
STATUTORY INSTRUMENTS

2004 No. 3391

The Environmental Information Regulations 2004

PART 3

Exceptions to the duty to disclose environmental information

Exceptions to the duty to disclose environmental information

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

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

(2) A public authority shall apply a presumption in favour of disclosure.

(3) To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

- (a) it does not hold that information when an applicant's request is received;
- (b) the request for information is manifestly unreasonable;
- (c) the request for information is formulated in too general a manner and the public authority has complied with regulation 9;
- (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or
- (e) the request involves the disclosure of internal communications.

(5) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—

- (a) international relations, defence, national security or public safety;
- (b) the course of justice, the ability of a person to receive a fair trial or the ability of a public authority to conduct an inquiry of a criminal or disciplinary nature;
- (c) intellectual property rights;
- (d) the confidentiality of the proceedings of that or any other public authority where such confidentiality is provided by law;
- (e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;
- (f) the interests of the person who provided the information where that person—
 - (i) was not under, and could not have been put under, any legal obligation to supply it to that or any other public authority;

(ii) did not supply it in circumstances such that that or any other public authority is entitled apart from these Regulations to disclose it; and

(iii) has not consented to its disclosure; or

(g) the protection of the environment to which the information relates.

(6) For the purposes of paragraph (1), a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, if that confirmation or denial would involve the disclosure of information which would adversely affect any of the interests referred to in paragraph (5)(a) and would not be in the public interest under paragraph (1)(b).

(7) For the purposes of a response under paragraph (6), whether information exists and is held by the public authority is itself the disclosure of information.

(8) For the purposes of paragraph (4)(e), internal communications includes communications between government departments.

(9) To the extent that the environmental information to be disclosed relates to information on emissions, a public authority shall not be entitled to refuse to disclose that information under an exception referred to in paragraphs (5)(d) to (g).

(10) For the purposes of paragraphs (5)(b), (d) and (f), references to a public authority shall include references to a Scottish public authority.

(11) Nothing in these Regulations shall authorise a refusal to make available any environmental information contained in or otherwise held with other information which is withheld by virtue of these Regulations unless it is not reasonably capable of being separated from the other information for the purpose of making available that information.

Personal data

13.—^[F1](1) To the extent that the information requested includes personal data of which the applicant is not the data subject, a public authority must not disclose the personal data if—

(a) the first condition is satisfied, or

(b) the second or third condition is satisfied and, in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.]

^[F2](2A) The first condition is that the disclosure of the information to a member of the public otherwise than under these Regulations—

(a) would contravene any of the data protection principles, or

(b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

(2B) The second condition is that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene—

(a) Article 21 of the ^[F3]UK GDPR] (general processing: right to object to processing), or

(b) section 99 of the Data Protection Act 2018 (intelligence services processing: right to object to processing).]

^[F4](3A) The third condition is that—

(a) on a request under Article 15(1) of the ^[F5]UK GDPR] (general processing: right of access by the data subject) for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018,

- (b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section, or
- (c) on a request under section 94(1)(b) of that Act (intelligence services processing: rights of access by the data subject), the information would be withheld in reliance on a provision of Chapter 6 of Part 4 of that Act.]

^{F6}(4)

[^{F7}(5A) For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that—

- (a) the condition in paragraph (5B)(a) is satisfied, or
- (b) a condition in paragraph (5B)(b) to (e) is satisfied and in all the circumstances of the case, the public interest in not confirming or denying whether the information exists outweighs the public interest in doing so.

(5B) The conditions mentioned in paragraph (5A) are—

- (a) giving a member of the public the confirmation or denial—
 - (i) would (apart from these Regulations) contravene any of the data protection principles, or
 - (ii) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded;
- (b) giving a member of the public the confirmation or denial would (apart from these Regulations) contravene Article 21 of the [^{F8}UK GDPR] or section 99 of the Data Protection Act 2018 (right to object to processing);
- (c) on a request under Article 15(1) of the [^{F9}UK GDPR] (general processing: right of access by the data subject) for confirmation of whether personal data is being processed, the information would be withheld in reliance on a provision listed in paragraph (3A)(a);
- (d) on a request under section 45(1)(a) of the Data Protection Act 2018 (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section;
- (e) on a request under section 94(1)(a) of that Act (intelligence services processing: rights of access by the data subject), the information would be withheld in reliance on a provision of Chapter 6 of Part 4 of that Act.]

[^{F10}(6) In determining for the purposes of this regulation whether the lawfulness principle in Article 5(1)(a) of the [^{F11}UK GDPR] would be contravened by the disclosure of information, Article 6(1) of the [^{F11}UK GDPR] (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.]

F1	Reg. 13(1) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), Sch. 19 para. 307(2) (with ss. 117, 209, 210, Sch. 20 para. 60); S.I. 2018/625, reg. 2(1)(g)
F2	Reg. 13(2A)(2B) substituted for reg. 13(2) (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), Sch. 19 para. 307(3) (with ss. 117, 209, 210, Sch. 20 para. 60); S.I. 2018/625, reg. 2(1)(g)
F3	Words in reg. 13(2B)(a) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), Sch. 3 para. 54 (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)
F4	Reg. 13(3A) substituted for reg. 13(3) (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), Sch. 19 para. 307(4) (with ss. 117, 209, 210, Sch. 20 para. 60); S.I. 2018/625, reg. 2(1)(g)

- F5** Words in reg. 13(3A)(a) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 3 para. 54** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Reg. 13(4) omitted (25.5.2018) by virtue of Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 307(5)** (with ss. 117, 209, 210, Sch. 20 para. 60); S.I. 2018/625, reg. 2(1)(g)
- F7** Reg. 13(5A)(5B) substituted for reg. 13(5) (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 307(6)** (with ss. 117, 209, 210, Sch. 20 para. 60); S.I. 2018/625, reg. 2(1)(g)
- F8** Words in reg. 13(5B)(b) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 3 para. 54** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in reg. 13(5B)(c) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 3 para. 54** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Reg. 13(6) inserted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 307(7)** (with ss. 117, 209, 210, Sch. 20 para. 60); S.I. 2018/625, reg. 2(1)(g)
- F11** Words in reg. 13(6) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 3 para. 54** (with Sch. 3 para. 112); 2020 c. 1, Sch. 5 para. 1(1)

Refusal to disclose information

14.—(1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.

(2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.

(3) The refusal shall specify the reasons not to disclose the information requested, including—

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, [^{F12}regulation 13(1)(b) or (5A)].

(4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.

(5) The refusal shall inform the applicant—

- (a) that he may make representations to the public authority under regulation 11; and
- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.

- F12** Words in reg. 14(3)(b) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 308** (with ss. 117, 209, 210, Sch. 20 para. 60); S.I. 2018/625, reg. 2(1)(g)

Ministerial certificates

15.—(1) A Minister of the Crown may certify that a refusal to disclose information under regulation 12(1) is because the disclosure—

- (a) would adversely affect national security; and
- (b) would not be in the public interest under regulation 12(1)(b).

(2) For the purposes of paragraph (1)—

- (a) a Minister of the Crown may designate a person to certify the matters in that paragraph on his behalf; and
 - (b) a refusal to disclose information under regulation 12(1) includes a response under regulation 12(6).
- (3) A certificate issued in accordance with paragraph (1)—
- (a) shall be conclusive evidence of the matters in that paragraph; and
 - (b) may identify the information to which it relates in general terms.
- (4) A document purporting to be a certificate under paragraph (1) shall be received in evidence and deemed to be such a certificate unless the contrary is proved.
- (5) A document which purports to be certified by or on behalf of a Minister of the Crown as a true copy of a certificate issued by that Minister under paragraph (1) shall in any legal proceedings be evidence (or, in Scotland, sufficient evidence) of that certificate.
- (6) In paragraphs (1), (2) and (5), a “Minister of the Crown” has the same meaning as in section 25(3) of the Act.

Changes to legislation:

There are currently no known outstanding effects for the The Environmental Information Regulations 2004, PART 3.