

Decision Notice



Decision 071/2009 Fish Legal and the Scottish Ministers

Fish escapes in Loch Lochy

Reference No: 200801520

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www.itspublicknowledge.info

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Scottish Information Commissioner

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Summary

Fish Legal (previously known as the Anglers' Conservation Association) requested from the Marine Directorate of the Scottish Ministers (the Ministers) a range of documents relating to the escape of farmed fish into Loch Lochy. The Ministers provided the majority of the requested documents but withheld others under various exceptions contained in the Environmental Information (Scotland) Regulations 2004 (EIRs). Following a review, during which the Ministers released additional documents, and altered their application of exceptions, Fish Legal remained dissatisfied and applied to the Commissioner for a decision.

Following the investigation (during which the Ministers disclosed more documents to Fish Legal) the Commissioner found that the Ministers had failed to deal with Fish Legal's request for information in accordance with the EIRs, by incorrectly withholding the remaining information in terms of the exception contained in regulation 10(5)(g) (which applies where disclosure would prejudice substantially the protection of the environment to which the information relates). He also found that the Ministers had failed to comply fully with the duty to provide advice and assistance to Fish Legal provided by regulation 9(1) of the EIRs. The Commissioner required the Scottish Ministers to disclose the withheld information to Fish Legal, with the names and telephone numbers of individuals removed.

Relevant statutory provisions and other sources

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation – definition of environmental information); 5(1) and (2)(b) (Duty to make available environmental information on request); 9(1) (Duty to provide advice and assistance), 10(1), (2) and (5)(g) (Exceptions from duty to make environmental information available).

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

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 10 July 2008, the Anglers' Conservation Association wrote to the Scottish Ministers' (the Ministers') Marine Directorate (which has since become part of a new directorate named Marine Scotland) requesting the following information:



- a. All documentation relating to reports of escapes of farmed rainbow trout in Loch Lochy.
 - b. All correspondence (to include emails and notes of telephone conversations) to and from rainbow trout farm operators, owners or potential buyers, their servants or agents and the Scottish Government concerning any escapes, or any other matter relating to the containment of or escape of rainbow trout in farms in Loch Lochy.
 - c. Full details of any Scottish Government investigations of escapes of rainbow trout in Loch Lochy.
 - d. Full details of any Scottish Government inspections carried out in Loch Lochy (irrespective of whether these followed reports of escapes or not).
 - e. Any photographic evidence relating to any escapes or inspections in Loch Lochy.
 - f. Any scientific, analytical or other relevant scientific data held by Scottish Government concerning escapes of or farming of rainbow trout in Loch Lochy.
2. In the course of the investigation into this case, the Anglers' Conservation Association changed its name to Fish Legal. This new name will be used for the remainder of this decision.
 3. The Ministers responded on 15 August 2008. In relation to parts a) to e) of Fish Legal's request, they provided the majority of the documents sought, but withheld some documents falling within the scope of part c) in terms of regulations 10(4)(d), 10(5)(e) and (f) of the EIRs. The Ministers also advised Fish Legal that they had made redactions to some of the released documents in terms of regulation 10(3) and 11(2) of the EIRs, on the basis that the redacted information was personal data and its disclosure would breach the Data Protection Act 1998 (DPA).
 4. The Ministers advised Fish Legal that they did not hold any information falling within the scope of part f) of its request, and noted that they had (when acknowledging the request) advised Fish Legal to contact the Fisheries Research Service (FRS) directly. At the time, the FRS was an agency of the Scottish Government which, during the investigation, ceased to exist as a separate agency and become part of the newly formed directorate named 'Marine Scotland'. The process followed in a separate request made directly to the FRS is described below.
 5. On 21 August 2008, Fish Legal wrote to the Ministers requesting a review of their decision. In particular, Fish Legal queried the Ministers' application of regulations 10(5)(e) and (f) of the EIRs to certain information that was referred to within an investigation report. Fish Legal argued that, the information withheld under these exceptions related to emissions into the environment (in the form of escaped alien species of fish) and so, in terms of regulation 10(6) of the EIRs, the Ministers were prohibited from applying any of the exceptions contained in regulations 10(5)(d) to (g) of the EIRs to this information. Fish Legal also disagreed with the Ministers' application of regulation 10(4)(d) of the EIRs to a containment audit, and queried the redaction of names of individuals under regulation 11(2) of the EIRs, on the basis that the individuals were senior civil servants acting in the course of their employment (as opposed to in their private lives).



6. The Ministers notified Fish Legal of the outcome of their review on 18 September 2008. The Ministers withdrew their application of regulation 10(4)(d) to the containment audit, but still found this document (along with the other documents it was withholding) to be excepted from disclosure under regulations 10(5)(f) and (g) of the EIRs. The Ministers advised Fish Legal that they did not consider the escape of a fish to constitute an 'emission into the environment' and therefore they concluded that were legally entitled to apply exceptions to the withheld information. The Ministers also withdrew their previous reliance on regulation 11(2) of the EIRs in relation to the information that had previously been redacted within disclosed documents and supplied complete copies of the relevant documents.
7. On 17 October 2008, Fish Legal wrote to the Commissioner, stating that it was dissatisfied with the outcome of the Ministers' review and applying 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.
8. The application was validated by establishing that Fish Legal 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.
9. As noted above, the Ministers suggested to Fish Legal that it seek some of the information requested directly from the FRS. On 13 August 2008, Fish Legal wrote to the FRS, enclosing the request described in paragraph 1, and asking the FRS to respond based on the information it held. In subsequent correspondence, Fish Legal confirmed that it was only seeking information that was created in the last ten years.
10. The FRS responded on 8 October 2008. It provided Fish Legal with the majority of the information it had requested, but it withheld some documents falling within part c) of the request, on the basis that they were excepted from under regulation 10(5)(f) of the EIRs. The FRS also withheld some documents falling within the scope of part d) of Fish Legal's information request in terms of regulation 10(5)(e) of the EIRs. The FRS advised Fish Legal that it had redacted the names/initials of personnel on some of the documents it had disclosed as it considered them to be personal data and therefore excepted from disclosure in terms of regulation 11(2) of the EIRs.
11. On 14 October 2008, Fish Legal wrote to the FRS requesting a review of its decision. Fish Legal again argued that the escape of a farmed fish is an emission into the environment, and so regulation 10(6) of the EIRs prohibits Scottish public authorities from applying any of the exceptions contained in regulations 10(5)(d) to (g) of the EIRs. Given that the information requested related to escapes of farmed fish, Fish Legal argued that the FRS was wrong to withhold information under regulations 10(5)(e) and (f) of the EIRs. In relation to the redaction of personal data (under regulation 11(2) of the EIRs), Fish Legal again expressed dissatisfaction with the removal of names of officials and referred the FRS to the review conducted by the Ministers, which had led to the decision disclose to Fish Legal unredacted versions of the disclosed documents.



12. The FRS notified Fish Legal of the outcome of its review on 16 December 2008. It firstly acknowledged that Fish Legal's two information requests (to the Marine Directorate division of the Ministers and to the FRS) should have been handled as a single request, given that both the Marine Directorate and the FRS were part of the Scottish Government, and fell within the ambit of the Scottish Ministers for the purposes of compliance with the EIRs. In light of this, the FRS noted that Fish Legal should not have been directed to submit a second (identical) request to the FRS, and it apologised for any inconvenience and delay caused as a result of this.
13. The FRS also advised Fish Legal that, after reconsidering the withheld information, it had decided to disclose some of the information it had previously withheld. The FRS withdrew its previous reliance on regulation 10(5)(f) of the EIRs, but confirmed that it was still withholding the remaining information under the terms of regulation 10(5)(e) of the EIRs. The FRS also advised Fish Legal that it had reconsidered the personal data it had previously withheld under regulation 11(2) of the EIRs, and it provided Fish Legal with unredacted versions of previously released documents.
14. On 7 January 2009, Fish Legal wrote to the Commissioner, stating that it was dissatisfied with the outcome of the FRS's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
15. This second application was validated by establishing that Fish Legal 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

16. On 22 October 2008, the Ministers were notified in writing that Fish Legal's first application had been received from Fish Legal (with respect to the request submitted to the Marine Directorate) and asked to provide the Commissioner with any information withheld from it. The Ministers responded with the information requested and the case was then allocated to an investigating officer.
17. On 9 January 2009, the Ministers were notified in writing that another application had been received from Fish Legal (with respect to the request submitted to the FRS) and asked to provide the Commissioner with any information withheld from it. In this letter, the investigating officer also advised the Ministers that, as the FRS is an agency of the Scottish Ministers and as the Marine Directorate is a division of the Scottish Ministers, the Commissioner considered this case to constitute one single request (not two) and the Ministers were advised that both requests would be addressed within a single investigation and decision, in which the Scottish Ministers would be named as the public authority concerned.



18. In relation to each of the applications, the investigating officer (on separate occasions) contacted the Ministers and gave 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 justify their reliance on any provisions of the EIRs they considered applicable to the information requested.
19. The investigating officer also contacted Fish Legal to advise it that the Commissioner would be dealing with both requests within a single investigation and decision. In subsequent correspondence, the investigating officer sought and received Fish Legal's views on the application of the public interest test and on various other issues related to the case.
20. In further correspondence with the investigating officer, the Ministers advised that they had decided to disclose some of the previously withheld documents to Fish Legal and they confirmed that the only documents that they were still withholding were:
 - a. An escape prevention and recapture strategy
 - b. Escape prevention risk assessment
 - c. A number of standard operating procedures relating to specific site activities
21. In further submissions, the Ministers set out their views on why they considered these documents to be excepted from disclosure under the EIRs. Having reconsidered the case during the investigation, the Ministers no longer sought to rely upon the exceptions in regulation 10(5)(e) or (f) of the EIRs. Instead, they submitted that the information was excepted from disclosure under regulation 10(5)(g), on the basis that disclosure would or would be likely to prejudice substantially the environment to which the information related.
22. The Ministers also maintained that the names and mobile telephone numbers of individuals detailed in the escape prevention and recapture strategy should be withheld in terms of regulation 11(2) of the EIRs. In further correspondence with the investigating officer, Fish Legal indicated that they would accept the removal of the names and phone numbers from this document, provided the redacted information was clearly and unambiguously associated with job titles.

Commissioner's analysis and findings

23. In coming to a decision on this matter, the Commissioner has consider all of the withheld information and the submissions made to him by both Fish Legal and the Ministers and is satisfied that no matter of relevance has been overlooked.



24. The Ministers dealt with Fish Legal's request on the basis that the information requested was environmental information as defined in regulation 2(1) of the EIRs, which is reproduced in the Appendix below. The information withheld relates to measures taken to prevent or deal with the escape of non-native fish into Loch Lochy. As such, the Commissioner is satisfied that it falls within the definition of environmental information set out in regulation 2(1), in particular part (c) of that definition, which refers to information on measures and activities affecting or likely to affect the elements of the environment (which include biological diversity and its components).

Section 39(2) of FOISA – environmental information

25. The exemption in section 39(2) of FOISA provides that environmental information as defined by regulation 2(1) of the EIRs is exempt from disclosure under FOISA (thereby allowing any such information to be considered solely in terms of the EIRs). This exemption is subject to the public interest test in section 2(1)(b) of FOISA. In this case the Commissioner accepts that the Ministers were correct to apply the exemption to the withheld information, given his conclusion that this is environmental information.
26. As there is a separate statutory right of access to environmental information available to the applicant in this case, the Commissioner also accepts that 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 the information under FOISA. The Commissioner has consequently proceeded to consider this case in what follows solely in terms of the EIRs.

Regulation 10(5)(g) of the EIRs

27. Regulation 10(5)(g) of the EIRs states:

“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 protection of the environment to which the information relates.”

28. As with all the exceptions under 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 released unless, in all the circumstances of the case, the public interest in making the information available is outweighed by that in maintaining the exception (regulation 10(1)(b)).
29. The information withheld in this case relates to a particular fish farm, which in 2008 voluntarily engaged in a “dry run” audit, which tested guidance developed by Ministers produced as part of an inspection regime for finfish farms under the terms of the Aquaculture and Fisheries (Scotland) Act 2007 (the 2007 Act).



30. The Ministers argued that in this case, the fish farm operator provided them with the withheld information in good faith, on the understanding that the FRS (at that time) were not exercising their legal powers to take copies of records and that the documents were being provided to help inform FRS and Marine Directorate policy and procedural development.
31. The Ministers submitted that it is only with the continued cooperation of the aquaculture industry that robust policies and procedures have been, and can continue to be, developed and implemented by the Scottish Government. The Ministers explained that a key objective of these policies and procedures is environmental protection.
32. The Ministers maintained that disclosing the withheld information would seriously undermine the positive relationship which FRS and the Marine Directorate (now both succeeded by Marine Scotland) have with the industry as a whole, and so would be likely to adversely affect future cooperation in this and other areas, including access to material and information for research purposes. If this happened, the Ministers have argued that it could significantly affect information-gathering, crucial to inform on-going improvement and development of all fish farming business procedures, which in turn would be likely to substantially prejudice protection of the environment.
33. Fish Legal disagreed with the application of regulation 10(5)(g), arguing that the 2007 Act provides the Ministers (and their agencies) with the statutory powers required to compel information from the fish industry. Fish Legal argued that both the UK and Scottish parliaments have passed legislation to provide for these powers precisely to enhance the protection of the environment.
34. Fish Legal queried how the Ministers could argue that the provision of information by the industry was truly voluntary and should be subject to a non-disclosure agreement, denying other legitimate interests proper access to that information. Fish Legal argued that disclosure of the withheld documents would not substantially prejudice the protection of the environment, and suggested that their disclosure, if they were to reveal anything of concern, were likely to do the opposite.
35. The Commissioner has considered the submissions provided by the Ministers and Fish Legal on this exception. He is not persuaded that the Ministers have demonstrated that disclosure of the withheld information would or would be likely to substantially prejudice the protection of the environment to which the information relates. The Aarhus Implementation Guide¹ (the Guide) provides some guidance on how to apply exceptions to the disclosure of environmental information. The Commissioner notes, that in relation to the exception contained in regulation 10(5)(g), the Guide advises that the exception exists to allow governments to protect certain sites (such as the breeding sites of rare species) from exploitation. In this instance, it is difficult to see what damage would be caused by disclosure of the withheld information to the environment to which it relates.

¹ The Aarhus convention: an implementation guide. Available at: <http://www.unece.org/env/pp/acig.pdf>



36. The Ministers submissions suggest that the direct effect of disclosure would be to harm its relationships with the aquaculture industry, and that this would in turn have other consequences which would ultimately be harmful to the environment.
37. Having considered the content of the withheld information, the Commissioner does not see how disclosure in this case, could lead to the consequences outlined by the Ministers. The Commissioner notes that the information that is being withheld (and which was voluntarily provided to the Ministers by the fish farm operator) could be legally acquired by the Ministers under existing legislation. While it is possible that the circumstances in which this information was provided fell outwith that formal process, disclosure would not prevent to similar information being made available in future.
38. The Commissioner has noted that fish farm operators are legally obliged to cooperate with the Ministers and provide them with information when requested, and the powers granted under the 2007 Act allow the Ministers to enforce a robust inspection regime, whether or not the fish farm concerned voluntarily provides the information.
39. The Scottish Ministers' case therefore seems to be predicated on a harm to the general relationship with the industry as whole, as indicated at paragraph 32 above. The Commissioner cannot accept that disclosure of this information would lead to the chain of events put forward by the Ministers. Nor does he accept that regulation 10(5)(g) which has to be interpreted in a restricted way, should be applied with such a broad hypothesis. The industry must be aware that the EIRs are in effect and that information which has been voluntarily disclosed can be requested and could be disclosed, contrary to the assurances which, according to the submission made by the Ministers, seem to have been given in this case. The industry should also be aware that the EIRs provide exceptions which may justify non-disclosure. In this particular case the exception has been found not to apply. In the Commissioners view neither the requirement to disclose information, nor the content of the specific information in this case, will have the consequences argued by the Ministers.
40. The Commissioner has concluded that the Ministers have not demonstrated that disclosure of the withheld information would or would be likely to substantially prejudice the environment to which the information relates. Consequently, the Commissioner does not uphold the application of the exception contained in regulation 10(5)(g).
41. Having found that the exception does not apply, the Commissioner is not required to go onto consider the public interest test in section 10(1) in relation to this information.

Emissions and exceptions under the EIRs

42. Fish Legal has argued that the escape of a live farmed fish is an emission, and as such the information withheld by the Ministers under regulation 10(5)(g) is subject to the provisions of regulation 10(6) which states that, to the extent that environmental information relates to 'emissions', a Scottish public authority is not entitled to apply the exceptions in regulations 10(5)(d) to (g). Fish Legal has asked the Commissioner to reach a decision on whether the escape of a farmed fish (and non-native species) can be classified as an emission in terms of regulation 10(6).



43. The Commissioner acknowledges that the question of what constitutes an 'emission' for the purposes of regulation 10(6) is not clearly defined and is open to interpretation. Whether an escape of non-native fish constitutes an emission can neither be readily accepted nor dismissed.
44. However, the Commissioner has not considered this further in this case since he has found that the exception in regulation 10(5)(g) would not apply irrespective of any decision on the applicability or otherwise of regulation 10(6). In the circumstances, it has not been necessary to go on to consider whether the Ministers were entitled to use this exception given the terms of regulation 10(6).

Personal data

45. In this case, the Ministers have applied the exception contained in regulation 11(2) of the EIRs to the names and contact numbers of individuals that appear in the escape prevention and capture strategy. As noted above, Fish Legal confirmed that it was willing to accept the removal of this information, provided that the job titles to which each removed name and telephone number related were clear within any released information.
46. The Commissioner has reviewed the information concerned and notes that each name and telephone number appears alongside the job title of the person concerned. Removal of the names and telephone numbers would not prevent clear identification the job roles to which the document refers, or full understanding of the substance of the document.
47. The Commissioner is satisfied that disclosure without the names and telephone numbers would provide the level of detail about the staff members that Fish Legal has indicated it wishes to receive. In light of this, the Commissioner will not consider the application of regulation 11(2) of the EIRs to these names and telephone numbers in his decision, and concludes that the Ministers should disclose the withheld documents to Fish Legal, subject to the removal of the names and telephone numbers (but not the job titles) detailed within the Escape Prevention and Recapture Strategy document.

Other issues

48. As outlined above, in this case Fish Legal made a written information request to the Ministers, who (in addition to responding to the request) advised Fish Legal to submit the same request to the FRS (then an agency of the Scottish Government, which fell within the ambit of the Scottish Ministers for the purposes of compliance with the EIRs). This advice was given on the understanding that the FRS was likely to information in addition to that held by the Marine Directorate, which was relevant to Fish Legal's request.
49. The Commissioner has noted that, given the relationship between the two parts of the Scottish Government, any information held by an agency of the Scottish Government fell within the scope of the request made directly to the Ministers.



50. The Ministers have acknowledged that they should have provided Fish Legal with a coordinated response, covering both the FRS and the Marine Directorate of the Scottish Government. The FRS apologised to Fish Legal for this error and the inconvenience it caused.
51. While the Commissioner acknowledges that this was a genuine error, he has had regard to the terms of regulation 9(1), which requires a Scottish public authority to provide advice and assistance to applicants, so far as it is reasonable to expect the authority to do so. In this case, the Ministers did provide advice to Fish Legal but that advice was flawed (as it directed it to submit the same request to the FRS when it was unnecessary for it to do so). The provision of flawed advice disadvantaged Fish Legal by causing a substantial delay to the progression of its information request.
52. The Commissioner considers it reasonable to expect that a public authority will take all of its constituent parts into consideration when dealing with an information request, and this did not happen in this case, to the detriment of the applicant.
53. In light of this, the Commissioner has found that the Ministers failed to comply fully with the requirements of regulation 9(1) of the EIRs. The Commissioner would urge the Ministers to be more aware of its responsibilities in relation to information held by their agencies. However, he notes that the Ministers have acknowledged and apologised for the error in this case. He does not require the Ministers to take any action in relation to this breach in response to this decision.

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 Fish Legal. In particular, the Commissioner finds that the Scottish Ministers wrongly applied the exception contained in regulation 10(5)(g) of the EIRs to the documents it was withholding from Fish Legal. The Commissioner also finds that the Ministers breached regulation 9(1) of the EIRs, by giving misleading advice to the applicant, which led to Fish Legal expending unnecessary time on submitting two requests.

The Commissioner therefore requires the Scottish Ministers to disclose the documents identified in paragraph 20 above to Fish Legal subject to the removal of the names and contact telephone numbers within the Escape Prevention and Recapture Strategy, by 1 August 2009.



Appeal

Should either Fish Legal 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
17 June 2009



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

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

...

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

2 Effect of exemptions

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

(a) the provision does not confer absolute exemption; and

(b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

39 Health, safety and the environment

...

- (2) Information is exempt information if a Scottish public authority-

(a) is obliged by regulations under section 62 to make it available to the public in accordance with the regulations; or

(b) would be so obliged but for any exemption contained in the regulations.

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

- (1) In these Regulations –

...



"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;
- (d) reports on the implementation of environmental legislation;
- (e) costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

5 Duty to make available environmental information on request

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

9 Duty to provide advice and assistance

- (1) A Scottish public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.



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