrokeshire Coast National Park Authority, to which the Port Authority is an interested party. These two organisations are the planning authorities with the statutory responsibility for determining applications for planning permissions and hazardous substances consents relating to the development of the two LNG terminals. Such permissions have now been granted and the litigants are taking

action on the basis that, in their opinion, the planning authorities did not take sufficient account of the risks posed by the terminals in reaching their decisions.

29. As the litigation was ongoing at the time of the request (and indeed remains so), the Port Authority has argued that to release into the public domain the two documents subject to the amended request would adversely affect that litigation.
30. The Port Authority has argued that the disclosure of the two documents would adversely affect the litigation because the documents would be used by opponents of the LNG developments to distort and magnify the risks posed by the terminals and thereby influence the outcome of the legal action. To support this assertion the Port Authority has explained that previous disclosures of information have been used by opponents of the development to support their point of view.
31. The Commissioner has considered these arguments and has concluded that the Port Authority has not provided enough evidence to suggest that disclosure in this case 'would adversely affect' the course of justice. He believes that, in order to demonstrate adverse affect, a public authority must be able to demonstrate that it is more probable than not that harm that would be caused if the information were to be disclosed. The Port Authority has not been able to do so in this case. Accordingly, the Commissioner has decided that the exception at 12(5)(b) is not engaged and therefore he has not considered the public interest test.

#### **Does the information requested relate to emissions?**

32. In his submission to the Commissioner, the complainant has argued that the information requested relates to emissions. This is significant because regulation 12(9) states that information relating to emissions cannot be exempted by virtue of the exceptions at regulations 12(5)(d) to (g), and therefore the Port Authority would not be able to rely on the exceptions at regulations 12(5)(e) and (f).
33. The Port Authority has argued that neither report relates to 'emissions'. It argues that the word 'emissions' in regulation 12(9) is a specific definition that should be interpreted narrowly. In support of this position, the Port Authority draws a contrast between the wording of regulation 12(9), which simply refers to 'emissions', and the wider definition of 'emissions, discharges and other releases', used in regulation 2(1)(b).
34. The Commissioner has considered these arguments and believes that, on balance, the information contained in the Milne report does relate to emissions and therefore the Port Authority cannot rely on the exceptions at regulation 12(5)(e) and (f) in relation to that information. The Commissioner does not agree with the Port Authority that regulation 12(9) should be interpreted narrowly, and believes that a release of LNG constitutes an 'emission' for the purposes of regulation 12(9). As the Commissioner has decided that the information contained within the Milne report relates to emissions, he has not considered whether the exceptions at regulation 12(5)(e) and (f) apply.
35. The Commissioner has determined that the Qatargas II report does not contain information relating to emissions, and therefore the prohibition at regulation 12(9)

does not apply to the information contained within that report. In reaching this decision, the Commissioner is mindful of the guidance on the regulations issued by the Department for the Environment, Food and Rural Affairs. Paragraph 7.5.1.2 of that guidance states that:

*“Regulation 12(9) does not include information on emissions that have not yet occurred, for example information on plans to reduce the likelihood of emissions. In this case the public authority would still be able to consider refusing disclosure under exceptions 12(5)(d) to (g) subject to a public interest test.”*

36. The Qatargas II report is an assessment of potential future risks, rather than about emissions which have already occurred, and therefore the Commissioner believes that the information contained within it cannot relate to emissions.

### **Regulation 12(5)(e) – ‘confidentiality of commercial information’**

37. Regulation 12(5)(e) allows public authorities to exempt information, the disclosure of which would adversely affect ‘the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest’.
38. The Port Authority has stated that the Qatargas II report was received in confidence. It was provided to the Port Authority by the developers, South Hook LNG Terminal Company Ltd, which is a joint venture between ExxonMobil and Qatar Petroleum.
39. In January 2003 the Port Authority signed a Confidentiality Agreement with the ExxonMobil Development Company and Qatar Petroleum. This agreement provided for information to be exchanged between the parties (and their subsidiaries), on the basis of maintaining confidence. According to the terms of the Agreement, confidential information passed to the Port Authority must not be disclosed except with the disclosing party’s agreement. This Agreement remained in force for a period of two years. The Qatargas II report was disclosed to the Port Authority by the developers under the terms of this Confidentiality Agreement.
40. In March 2006 the Port Authority entered into a Confidentiality Agreement with South Hook LNG Terminal Company Ltd. There was therefore no specific confidentiality agreement in operation at the time of the request for information (in January 2005). However, the Port Authority has argued that the report remained subject to the provisions of the first Agreement, and that in any case a duty of confidence remained.
41. The Commissioner agrees that the Qatargas II report was received in circumstances giving rise to a duty of confidence. Furthermore, the Commissioner believes that the information has the necessary quality of confidence.

42. The Commissioner accepts that the confidentiality agreements exist to protect a legitimate economic interest – in this case the interest of the developers in taking forward the development of the South Hook LNG terminal and the interests of the Port Authority in bringing forward existing and future developments in the Haven. He also notes that the Port Authority has contacted the developers who have stated that they do not consent to any disclosure and would consider any disclosure to constitute a breach of the confidentiality agreements. Furthermore, the developers have stated that the report contains sensitive commercial information that could prejudice the interests of the developers if disclosed.
43. The Commissioner has looked at the arguments put forward by the Port Authority to support its view that the disclosure of the Qatargas II report would 'adversely affect' the purpose of the exception. He is mindful of the need for the developers and the Port Authority to be able to share information on a confidential basis.
44. Accordingly, the Commissioner believes that the exception at regulation 12(5)(e) is engaged in the case of information contained within the Qatargas II report. In order to rely on this exception, however, it is necessary to also consider the public interest test.

### **The public interest test**

45. There is an inherent public interest in individuals having access to information that helps them to understand the decisions made by public bodies. This is recognised within the regulations by the duty placed on public authorities by regulation 4 to proactively disseminate environmental information. Article 7(2) of Directive 2003/4/EC sets out the categories of information that shall be made available, and the Commissioner notes that one such category is 'environmental impact studies and risk assessments' (Article 7(2)(g)).
46. In this particular case, the Commissioner believes that there is a very strong public interest in the disclosure of environmental information relating to the development of LNG terminals in Milford Haven. The LNG developments are locally controversial, with proponents arguing that the terminals will bring jobs and investment to the area and opponents arguing that the actual and potential environmental impacts are too high. Disclosure of environmental information of the type requested in this case could add significantly to public knowledge of the risks posed by the development and better inform public debate.
47. Furthermore, the Commissioner believes that there is a public interest in ensuring that the Port Authority is undertaking its duties effectively and that it adequately assesses and manages risk within the Haven. In terms of high-profile and potentially hazardous developments such as the LNG terminals, there is a legitimate public interest in demonstrating that public safety has been fully considered by all relevant authorities, including the Port Authority, at each stage of the development process.
48. In terms of the public interest in maintaining the exception, the Commissioner recognises that there is an inherent public interest in maintaining the confidentiality of commercial information. Commercial confidentiality exists to

allow companies to develop and maintain a competitive advantage in a market economy, and in balancing the public interest the Commissioner must weigh up the extent to which the developers' interests would be adversely affected by disclosure.

49. The Commissioner recognises that the Port Authority, whilst it is a public authority for the purposes of the regulations and does undertake functions of public administration, operates in a largely commercial environment. The Port Authority has developed and continues to develop close working relationships with private sector partners to take forward economic development in the area.
50. The Commissioner believes that it is important for the Port Authority and developers to share information, particularly information relating to the management of risk and, ultimately, public safety. If the disclosure of commercially confidential information would dissuade other organisations from sharing information with the Port Authority in the future, then this would have a negative impact on the Port Authority's ability to carry out its functions. It could, ultimately, impact on its ability to manage environmental and public safety in the Haven.
51. After weighing up the competing factors, the Commissioner has concluded that the public interest in disclosure outweighs the public interest in maintaining the exception. In reaching this decision he has considered that the adverse affect to the confidentiality of commercial information would not outweigh the considerable public interest in providing information about issues of public safety and environmental concerns. The Commissioner does not believe that disclosure of the environmental information in this instance would dissuade the developers or other organisations from sharing commercial or industrial information with the Port Authority.

#### **Regulation 12(5)(f) – 'the interests of the person who provided the information'**

52. The Commissioner has further considered whether the exception at regulation 12(5)(f) is engaged for the information contained within the Qatargas II report. In order for this exception to be engaged, the Port Authority must demonstrate that disclosure would adversely affect the interests of the person who provided the information, that the provider was not under any legal obligation to supply the information, did not supply it under circumstances that would allow the Port Authority to disclose it and has not consented to its release.
53. It is agreed that the Qatargas II report was provided to the Port Authority by the developers, South Hook LNG Terminal Company Ltd. The Port Authority has argued that the report was provided voluntarily and that there was no obligation on the developers to provide it. The developers have stated that they do not consent to its release and that any disclosure would adversely affect their interests.
54. The guidance issued by the Department for the Environment, Food and Rural Affairs in relation to the exception at regulation 12(5)(f) states that:

*“7.5.7.2 The purpose of this exception is to ensure the free flow of volunteered information to government, for example for collecting certain types of statistical data and conducting sample surveys and in consultation exercises.”*

55. The guidance goes on to state that:

*“7.5.7.3 When applying the public interest test to determine whether information within the scope of this exception must be released or withheld, regard should be had to the purpose of this exception. It recognises that making such information available to the public could inhibit open and constructive discussions between public authorities and third parties. It is recognised therefore that the supply of volunteered information could diminish if information is later published in response to EIR requests.”*

56. The Commissioner considers this guidance instructive as it provides insight into the purpose of the exception. It is clear that regulation 12(5)(f) is intended to allow public authorities to withhold information that was volunteered to them by third parties who had not consented to disclosure, where such disclosure could adversely affect their interests (for example whistle-blowers). In this case, the developers may not have been under any specific obligation to provide the report to the Port Authority, but they were involved in a commercial and contractual arrangement with the Port Authority.

57. That the Port Authority and the developers were working together to facilitate the development of the LNG terminals was and remains widely known. Furthermore, it is not unreasonable to assume that the developers, in bringing forward such a development, would carry out risk assessments. Whilst the Commissioner has noted the views of the developers, therefore, he does not believe that the disclosure of the environmental information contained in the Qatargas II report would adversely affect the interests of the developers. Accordingly, the Commissioner has concluded that the exception at regulation 12(5)(f) is not engaged in this case.

58. However, even if the exception were engaged, the Commissioner believes that the public interest would favour the disclosure of the information, for the reasons set out above in relation to the exception at regulation 12(5)(e).

## The Decision

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59. The Commissioner's decision is that the Port Authority did not deal with the following elements of the request in accordance with the requirements of the regulations:

**Regulation 5(2)** and **regulation 14(2)**, in that the Port Authority did not respond to the request within 20 working days and did not issue a valid refusal notice within that period of time.

**Regulations 12(5)(b) and (f)**, in that the Port Authority incorrectly applied these exceptions in order to withhold the environmental information requested.

**Regulation 12(5)(e)**, in that the exception was engaged in relation to the environmental information contained in one document, but the Port Authority incorrectly applied the public interest test in order to withhold the information.

### Steps Required

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60. The Commissioner requires that the Port Authority disclose to the complainant the Milne report and those sections of the Qatargas II report that constitute environmental information.
61. The Port Authority must comply with the steps required by this Notice within 35 calendar days of the date of this Notice.

### Failure to comply

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62. 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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63. 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@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.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 28<sup>th</sup> day of March 2007**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex

### Regulation 2 - Interpretation

#### Regulation 2(1) In these Regulations –

“the Act” means the Freedom of Information Act 2000(c);

“applicant”, in relation to a request for environmental information, means the person who made the request;

“appropriate record authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“the Commissioner” means the Information Commissioner;

“the Directive” means Council Directive 2003/4/EC(d) on public access to environmental information and repealing Council Directive 90/313/EEC;

“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

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- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c) ; and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

“historical record” has the same meaning as in section 62(1) of the Act;

“public authority” has the meaning given in paragraph (2);

“public record” has the same meaning as in section 84 of the Act;

“responsible authority”, in relation to a transferred public record, has the same meaning as in section 15(5) of the Act;

“Scottish public authority” means –

- (a) a body referred to in section 80(2) of the Act; and
- (b) insofar as not such a body, a Scottish public authority as defined in section 3 of the Freedom of Information (Scotland) Act 2002(a);

“transferred public record” has the same meaning as in section 15(4) of the Act; and  
“working day” has the same meaning as in section 10(6) of the Act.

**Regulation 2(2)** Subject to paragraph (3), “public authority” means –

- (a) government departments;
- (b) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding –
  - (i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description; or
  - (ii) any person designated by Order under section 5 of the Act;
- (c) any other body or other person, that carries out functions of public administration; or
- (d) any other body or other person, that is under the control of a person falling within sub-paragraphs (a), (b) or (c) and –
  - (i) has public responsibilities relating to the environment;
  - (ii) exercises functions of a public nature relating to the environment; or
  - (iii) provides public services relating to the environment.

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

**Regulation 12(1)** Subject to paragraphs (2), (3) and (9), a public authority may refuse to disclose environmental information requested if –

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

**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 –

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

**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.

## **Regulation 14 - Refusal to disclose information**

**Regulation 14(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.

**Regulation 14(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.

**Regulation 14(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).

**Regulation 14(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.

**Regulation 14(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.