

Decision Notice

Decision 167/2014: Mr Ed Pybus and the Scottish Environment Protection Agency

Field development plan: unconventional gas extraction

Reference No: 201302484

Decision Date: 28 July 2014



Scottish Information
Commissioner

Summary

On 25 July 2013, Mr Pybus asked the Scottish Environment Protection Agency (SEPA) for a Field Development Plan (FDP) Addendum report for unconventional gas development. The majority of the information was withheld on the basis that regulation 10(5)(e) of the EIRs applied, and the remainder was disclosed.

Following an investigation, the Commissioner agreed with SEPA that the information that had been withheld in the FDP Addendum report was excepted from disclosure under regulation 10(5)(e), which relates to the confidentiality of commercial or industrial information.

Relevant statutory provisions

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

Background

1. On 25 July 2013, Mr Pybus asked SEPA for the following information:
 - Airth FDP – Composite (24 November 2006) [the “Composite report”]
 - Airth FDP Addendum – DART 27 June 2012 [the “FDP Addendum report”]
2. SEPA responded on 20 August 2013, informing Mr Pybus that it was processing his request under the terms of the EIRs. Under regulation 10(4)(a) of the EIRs, it gave notice that the Composite report was not held by SEPA, and provided Mr Pybus with a web link to a published, redacted copy of the report. In relation to the FDP Addendum report, SEPA noted that parts of the report were in the public domain and provided this information. It withheld the remaining information under regulation 10(5)(e) of the EIRs, giving reasons for its decision.
3. On 5 September 2013, Mr Pybus emailed SEPA requesting a review of its decision to withhold the information in the FDP Addendum report. He considered that the public interest in disclosure outweighed the commercial confidentiality of the withheld information.
4. SEPA notified Mr Pybus of the outcome of its review on 2 October 2013. SEPA maintained its reliance on regulation 10(5)(e) to withhold the information, but provided Mr Pybus with further explanation as to why it considered the exception to apply.
5. On 23 October 2013, Mr Pybus emailed the Commissioner, stating that he was dissatisfied with the outcome of SEPA’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 specified modifications.

6. The application was validated by establishing that Mr Pybus 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 30 October 2013, SEPA was notified in writing that an application had been received from Mr Pybus and was asked to provide the Commissioner with any information withheld from him. SEPA responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted SEPA, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. SEPA was asked to justify its reliance on any provisions of the EIRs it considered applicable to the information requested (with particular reference to the exception relied upon in its responses to Mr Pybus).
9. SEPA provided its submissions, setting out its reliance on regulation 10(5)(e) to withhold the information.
10. During the investigation Mr Pybus provided his arguments as to why he considered that the public interest favoured the disclosure of the withheld information.
11. Mr Pybus did not take issue with SEPA's decision to respond to the request under the EIRs. The Commissioner is content that this was the correct decision, given that the withheld information is environmental information as defined in regulation 2 of the EIRs, and she will not consider this aspect of SEPA's handling of the case further in this decision.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both SEPA and Mr Pybus. She is satisfied that no matter of relevance has been overlooked.

Background

13. The main area of interest for unconventional gas development in Scotland is north of Falkirk where Dart Energy has planning and environmental permissions in place for Coal Bed Methane (CBM) exploration and pilot test wells, to verify the feasibility of extracting gas from these sites. As of the date of this decision, Dart Energy had not received planning permission to extract CBM from the wells and could not progress any further in its work on the site.
14. Permission to exploit unconventional gas resources in Scotland¹ requires a combination of licences, including from DECC, the Coal Authority (in some cases), planning permission, and SEPA, which plays a key role in controlling environmental impacts. Public acceptability is also crucial, and some NGOs have called for a ban on the industry.
15. In the case under consideration, it is proposed that wells are drilled in vertical-horizontal pairs to maximise production (no hydraulic fracture stimulation, "fracking", is employed nor can it be employed on these wells). Once the gas has been brought to surface will be transported by underground pipeline to the gas gathering facility situated near the existing national gas

¹ <http://www.scottish.parliament.uk/parliamentarybusiness/69074.aspx>

network pipelines. Water treatment equipment will process any water from the wells before discharging to an outfall agreed with SEPA.

16. Dart Energy sought planning permission to extract CBM from 22 wells lying within Falkirk and Stirling Councils' boundaries. These Councils were unable to reach a decision as to whether the planning permission should be granted and on 5 June 2013² Dart Energy appealed the matter to the Directorate for Planning and Environmental Appeals (DPEA)³. On 2 August 2013⁴ it was announced that a planning inquiry would take place. This planning inquiry took place in public between 18 March 2014 and 17 April 2014⁵. As of the date of this decision, the planning appeal had not been decided.
17. SEPA explained that initial bids are made to DECC, who then challenge the content of the bids and the licence is awarded to the successful bidder. The potential licence holder then undertakes further analysis and applies their proprietary methodology. The revised version of the FDP is submitted to DECC for further approval.
18. Until planning permission is granted for the drilling activities included in the FDP, DECC will not consider approving the plan. The licence holder cannot commence the activities included in the plan until all permissions and approvals required have been secured. The FDP process is also used to confirm or otherwise the suitability of an operator to retain a Petroleum Exploration Development Licence (PEDL).
19. SEPA considered that a critical step in obtaining approval from DECC is to secure planning permission; at the time, this was the subject of a planning inquiry. SEPA confirmed that planning permission had previously been given for a small number of test (exploration) boreholes and exploratory drilling had taken place under the terms of the previous plan (the Composite report), dated 2006. However, at the date of this decision no further drilling could take place as planning permission had not been awarded; consequently the whole project had come to a halt.

Regulation 10(5)(e)

20. 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.
21. As with all of the exceptions under regulation 10, a Scottish public authority applying this exception must interpret it in a restrictive way and apply a presumption in favour of disclosure (regulation 10(2)). Even where the exception applies, the information must be released 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)).
22. The Aarhus Convention: an Implementation Guide⁶, which offers guidance on the interpretation of the convention from which the EIRs are derived, notes (at page 60) that the first test for considering this exception is whether national law expressly protects the confidentiality of the withheld information: it must explicitly protect the type of information in

² <http://www.scottish.parliament.uk/parliamentarybusiness/69074.aspx>

³ www.dpea.scotland.gov.uk

⁴ <http://www.heraldscotland.com/news/home-news/inquiry-into-coal-bed-gas-plan-after-2500-object.21762396>

⁵ <http://www.falkirkherald.co.uk/news/local-news/public-inquiry-into-gas-drilling-plan-for-airth-ends-1-3363482>

⁶ <http://www.unece.org/fileadmin/DAM/env/pp/acig.pdf> (version in force at the time the authority dealt with the request)

question as commercial or industrial secrets. Secondly, the confidentiality must protect a "legitimate economic interest": this term is not defined in the Convention, but its meaning is considered further below.

23. Having taken this guidance into consideration, the Commissioner's view is that before regulation 10(5)(e) can be engaged, authorities must consider the following matters:
- (i) Is the information commercial or industrial in nature?
 - (ii) Does a legally binding duty of confidence exist in relation to the information?
 - (iii) Is the information publicly available?
 - (iv) 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?

24. SEPA explained that all parties interested in applying for a PEDL licence will review publicly available information and then apply their proprietary methodology to make an estimation of the quantity of gas and oil that can be exploited from the licence area. This forms the basis of their promise, contained in the FDP, to optimise the available reserves.
25. SEPA contended that it is the methodology used in the compilation of the FDP Addendum report that is proprietary, and the outcome of applying that methodology to the potential licence area, as contained in the same document, that is commercially sensitive
26. Having considered the withheld information, the Commissioner accepts that it relates to Dart Energy's proprietary methods for the unconventional gas extraction in the Airth area. Consequently, she accepts that it is commercial in nature.

Does a legally binding duty of confidence exist in relation to the information?

27. The Commissioner considers that, in terms of regulation 10(5)(e), confidentiality "provided by law" will include confidentiality imposed on any person under the common law duty of confidence, under a contractual obligation or by statute.
28. In a letter to SEPA, Dart Energy stated that if the FDP Addendum report was disclosed it would breach the licence conditions under which some of its vendors had provided the information for the report. Dart was asked for further evidence to substantiate this claim, which it provided and which the Commissioner accepted.
29. In its submissions, SEPA stated that the relevant legal binding duty of confidence derives from schedule 7, paragraph 8 of The Petroleum (Current Model Clauses) Order 1999 (S.I. 1999/160)⁷, which states "records to be treated as confidential". Given the content of this provision, SEPA believed it was reasonable to infer that Dart Energy would have expected the information shared with SEPA to be treated as confidential.
30. SEPA acknowledged that it could be argued that a "legal binding duty of confidence" may not exist in respect of the FDP Addendum report: there is no contractual relationship between DECC and Dart Energy in relation to the specific content of this report, as it had not yet been approved and production consent had not been issued. However, SEPA noted that there was a contractual relationship between DECC and the licence holder for PEDL 133, dating from the issuing of the original licence in 2004. Dart Energy acquired the licence (Composite) from the then licence holder in 2011. SEPA therefore considered that there is

⁷ <http://uk.practicallaw.com/uklegislation/uksi/1999/160/schedule/7/made?view=plain>

an implied duty of confidence, based on a shared understanding of the conditions applicable to the publishing of the previous 2006 Field Development Plan.

31. SEPA noted that, on page 6 of the DECC guidance document⁸ on Coalbed Methane FDPs, it is stated that the department will commit to publishing FDPs six years after approval. SEPA considered that this provided additional evidence of an existing duty of confidence.
32. Having considered SEPA's submissions as set out above regarding the status of the FDP Addendum report and Dart Energy's submissions, the Commissioner is satisfied that SEPA was under an obligation to maintain the confidentiality of the information under consideration.

Is the information publicly available?

33. SEPA confirmed that it had identified and disclosed the publicly available information from the FDP Addendum report in its response to the review request. The remaining withheld information within the report was not in the public domain at the date of the review response and was not generally accessible to the public.
34. The Commissioner accepts that at the time SEPA dealt with Mr Pybus' request and request for review, the withheld information was confidential in nature and was being treated confidentially, and that no part of the withheld information was in the public domain.

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

35. As noted above, the term "legitimate economic interest" is not defined in the EIRs or in the Aarhus Convention Implementation Guide. In the Commissioner's view, the interest(s) in question will, 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.
36. Mr Pybus did not accept that there was a competitive environment in this case, as the licences had already been awarded for the area in question and none of Dart Energy's competitors could bid for a licence for that particular block. Mr Pybus concluded that Dart Energy did not have any competitors for the area covered by the FDP Addendum report and their plans were of limited interest to its competitors.
37. Mr Pybus noted that Dart Energy's investors are institutional and did not believe that Dart Energy was either publicly listed or hoping to attract small investors. Mr Pybus considered it was inconceivable that Dart Energy's investors would make investment decisions without knowledge of what is in the FDP: in fact, he believed that investors would require far more detailed information than was contained in the FDP so he found it hard to envisage how disclosure of the FDP would have a detrimental effect on Dart Energy's ability to raise funds.
38. Mr Pybus accepted that the release of the FDP Addendum report might conceivably reduce Dart Energy's advantage when negotiating access agreements with landowners. However, given Dart Energy's knowledge and expertise, he considered that they would still be in a strong position when negotiating with other stakeholders.
39. SEPA supplied a copy of a letter it had received from Dart Energy, after consulting with them about release of the information covered by Mr Pybus' request. Dart Energy took the view that their commercial interests would be substantially prejudiced by disclosure of the FDP

⁸ http://webcache.googleusercontent.com/search?q=cache:J-gPjSEqEhUJ:https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/246039/onshorefdpguidecbmminegas.doc+&cd=1&hl=en&ct=clnk&gl=uk

Addendum report, as this would compromise the development of their other coal bed methane licences, particularly Dumfries, in which they would be adopting a similar approach. Dart Energy went on to comment that disclosure would provide their competitors with sensitive commercial and technical information and would compromise their ability to be competitive in winning new acreage. Their competitors would be able to understand from it how they work, how they interpret, and how they draw conclusions and adapt their strategies accordingly.

40. SEPA stated that if the content of a FDP was released, competitors would be able to review its content and then undertake a reverse engineering exercise to identify the secret proprietary methodology used by the licence holder to estimate the level of oil and gas that could be exploited. SEPA explained that it is this proprietary methodology that is price-sensitive and therefore commercially confidential. SEPA asserted that the release of the FDP with the consequence of the identification of the proprietary methodology would have a direct impact on the share price of any PEDL licence holder.
41. SEPA considered that, once identified, the methodology could be used by other competitors to bid for other licences. It would also compromise significantly Dart Energy's competitive position in bidding for additional PEDL licence areas in the future. The fourteenth round of PEDL licenses ran from 17 December 2013 to 28 March 2014⁹ and release of the information would have substantially prejudiced Dart Energy's bidding position. (Mr Pybus first requested the information on 13 July 2013.)
42. SEPA concluded that competitors would also be able to obtain insight into the project costs for specific activities under the PEDL licence. This would destroy any competitive advantage developed by the licence holder.
43. SEPA noted Mr Pybus' comments regarding Dart Energy's sharing of financial information with potential investors. SEPA envisaged that at all potential investors would sign non-disclosure agreements in relation to the financial information shared with them.
44. SEPA submitted that the effect of releasing the information at this time (i.e. the date of its review under the EIRs) could cause substantial prejudice to Dart Energy's commercial undertaking and economic interests. The FDP Addendum report contains information relating to the estimates of field reserves, potential development costs, contractor remuneration, and production forecasts. SEPA was aware that Dart Energy was currently seeking funding for their project. To release the information could ultimately affect the funding, the value of the company and lead to competitors gaining an unfair advantage, as the information could give an insight into the Dart Energy's method of business.
45. The Commissioner is satisfied on the basis of SEPA's explanatory submissions that if the withheld information had been disclosed in response to Mr Pybus' request for review, it would have been likely to undermine Dart Energy's ability to keep their proprietary methodology confidential. In reaching this conclusion, she takes into account that the FDP Addendum report contains confidential details of Dart Energy's proposed methodology, in relation to the drilling activities which are yet to receive planning permission. Accordingly, the Commissioner accepts that disclosure would be likely to cause substantial prejudice to the developer's legitimate economic interests.
46. The Commissioner is satisfied, therefore, that SEPA was entitled to apply the exception in regulation 10(5)(e) to the information falling within the scope of Mr Pybus' request.

Consideration of the public interest test

⁹ <https://econsultation.decc.gov.uk/decc-policy/consultation-env-report-further-oil-gas-licensing/>

47. Having accepted that the exception in regulation 10(5)(e) applies to the information withheld from Mr Pybus, the Commissioner is required to consider the public interest test in regulation 10(1)(b) of the EIRs. This specifies that 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.

Public interest arguments from Mr Pybus

48. Mr Pybus submitted that the Airth site is the first production site in the UK for a new technology, and it is in the public interest that as much information as possible is made available in order to ascertain whether unconventional gas in general, and this development in particular, is a 'green' fossil fuel, as claimed by its supporters, or if the environmental risks outweigh the benefits, as claimed by its opponents.
49. Mr Pybus noted that as well as inheriting the DECC licence from the previous licence holder, Composite Energy, Dart also inherited licences from SEPA for the extraction and discharge of water. He pointed out that these licences were issued prior to the introduction of new Controlled Activities Regulations¹⁰. Any new application for such licences would require a detailed Health Risk Assessment (HRA), which would be made public. Mr Pybus acknowledged that the FDP Addendum report would not replace the information in an HRA, but believed that disclosure of the report in full would provide more information in a situation where there was a lack of reliable public information.
50. Mr Pybus argued that, at present, the licences issued by SEPA for the extract and discharge of water represent the sole regulation of unconventional gas exploitation in Scotland. He stated that the Scottish Government has acknowledged that this is insufficient, and has stated that it is working "to ensure that the monitoring of methane emissions from unconventional gas activities is robustly regulated". Mr Pybus considered that elected representatives and the general public need information on exactly what is proposed in order to create the relevant legislation, and in order to allow the public to hold the legislation up to scrutiny. He believed that the FDP Addendum report contained this information.
51. Mr Pybus noted that across the world unconventional gas developments have attracted public opposition due to the impact they have had on the environment. In particular, Dart Energy's activities in Australia have been shut down due to a combination of environmental breaches, public opposition and new environmental legislation. My Pybus commented that Dart Energy has suggested that comparisons with its overseas operations are unfounded as they will deploy different techniques in Scotland. However, he believed it was impossible to assess this without having the information on Dart Energy's proposals, and then being able to compare the techniques that Dart Energy propose to use in the UK with the techniques that have used in Australia; the FDP Addendum report would provide this information.
52. Despite the current planning application being for only 22 additional wells, Mr Pybus was concerned that the license block extends over a large portion of the central belt in Scotland. Campaigners from other parts of the world have suggested that thousands of wells may have to be drilled to release the potential of the field, while investor briefings regarding Dart Energy suggest it could amount to dozens of wells per year. In order to give affected communities (and Scotland as a whole) the chance to decide if the number of wells is acceptable, it is important that the extent of the field is known. Mr Pybus stated that the FDP Addendum report provides the most definitive information on the extent of the field.

¹⁰ Water Environment (Controlled Activities) (Scotland) Regulations 2005
(<http://www.legislation.gov.uk/ssi/2005/348/contents/made>)

53. Mr Pybus conceded that the release of the FDP Addendum report could reduce Dart Energy's advantage when negotiating access agreements with landowners. However, considering Dart Energy's knowledge and expertise, he believed they would still be in a strong position during those negotiations, and argued that it was in the public interest to release the information in the FDP Addendum report so that landowners and other stakeholders would have sufficient information to negotiate with Dart Energy.

Public interest arguments from SEPA

54. SEPA concluded that after considering all the facts in this case, it was not in the public interest for the information to be disclosed. It noted that the FDP Addendum report was still live within the DECC licensing process and argued that to disclose such information would pre-empt this process, which would not be in the public interest. It argued that the express non-disclosure agreement in the Model Clause Order already referenced in this decision meant that there was an expectation of confidentiality for a period of six years, in relation to the FDP.
55. SEPA commented that since the FDP Addendum report under consideration is dated June 2012, it could be inferred that it has been in force since that date, but in reality, the FDP Addendum report had not commenced Year 1 of its lifecycle and could be said to be in Year - 1 (i.e. minus 1).
56. SEPA contended that disclosure would compromise the efficient and effective exploitation of the UK's on- and off-shore oil and gas, as the release of a FDP would set aside the implied six year period of confidentiality of FDPs after commencement of the licensed activities, as laid out in the DECC guidance document. Future bidders for such licences might not come forward to bid, if there was a presumption that the content of an FDP could be put into the public domain before the six year period ended. SEPA therefore maintained its position that it was not in the public interest to release the content of the FDP.
57. SEPA also considered that releasing the FDP Addendum report in question would have a significant impact on the working relationship between itself and DECC, and between itself and the licence holder. It stated that the report had been shared with SEPA for information purposes only, at a stage in the licensing process when it was as yet unapproved. SEPA considered that there was a strong likelihood that such information sharing would not take place in future if the report was disclosed, which would deprive SEPA of information that contributes to its understanding of the pressures and impacts on Scotland's environment as a whole. SEPA contended that the ability to have dialogue with customers such as Dart Energy has benefits for local communities, consultees and wider stakeholders.
58. SEPA argued that the public interest relating to the proposed activities at Airth would be addressed fully during the planning enquiry commencing on 18 March 2014. SEPA noted that if planning permission is not given, the activities proposed in the FDP Addendum report dated June 2012 will not be taken forward.
59. On balance, SEPA concluded that the public interest in maintaining the exception and withholding the information outweighed that in its release in this case.

Conclusions on the public interest

60. The Commissioner has carefully considered all the public interest arguments put forward by both Mr Pybus and SEPA.
61. The Commissioner recognises the clear and strong public interest in understanding the processes involved in unconventional gas extraction and the impact these may have on the

environment, which have attracted substantial media attention^{11, 12}. Mr Pybus has put forward detailed arguments to show why it would be in the public interest to disclose further information about the proposals contained in the FDP Addendum report. The Commissioner accepts that there are strong reasons why it would be in the public interest to disclose information which would improve public understanding of the likely impact of Dart Energy's drilling activities.

62. On the other hand, the Commissioner accepts that disclosure of the withheld information is likely to put Dart Energy in an unfavourable position (to the extent of causing substantial prejudice to its commercial interests) as this would allow the methodology it used to develop the FDP to be reverse engineered and revealed, giving competitors an advantage when bidding against Dart Energy for other licences.
63. The Commissioner notes that the information in the FDP Addendum report was provided to SEPA on a voluntary basis, there being no legal basis for SEPA to secure its provision otherwise. The Commissioner accepts that it is strongly in the public interest for SEPA to continue to receive such information in relation to any future licences, and accepts that disclosure of the withheld information in this case is likely to put this in doubt, given that Dart Energy has objected to disclosure.
64. The Commissioner considers that the public interest in obtaining information from the FDP Addendum report is outweighed by the public interest in preserving SEPA's ability to obtain and analyse such sensitive information in future cases. In reaching this decision, she has taken into account the fact that some information about the proposals had already been made public at the time of Mr Pybus' request, and that this went some way towards satisfying the public interest in obtaining information about the activities proposed in the FDP Addendum report, although not as far as Mr Pybus thought necessary.
65. In all the circumstances of this case, the Commissioner is satisfied that the public interest in maintaining the exception outweighed that in disclosure at the time SEPA dealt with Mr Pybus' request and requirement for review.
66. In conclusion, the Commissioner is satisfied that SEPA correctly withheld the information from the FDP Addendum report under regulation 10(5)(e) of the EIRs.
67. The Commissioner notes that this information is commercial and industrial in nature and acknowledges, in line with other decisions considering such information, that its currency (and therefore its sensitivity) may reduce with time.
68. Although not relevant to her decision on how his request was dealt with, she notes that the recent public inquiry has provided additional information to the public¹³ about the methods proposed for gas extraction in this case.

Decision

The Commissioner finds that the Scottish Environment Protection Agency complied with the Environmental Information (Scotland) Regulations 2004 in responding to the information request made by Mr Pybus.

¹¹ <http://frack-off.org.uk/tag/airth/>

¹² <http://www.scotsman.com/news/environment/fracking-dart-desperate-to-revive-airth-plan-1-3076699>

¹³ <http://www.falkirkherald.co.uk/news/local-news/dart-inquiry-opponents-are-scaremongering-1-3356077>

Appeal

Should either Mr Pybus or the Scottish Environment Protection Agency 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.

Rosemary Agnew
Scottish Information Commissioner
28 July 2014

Appendix

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

(1) In these Regulations –

“the Act” means the Freedom of Information (Scotland) Act 2002;

...

"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-

...

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

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info