

Decision Notice



Decision 033/2009 Mr Paul Drury and East Renfrewshire Council

Contract relating to development of Braidbar Quarry, Giffnock

Reference No: 200800429

Decision Date: 19 March 2009

www.itspublicknowledge.info

Kevin Dunion

Scottish Information Commissioner

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Summary

Mr Paul Drury requested from East Renfrewshire Council (the Council) a copy of an agreement between the Council and MacDonald Estates (Braidbar) Ltd. relating to the development of Braidbar Quarry in Giffnock. The Council responded by withholding the information under various exemptions contained in the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, Mr Drury remained dissatisfied and applied to the Commissioner for a decision.

During the investigation, the Commissioner took the view that the information comprised environmental information and asked for the Council's comments as to whether the request should have been dealt with under the Environmental Information (Scotland) Regulations 2004 (the EIRs). The Council did not agree that the information was environmental. However, it indicated that should the Commissioner continue to consider the case under the EIRS, it would wish to rely on section 39(2) of FOISA and upon a number of exceptions contained in regulation 10 of the EIRs for withholding the information. Following an investigation, the Commissioner found that the Council was entitled to withhold the information from Mr Drury on the basis that disclosure would, or would be likely to, prejudice substantially the confidentiality of commercial or industrial information in terms of regulation 10(5)(e) of the EIRs.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) (Effect of exemptions) and 39(2) (Health, safety and the environment)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation) (definition of "environmental information"); 5(1) and (2)(b) (Duty to make environmental information available on request) and 10(1), (2) and (5)(e) (Exceptions from duty to make environmental information available)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Decision 218/2007 Professor A D Hawkins and Transport Scotland (the Hawkins Decision), 19 November 2007.

<http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600654.asp>

The Aarhus Convention: an implementation guide (the Aarhus Convention Implementation Guide):
<http://www.unece.org/env/pp/acig.pdf>



Background

1. On 25 January 2008, Mr Drury emailed the Council requesting a copy of the agreement between the Council and MacDonald Estates (referred to hereafter as the developer) in relation to the development of the Braidbar Quarry site in Giffnock.
2. The Council responded on 14 February 2008. The Council stated that it considered the information requested was exempt from disclosure in terms of sections 33 and 36 of FOISA.
3. On 25 February 2008, Mr Drury emailed the Council requesting a review of its decision. In particular, Mr Drury stated that, given the significance of the project, the information should be open to public scrutiny.
4. The Council notified Mr Drury of the outcome of its review on 18 March 2008, upholding its original decision to withhold the information. In addition, the Council stated that it also considered the information to be exempt under section 30(b) and (c) of FOISA.
5. On 25 March 2008, Mr Drury wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Mr Drury had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. On 2 April 2008, the Council was notified in writing that an application had been received from Mr Drury and asked to provide the Commissioner with any information withheld from the applicant. The Council responded with the information requested and the case was then allocated to an investigating officer.



8. The investigating officer subsequently contacted the Council, inviting it to provide comments on the application (as required by section 49(3)(a) of FOISA which, in line with regulation 17 of the EIRs, applies for the purposes of the EIRs as it applies for the purposes of FOISA) and asking it to respond to specific questions. In particular, the Council was advised that, having viewed the information previously supplied by it, the Commissioner was of the opinion that all of the withheld information fell under the definition of environmental information as defined in regulation 2(1) of the EIRs. The Council was asked to comment on this point and provide submissions on whether it considered the information withheld to fall under the scope of any of the exceptions contained in the EIRs. The Council was also asked if it wished to rely on section 39(2) of FOISA, which allows Scottish public authorities to exempt information from disclosure under FOISA if it is environmental information which the authority is obliged to make available to the public in accordance with the EIRs.
9. In its response, the Council submitted that it did not consider the information to be environmental and therefore believed it had been correct in considering Mr Drury's request in terms of FOISA rather than the EIRs. The Council stated that it was now applying only the exemption in section 30(c) of FOISA (having previously applied the exemptions in section 30(b) as well). Additionally, the Council continued to apply the exemptions in section 33(1)(b) and 36(2) of FOISA. The Council provided the Commissioner with detailed submissions regarding its application of these exemptions.
10. The Council added that, if the Commissioner held to his view that the information fell under the definition of environmental information, then it would wish to rely on the exemption contained in section 39(2) of FOISA. The Council stated that it would apply the exceptions contained in regulations 10(4)(d), 10(5)(e) and 10(5)(f) of the EIRs to the withheld information and provided submissions in support of its application of these exceptions.
11. During the investigation, the Council subsequently provided the Commissioner with additional submissions supporting its application of the exceptions in regulations 10(4)(d), 10(5)(e) and 10(5)(f) of the EIRs.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has consider all of the withheld information and the submissions made to him by both Mr Drury and the Council and is satisfied that no matter of relevance has been overlooked.



FOISA or EIRs?

13. While the Council initially argued that the withheld information was not environmental information for the purposes of the EIRs (and referred to various previous decisions of the Commissioner in support of this assertion), the Commissioner considers that his views set out in *Decision 218/2007 Professor A D Hawkins and Transport Scotland*, in which he considered the relationship between FOISA and the EIRs at some length and set out his understanding of the situation, are what are relevant here. Broadly, the Commissioner's position on the interaction between the two regimes is as follows:
- The definition of what constitutes environmental information should not be viewed narrowly, but in line with the definition of environmental information in the EIRs
 - There are two separate statutory frameworks for access to environmental information and an authority is required to consider any request for environmental information under both FOISA and the EIRs
 - Any request for environmental information therefore **must** be dealt with under the EIRs
 - In responding to a request for environmental information under FOISA, an authority **may** claim the exemption in section 39(2)
 - If the authority does not choose to claim the section 39(2) exemption it must then **also** deal with the request fully under FOISA, by providing the information, withholding it under another exemption in Part 2, or claiming that it is not obliged to comply with the request by virtue of another provision in Part 1 (or a combination of these)
 - The Commissioner is entitled (and indeed obliged) where he considers a request for environmental information has not been dealt with under the EIRs to consider how it should have been dealt with under that regime
14. The implication of the Hawkins Decision for the Commissioner's consideration of Mr Drury's request is therefore that the Commissioner must first determine whether the information withheld is environmental information.
15. Environmental information is defined in regulation 2(1) of the EIRs (the definition is reproduced in full in the Appendix). Where information falls within the scope of this definition, a person has a right to access it under the EIRs, subject to various restrictions and exceptions contained in the EIRs.
16. The Council argued that the information under consideration did not come within the definition of environmental information for the purposes of the EIRs and referred to previous decisions of the Commissioner in support of its position.



17. The Council considered that, whilst it may, generally speaking, be appropriate for information relating to planning applications to be appropriately dealt with under the EIRs, each case must be examined on its merits. The Council considered that, in the particular circumstances of this case, the information which has been withheld comprises a legal contract which, whilst referring to the broad outline of the remediation for the site, comprised largely contractual legal clauses relating to the relationship of the parties and various obligations, agreements and financial provisions appropriate to the proposals. The Council did not, in the circumstances, agree that such complex legal documentation could appropriately be considered to fall within the definition of environmental information.
18. Additionally, the Council submitted that environmental information relates to facts, not possibilities and is concerned with what will or may happen to the environment if proposals are implemented. In this case, the Council argued that it is only when the formal planning applications are submitted (including highly detailed technical information), that the relevant environmental information would be sufficiently developed to allow the impact of the intended development to be appropriately assessed.
19. The Commissioner has taken account of the Council's submissions on this point. However, his view is that these do not detract from his conclusion that the information is environmental information and ought to have been considered in terms of the EIRs.
20. The Commissioner notes that much of the information contained in the agreement describes or relates to matters such as planning consents, survey reports and remediation works which form a major and integral part of the agreement.
21. The Commissioner's view is that the withheld information relates to proposed measures, the ultimate intention of which are to bring about changes to the land in question which constitute environmental remediation and includes information on current environmental conditions in and around the site in question. In particular, the Commissioner considers the information falls within the definition of environmental information contained in regulation 2(1)(a), (b) and (c) of the EIRs (see the text of regulation 2(1)(a) to (c) in the Appendix).
22. As previously indicated, the definition of what constitutes environmental information should not be viewed narrowly. The Commissioner regards a significant proportion of the information under consideration as containing information on measures, including activities, policies, plans and programmes, which would be likely to affect the elements and factors referred to in parts (a) and (b) of the definition of environmental information.
23. The Commissioner accepts that the contract contains legal clauses relating to the relationship of the parties and various obligations, agreements and financial provisions appropriate to the proposals which, considered in isolation, may not be environmental information. However, he considers that when these clauses are taken in the context of the contract as a whole, they must be considered to be environmental information.
24. As the Commissioner considers that the information requested by Mr Drury is environmental information, he also therefore considers that the Council was correct in its application of section 39(2) of FOISA.



25. This exemption is subject to the public interest test in section 2(1)(b) of FOISA. The Commissioner's view is that, in this case, as there is a separate statutory right of access to environmental information, the public interest in maintaining this exemption and allowing access in line with the requirements of the EIRs outweighs the public interest in the disclosure of information under FOISA.

Consideration of Regulation 10(5)(e)

26. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 apply and, in all the circumstances of the case, the public interest in maintaining the exception or exceptions outweighs the public interest in making the information available. It should be noted that under regulation 10(2)(b), authorities are required to interpret the exceptions in a restrictive way and apply a presumption in favour of disclosure.
27. Regulation 10(5)(e) of the EIRs provides that a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest.
28. The Aarhus Convention Implementation Guide (which offers guidance on the interpretation of the Aarhus Convention) notes (at page 60) that the first test for considering this exception states that national law must expressly protect the confidentiality of the withheld information. In practical terms, this means that national law must explicitly protect the type of information in question as commercial or industrial secrets.
29. The same guidance goes on to note that the Aarhus Convention does not define "legitimate economic interest" but that there are several steps that countries have taken to help define legitimate economic interest case by case. These are:
- Establish a process. Parties (to the Convention, i.e. relevant states) may wish to establish some type of process or test to identify information that has a legitimate economic interest in being kept confidential;
 - Determine confidentiality. Legitimate economic interest carries the implication that the information is only known to the company and the public authority, or at least is certainly not already in the public domain; and that the body whose interests are at stake took reasonable measures to protect the information. This can be objectively determined in each case;
 - Determine harm. Legitimate economic interest also implies that the exception may be invoked only if disclosure would significantly damage the interest in question and assist its competitors.
30. The Commissioner has taken this guidance into consideration when considering this exception.



31. The Commissioner's view is that, before regulation 10(5)(e) can be engaged, authorities must consider the following matters:
- Is the information commercial or industrial in nature?
 - Does a legally binding duty of confidence exist in relation to the information?
 - Is the information publicly available?
 - Would disclosure of the information cause, or be likely to cause substantial harm to a legitimate economic interest?

Is the information commercial or industrial in nature?

32. The Council has submitted that, as the withheld information comprises concluded missives pertaining to a property transaction and also incorporates a remediation works agreement relating to the stabilisation works to be carried out, the information is clearly commercial in nature.
33. The Commissioner has considered the Council's representations on this point and accepts that the withheld information comprises commercial information.

Does a legally binding duty of confidence exist?

34. The Council has stated that the constituent parts of the agreement contain confidentiality clauses and, as such, there is clearly a legally binding duty of confidentiality. The Council noted that it would normally refuse to accept any such confidentiality provisions, but on consideration of the specific facts of this case, the historical background of the difficulties at the locus and the obligation of the developer to seek to conclude contractual arrangements with other landowners at the site, the Council felt that it was appropriate to accept such a clause in relation to this transaction. The Council went on to submit that, in these particular circumstances, its decision to accept the confidentiality obligation was taken for proper purposes and in good faith.
35. The Commissioner does not accept that a confidentiality clause or a general implication of a duty of confidence will, in itself, mean that all information caught by the clause should be, or will be automatically considered confidential. To accept such a proposition would essentially give public authorities the opportunity to contract out of their obligations under FOISA and the EIRs. The Commissioner will therefore look behind any specific stipulation or implied duty of confidence to the nature of the information concerned and consider whether the duty should stand.



36. For a duty of confidence to be owed under the common law, it is necessary for certain criteria to be met. These are:
- i. the information must have the necessary quality of confidence about it. It must not be generally accessible to the public already.
 - ii. the information must have been communicated in circumstances importing an obligation of confidentiality. The obligation may be express (for example, in a contract or other agreement), or implied from the circumstances or the nature of the relationship between the parties; and
 - iii. there must have been unauthorised use or disclosure of the information to the detriment of the party communicating it. Detriment may be potential rather than actual and need not be financial.

Necessary quality of confidence

37. To have the necessary quality of confidence, the information should not be generally accessible. That is clearly the case here. Although the general nature of the agreement is in the public domain, the detailed legal agreement between the Council and the developer is not. The information in question will only have been viewed by a limited number of individuals. It was clearly received under circumstances from which it should reasonably have been inferred that it was confidential.
38. Although the agreement in question was concluded in 2005, the Commissioner notes that the transaction itself remains live and ongoing. In addition, there are a number of suspensive conditions in the agreement. Furthermore, the implementation of the proposals contained therein can only proceed with the granting of planning permission, a process which remains ongoing.
39. The Commissioner is therefore of the view that the information has, and has retained, the necessary quality of confidence.

Obligation to maintain confidentiality

40. The Council must also have received the information in circumstances which imposed an obligation on it to maintain confidentiality.
41. The Commissioner accepts in all the circumstances that the information in question in this case has been received under an implicit and explicit obligation to maintain confidentiality. Such an expectation would have been normal legal practice in a transaction of this kind.

Unauthorised disclosure would cause detriment

42. The third requirement is that that disclosure of the information must be unauthorised by, and cause detriment to, the person who communicated it.



43. The Commissioner is satisfied that when the developer in this case negotiated the agreement with the Council, it did so in the expectation that the information contained therein would not be disclosed into the public domain whilst the transaction had not been concluded and the remediation works had not been completed. During the course of the investigation, the Commissioner contacted the developer who confirmed that it did not wish any part of the agreement to be released into the public domain. The Commissioner is therefore satisfied that release of the information would be unauthorised.
44. In its submissions, the Council has provided the Commissioner with a number of examples of substantial harm which it considers would result from disclosure of the information. These will be considered in more detail below. As noted at paragraph 36 above, the detriment under consideration in this instance need only be potential and the Commissioner is satisfied that the disclosure of the information in this case is capable of causing detriment to the developer.
45. The Commissioner is therefore satisfied that a legally binding duty of confidence exists.

Is the information publicly available?

46. The Council has submitted that, whilst the general import of the agreement between it and the developer is in the public domain, the detailed nature of the arrangement as specified in the withheld information is not.
47. The Commissioner has noted that such general information is clearly in the public domain including the general nature of the remediation work to be undertaken and the intention to redevelop the land in question for mixed use development, including housing.
48. However, the Commissioner accepts the Council's arguments that the information under consideration in this case is not publicly available.

Would disclosure of the information cause, or be likely to cause substantial harm to a legitimate economic interest?

49. The term legitimate economic interest is not defined within the EIRs. The interest in question will however be financial, commercial or otherwise "economic" in nature, and the prejudice to that interest must be substantial. In order to apply this exception, an authority must be able to demonstrate that the harm to the economic interest in question would be real, actual and of significant substance.
50. In its submissions, the Council has argued that the concluded missives contain a variety of information about both the transaction and the developer which is of significant commercial value to a number of parties, including commercial organisations which operate in competition with the developer and also those working collaboratively with the developer not only in relation to this project but other commercial developments.



51. The Council argued that these collaborative partners, whilst working towards the same outcome as the developer, each retain the advancement of their own organisation as their primary aim and the detail of the structure of the agreement between the Council and the developer, particularly with reference to its financial aspects, discloses information which is of significant commercial value and would give a competitive advantage to any party negotiating commercial transactions with the developer. The Council further argued that the detail of the agreement as to the structure of the deal, the financial requirements on the various parties and the risk profile assumed by the developer gives information to third parties which would not otherwise be available to them in a competitive market place.
52. The Council submitted that there are a variety of other parties involved in the transaction which have an interest falling within the definition of "legitimate economic interest. These include the landowners of the affected site, local residents living adjacent to disused mine workings who have been unable to sell their properties for many years, the Council, which faces a multi million pound contingent liability in the event of a ground collapse and the residents of East Renfrewshire who would ultimately have to bear the financial burden of any claim made against the Council in the event of a collapse.
53. The Commissioner has considered all of these arguments carefully. It is the Commissioner's view that the Council's arguments are persuasive and that the release of the information would, or would be likely to, cause substantial harm to the legitimate economic interests of (particularly) the developer, but also the Council itself.
54. As such, the Commissioner is satisfied that the Council acted correctly in applying the exception in regulation 10(5)(e) to the withheld information in this case.

Consideration of the public interest test

55. Having upheld the use of the exception contained within regulation 10(5)(e), the Commissioner is required to consider the public interest test required by regulation 10(1)(b) of the EIRs. The test specifies that a public authority may only withhold information to which an exception applies where, in all the circumstances, the public interest in making the information available is outweighed by the public interest in maintaining the exception.
56. In his submissions to the Commissioner, Mr Drury stated that there are thousands of residents surrounding Braidbar quarry, each with an interest in what happens there. Mr Drury indicated that there is local suspicion about the Council's motives and methods in developing the site.
57. Mr Drury stated that when the planning application for the site is submitted, it was his intention to be an objector along with a number of other local people. He also stated that he wished to know that as a Council tax payer, he was receiving the best possible value for money from the disposal of Council land. He argued that seeing the agreement would allow him to reach a view on this, as well as providing possible grounds for opposition to the planning application.
58. Mr Drury also considered that the re-stabilising of the land could have detrimental effect on adjoining properties as well as having significant implications for the routing of water. He believed the agreement may contain information addressing some of these areas of concern.



59. In conclusion, Mr Drury stated that the scheme will have significant implications for the area for generations to come, with the attendant impact on wildlife, the environment, traffic and road safety. Mr Drury considered that the people affected by it were entitled to know the basis on which it was being promoted.
60. In its representations to the Commissioner regarding the public interest, the Council argued that the general principles of the agreement between it and the developer are already in the public domain and disclosure would not provide any greater public awareness of the Council's interest and would not assist the local community in coming to a view on the proposal. The Council added that information about the technical aspects of the remediation work would be contained in the planning applications which were available for examination by the public.
61. The Council also argued that the public interest lay in maintaining the exception as it had a genuine and realistic fear that the disclosure of the information may prejudice the ability of both the Council and the developer to deliver the terms of their contractual agreement. It considered that, by maintaining the exception, the likelihood of the project actually coming to fruition would considerably increase.
62. The Council stated it considered there to be a high level of risk that in the event of the withheld information being disclosed, the remediation project enshrined in the agreement would not be delivered. The Council considered that the ramifications of the collapse of this project could not be overstated. The Council noted that a considerable amount of time and money had already been invested to bring the project to its present position and it would be hugely disappointing and of significant detriment to the Council and a variety of other parties if the project did not proceed.
63. The Commissioner has considered fully all of the submissions on the public interest made by both Mr Drury and the Council taking into consideration the specific content and wider context of the withheld information.
64. The Commissioner recognises that the information in question relates to a planning matter of great public interest and he is aware that this has occasioned controversy in the local area.
65. The Commissioner acknowledges that there is always a general public interest in making information held by public authorities accessible, to enhance scrutiny of decision making and thereby improve accountability and participation. In this case, this would contribute to the debate on a matter of public interest and may allow the public to make a judgement as to whether the Council has entered an appropriate contract and whether the contract is detrimental to the interests of the local community or taxpayers.



66. The Commissioner also accepts that there are relevant and valid arguments in this case which suggest that the public interest in making the information available is outweighed by the public interest in maintaining the exception. These include:
- The general public interest in confidences being maintained,
 - The likelihood of commercial damage being caused to the developer through disclosure of sensitive information,
 - The possibility that the developer's competitors could analyse and identify the risk profile assumed by the developer to its future detriment,
 - The possibility that by disclosing this information, the entire project may be placed in jeopardy.
67. Having carefully weighed up the arguments, the Commissioner has concluded that in all the circumstances of the case, the public interest in making the information available in this instance is outweighed by the public interest in maintaining the exception.
68. The Commissioner is mindful of the fact that this remains a live and unconcluded transaction and there are still significant sensitivities surrounding the project as a whole. In addition, the Commissioner considers that the nature of the information contained in the agreement would provide little degree of additional understanding of the implications of the project as a whole beyond what is already in the public domain. Whilst the Commissioner notes the concerns raised regarding the impact on matters such as wildlife and the environment, he is aware that these matters should be properly addressed in the Scottish Ministers' consideration of the planning application.
69. The Commissioner therefore concludes that the Council has correctly withheld the agreement from Mr Drury under regulation 10(5)(e) of the EIRs.
70. The Council also withheld the contract on the basis of the exceptions in regulations 10(4)(d) and 10(5)(f) of the EIRs. However, given that the Commissioner has found the information to be excepted under regulation 10(5)(e) of the EIRs, he does not consider it necessary to go on to consider the other exceptions cited by the Council.



DECISION

The Commissioner finds that East Renfrewshire Council (the Council) was entitled to withhold the contract from Mr Drury in terms of section 39(2) of the Freedom of Information (Scotland) Act 2002 and under the Environmental Information (Scotland) Regulations 2004.

Appeal

Should either Mr Drury or the Council wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Kevin Dunion
Scottish Information Commissioner
19 March 2009



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

- (a) the provision does not confer absolute exemption; and
- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

39 Health, safety and the environment

...

- (2) Information is exempt information if a Scottish public authority-
- (a) is obliged by regulations under section 62 to make it available to the public in accordance with the regulations; or
 - (b) would be so obliged but for any exemption contained in the regulations.

...



The Environmental Information (Scotland) Regulations 2004

2 Interpretation

(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 paragraph (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 paragraphs (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (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 paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);



5 Duty to make available environmental information on request

- (1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.
- (2) The duty under paragraph (1)-
...
 - (b) is subject to regulations 6 to 12...

10 Exceptions from duty to make environmental information available—

- (1) A Scottish public authority may refuse a request to make environmental information available if-
 - (a) there is an exception to disclosure under paragraphs (4) or (5); and
 - (b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
- (2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall-
 - (a) interpret those paragraphs in a restrictive way; and
 - (b) apply a presumption in favour of disclosure....
- (5) A Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially-
...
 - (e) the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest;...