Decision Notice 019/2021

Risk Assessment of Azamethiphos

Applicant: The Applicant

Public authority: Scottish Environment Protection Agency

Case Ref: 201902107

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Scottish Information Commissioner

Summary

SEPA was asked for a report entitled “Comments on SEPA’s risk assessments of Azamethiphos”.

SEPA disclosed the report, but withheld one table, on the basis that disclosure would prejudice substantially (i) commercial confidentiality and (ii) intellectual property rights.

The Commissioner investigated and found that SEPA was not entitled to withhold the information under the exception relating to commercial confidentiality, given that the information related to emissions. He also found that SEPA was not entitled to withhold the information under the exception relating to intellectual property. The Commissioner required SEPA to disclose the table.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (paragraphs (a) – (c) of definition of “environmental information”) (Interpretation); 5(1) and (2)(b) (Duty to make available environmental information on request); 10(1), (2), (5)(c), (5)(e) and (6) (Exceptions from duty to make environmental information available)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 12 September 2019, the Applicant made a request for information to the Scottish Environment Protection Agency (SEPA). The information requested was:

    i) A SEPA report examined at the SEPA Board meeting of 11 March 1997 entitled *Risk Assessment of Azamethiphos – a review of ecotoxicity and current policy*;

    ii) A report by Dr John McHenery entitled *Comments on SEPA’s risk assessments of Azamethiphos* (R257/A/01) submitted to SEPA by Novartis in September 1997;

    iii) A peer review of the proposed Maximum Allowable Concentrations by the Water Research Centre, dated April 1998;

    iv) A list of all currently active marine cage farms (those holding a current licence under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (the CAR Regulations) at which the use of Azamethiphos is not permitted.

2. SEPA responded on 16 October 2019. SEPA provided most of the information requested and informed the Applicant that it was withholding one table of data from the information provided in response to request (ii), under the exception in regulation 10(5)(e) of the EIRs. It applied section 39(2) of the Freedom of Information (Scotland) Act 2002 (Health, safety and the environment) to the request, given that it considered the information requested to be environmental information, to be handled under the EIRs.

3. On 16 October 2019, the Applicant wrote to SEPA requesting a review of its decision as it considered the information being withheld related to emissions: consequently, in view of regulation 10(6) of the EIRs, it was not open to SEPA to withhold the information under the exception in regulation 10(5)(e).

4. SEPA notified the Applicant of the outcome of its review on 13 November 2019, upholding its original decision.

5. On 17 November 2019, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of the Freedom of Information (Scotland) Act 2002 (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 specified modifications. The Applicant stated it was dissatisfied with the outcome of SEPA's review because it considered the withheld information related to emissions and, as such, should be subject to regulation 10(6) of the EIRs. It added that, if the Commissioner were to find the information did not relate to emissions, it believed SEPA had still incorrectly withheld the information under regulation 10(5)(e).

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.

7. On 25 November 2019, SEPA was notified in writing that the Applicant had made a valid application. SEPA was asked to send the Commissioner the information withheld from the Applicant. SEPA provided the information and the case was allocated to an investigating officer.

8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. SEPA was invited to comment on this application and to answer specific questions, focusing on the application of regulation 10(5)(e) and 10(6) of the EIRs.

9. SEPA responded, providing submissions on its application of the exception in regulation 10(5)(e) of the EIRs. SEPA also provided submissions explaining why it did not consider regulation 10(6) of the EIRs to be relevant to the Applicant's request.

10. During the investigation, SEPA stated that it wished to apply a further exception to the withheld information, regulation 10(5)(c) of the EIRs. SEPA provided further submissions to the Commissioner on its application of regulation 10(5)(c) of the EIRs.

11. The Applicant was informed of this further exception and was invited to provide the Commissioner with its comments.

12. The Applicant provided its views to the investigating officer on the application of regulation 10(5)(c), 10(5)(e) and 10(6) of the EIRs to the information it was seeking.

Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner considered all the withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and SEPA. He is satisfied that no matter of relevance has been overlooked.

Application of the EIRs

14. It is clear from SEPA's correspondence with both the Applicant and the Commissioner, and from the information itself, that the information sought by the Applicant is properly considered to be environmental information, as defined in regulation 2(1) of the EIRs. It relates to the

use of a veterinary medicine, the residue of which is discharged into lochs, and so the Commissioner is satisfied that it falls within either paragraph (a), (b) or (c) of the definition in regulation 2(1) (the text of each paragraph is reproduced in Appendix 1). The Applicant has not disputed this, and the Commissioner will consider the information in what follows solely in terms of the EIRs.

Regulation 5(1) of the EIRs

15. Regulation 5(1) of the EIRs (subject to the various qualifications contained in regulations 6 to 12) requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. This obligation relates to information held by the authority when it receives a request.

16. 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.

17. In responding to the Applicant, both initially and on review, SEPA withheld information under regulation 10(5)(e) (which relates to the confidentiality of commercial or industrial information) of the EIRs. The Applicant considered regulation 10(6) (which relates to information on emissions) applicable to the information. During the investigation, SEPA provided submissions to support withholding the information under regulation 10(5)(c) (which relates to intellectual property rights), if the Commissioner found that regulation 10(6) applied.

Regulation 10(6) of the EIRs: information on emissions?

18. Regulation 10(6) of the EIRs states that a Scottish public authority is not entitled to refuse to make information available under a number of exceptions (including that in regulation 10(5)(e)) to the extent that it relates to information on emissions.

19. In this case, the information under consideration comprises a table of data that appears in a report prepared by a regulatory affairs consultant for the makers of Azamethiphos, commenting on SEPA's risk assessment of Azamethiphos of 14 July 2014. The table shows the mortality/effects data for groups of 24 lobster larvae exposed to Azamethiphos and was produced as the result of laboratory-based experiments. As noted elsewhere, the Applicant considers that the information in the table relates to information on emissions. SEPA disagrees.

20. In its application, the Applicant describes Azamethiphos as an organophosphate pesticide used to treat sea lice parasites. It told the Commissioner that lobster larvae are tested because they are representative of non-target organisms likely to be affected by the discharge from open-net fish farm cages into the wider environment of Azamethiphos, after the treatment of farmed salmon has concluded.

21. According to the Applicant, treatment with Azamethiphos is largely conducted using tarpaulins placed around the cages in the sea loch. The chemical is added. Once the treatment period is over (usually between 30 minutes and two hours), the tarpaulins are removed and the Azamethiphos is allowed, by design, to wash out into the wider sea loch environment. (SEPA did not query or challenge the Applicant's description of Azamethiphos or of how it is used. It should be noted, however, that in this case the information sought relates to laboratory-based experiments.)

22. The Applicant referred the Commissioner to the paragraph which appears immediately after the redacted table in the report which, drawing on the data in the table, states that "the NOEC (no observed effect concentration) values previously reported…may require to be revised". The Applicant states that NOECs are one set of data then used to back-calculate, from the highest exposure one would wish to see in the wider sea loch environment, to what is then acceptable to use within fish farm cages and, subsequently, emissions from them.

23. The Applicant argues that the setting of NOEC levels based on the data within the redacted table is directly related to how much Azamethiphos can be discharged into the wider sea loch environment under permits issued by SEPA.

24. The Applicant considers this is further evident from Table 1 of the report, which shows that maximum concentrations of Azamethiphos in the wider sea loch, from emissions permitted from fish farms by SEPA, are derived (at least in part) from the redacted data.

25. The Applicant therefore strongly argues that the redacted data in the table is information relating to emissions and is subject to regulation 10(6) of the EIRs.

26. The Applicant referred to the ruling of the European Court of Justice (CJEU) in *Bayer CropScience SA-NV, Stichting De Bijenstichting v College voor de toelating van gewasbeschermingsmiddelen en biociden*[1]. The Applicant noted that the Court had given guidance on the concept of "information on emissions into the environment" and had confirmed that the concept was not to be interpreted narrowly.

27. SEPA, however, did not consider the withheld information related in a sufficiently direct manner to emissions in the environment. SEPA argued that the data feed into a process by which the permitted levels licensed at each site are calculated.

28. SEPA did not accept that the CJEU judgment referred to by the Applicant was relevant in this case, as that judgment refers to the regulatory framework for plant protection and biocides, as opposed to veterinary medicines.

29. SEPA instead referred to the UK Information Commissioner's guidance[2] on the application of the equivalent legislation in its jurisdiction (the Environmental Information Regulations 2004), placing emphasis on the following statement:

    "…emissions will generally be:

    - the by-product of an activity or process …
    - over which any control is relinquished"

The Commissioner's view

30. The term "emissions" is not explicitly defined in the EIRs, or in the European Directive on access to environmental information (2003/4/EC)[3] which they were intended to implement.

[1] http://curia.europa.eu/juris/document/document.jsf?text=&docid=185542&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4701671

[2] https://ico.org.uk/media/for-organisations/documents/1616/information-on-emissions-eir-guidance.pdf

[3] https://www.legislation.gov.uk/eudr/2003/4/contents/adopted

31. The Commissioner considered the definition of emissions in *Decision 191/2017*[4] and *Decision 199/2017*[5]. In those decisions, having taken account of the view of the CJEU in the *Bayer* case, the Commissioner did not consider that a restrictive interpretation of the meaning of regulation 10(6) should apply.

32. Raw data derived from laboratory experiments for lobster larvae exposed to Azamethiphos are used as the starting point from which the calculations are made to determine an environmental quality standard (EQS) for Azamethiphos. The Commissioner understands the argument put forward by SEPA to be that the raw data itself does not appear in the EQS and, as the experiments were laboratory based, it cannot be said that control has been relinquished. Consequently, the data does not of itself relate to emissions.

33. However, the Commissioner also understands that the raw data is used to determine the 72-hour LC50 (lethal concentration 50%), EC50 (effective concentration 50%) and NOEC values that are used to determine the EQS. Each fish farm site that wants to use Azamethiphos must apply for a licence from SEPA. Modelling is completed for each licensed site to work out the amount of Azamethiphos that can be used to meet the EQS at that particular site.

34. Having considered the nature of the withheld information, the Commissioner is satisfied that it does relate to information on emissions. In all the circumstances, bearing in mind that no provision of the EIRs should be interpreted narrowly, he cannot accept that its relationship to emissions is too remote for regulation 10(6) of the EIRs to apply. As such, he is satisfied that it falls within the definition contained in regulation 10(6).

35. Since the Commissioner considers regulation 10(6) of the EIRs applies to the withheld information, he cannot accept that SEPA was entitled to refuse to make the information available under the exception in regulation 10(5)(e).

Regulation 10(5)(c) of the EIRs

36. The conclusion of the Commissioner that regulation 10(6) of the EIRs applies to the withheld information does not preclude SEPA from relying on another exception within the EIRs to withhold the requested information, provided regulation 10(6) does not apply in relation to that exception.

37. SEPA submitted that the information withheld was excepted from disclosure by regulation 10(5)(c) of the EIRs.

38. Regulation 10(5)(c) 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 intellectual property (IP) rights.

39. As with all the exceptions contained within regulation 10, a Scottish public authority applying this exception must interpret the exception in a restrictive way (regulation 10(2)(a)) and apply a presumption in favour of disclosure (regulation 10(2)(b)). Even where the exception applies, the information must be made available unless, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception (regulation 10(1)(b)).

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[4] Decision 191/2017

[5] Decision 199/2017

40. As the Commissioner's guidance[6] on the exception in regulation 10(5)(c) states, in order to establish that disclosure would, or would be likely to, prejudice substantially IP rights, a public authority must demonstrate that:

- The environmental information is protected by IP rights;
- The IP right holder would suffer harm. It is not enough to show that IP rights would be infringed – disclosure must either prejudice substantially, or be likely to prejudice substantially, the IP rights;
- The harm would result from the infringement of the IP rights, for example by the third-party losing control over how the information is used and by whom; and
- The harm could not be prevented by enforcing the IP rights.

Is the material protected by IP rights?

41. IP rights arise when owners are granted exclusive rights to certain tangible assets. There are many forms of IP rights.

42. SEPA's view is that the withheld information constitutes a trade secret of the third-party data owner and that trade secrets are one of the categories of data falling under IP rights.

43. SEPA submitted that disclosure of the withheld information would negate its status as a trade secret and, as such, destroy a key IP right of the third party.

44. The Commissioner accepts that a trade secret can be intellectual property. The Aarhus Convention: an implementation guide[7] (page 88) supports this and the Trade Secrets (Enforcement, etc.) Regulations 2018[8], highlighted by SEPA, reinforce that conclusion.

45. The Commissioner also accepts that disclosure under the EIRs would effectively deprive the information of its secrecy and therefore any IP protection.

The IP holder would suffer harm

46. Infringement of IP rights in and of itself is not sufficient to prevent disclosure under the EIRs; the IP holder must demonstrate that such disclosure would prejudice substantially, or be likely to prejudice substantially, the IP rights.

47. SEPA submitted that an inherent feature of a trade secret is that it will be commercial or industrial information, that is confidential, and that disclosure would cause significant harm to the trading position (and therefore the legitimate interests) of the third party. In this case, SEPA argued that the withheld information could be used by another company seeking to apply for marketing authorisation for their own generic Azamethiphos-based product (to compete with the data owner's Azamethiphos product) without having to expend the cost required to generate the data.

48. In the Commissioner's view, it is not evident that the IP holder would, or would be likely to, suffer harm, from disclosure of the information. The reasoning given is speculative, with no real evidence of the nature of the market. The IP holder has an established market position which must depend, in commercial terms, on something rather more than these data. Quite

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[6] https://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/EIRsexceptionbriefings/Regulation10(5)(c)/Regulation10(5)(c)Intellectualpropertyrights.aspx

[7] https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition

[8] https://www.legislation.gov.uk/uksi/2018/597/pdfs/uksi_20180597_en.pdf

how the data could play such a crucial part in obtaining a marketing authorisation for a rival product (their role in creating such a product being obscure, to say the least) is not made clear.

49. Given the absence of a cogent case for relevant harm, the Commissioner considers that the information cannot be withheld under regulation 10(5)(c).

50. For the sake of completeness, however, the Commissioner will go on to consider the public interest test for this exception. Of necessity, consideration of the public interest will assume a degree of loss to the IP holder which has not in fact been accepted by the Commissioner in this case.

Public interest test

51. As noted above, in line with regulation 10(1)(b) of the EIRs, a Scottish 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. Both SEPA and the Applicant provided submissions on the public interest.

SEPA's submissions

52. SEPA recognised that disclosure of environmental information can increase public access to greater awareness of environmental matters, encourage free exchange of views, lead to more effective participation in decision making and so to a better environment.

53. SEPA submitted that it had disclosed the remainder of the information requested and that it published extensive information on its regulatory approach to aquaculture to fulfil its obligation to promote openness and transparency.

54. SEPA stated that it receives information relating to veterinary medicines, both in existence and under development, and that this is assessed for potential environmental effects. It also exchanges data, information, advice and support with other regulators.

55. SEPA emphasised that the IP holder believed disclosure would prejudice substantially its current and future economic interests. SEPA envisaged that, if the information were disclosed, manufacturers and other interested bodies would not share such data with SEPA in the future.

56. SEPA submitted that being unable to receive such data would compromise its ability to discharge its duties to the best of its abilities in three key areas:

    i) Providing advice and support to other regulators, potentially leading to delay for other regulators;

    ii) Environmental standards might be derived from incomplete data and that could result in overly precautionary standards being set;

    iii) Voluntary data submitted is a key component of the evidence base used in regulatory development. The quality and timeliness of data being made available might impact on SEPA.

57. In 2019, SEPA issued a strengthened regulatory framework for Discharges from Marine Pen Fish Farms. A key component of the framework relates to medicine discharges, as outlined in Section 5 and includes the following statement: "[SEPA] will only consider authorising discharges of new medicines and other chemicals **if sufficient data on likely harmful**

concentrations for sea life have enabled the establishment of a scientifically robust environmental standard."

58. SEPA submitted that the opportunity for regulators to share information and provide support and advice to each other (including commercially sensitive third-party information, with permission) benefits society as a whole. Furthermore, it enables coordination between parties, so that all relevant aspects of policy and regulation can be considered.

59. SEPA argued that there was a stronger public interest in withholding the information in question, as its disclosure would lead to a situation that would substantially prejudice its ability to provide advice and support to other regulators and to effectively discharge its duties in regulating discharges of medicines used in the aquaculture sector.

The Applicant's submissions

60. The Applicant argued that SEPA acknowledged the data was (and data like it would be in the future) an essential part of both the marketing authorisation process for a sea-lice treatment chemical and the setting of the EQS for the receiving waters outside a fish farm by SEPA (which then fed into the conditions applied in the CAR licences given to each fish farm). It contended, therefore, that the information was not given to SEPA voluntarily as, without providing it, the manufacturer of that chemical would not have been able to expect to receive the requisite permits and authorisation for its use.

61. The Applicant considered this situation to be analogous with the Commissioner's *Decision 225/2013*[9], noting paragraph 33 as particularly relevant –

"Persons who apply to public authorities for the purposes of obtaining licences, grants, and other permissions (such as the review process under consideration in this case) will submit information as part of the process. The Commissioner acknowledges that the decision to instigate that process will be a voluntary one, but once that decision is made there will be certain information the person seeking the permission is obliged to provide in order for the application to be processed. This has the effect of removing the element of choice associated with information provided voluntarily."

62. The Applicant submitted that the redacted information in this case is data without which relevant authorisations, licences and permits for Azamethiphos might not have been granted.

63. The Applicant identified a strong and legitimate public interest in the pollution emanating from fish farms. This should include, it submitted, the full basis upon which permits were granted for this chemical and the basis on which SEPA established the EQS values for Azamethiphos residues in the wider environment.

64. The Applicant dismissed SEPA's fears that manufacturers and other interested bodies would not share data with SEPA in future. Its view was that manufacturers could not hope to get relevant permits if they did not share data with SEPA.

65. The Applicant submitted that fish farms that use Azamethiphos have permits issued under the CAR Regulations 2011 (CAR) and that SEPA has regulatory powers, under regulation 14, to request such additional information in relation to any application as it reasonably requires when dealing with applications made for new permits. This also applies to variations of existing permits held by fish farmers. The Applicant considered SEPA would

[9] Decision 225/2013

not grant permits to allow fish farmers to use toxic chemicals if it did not have all the data required to come to a reasonable determination.

66. The Applicant reasoned that sea-lice medicine manufacturers want fish farmers to use their product, so are likely to help fish farmer applicants to provide information to SEPA to allow a permit to be granted. It considered the same logic applied to setting or reviewing an EQS.

67. The Applicant referred to the paragraph preceding the redacted data in the 1997 report:

"At the time of Ciba/Novartis's meeting with SEPA no mention was made by SEPA that a 72 hour standard was being proposed. If this intention had been disclosed then Ciba could have made available unreported toxicity data for lobster larvae from the studies conducted by SOAFD for a comprehensive range of exposure periods, Table 3**."**

68. The Applicant submitted this showed the simple decision for manufacturers to make:

- If they give insufficient data to SEPA, no EQS will be set by SEPA
- If no EQS is set by SEPA, no CAR licenses will be issued for customers
- If no CAR licences are issued for customers, there are no sales.

69. The Applicant considered the same argument applied to SEPA's interactions with other regulators. The more a manufacturer could ensure the flow of inter-regulator advice and information, the better the prospect for its sales.

70. The Applicant argued that, if a manufacturer feared SEPA's "overly precautionary" standards, it was highly likely to need to provide further information to combat such over-precaution.

71. The Applicant reasoned that, if SEPA itself believed it might be about to set an "under…precautionary" standard, apart from being contrary to its over-arching duties to protect the environment, it had the power, under regulation 14 of the CAR Regulations, to ask the manufacturers for more information and wait until it got that information before setting any standard.

The Commissioner's view

72. In every case, the public interest factors favouring disclosure will include both general and specific arguments relating to transparency, accountability, participation in the democratic process and decision-making on environmental issues. Generally, there will always be public interest in the disclosure of information which will promote transparency and accountability of public authorities, greater public awareness and understanding of environmental matters, a free exchange of views, and more effective public participation in environmental decision making; all of which ultimately contribute to a better environment.

73. The Commissioner must also consider the public interest factors relating more specifically to the information in question and the likely effects of its disclosure. He must balance the factors favouring disclosure against those weighing against it.

74. The Commissioner accepts SEPA's assertion that it is in the public interest for it to be able to continue to carry out its regulatory functions in an effective manner, and it could be argued that disclosure of the withheld information might undermine this effectiveness (although the Commissioner would also acknowledge a degree of force in the countervailing arguments offered by the Applicant).

75. On the other hand, the Applicant has made strong, in some respects compelling, arguments as to why disclosure of the withheld information would be in the public interest.

76. The Commissioner has also taken into account the Applicant's argument about the likelihood of information being shared in future if something is expected in return, and that overall it will be in the interests of business to continue sharing information. There is clearly force in these arguments.

77. The Commissioner concludes that, even if he had found the exception in regulation 10(5)(c) to have been engaged, he would have concluded, on balance, that the public interest in making the information available outweighed the public interest in maintaining the exception.

Decision

The Commissioner finds that the Scottish Environment Protection Agency (SEPA) failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs), specifically regulation 5(1), in responding to the information request made by the Applicant.

The Commissioner finds that the information relates to information on emissions, so SEPA was not entitled to refuse to make the information available under regulation 10(5)(e) of the EIRs.

The Commissioner also finds that SEPA was not entitled to withhold the information under regulation 10(5)(c) of the EIRs.

The Commissioner requires SEPA to disclose the information to the Applicant by **24 March 2021**.

Appeal

Should either the Applicant or SEPA wish to appeal against this decision, they have the right to 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.

Enforcement

If SEPA fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that SEPA has failed to comply. The Court has the right to inquire into the matter and may deal with SEPA as if it had committed a contempt of court.

Margaret Keyse
Head of Enforcement

4 February 2021

Appendix 1: Relevant statutory provisions

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;

…

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-

…

(c) intellectual property rights;

…

(e) the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest;

…

(6) To the extent that the environmental information to be made available relates to information on emissions, a Scottish public authority shall not be entitled to refuse to make it available under an exception referred to in paragraph (5)(d) to (g).

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