

Decision Notice



Decision 060/2012 Millar & Bryce Limited and Dundee City Council

Statutory notices and orders

Reference No: 201100082
Decision Date: 30 March 2012

www.itspublicknowledge.info

Margaret Keyse

Acting Scottish Information Commissioner

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



Summary

Millar & Bryce Limited (Millar & Bryce) requested from Dundee City Council (the Council) information collected for and contained in certain specified statutory notices and orders, being information which would form part of any property enquiry certificate (PEC) issued by the Council. The Council contended that disclosure of the information would (or would be likely to) substantially prejudice its commercial interests, withholding it under section 33(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA). Following a review, which upheld the Council's original decision, Millar & Bryce remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had failed to deal with Millar & Bryce's request for information in accordance with Part 1 of FOISA, by withholding the information under section 33(1)(b) of FOISA. She was not persuaded that disclosure would cause substantial prejudice to the Council's commercial interests, and in any event found that the public interest favoured disclosure. Given that she also considered the withheld information to be environmental information, at least in part, she also found that the Council was not entitled to withhold it under regulation 10(5)(e) of the Environmental Information (Scotland) Regulations 2004 (the EIRs). She required the Council to disclose the withheld information or (where appropriate) respond to the request by way of a fees notice or a notice in respect of excessive cost of compliance.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 33(1)(b) (Commercial interests and the economy)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation) (definitions (a), (b) and (c) 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.

All references in this decision to "the Commissioner" are to Margaret Keyse, who has been appointed by the Scottish Parliamentary Corporate Body to discharge the functions of the Commissioner under section 42(8) of FOISA.



Background

1. On 11 August 2010, Millar & Bryce wrote to the Council with 53 requests for information. Basically, all of the requests asked the Council to provide:
“... all information collected by you pursuant to your statutory duty under [specified piece of legislation] and subsequently contained within all Notices and Orders made, served, discharged or released and those which remain extant (i.e. works and/or monies outstanding) during the period to 11th Aug 2010, under or pursuant to [specified provision of the legislation] which information would form part of any PEC issued by the Council were one to be issued.”
(Requests 1 and 2 were in the above terms but omitted the words “made, served, discharged or released and those”: there were no other variations.) The provisions specified in the requests are listed in the Schedule at the end (and forming part) of this decision.
2. The Council responded to all of the requests together on 8 September 2010. Arguing that disclosure would, or would be likely to, prejudice its commercial interests substantially, the Council withheld the requested information under section 33(1)(b) of FOISA.
3. On 21 October 2010, Millar & Bryce wrote to the Council requesting a review of its decision. Millar & Bryce argued that each request should have been responded to individually, rather than what it considered to be a “blanket response” being given to all 53. It also sought further explanation of how disclosure would impact on the Council’s commercial interests.
4. The Council notified Millar & Bryce of the outcome of its review on 18 November 2010. While providing some further explanation (and referring in particular to the impact of disclosure on its ability to sell PECs), it upheld its original decision without modification.
5. On 13 January 2011, Millar & Bryce’s solicitors wrote to the Commissioner on behalf of their client, stating that Millar & Bryce 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. Subsequent references in this decision to Millar & Bryce should be read as including reference to Millar & Bryce’s solicitors acting on behalf of their client.
7. The application was validated by establishing that Millar & Bryce 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. The case was then allocated to an investigating officer.



Investigation

8. On 25 February 2011, the Council was notified in writing that an application had been received from Millar & Bryce and was asked to provide comments on the application, as required by section 49(3)(a) of FOISA. In seeking comments, including supporting evidence, the investigating officer noted that the information had been withheld under section 33(1)(b) of FOISA.
9. The Council responded with its submissions on 18 March 2011. These provided further reasoning in support of its application of section 33(1)(b) of FOISA.
10. In the course of the investigation, the Council was also asked to comment on whether it considered any of the withheld information to be environmental information, as defined in regulation 2(1) of the EIRs. Without acknowledging that any of the information was environmental, the Council submitted that any information the Commissioner considered to be environmental information should be withheld under regulation 10(5)(e) of the EIRs, for the same reasons as it had advanced in support of its position under section 33(1)(b) of FOISA.
11. The submissions received from both parties, insofar as relevant, will be considered further in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered the submissions made to her by both Millar & Bryce and the Council and is satisfied that no matter of relevance has been overlooked.

FOISA or EIRs?

13. The previous 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*¹ and need not repeat it in full here. In the course of the investigation, the investigating officer asked the Council to comment on whether it considered any of the withheld information to be environmental information, as defined in regulation 2(1) of the EIRs. As indicated above (see paragraph 10), the Council did not consider any of the information to be environmental, although it argued that it should be withheld under regulation 10(5)(e) of the EIRs should the Commissioner find otherwise.

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



14. Without having considered the withheld information in detail, but having considered the statutory provisions cited in the 53 requests and bearing in mind the Council's position that information is held which falls within the scope of every one of them, the Commissioner finds it inconceivable that there will be no environmental information held by the Council and covered by any of these requests. She considers paragraphs a, b and c of the definition to be of particular relevance and has set these out in the Appendix below.
15. Request 26, for example, seeks information from notices under section 168 of the Town and Country Planning (Scotland) Act 1997: these would relate to the replacement of trees protected by a tree preservation order. Request 36 relates to information in notices or orders under section 78A-E of the Environmental Protection Act (i.e. Part IIA of that Act, relating to contaminated land). This would include information from a notice under section 78E, requiring the remediation of contaminated land.
16. The Commissioner also notes that the Council has not chosen to cite the exemption in section 39(2) of FOISA in respect of the withheld information. In the circumstances, she finds it necessary to consider the requests under both FOISA and the EIRs.

Section 33(1)(b) of FOISA

17. The Council withheld the information requested by Millar & Bryce under this exemption. Section 33(1)(b) provides that information is exempt if its disclosure under FOISA would, or would be likely to, prejudice substantially the commercial interests of any person. "Person" includes a legal person (such as a company or other body corporate) as well as an individual. Section 33(1)(b) specifically provides that it includes a Scottish public authority.
18. As the Commissioner's published guidance² makes clear, there are certain elements which an authority needs to demonstrate are present when relying on this exemption. In particular, it needs to indicate whose commercial interests would (or would be likely to) be harmed by disclosure, the nature of those commercial interests and how those interests would (or would be likely to) be prejudiced substantially by disclosure. The prejudice must be substantial, in other words of real and demonstrable significance.
19. Millar & Bryce did not believe that disclosure of the requested information would prejudice substantially the Council's ability to participate successfully in the commercial activity of issuing PECs, as suggested in the Council's review decision. It suggested that harm of the kind predicted by the Council had not generally occurred in practice. Millar & Bryce believed that decreased revenues from the issuing of PECs could not be attributed solely and primarily to disclosures under FOISA, noting that local authorities had faced numerous commercial competitors in the provision of PEC services before the implementation of FOISA and that they remained at a distinct commercial advantage in this field as the only source of up-to-date, indemnified PECs. It also identified the falling level of property sales as a likely factor in any reduction in demand for PECs.

² <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section33/Section33.asp>



20. Millar & Bryce also emphasised that it had requested raw data related to, but quite distinct from, the provision of PECs. Consequently, it submitted that the Council had erred in making an assumption as to the use for which the information would be put (with the result, it appeared to suggest, that the link between disclosure and harm could not be established). In any event, it noted that a large number of local authorities in Scotland already provided the equivalent information, suggesting this indicated that the financial consequences of disclosure (even assuming these could be described as commercial) were likely to be less harmful than the Council had suggested.
21. The Council believed Millar & Bryce to be seeking the information with a view to preparing its own PECs for sale, in competition with the Council. In receiving the information “free of charge”, Millar & Bryce would (the Council submitted) gain a commercial advantage over the Council: in this connection, the Council noted that it required to expend time and money preparing the information.
22. The Council considered itself to have a commercial interest in the sale of PECs, which it submitted was a commercial trading activity undertaken for the purposes of revenue generation. This activity took place in a competitive environment and the Council contended that disclosure of the requested information would be seriously detrimental to its trading position. It provided details of the income it derived from the activity.
23. The Council also noted Millar & Bryce’s arguments as to the lack of actual harm following the disclosure of equivalent information elsewhere. It considered these irrelevant to the requests under consideration here, however, unless Millar & Bryce could produce evidence as to the lack of such harm in Dundee. It also noted Millar & Bryce’s use of the words “solely and primarily” in relation to diminished income elsewhere, suggesting that this indicated an acceptance that such disclosures had resulted in a decline in revenue.
24. The Council went on to submit that Millar & Bryce’s arguments as to the Council’s commercial advantage as a supplier of PECs were also irrelevant, in the absence of evidence that this was the case in Dundee. Its own view was that disclosure would give Millar & Bryce a distinct commercial advantage, for the reasons set out in paragraph 22 above.
25. The Council acknowledged the impact of falling property sales on the demand for PECs, but emphasised that this made it all the more important that the relevant income did not decline further (which it considered to be an inevitable consequence of disclosure). It did not believe it had erred in taking account of what it perceived to be Millar & Bryce’s intended purpose in seeking the information (i.e. the preparation of PECs).



26. The Commissioner's general position is that commercial interests in their clearest sense will relate to commercial trading activity undertaken by an organisation, such as the sale of products or services, commonly for the purposes of revenue generation. It would be usual for such activities to take place in a competitive environment and (although this is not essential) for them to be profit making. Taking all of these factors into consideration, along with the submissions she has received, the Commissioner is satisfied that the Council has a commercial interest in the production and sale of PECs. While she notes that the applicant appears to have attempted to draw a distinction between the activity itself and the income derived from that activity (which it has suggested is more financial than commercial in nature), she does not believe this to be a realistic distinction to draw in the circumstances.
27. The key question, therefore, is whether disclosure of the information in response to Millar & Bryce's request would have prejudiced those commercial interests substantially, or would have been likely to do so. The applicant has suggested that the Council erred in making an assumption as to the use for which the information would be put. The Commissioner finds this to have been a perfectly reasonable assumption, however. Even if it was not Millar & Bryce's intended use (which it appears to have been, even if that was not made apparent to the Council at the time), disclosure under FOISA is disclosure to the world at large and not simply to a particular applicant. In the circumstances, it does not appear unreasonable to the Commissioner that the Council identified the production and sale of PECs, by definition in competition with the Council, as a use to which the information was likely to be put should it be available under FOISA. Having identified this as a likely use, it was, in the Commissioner's view, perfectly appropriate for the Council to take that use into account in deciding whether the section 33(1)(b) exemption applied.
28. On the other hand, the Commissioner must accept a degree of force in the Council's argument that the circumstances in which other local authorities have decided to disclose equivalent information are not necessarily those applying in Dundee. It is, however, for the Council to persuade her that, in its own specific circumstances, disclosure would bring about the harmful consequences required for the section 33(1)(b) exemption to apply. It is not, as the Council also appears to be arguing, for the applicant to establish that the exemption does not apply in the circumstances. In particular, the applicant cannot be expected to provide evidence as to a lack of commercial harm in Dundee, where no disclosure has taken place.
29. Both parties appear to accept the potential for some diminution of the Council's income from PECs should disclosure take place. It is difficult to argue otherwise: there is a competitive market for PECs and it would appear, again, to be common ground that the position of the Council's competitors in that market would be enhanced should the requested information become available to them. It does not appear to follow necessarily, however, that any impact on the Council's revenue would, or would be likely to, amount to substantial prejudice.



30. From its submissions, the Council appears to regard substantial prejudice to its commercial interests as an inevitable consequence of disclosure. It is clear from the information the Council has supplied that the production and sale of PECs is an important source of income for the Council, even if the level of that income has declined in recent years. Whatever factors may have contributed to that decline (and the Commissioner has not been persuaded that these are themselves of relevance to this decision), the Council's desire to protect this income stream from further decline is understandable. What has not been made clear to the Commissioner, however, is why it should be concluded that the prejudicial effect of disclosure would, or would be likely to, be substantial.
31. The Council has submitted that disclosure would confer a commercial advantage on its competitors, because they would obtain the information "free of charge" (the Commissioner would note here that both FOISA and the EIRs allow public authorities to charge a fee for making information available, provided certain conditions are met). The Council, on the other hand (in its own view), has been required to expend time and money in preparing the information. From the arguments presented to her, however, it is not entirely clear to the Commissioner why this should be the case. The information requested is information collected by the Council pursuant to various statutory duties and subsequently contained within certain statutory notices and orders. In other words, it is information the Council would be required to collect and hold in any event, regardless of whether it was going to use it in PECs. What further time or expense would be required in making the information available to the applicant is not apparent to the Commissioner and has not been explained to her. In the circumstances, it is not clear to the Commissioner why disclosure of the information should be expected to confer an automatic competitive advantage on other providers of PECs, beyond that created by making available to them information which was not previously available (in other words, it would appear, putting them in the same position as the Council).
32. The Council has provided no explanation as to why it would not be in a position to compete effectively with these other providers, should the information be disclosed. Even if some immediate detriment to its own competitive position might be expected should the information become more generally available, the Council has not explained why this position should be irreversible, or why it could not (or at least would be unlikely to) recover its trading position following an immediate decline in sales. In all the circumstances, therefore, the Commissioner is not satisfied that she has been presented with adequate arguments to the effect that the section 33(1)(b) exemption applied when the Council dealt with Millar & Bryce's information request and its request for review.

Public interest test

33. The exemption in section 33(1)(b) is subject to the public interest test set out in section 2(1)(b) of FOISA. Consequently, information which is exempt under this exemption must still be disclosed unless, in all the circumstances of the case, the public interest in disclosure is outweighed by that in maintaining the exemption. In this case, while she has not been persuaded that the exemption applied in the circumstances, she considers it appropriate to address the public interest arguments presented to her, as if the exemption did apply.



34. The Council did not consider the withheld information to be of serious concern and benefit to the public (it could identify no particular public interest which would be served by disclosure), but rather something of particular benefit to Millar & Bryce by virtue of the revenue it was hoped to generate. Disclosure would therefore, in the opinion of the Council, serve the interests of Millar & Bryce rather than those of the public.
35. In the Council's view, the interests of the public would in fact be harmed by disclosure, because of the reduction in the Council's income and the attendant increase in the level of Council tax paid by every Council Tax payer in Dundee (details of which, as projected by the Council, were provided). It contended that disclosure would put Millar & Bryce's interest in making a profit before the public interest in levels of taxation being kept as low as possible, and consequently it believed that the public interest would be better served by withholding the information.
36. While acknowledging the Council's arguments that there was a significant public interest in the Council being able to secure its income, Millar & Bryce also considered there to be a significant public interest in consumers being able to acquire PECs at a reasonable price in a competitive marketplace and/or from an alternative source (i.e. a source other than the Council). Without the requested information, it was only in a position to offer a limited PEC service in the Council's area, with inadequate and potentially out-of-date information. Consequently, the market was not truly competitive there and it was placed at a distinct commercial disadvantage.
37. These points were not entirely accepted by the Council, which provided further arguments in relation to competition. As indicated above, it argued that disclosure would place Millar & Bryce at a distinct commercial advantage. Millar & Bryce would receive the information free of charge and be able to price its PEC service accordingly. It did not believe that the availability of an alternative source of PECs was necessarily in the public interest, stating that in any event it considered maintaining a lower level of Council tax to be of benefit to considerably more people than cheaper PECs.
38. The Commissioner has considered these arguments carefully. She cannot accept the argument, advanced by the Council, that disclosure would only serve the interests of Millar & Bryce. Disclosure might assist Millar & Bryce in generating additional revenue, but that revenue would be derived from a service Millar & Bryce offered to the public – the production of PECs. Presumably, disclosure would only result in increased revenue if it had the more direct consequence of making the product, as offered by Millar & Bryce, more attractive to the public. The Council does not appear to recognise the possibility that this might be in the public interest.



39. Securing fair competition in the marketplace is a key policy area of the European Union, underpinned by relevant provisions of the European Community Treaty³ and regulated by the European Commission. There is also related legislation⁴ at a national (i.e. United Kingdom) level, regulated by the Office of Fair Trading (the OFT). In explaining why competition is important, the OFT's website states:
- Open and vigorous competition is good for consumers because it results in lower prices, new products of a better quality and more choice. It is also good for fair-dealing businesses, which flourish when markets are competitive.*
40. It is not the function of the Commissioner in this decision to consider whether the market for PECs in the Council's area is compliant with competition law. As indicated above, that would be a matter for other regulatory authorities. Clearly, however, there would appear to be an acknowledged public interest in ensuring that businesses operating a particular market can do so on a competitive basis, and the Commissioner does believe it relevant in this case to consider the arguments put to her as to whether competition in the local market for PECs would be enhanced by disclosure.
41. As indicated above (see paragraph 31), the Commissioner has not been persuaded by the Council's argument that disclosure would place Millar & Bryce at an automatic competitive advantage. Disclosure would appear to make available to the applicant (on the same basis) the same information as is available to the Council for the purpose of producing PECs, placing each of them on an equal footing in providing this service. At present, however, on the information available to her, the Commissioner has no basis for disagreeing with the apparently sound argument that there is no such equality of access to the information, placing Millar & Bryce and other potential providers at a distinct competitive disadvantage when their position is compared to that of the Council.
42. On the other hand, the revenue earned by the Council from PECs is clearly significant to it. It can be (and is) used to support the funding of important public services. The Commissioner acknowledges that any reduction in the Council's overall income will affect the quality of those services, even if she cannot accept the argument that increasing the (frozen) Council Tax was at the time the request was dealt with – or, for that matter, is now – an option open to the Council. She must, however, also note the substantial decline in the level of revenue derived from PECs over recent years – it may be important to take steps to prevent a further decline, but it cannot be ignored that this source of income makes a significantly smaller contribution on the whole than it did five years ago.
43. In all the circumstances, having balanced the competing public interests, the Commissioner finds that the public interest in disclosure of the requested information outweighs that in maintaining the exemption in section 33(1)(b) of FOISA. She has not reached this conclusion lightly, but believes there to be a considerable degree of force in the competition-based arguments advanced by the applicant (and not convincingly countered by the Council).

³ Articles 81 and 82

⁴ Competition Act 1998



Regulation 10(5)(e) of the EIRs

44. Regulation 10(5)(e) of the EIRs permits a Scottish public authority to refuse to make information available under the EIRs, to the extent that disclosure of that information 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. As with all of the exceptions in regulation 10 of the EIRs, in considering its application, the authority is required to interpret the exception in a restrictive way and apply a presumption in favour of disclosure. Under regulation 10(1)(b), all of the exceptions in regulation 10 are subject to the public interest test.
45. The Council indicated that it would consider this exception to apply to the withheld information should the Commissioner find it to be environmental information, “for the reasons given in previous correspondence”: the Commissioner can only interpret this as being a reference to the Council’s arguments in support of the exemption in section 33(1)(b) of FOISA.
46. Taking into account *The Aarhus Convention: an Implementation Guide*, the Commissioner has taken the view that authorities must consider the following matters in determining whether this exception applies:
- 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?
47. Having accepted the Council’s arguments that it has a relevant commercial interest, the Commissioner also accepts (for the same reasons) that the withheld environmental information is commercial or industrial in nature. Clearly, the information is not publicly available.
48. For the reasons set out above in relation to substantial prejudice to the Council’s commercial interests, however, the Commissioner is unable to accept that disclosure would, or would be likely to, cause substantial prejudice to a legitimate economic interest. As indicated above, she has not been provided with an adequate explanation of why this should be considered to be the case. In any event, there is nothing in the arguments advanced by the Council which could be taken to evidence the existence of a legally binding duty of confidence in relation to the information.



49. Even if the Commissioner were to accept that the exception applied to the withheld environmental information, she would be required to consider the same public interest arguments as are considered above in relation to section 33(1)(b) of FOISA. She could only accept that the Council was correct in refusing to make the information available if satisfied that, in all the circumstances, the public interest in making the information available was outweighed by the public interest in maintaining the exception.
50. For the reasons set out above in the context of section 33(1)(b) of FOISA, therefore, the Commissioner finds that the public interest in making the withheld environmental information available would outweigh that in maintaining the exception in regulation 10(5)(e) of the EIRs. Consequently, even if she were to accept that the exception applied to that information, she could not find that the Council had been correct to withhold the information.
51. As the Commissioner has not found that the Council was correct to withhold the information requested by Millar & Bryce under any of the FOISA or EIR provisions it applied, she requires the Council to disclose the information to Millar and Bryce or, if it is entitled to issue a fees notice under the Fees Regulations or to refuse to comply with the requests on the basis that it would cost more than £600 to do so, to respond to Millar & Bryce in line with sections 9 or 12 of FOISA (or, as appropriate, regulation 8 or 10(4)(b) of the EIRs) respectively.

DECISION

The Commissioner finds that, by incorrectly withholding the requested information under section 33(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA), Dundee City Council (the Council) failed to comply with Part 1 (and in particular section 1(1)) of FOISA in responding to the information request made by Millar & Bryce Limited.

Having concluded that the withheld information was, at least in part, environmental information as defined in regulation 2(1) of the Environmental Information (Scotland) Regulations 2004 (the EIRs), the Commissioner also finds that the Council was not entitled to withhold this information under regulation 10(5)(e) of the EIRs. In withholding the environmental information under regulation 10(5)(e), the Council failed to comply with regulation 5(1) of the EIRs.

The Commissioner therefore requires the Council to provide Millar & Bryce Limited with the withheld information, or to issue a notice to Millar & Bryce Limited in terms of section 9 or 12 of FOISA or (as appropriate) regulation 8 or 10(4)(b) of the EIRs, by 15 May 2012.



Appeal

Should either Millar & Bryce Limited or Dundee City 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.

Margaret Keyse
Acting Scottish Information Commissioner
30 March 2012



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 –

...

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

...

33 Commercial interests and the economy

- (1) Information is exempt information if-

...

- (b) its disclosure under this Act would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority).

...

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

- (1) In these Regulations –



...

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

-

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;

...

5 Duty to make available environmental information on request

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

...

- (b) is subject to regulations 6 to 12.

...

10 Exceptions from duty to make environmental information available-

- (1) A Scottish public authority may refuse a request to make environmental information available if-
 - (a) there is an exception to disclosure under paragraphs (4) or (5); and
 - (b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.



- (2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall-
- (a) interpret those paragraphs in a restrictive way; and
 - (b) apply a presumption in favour of disclosure.

...

- (5) A Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially-

...

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

...



Schedule

Statutory provisions cited in the applicant's requests

1. Section 10 of the Building (Scotland) Acts 1959/70
2. Section 13 of the Building (Scotland) Acts 1959/70
3. Section 25 of the Building (Scotland) Act 2003
4. Section 27 of the Building (Scotland) Act 2003
5. Section 28 of the Building (Scotland) Act 2003
6. Section 29 of the Building (Scotland) Act 2003
7. Section 30 of the Building (Scotland) Act 2003
8. Section 87(3) of the Civic Government (Scotland) Act 1982
9. Section 92 of the Civic Government (Scotland) Act 1982
10. Section 95 of the Civic Government (Scotland) Act 1982
11. Section 96 of the Civic Government (Scotland) Act 1982
12. Section 90 of the Housing (Scotland) Act 1987
13. Section 108 of the Housing (Scotland) Act 1987
14. Section 114 of the Housing (Scotland) Act 1987
15. Section 115 of the Housing (Scotland) Act 1987
16. Section 116 of the Housing (Scotland) Act 1987
17. Section 156 of the Housing (Scotland) Act 1988
18. Section 157 of the Housing (Scotland) Act 1989
19. Section 160 of the Housing (Scotland) Act 1990
20. Section 161 of the Housing (Scotland) Act 1991
21. Section 162 of the Housing (Scotland) Act 1992
22. Section 166 of the Housing (Scotland) Act 1993



23. Section 33A of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006
24. Section 140 of the Town and Country Planning (Scotland) Act 1997
25. Section 144A of the Town and Country Planning (Scotland) Act 1997 (as amended by the Planning etc (Scotland) Act 2006
26. Section 168 of the Town and Country Planning (Scotland) Act 1997
27. Section 179 of the Town and Country Planning (Scotland) Act 1997
28. Section 189 of the Town and Country Planning (Scotland) Act 1997
29. Section 190 of the Town and Country Planning (Scotland) Act 1997
30. Section 3 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
31. Section 4 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
32. Section 42 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
33. Section 43 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
34. Section 49 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
35. Section 50 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997
36. Section 78 A-E of the Environmental Protection Act 1990, Part IIA (Cont. Land)
37. Section 80 of the Environmental Protection Act 1990
38. Section 1 of the Housing (Scotland) Act 2006
39. Section 3 of the Housing (Scotland) Act 2006
40. Section 5 of the Housing (Scotland) Act 2006
41. Section 24 of the Housing (Scotland) Act 2006
42. Section 25 of the Housing (Scotland) Act 2006
43. Section 30 of the Housing (Scotland) Act 2006
44. Section 31 of the Housing (Scotland) Act 2006
45. Section 32 of the Housing (Scotland) Act 2006
46. Section 33 of the Housing (Scotland) Act 2006



47. Section 35 of the Housing (Scotland) Act 2006
48. Section 36 of the Housing (Scotland) Act 2006
49. Section 37 of the Housing (Scotland) Act 2006
50. Section 38 of the Housing (Scotland) Act 2006
51. Section 40 of the Housing (Scotland) Act 2006
52. Section 42 of the Housing (Scotland) Act 2006
53. Section 1 of the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947