

# Decision Notice



Decision 167/2011 Mr Paul Drury and Glasgow City Council

Land valuation report

Reference No: 201002050

Decision Date: 16 August 2011

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**Kevin Dunion**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

Mr Paul Drury (Mr Drury) requested from Glasgow City Council (the Council) a copy of a land valuation report commissioned by the Council from a firm of surveyors. The Council responded by withholding the information in terms of the exemptions at sections 33(1)(b) and 36(2) of FOISA. Following a review in which the Council upheld its original decision, Mr Drury remained dissatisfied and applied to the Commissioner for a decision.

During the course of the investigation the Commissioner highlighted to the Council that he considered the withheld information was environmental information. Following some discussion, the Council accepted this position and sought to rely on the exceptions at regulations 10(5)(e) and (f) of the EIRs.

Following an investigation, the Commissioner found that by failing to identify the information requested by Mr Drury as environmental information and deal with the request accordingly under the EIRs, the Council had failed to comply with regulation 5(1) and 2(b) of the EIRs.

The Commissioner also found that the exceptions in regulation 10(5)(e) and (f) did not apply the withheld information, and so the Council failed to comply with the EIRs by withholding the report. The Commissioner required the Council to provide Mr Drury with a copy of the valuation report.

## Relevant statutory provisions and other sources

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

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

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1. On 26 July 2010, Mr Drury emailed the Council requesting a copy of a report provided for its Regeneration Services by Colliers CRE Ltd into the value of land in Dalmarnock held by a company called Springfield Properties (No1).
2. The Council responded on 26 August 2010 and withheld the information on the basis that it was exempt from disclosure in terms of sections 33(1)(b) and 36(2) of FOISA.
3. On 6 September 2010, Mr Drury wrote to the Council requesting a review of its decision, stating that he did not accept that the information was exempt under sections 33(1)(b) or 36(2) of FOISA.
4. The Council notified Mr Drury of the outcome of its review on 4 October 2010. The Council upheld the original decision in full.
5. On 25 October 2010, Mr Drury wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to certain specified modifications.
6. The application was validated by establishing that Mr Drury 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

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7. On 2 November 2010 the Council was notified in writing that an application had been received from Mr Drury and was asked to provide the Commissioner with any information withheld from him. The Council responded with the information requested (which will be referred to as "the report" in what follows) and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA which, in line with regulation 17 of the EIRs, applies for the purposes of the EIRs as it applies for the purposes of FOISA) and asking it to respond to specific questions. In particular, the Council was asked whether it was of the view that the withheld information was environmental information as defined within the EIRs, and to justify its reliance on any provisions of FOISA and/or the EIRs it considered applicable to the information requested. The investigating officer also noted that two appendices appeared to be missing from the report provided to the Commissioner, and asked the Council to clarify this point and provide any missing information.



9. The Council responded with its submissions on the matters raised, explaining its reasons for applying the exemptions in section 33(1)(b) and 36(2) of FOISA. It acknowledged that the report as supplied to the Commissioner appeared to contain gaps, and indicated that the Council was investigating with a view to supplying the missing information.
10. The Council also accepted that some of the information within the report was environmental information. It highlighted the relevant parts, and indicated that it considered this information to be exempt from disclosure under section 39(2) of FOISA. It did not, however, indicate whether it considered any exceptions within the EIRs to be applicable to this environmental information.
11. The Council maintained that other information within the report was not environmental information for the purposes of the EIRs. However, it indicated that should the Commissioner find other parts or indeed the whole of the report to be environmental information then it would wish to rely on section 39(2) of FOISA in relation to that information.
12. Following further communications, in which the investigating officer indicated that the Commissioner was likely to find that the report was entirely environmental information for the purposes of the EIRs, the Council accepted that the report was environmental information. It indicated that it now considered the exceptions at regulations 10(5)(e) and 10(5)(f) of the EIRs to be applicable to all that information. It provided some comments on the application of these exceptions, but indicated also that it wished its previous submissions regarding sections 33(1)(b) and 36(2) of FOISA to be taken into consideration in relation to the exceptions under the EIRs.
13. In further communications with the investigating officer, the Council also confirmed that it had undertaken additional searches, and that it did not hold the missing appendices.
14. Also, during the course of the investigation, the Council asked the surveyors to provide a summary publication statement in relation to the report in question which the Council then provided to Mr Drury. However Mr Drury was of the view that the summary was insufficient for his purposes and advised that he still wished to receive a copy of the full report.
15. Submissions were also sought from and provided by Mr Drury on the matters raised by this case. These submissions along with the submissions provided by the Council will be considered in more detail in the Commissioner's analysis and findings section below.

## Commissioner's analysis and findings

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16. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Drury and the Council and is satisfied that no matter of relevance has been overlooked.

### The withheld information, and whether appendices 1 and 4 are held by the Council



17. The Commissioner first considered the extent of which the Council holds the information requested by Mr Drury. He requested a particular report, which incorporated a number of appendices. When the Council supplied the report to the Commissioner for the purposes of his investigation, it was noted that this included references to two appendices which were not present.
18. When asked to carry out further searches to locate the missing appendices, the Council did so and, subsequently submitted that it did not appear to hold, or nor appear to have ever held, information comprising appendices 1 and 4 of the report.
19. Having taken account of the Council's submissions on this matter, the Commissioner is surprised to learn that the Council would commission a report from an outside body, paid for with public funds, and apparently fail to notice that such a report was incomplete at the time of taking receipt of it.
20. He would equally be concerned to hear that, if appendices 1 and 4 had formed part of the report at the time of its receipt they were subsequently mislaid (in a period of little more than two years since its completion).
21. However, having considered the submissions made, the Commissioner accepts that, at the time of Mr Drury's request, these appendices were not held by the Council. The information under consideration in this decision will therefore be the report as held by the Council at that time, which does not include any information within appendices 1 and 4.

#### FOISA or EIRs?

22. As noted above, the Council responded to Mr Drury's request solely in terms of FOISA. However, after it was advised during the investigation that the Commissioner was likely to conclude that the report entirely constituted environmental information, the Council confirmed that it accepted that it was environmental information.
23. The Commissioner set out his thinking on the relationship between FOISA and the EIRs in some detail in *Decision 218/2007 Professor A D Hawkins and Transport Scotland*<sup>1</sup> and need not repeat it in full here. However he will reiterate some of the key points which are relevant in this case:
  - The definition of what constitutes environmental information should not be viewed narrowly, but in line with the definition of environmental information in the EIRs.
  - There are two separate statutory frameworks for access to environmental information and an authority is required to consider any request for environmental information under both FOISA and the EIRs.
  - Any request for environmental information therefore **must** be dealt with under the EIRs.
  - In responding to a request for environmental information under FOISA, an authority **may** claim the exemption in section 39(2).

<sup>1</sup> <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600654.asp>



24. The definition of environmental information is set out in regulation 2(1) of the EIRs. Parts (a), (b), (c) and (e) of this definition are reproduced in the Appendix to this decision.
25. The Commissioner has considered the withheld report alongside this definition. The Council's initial submissions on this case recognised that parts of the report constituted environmental information. It accepted this to be the case where the information relates to the state of the land at the relevant site and associated buildings, factors that might affect this land, and measures affecting or likely to affect both the elements of the environment and factors that might affect these.
26. Having highlighted the parts it considered to be environmental information on this basis, the Council maintained that the remainder of the information was not environmental information, because it related to factors such as economic or other considerations and valuation methodology, which the Council submitted was distinct from that captured by the definition of environmental information. In further submissions, the Council indicated that it would be taking the definition of environmental information beyond the scope of its reasonable and proper interpretation to designate the remainder of the report, outside of the information it had highlighted, to be environmental information.
27. The Commissioner has noted all of these comments. However, he has reached the conclusion that the report in its entirety falls within the scope of part (e) of the definition of environmental information, since, read as a whole, it is an economic analysis used in the context of measures relevant for part (c) of that definition.
28. In reaching this conclusion, he notes that the purpose of the report is to provide and explain the basis of valuation of the land (an economic analysis), for the purpose of informing the Council's decision to purchase that land in order for it to be developed as part of the Council's wider preparations to host the Commonwealth Games in 2014. The Commissioner considers that the purchase and development of that land constitute measures for the purposes of part (c) of the definition, which are likely to affect the state of that land (an element of the environment as defined in part (a) of the definition), and also factors (such as waste and noise) which can affect the state of the elements.
29. While the Commissioner has concluded that the report as a whole constitutes an economic analysis for the purposes of part (e) of the definition contained in regulation 2(1), he also notes that the information contained in the report, inter alia, comments upon planning issues, the location and state of the land, a range of factors affecting or likely to affect the land, and regeneration plans. In the light of this, the Commissioner also finds that substantial parts of the report (considerably more than was highlighted by the Council) fall within the scope of one or more of parts (a), (b) and (c) of the definition of environmental information.
30. Taking into account all of the above, it is the Commissioner's conclusion that the report should be considered to be wholly environmental information.



31. While the Commissioner is pleased to note that, at the end of his investigation, the Council accepted this, he must also note that it did not do so (and act accordingly under the EIRs) when initially dealing with Mr Drury's information request and his subsequent request for review. Consequently, the Commissioner finds that in failing to identify that the report constituted environmental information (as defined in regulation 2(1)) and deal with Mr Drury's request accordingly under the EIRs, the Council failed to comply with regulation 5(1) and 2(b) of the EIRs.

### **Section 39(2) of FOISA - environmental information**

32. Having accepted during the investigation that the report constituted environmental information, the Council indicated that it considered the exemption in section 39(2) of FOISA was applicable to all of the information therein.
33. 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 required by section 2(1)(b) of FOISA. In this case the Commissioner finds that the Council was entitled to apply the exemption to the withheld information, given his conclusion that it is wholly and properly considered to be environmental information.
34. 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.
35. Having accepted that the information is environmental, the Council submitted that the exceptions in regulations 10(5)(e) and 10(5)(f) of the EIRs applied to the withheld information.

### **Regulation 10(5)(e) of the EIRs**

36. 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.
37. In this case, the Council applied the exception in regulation 10(5)(e) to the report in its entirety.



38. The Aarhus Convention: an Implementation Guide<sup>2</sup> (which offers guidance on the interpretation of the Aarhus Convention) notes (at page 60) that the first test for considering this exception states that national law must expressly protect the confidentiality of the withheld information: it must, the guidance states, explicitly protect the type of information in 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.
39. The Commissioner has taken this guidance into consideration when considering this exception, for example in *Decision 071/2011 Mr Craig Mitchell and Fife Council*. It is the Commissioner's view that before regulation 10(5)(e) can be engaged, authorities must consider the following matters:
- Is the information commercial or industrial in nature?
  - Does a legally binding duty of confidence exist in relation to the information?
  - Is the information publicly available
  - 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?*

40. The information withheld under this exception comprises a surveyors' valuation report compiled for the Council's Development and Regeneration Service. The land in question was eventually purchased by the Council for development in relation to the 2014 Commonwealth Games.
41. The Council submitted that all of the information contained within the report was commercial or industrial information.
42. The Commissioner is satisfied that the information under consideration relates to a potential purchase of the site in question and that the contents of the report would form the basis of related negotiations between the Council and the owner of the land regarding its purchase by the Council. As such, he is satisfied that the information is commercial in nature.

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

43. The Council has argued that a legally binding duty of confidence exists between itself and the surveyors who compiled the valuation report, in the context that the report is a bespoke document, produced using the surveyors' skill and labour to meet the requirements of the Council. The Council argued that the content of the report was not common knowledge and that it was provided exclusively for the Council's consideration and use.

<sup>2</sup> <http://www.unece.org/env/pp/acig.pdf>





44. The Council noted that the report was had been provided to the Council by the surveyors in accordance with terms contained within the Valuation Standards (6<sup>th</sup> edition) of the Royal Institute of the Chartered Surveyors ("RICS Valuation Standards"). The Council provided a copy of the relevant parts of the RICS Valuation Standards to the Commissioner, and highlighted in particular Practice Statement 2, which provides for the terms of engagement on which surveyors services are engaged by clients.
45. The Council indicated that these were the terms on which the surveyors had been engaged by the Council, and noted that these expressly provide that reports in their entirety are subject to confidentiality unless consent to reproduction or public reference to the report is given in writing. The Council argued that accordingly, the valuation report had been received by it in circumstances which clearly imposed an obligation to maintain confidence.
46. The Commissioner notes that the report indicates that it has been prepared in accordance with the RICS Valuation Standards, and also expressly indicates that neither the whole, not any part, of the valuation or any reference thereto, may be included in any published document or disclosed in any way without the prior written consent from the surveyors. He also notes that the Council has requested permission to disclose the report, and this was not granted.
47. In the circumstances, the Commissioner accepts that the Council was subject to an express obligation to maintain confidentiality with respect to the report.

*Is the information publicly available?*

48. The Council submitted that the information contained in the report is not otherwise publicly available.
49. The Commissioner notes that, whilst the fact that the report was commissioned by the Council from the surveyors is in the public domain (this fact is mentioned in a Council Regeneration Services Committee report dated 31 July 2008 and available on the Council's website) the contents of the valuation report are not.
50. The Commissioner accepts that the report is not otherwise publicly available, and that it was not at the time when the Council responded to Mr Drury's information request and subsequent request for review.

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

51. The term legitimate economic interest is not defined within the EIRs. The interest in question will however 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.



52. The Council argued that it considered the surveyors' commercial interests would be, or would be likely to be, substantially prejudiced by disclosure of the information requested by Mr Drury and identified those commercial interests as being:
- *The know-how and skill of the surveyors' employees.* The Council submitted that the main asset of any professional services firm is the know-how and skill of its employees and this asset would be significantly devalued were its product i.e. valuation reports, to be widely accessible in the public realm.
  - *The ability for the surveyors to tender competitively for future work from the Council and other local authorities.* The Council submitted that the ability of the surveyors to tender competitively for future work from the Council and other local authorities would be substantially harmed where their techniques and approach to undertaking work of this nature could be freely duplicated with minimal skill by competing firms seeking to gain work from public sector organisations.
  - *The business and financial model of the firm in the current property market.* The Council highlighted the environment in which the surveyors operate, noting in particular that the preceding 1-2 years had seen a significant decline in activity in the property market. The Council maintained that, in these circumstances, any factor which may have an impact on a professional services firm operating within that market creates a real risk that the business and financial model of a firm will be undermined to its significant detriment.
  - *Reputational risk to the surveyors.* The Council asserted that there was a real risk that disclosure of the information within the report could unjustifiably result in real, actual and significant prejudice being caused to the surveyors' reputation.
53. Finally the Council submitted that, in addition, release of just certain parts of the report would create a risk of inaccuracy, in so far as the contents of the report as a whole are used to justify the valuation provided by the surveyors. The release of certain parts of the information would create a real risk that the information may be manipulated and attributed to the surveyors in a manner which is likely to cause substantial prejudice to their commercial interests and therefore the contents of the report as a whole should be withheld.
54. Mr Drury disputed the Council's assertion that the know-how and skill of the surveyors' employees would be significantly devalued should the valuation report enter the public domain.
55. He submitted that the report in question was probably just one of thousands of valuation reports compiled by the surveyors in 2010 and was of the view that most would have been for private clients. Mr Drury did not accept the Council's implication that each of these reports contained the same "magic formula", which would render disclosure of any one of them akin to revealing the surveyors' techniques and approach to undertaking work to their competitors.



56. Mr Drury asserted that if such reports contained such telling information, why would a competitor not be able to source that information relatively easily, for example, by seeking an old copy from one of the surveyors' clients or even commissioning its own report under a different guise?
57. Mr Drury did not accept that the report contained information necessary to cause significant prejudice to the surveyors' reputation and suggested that the reason for withholding the report may be because its content could cause embarrassment to the Council.
58. In coming to a conclusion on the matter of whether disclosure of the valuation report would cause, or be likely to cause substantial harm to the surveyors' legitimate economic interest the Commissioner has taken on board all of the arguments put forward by both the Council and Mr Drury. He has also taken account of the fact that the report in question was commissioned and provided to the Council in 2008 and more than two years had passed by the date when the Council issued its response to Mr Drury on 10 October 2010 (the date at which the Commissioner must consider this matter for the purposes of this decision).
59. The Commissioner finds it difficult to accept that the general methodology employed by the surveyors in compiling such a report would not be well known to others in the surveying profession. Furthermore, to the extent that an individual surveyor's methodology can be understood from a report, the knowledge is available to any customer of that surveyor. Should a competitor wish to gain insight into the methodology adopted by particular surveyor from their valuation reports, it could simply arrange for a valuation report to be commissioned from that surveyor.
60. Having read the report, the Commissioner does recognise that it offers insight into the method by which the valuation was reached in this particular case. However, he also notes that the report relates to a particular site, and its valuation in the first half in 2008, and the economic circumstances and the state of the property market will have changed in the period since its creation. The Commissioner is unable to see (and the Council has not explained) how any person could utilise the contents of this report following disclosure at the end of 2010 to replicate the methodology and analysis therein, and apply it to different land following the passage of a significant amount of time.
61. The Commissioner is consequently unable to accept that it is likely that the disclosure of the report would devalue the skills and analysis of the surveyor concerned, or allow these to be reproduced to the detriment of the surveyor's ability to win work. For the same reasons, the Commissioner is unable to accept that it is likely that the surveyor's business and financial model would be undermined to its significant detriment as a result of disclosure of the withheld information.
62. The Council has given no explanation of its submission that disclosure of the report would lead to substantial prejudice being caused to the surveyor's reputation, and (in the absence of further explanation from the Council) the Commissioner can identify no reason why that should be the case.



63. In the light of these comments, the Commissioner is not persuaded that disclosure of the report would, or would be likely, to prejudice substantially the surveyor's legitimate economic interests.
64. Therefore the Commissioner has concluded that the Council was wrong to apply the exception at regulation 10(5)(e) to the information contained in the valuation report and as such he has not gone on to consider the public interest test required by regulation 10(1) of the EIRs in relation to that exception. He will now therefore go on to consider the Council's application of the exception at regulation 10(5)(f).

### Regulation 10(5)(f) of the EIRs

65. Regulation 10(5)(f) states 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 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 the information;
  - (ii) did not supply it in circumstances such that it could, apart from these Regulations, be made available; and
  - (iii) has not consented to its disclosure.
66. The Commissioner's briefing on regulation 10(5)(f)<sup>3</sup> states that certain points should be addressed in considering whether this exemption applies. These are:
- Was the information provided by a third party?
  - Was the third party under a legal obligation to provide the information?
  - Could the provider be required by law to provide it?
  - Would release of the information cause substantial harm to the interests of the information provider?
  - Is the information otherwise publicly available?
  - Has the information provider consented to disclosure?
67. The Commissioner accepts that the report was provided to the Council voluntarily by the surveyors, in circumstances where the surveyors were not under an obligation to supply it and could not be required by law to provide it. He also notes that the surveyors have not given their consent to disclosure. The Commissioner would also refer to his findings in paragraph 47 above in which he accepted that the valuation report had been received by the Council in circumstances which imposed an obligation to maintain confidence.

<sup>3</sup> <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=2583&SID=123>



68. The Commissioner is satisfied that the tests in regulation 10(5)(f) (i), (ii) and (iii) have been satisfied. However, he must now go on to consider whether disclosure of this information would prejudice substantially the interests of the person who provided the information (as required for regulation 10(5)(f) to apply).
69. The Council submitted that the valuation report had been provided by the surveyors and that disclosure of the report would prejudice substantially the surveyors' interests. The Council argued that disclosure of the valuation report in breach of a confidentiality clause could distort the market for surveying firms including the surveyors in question, when supplying valuations and reports to public authorities.
70. However, as noted above in paragraphs 58-64, in relation to his consideration of regulation 10(5)(e), the Commissioner is unable to accept that disclosure of the report in question would cause substantial prejudice to the interests of the surveyors in the manner suggested by the Council and is of the view that the Council's arguments about the harm that would result from disclosure are essentially hypothetical in nature.
71. The Commissioner is therefore satisfied that the Council cannot justify its reliance upon the exception in regulation 10(5)(f) of the EIRs.
72. Having found that the exception was incorrectly applied to this information, the Commissioner has not gone on to consider the public interest test required by regulation 10(1) of the EIRs.
73. He therefore requires the Council to disclose the valuation report to Mr Drury.

## DECISION

The Commissioner finds that Glasgow City Council failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr Drury.

The Commissioner finds that the Council failed to comply with the EIRs, and particularly regulations 5(1) and (2)(b), by failing to identify the information requested as environmental information and deal with the request accordingly under the EIRs.

The Commissioner also finds that the Council was not entitled to apply the exceptions in regulations 10(5)(e) and (f) applied to the withheld information, and so by refusing to disclose this information, it also failed to comply with regulation 5(1).

The Commissioner requires the Council to provide Mr Drury with a copy of the requested report (to the extent that this is held by the Council) by 4 October 2011.

Decision 167/2011  
Mr Paul Drury  
And Glasgow City Council



## **Appeal**

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Should either Mr Drury or the Council 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**  
**16 [August] 2011**



## Appendix

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### 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;
- ...
- (e) costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and
- ...

## **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;

(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 the information;

(ii) did not supply it in circumstances such that it could, apart from these Regulations, be made available; and

(iii) has not consented to its disclosure; or

...