

Decision Notice



Decision 139/2008 Mr Rob Edwards and the Scottish Ministers

Calling in of planning application by Trump International Golf Links Scotland

Reference No: 200800605

Decision Date: 5 November 2008

www.itspublicknowledge.info

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Scottish Information Commissioner

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Summary

Mr Edwards requested from the Scottish Ministers (the Ministers) all unpublished information held in relation to the decision to call in the planning application by Trump International Golf Links Scotland for a golf course at Balmedie, Aberdeenshire. The Ministers responded by stating that they had decided to publish certain documents and provided Mr Edwards with a link to the relevant part of the Scottish Government web site. However, the Ministers also withheld certain documentation under the terms of sections 25, 30(b), 36(1) and 38(1)(b) of FOISA. Following a review, Mr Edwards remained dissatisfied and applied to the Commissioner for a decision.

During the investigation, it was put to the Ministers that the information withheld was environmental information and following further consideration they accepted that the request should properly have been dealt with under the EIRs. The Ministers thereafter relied upon the exceptions under regulations 10(4)(d), 10(4)e) and 10(5)(d) of the EIRs in withholding the information. Since the information was considered environmental information they also relied upon section 39(2) of FOISA.

Following an investigation, the Commissioner found that the Ministers should have dealt with Mr Edwards' request for information under the EIRs. While he accepted that certain information could properly be withheld under regulation 10(5)(d) of the EIRs, he did not accept their application of exceptions to certain other information and required its release.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (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) (Duty to make available environmental information on request); 10(1), (2), (4)(d) and (e), and (5)(d) (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.



Background

1. On 5 December 2007, Mr Edwards wrote to the Ministers under both FOISA and the EIRs, requesting the following information: “copies of all unpublished correspondence, memos, reports or other documentation, whether draft or final, relating to the decision announced yesterday to call in the planning application by Trump International Golf Links Scotland for a golf resort in Balmedie, Aberdeenshire.”
2. The Ministers responded on 18 March 2008, informing Mr Edwards that certain documents which had been unpublished at the time of his request were now available on the Scottish Government web site and providing him with a link to that information. The Ministers also indicated, however, that they were withholding other information in terms of sections 25 (Information otherwise accessible), 30(b) (Prejudice to effective conduct of public affairs), 36(1) (Confidentiality) and 38(1)(b) (Personal information) of FOISA.
3. On 19 March 2008, Mr Edwards wrote to the Ministers requesting a review of their decision and in particular drew their attention to the fact that he had also requested the information under the terms of the EIRs and suggested that the request might have been considered under that regime also. He advised that he was not interested in the information withheld under section 25.
4. The Ministers notified Mr Edwards of the outcome of their review on 21 April 2008, upholding their original decision to withhold information in terms of sections 36(1), 30(b) and 38(1)(b) of FOISA. Within the review response the Ministers also intimated that Mr Edwards’ request had been considered under both the EIRs and FOISA, their conclusion being that the latter was the appropriate route as the withheld information related to policy issues around the planning process rather than issues relating to the merits of the actual planning application.
5. On 22 April 2008, Mr Edwards wrote to the Commissioner’s Office, stating that he was dissatisfied with the outcome of the Minister’s review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to certain specified modifications.
6. The application was validated by establishing that Mr Edwards 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 May 2008, the Ministers were notified in writing that an application had been received from Mr Edwards and asked to provide the Commissioner's Office with any information withheld from the applicant. The Ministers responded with the information requested and the case was then allocated to an investigating officer.
8. The Ministers provided copies of the information withheld, which consisted of 5 documents (numbered 9, 10, 14, 15 and 16), four of which were withheld in terms of section 30(b) of FOISA and one in terms of section 36(1) of FOISA. The Ministers had also released a further 4 documents with redactions in terms of 38(1)(b), one of which (numbered 121) had also been redacted in terms of section 30(b).
9. At an early stage Mr Edwards intimated that he was not disputing the redaction of any personal contact details, being the information redacted under section 38(1)(b). This information will therefore not be considered further in this decision.
10. The investigating officer subsequently contacted the Ministers, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, the Ministers were asked to reconsider whether the information withheld was "environmental information" as defined by Regulation 2(1) of the EIRs (see Appendix) and where appropriate provide argument as to why the information would be excepted in terms of regulation 10 of the EIRs. They were also asked to provide some clarification in relation to the documents withheld.
11. The Ministers responded by accepting after some explanation that the withheld information was "environmental information" as defined by Regulation 2 of the EIRs. As a consequence, they applied section 39(2) of FOISA to the information and went on to advise that it was excepted in terms of regulation 10(4)(d) and (e), and regulation 10(5)(d), of the EIRs.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions that have been presented to him by both Mr Edwards and the Ministers and is satisfied that no matter of relevance has been overlooked.
13. As mentioned above, the Commissioner takes the view in this case that Mr Edwards' request should have been responded to under the EIRs rather than FOISA and his reasoning for this is set out below.



14. The relevant information was (and is) held by the Ministers in connection with the process to be followed in relation to the Scottish Government "calling in" (under the terms of the Town and Country Planning (Scotland) Act 1997) the planning application to build a new golf course at Balmedie in Aberdeenshire. This process, which led to the convening of a public inquiry to advise the Ministers on the final determination of the application, is an important element in the consideration of whether or not planning permission should be granted for the proposed development. The development proposal in question is of some environmental controversy and appears to be a measure (as defined in regulation 2(1)(c) of the EIRs) with at least the potential to affect the state of the elements of the environment (as defined in regulation 2(1)(a)), including in this case land, landscape and natural sites. In the circumstances, therefore, the Commissioner is satisfied that the information in question falls within the definition of "environmental information" in regulation 2(1) and should properly have been dealt with in terms of the EIRs. In particular he is of the view that the process of considering the planning application (in this case by call-in) and the substance of the application itself are constituent elements of a measure which has the potential to affect the state of the environment, and rejects an approach which seeks to distinguish that information which is part of the process as not being environmental whilst that which forms part of the application is.
15. On 3 November 2008, the Ministers indicated that they were minded to grant outline planning permission for the proposed development, subject to conditions and following the conclusion of a planning agreement.
16. While the Ministers stated that they believed they had been correct to consider Mr Edwards' request under FOISA, they noted the Commissioner's recent decisions on the application of the EIRs, particularly *Decisions 039/2008* and *056/2008* (both *Mr Rob Edwards and the Scottish Ministers*) and as a consequence accepted that Mr Edwards' application should be considered according to the EIRs. In doing so, the Ministers indicated they wished to rely upon the exemption in section 39(2) of FOISA with respect to any information falling within the scope of Mr Edwards' request.
17. The exemption in section 39(2) of FOISA in effect provides that information which is environmental information for the purposes of regulation 2(1) of the EIRs is exempt information under FOISA (thereby allowing the request to be considered solely in terms of the EIRs). The 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 available to the applicant, the public interest in maintaining this exemption and dealing with the request in line with the requirements of the EIRs outweighs any public interest in disclosure of information under FOISA. Given this conclusion, the Commissioner has made his decision in this case solely under the terms of the EIRs.
18. The Ministers claimed that all the withheld documents were internal communications in terms of Regulation 10(4)(e) of the EIRs. The various emails and associated documentation are exchanges between various Scottish Government officials, predominantly in the Planning Directorate but also including legal colleagues (for this reason, the exception at Regulation 10(5)(d) was also applied to document 16). In addition, the Ministers also considered that the exception at Regulation 10(4)(d) should be applied to documents 9, 10, 14 and 15.



19. All of the exceptions contained in regulations 10(4) and (5) of the EIRs are subject to the public interest test set out in regulation 10(1)(b). Regulation 10(1) provides that a public authority may refuse a request to make environmental information available if it falls under any of the exceptions in regulations 10(4) or (5) and, in all the circumstances of the case, the public interest in making information available is outweighed by that in maintaining the exception. Further, regulation 10(2) of the EIRs specifies that in considering the application of the exceptions contained in regulations 10(4) and (5), the public authority shall interpret those exceptions in a restrictive way and apply a presumption in favour of disclosure.
20. In the first instance the Commissioner will consider regulation 10(5)(d) in relation to document 16.

Application of regulation 10(5)(d) - Confidentiality

21. The Ministers relied upon the exception in regulation 10(5)(d) in relation to document 16. This provides that a Scottish public authority may refuse to make environmental information available if its disclosure would, or would be likely to, prejudice substantially the confidentiality of the proceedings of any public authority where such confidentiality is provided for by law. In its publication *The Aarhus Convention: an implementation guide*, the Economic Commission for Europe (the United Nations agency responsible for the Convention, which the EIRs are designed to implement) notes at page 59 that the Convention does not comprehensively define “proceedings of public authorities”, but suggests that one potential interpretation is that these might be “proceedings concerning the internal operations of a public authority and not substantive proceedings conducted by the public authority in its area of competence”.
22. The Ministers excepted the information contained in document 16 on the basis that it comprised communications between planning officials (in the role of client) and Scottish Government lawyers and constituted legal advice which was provided strictly in confidence. While this is in fact explicitly stated within the email, and while such a comment may give an indication of the sensitivity of the information, it does not automatically follow that the information falls within the scope of the exception.
23. The Commissioner accepts, however, that the information withheld in document 16 comprises a series of email communications between legal advisor and client, in this case the Ministers. The Commissioner also accepts that the communications fall within the suggested definition of “proceedings of public authorities” set out in paragraph 21 above. For the exception in regulation 10(5)(d) to apply, however, the Commissioner must be satisfied that disclosure of the information would, or would be likely to, prejudice substantially the confidentiality of those proceedings. Firstly, he must be satisfied that the proceedings are confidential, on the basis of such confidentiality being provided for by law.
24. In most cases where this exception will apply, there will be a specific statutory provision prohibiting the release of the information. However, the Commissioner considers that there may also be cases where the common law of confidence will protect the confidentiality of the proceedings. An aspect of this is the law relating to confidentiality of communications, which embraces the rules and principles relating to legal professional privilege.



25. As indicated in the context of regulation 10(5)(d) in the Commissioner's *Decision 069/2008 Robin Thompson and the Scottish Environment Protection Agency*, a number of the Commissioner's decisions have considered the application of that element of legal professional privilege known as legal advice privilege to communications between legal advisor and client. As these decisions explain, certain conditions must be fulfilled before legal advice privilege can apply to such a communication: for example, the information being withheld must relate to communications with a legal advisor, the legal advisor must be acting in a professional capacity and the communications must occur in the context of a professional relationship with the client. While the majority of the Commissioner's decisions on legal advice privilege relate to the application of the exemption in section 36(1) of FOISA (which relates directly to confidentiality of communications), the principles may (in appropriate circumstances) be of relevance to the application of regulation 10(5)(d).
26. Having reviewed the information in document 16, the Commissioner is satisfied that it comprises information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings. This is a communication between a professional legal advisor (a solicitor) acting as such and their client within the context of a professional relationship. The Commissioner must go on to consider whether disclosure of the information would substantially prejudice that confidentiality.
27. In support of their claim that confidentiality of the relevant proceedings would be substantially prejudiced by disclosure, the Ministers argued that it was essential to the working of any solicitor/client relationship that both parties could be confident that all information passing between them would be treated confidentially: any release of the information would significantly undermine this relationship and have serious consequences for the general ability of legal advisors to fulfil their role effectively.
28. The Commissioner has made clear in previous decisions that the test of substantial prejudice is a high one, requiring a real risk of actual, significant harm. That said, given the content of the information and its continuing privileged nature, the Commissioner accepts that disclosure would cause substantial prejudice to the confidentiality of the proceedings in question and therefore that the exception in regulation 10(5)(d) applies. He must, however, go on to consider whether the public interest in making the information available is outweighed by the public interest in maintaining the exemption.

Public interest regarding regulation 10(5)(d)

29. The Ministers maintained that the public interest in maintaining confidentiality of communications between legal advisor and client was high and that only in highly compelling cases should release be considered. In support of this position, the Ministers referred to the serious consequences for the solicitor/client relationship and the effective functioning of legal advisors (as identified at paragraph 27 above) if the requested material, consisting of candid and confidential legal advice, were to be released. The Ministers submitted that there were no sufficiently compelling reasons for disclosure in the present case and concluded that disclosure would be detrimental to the public interest.



30. In his previous decisions on section 36(1) of FOISA, the Commissioner has concluded that there will always be a strong public interest in maintaining the right to confidentiality of communications between legal adviser and client, bearing in mind that the courts have long recognised the strong public interest in maintaining this right on administration of justice grounds. Consequently, while he will consider each case individually, he is likely only to order the release of such communications in highly compelling cases. In *Decision 096/2006 Mr George Waddell and South Lanarkshire Council* (and in *Decision 069/2008*, referred to above), he noted that he would apply the same reasoning in general to equivalent provisions of the EIRs.
31. The Commissioner accepts the public interest arguments put forward by the Ministers in support of the information being withheld. It is in the public interest that an authority can communicate with its legal advisers freely and frankly in confidence, in order that it can obtain the most comprehensive legal advice about its proposed actions and defend its position adequately as required. The Commissioner can identify no public interest arguments of substance in support of this information being disclosed. In all the circumstances, therefore, the Commissioner concludes that the strong public interest in maintaining the exception outweighs such public interest as exists in making the information available, and therefore is satisfied that the document 16 can properly be withheld under regulation 10(5)(d) of the EIRs (and could have been so withheld in response to Mr Edwards' request).

Application of regulation 10(4)(d) – Incomplete data

32. To documents 9, 10, 14 and 15, the Ministers applied regulation 10(4)(d) of the EIRs, which provides that a Scottish public authority may refuse to make environmental information available to the extent that it relates to material which is still in the course of completion, to unfinished documents or incomplete data.
33. Regulation 13(d) provides that where a Scottish public authority refuses to make information available on the basis of the exception in regulation 10(4)(d), the authority shall state the time by which it considers that the information will be finished or completed.
34. In support of their argument in relation to regulation 10(4)(d), the Ministers highlighted that the four documents were all draft lines to take and at the time of creation would have been considered unfinished and therefore material in the course of completion. While acknowledging that final versions of certain of these documents were by then in the public domain and were in substance the same as the withheld versions, they contended that at the time these documents were written they would have been considered as drafts and potentially subject to further amendment. It should therefore, they argued, be regarded as purely incidental that the final draft was identical to the released version.
35. The Ministers made no reference to the requirement contained in regulation 13(d) of the EIRs, other than the fact that in substance certain documents were subsequently published by the Ministers.



36. The Commissioner has considered the content of documents 9, 10, 14 and 15 and has referred to *The Aarhus Convention: an implementation guide* for guidance on the application of exception 10(4)(d). This guide indicates that the mere status of something as a draft does not automatically bring it under the exception. The terms “unfinished documents” and “materials in the course of completion” suggest reference to individual documents that are actively being worked on by the public authority. Once those documents are no longer in the “course of completion” they may be released, even if they are still unfinished and even if the decision to which they pertain has not yet been resolved. “In the course of completion” suggests that the document will have more work done on it within some reasonable time-frame.
37. The Commissioner accepts that any advice and opinion detailed in the documents could be subject to further amendment, but that is not the issue for the purposes of regulation 10(4)(d). None of the relevant documents requires further work to make it complete, each is a finished piece of work in itself and the content of each, while it may be subject to revision or development in subsequent versions, can in no sense be described as incomplete. Consequently, the Commissioner is unable to accept that the information in the documents in question can be described as material which is still in the course of completion, unfinished documents or incomplete data, and therefore concludes that it does not fall within any part of the exception contained in regulation 10(4)(d). As he is satisfied that the exception does not apply, he is not required to consider the public interest test.

Application of regulation 10(4)(e) - Internal Communications

38. The Ministers also claimed regulation 10(4)(e) as an exception in relation to all the withheld information, in that it classed them all as internal communications. For information to fall within the scope of this exception, it need only be established that it is an internal communication.
39. The first thing for the Commissioner to do, therefore, is to determine whether each item of information withheld can be described as an internal communication. Given that all the documents are internal emails or attachments thereto, and given the context in which the attachments are circulated with the relevant emails, the Commissioner is satisfied that they all constitute internal communications within the Scottish Administration and therefore are subject to the exception in regulation 10(4)(e) of the EIRs.

Public interest regarding regulation 10(4)(e)

40. As the Commissioner has indicated above, regulation 10(4)(e) is also subject to the public interest test contained in regulation 10(1)(b) of the EIRs, so the request might legitimately be refused only if, in all the circumstances, the public interest in making the information available was outweighed by that in maintaining the exception. The Commissioner must also bear in mind the presumption in favour of disclosure in regulation 10(2)(b).



41. In this case, the Ministers acknowledged that there was clearly a high level of public interest in the issues involved in this case, as well as intense interest from the media and the political arena. Having accepted that, the Ministers considered there to be a clear public interest in withholding documents prepared solely for internal communication and not in the expectation of publication.
42. The Ministers claimed that in the interests of effective government, there was a strong public interest in the ability of officials to rigorously discuss and debate available options in order to fully understand their possible implications, with a view to decisions being made on the basis of high quality advice and all available information. They submitted that the candour of officials in setting out their advice would be affected if they assessed that their internal discussions would be disclosed in future. Inappropriate disclosure might not only have a suppressive effect on full discussion of issues in future, but might also result in a distorted public perception of advice in general. Noting that some of the views expressed in the information would have become out of date quickly and therefore be inaccurate and potentially misleading, they suggested that the ability of officials to prepare drafts and particularly draft briefings for Ministers would be significantly reduced if there was any likelihood of draft briefing material being made routinely available. In any event, clearer and more accurate explanations of the Government's actions had been made public.
43. Referring to the need for private space in which drafts could be prepared, discussed and amended (which they submitted was all the greater when the final version was likely to be made public), the Ministers argued that if officials understood there was a strong possibility of early versions of documents being released there would undoubtedly be a different approach taken in the preparation and development of such information: officials would take a much more circumspect attitude in preparing material through concern that thoughts and opinions perhaps more freely and less cautiously expressed would be made public. In other words, they suggested, fear of release of draft information prepared for internal discussion would have the effect of limiting or curtailing consideration of all potential options – in this case, anticipating all possible questions which might be raised in respect of appealing a planning application.
44. Moreover, in respect of all the withheld information, the Ministers argued that instead of assisting transparency and openness, the release of such background documentation could potentially be highly misleading, open to misinterpretation and ultimately affect the accuracy of the public record. The Ministers therefore contended that the public interest was clearly not in the release of these documents, but rather in placing in the public domain information allowing a full and accurate assessment of a particular issue and ensuring the integrity of the public record – as they submitted had already been done on this occasion.
45. The Commissioner has considered all of the arguments put forward by the Ministers, the content of the information withheld and the relevant information already released by the Ministers and therefore within the public domain.



46. The information falling within the exception in regulation 10(4)(e) covers the processes of setting out the background to the Ministers' participation or otherwise in the "calling in" of the planning application in question, determining the scope and form of that participation, consulting with relevant civil servants in the Scottish Government and receiving their advice, views and opinions, making recommendations to and advising Ministers, and finally drafting the direction to the planning authority with covering correspondence. It also deals with associated questions of presentation.
47. 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. The Commissioner acknowledges a more specific public interest in allowing scrutiny of the matters considered by the Ministers in relation to this specific topic, namely the calling in of a planning application which had generated considerable public debate.
48. Having examined the actual content of the information under consideration, the Commissioner has found little that would significantly inform the ongoing public debate on any aspect of the Ministers' involvement in the calling in of the planning application. He has also considered the publication of documents previously released, along with press statements by or on behalf of the Ministers. In all the circumstances, the Commissioner is not convinced that the publication of the internal communications withheld would add substantially to what is already in the public domain on this issue.
49. However, the Commissioner will not generally accept arguments that there is an inherent public interest in protecting certain information because it falls into a particular class (such as internal communications). He does accept that there may be a public interest in allowing Ministers and officials time and space to consider and debate matters of importance in order that the settled view of the Ministers can be arrived at without fear of misinterpretation, misrepresentation or manipulation through the premature release of draft documents or the advice of officials, particularly where the form and content of the final product of deliberation are still under consideration. The information in question must, however, be capable of causing detriment to that public interest by its disclosure.
50. In this particular case, there is nothing within the withheld information which persuades the Commissioner that its release would have (or would have had) any of the detrimental effects suggested by the Ministers. In particular, there is nothing of substance in the withheld information which is particularly revealing of the drafting or deliberative process, or indeed which could not be gleaned from the information released into the public domain prior to or as a consequence of Mr Edwards' request.
51. The Commissioner must also bear in mind the presumption in favour of disclosure in regulation 10(2)(b) of the EIRs.



52. In all the circumstances of this case, therefore, having considered all the internal communications withheld (that is, all of the information withheld with the exception of that in documents 16 and the redacted personal contact details) along with all relevant submissions, the Commissioner concludes that the public interest in making the withheld information available is not outweighed by that in maintaining the exception in regulation 10(4)(e) of the EIRs. Therefore, he does not consider the Ministers to have been justified in withholding the information under that exception.

DECISION

The Commissioner finds that the Scottish Ministers failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr Rob Edwards. In particular, he finds that the request related to environmental information (as defined by regulation 2(1) of the EIRs) and therefore should have been responded to in accordance with regulation 5(1) of the EIRs.

The Commissioner also finds that the information in document 16 could properly be withheld under the exception in regulation 10(5)(d) of the EIRs.

However, the Commissioner finds that the Ministers were not entitled to withhold the remainder of the information under regulation 10(4)(d) or (e) of the EIRs.

The Commissioner therefore requires the Ministers to provide Mr Edwards with copies of documents 9, 10, 14 and 15 and 121 (subject to the redaction of the mobile telephone number from page 4 of document 121), by 20 December 2008.

Decision 139/2008
Rob Edwards
and the Scottish Ministers



Appeal

Should either Mr Edwards or the Scottish Ministers 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
5 November 2008



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 –
 - ...
 - (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.

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;

...

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)-
 - (a) shall be complied with as soon as possible and in any event no later than 20 working days after the date of receipt of the request; and
 - (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.
- ...
- (4) A Scottish public authority may refuse to make environmental information available to the extent that
 - ...
 - (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
 - (e) the request involves making available internal communications.
 - (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-
 - ...
 - (d) the confidentiality of the proceedings of any public authority where such confidentiality is provided for by law;
 - ...

13 Refusal to make information available

Subject to regulations 10(8) and 11(6), if a request to make environmental information available is refused by a Scottish public authority in accordance with regulation 10, the refusal shall-

- ...
- (d) if the exception in regulation 10(4)(d) is relied on, state the time by which the authority considers that the information will be finished or completed;
- ...