

Decision Notice

Decision 157/2014 Banknock Haggs & Longcroft Community Council and Transport Scotland

Land transaction

Reference No: 201302935

Decision Date: 16 July 2014



Scottish Information
Commissioner

Summary

On 10 October 2013, Banknock Hags & Longcroft Community Council (BHLCC) asked Transport Scotland for information about a land transaction. Transport Scotland refused to make the information available and informed BHLCC that the request was manifestly unreasonable. BHLCC did not accept this and so applied to the Commissioner for a decision.

Following an investigation, the Commissioner accepted that the request was manifestly unreasonable and that, as a result, Transport Scotland was entitled to refuse to make the information available to BHLCC.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definitions (a) and (c) of "environmental information"); 5(1) and (2)(b) (Duty to make available environmental information on request); 10(1), (2) and (4)(b) (Exceptions from duty to make environmental information available)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. The subject of this request is a piece of land near Banknock, which Transport Scotland had identified and included in the contract to upgrade the M80 between Stepps and Hags¹. The land was declared surplus to requirements once the upgrade was complete. Ownership of the land was disputed by Mr X, who considered that he owned the land. He informed BHLCC, who took an interest in the case as the land fell within the community council's boundary.
2. On 10 October 2013, BHLCC emailed Transport Scotland requesting the following information:
 1. *Copies of the Transport Scotland consultation response to Falkirk Council in respect of planning applications P/10/0633. TRNM references SE/56/2012 and SE/87/2010 may be of assistance to you.*
 2. *Copies of all documents including reports, briefings, notes, file notes, letters and e-mails to, from and within Transport Scotland and relating to land at Glenview Avenue, Banknock/Hags extending from the M80 overbridge to the junction at Garncrew Road/Castleview Terrace including all instructions, guidance and advice to a named individual and others in the matter of applications for Rectification of the Registers at Registers of Scotland.*
 3. *Copies of all versions of plans at the location referred to above and that were provided to Registers of Scotland.*
 4. *Copies of all documents including Major Transport & Infrastructure Projects directorate Management and Team meeting minutes; and all documents and file notes concerning meetings involving Transport Scotland and relating to the matter of competing titles at Glenview Avenue or at the A9 and the M74.*

¹ <http://www.transportscotland.gov.uk/projects/m80-stepps-to-hags>

5. *Information concerning (a) any representations made to The Registers of Scotland (for example in the course of telephone discussions) and (b) if lobbying took place (perhaps relating to "the public purse") – in the 3 month period preceding the decision being taken by Registers of Scotland on or around 24/2/2012 to cancel the Application for Rectification of the Register with reference 11STG05471 and relating to Title Number STG 62094, by Transport Scotland or by any other party on their behalf – including public servants, consultants or politicians, and if so by whom and to whom.*
6. *Copies of minutes, file notes or papers relating to the Chief Executive's project discussion and catch-up meetings with Government Ministers covering the period January 2011 to June 2012.*
3. Transport Scotland responded on 7 November 2013. It informed BHLCC that it considered the request to be manifestly unreasonable, in line with regulation 10(4)(b) of the EIRs.
4. On 14 November 2013, BHLCC emailed Transport Scotland, requesting a review of its decision. BHLCC considered that Transport Scotland was not operating on the basis of a culture of openness, had not applied the regulation correctly, and that the request had serious value and purpose.
5. Transport Scotland notified BHLCC of the outcome of its review on 13 December 2013, upholding its previous response without amendment.
6. On 13 December 2013, BHLCC emailed the Commissioner, stating that it was dissatisfied with the outcome of Transport Scotland's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications.
7. The application was validated by establishing that BHLCC made a request for information to a Scottish public authority and 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. Transport Scotland is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing on 30 January 2014 that an application for a decision had been received from BHLCC. (Subsequent references to communications with Transport Scotland should be read as relating to communications with the Ministers acting on Transport Scotland's behalf.)
9. Transport Scotland was invited to comment on the application (as required by section 49(3)(a) of FOISA) and was asked to respond to specific questions and to justify its reliance on any provisions of the EIRs it considered applicable to the information requested.
10. Transport Scotland responded with the information requested, providing detailed reasons why it considered the request manifestly unreasonable, and an itemised log of its correspondence with BHLCC. Later in the investigation, Transport Scotland provided further arguments to support its position, and copies of its correspondence with BHLCC.
11. BHLCC did not take issue with Transport Scotland's decision to apply the exemption in section 39(2) of FOISA and to respond to the request under the EIRs. The Commissioner is content that this was the correct decision, given that the information covered by the request is environmental information. She will not consider this aspect of Transport Scotland's handling of the case further in this decision.

Commissioner's analysis and findings

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

Regulation 10(4)(b) – manifestly unreasonable

13. Under regulation 10(4)(b) of the EIRs, a Scottish public authority may refuse to make environmental information available if the request is manifestly unreasonable. This exception can only apply where, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception. In addition, a Scottish public authority must apply a presumption in favour of disclosure (regulation 10(2)(b)); and it must interpret the exception restrictively (regulation 10(2)(a)).
14. There is no definition of “manifestly unreasonable” in the EIRs, or in Directive 2003/4/EC² from which they are derived. There is no single test for what sort of request may be manifestly unreasonable. Rather, it is to be judged on each individual request, bearing in mind all of the circumstances of the case. Generally, in applying this exception, the Commissioner is likely to take into account the same kinds of considerations as she would in reaching a decision as to whether a request is vexatious in terms of section 14(1) of FOISA, as detailed in her briefing³. The Commissioner’s general interpretation, as set out in her briefing, is that the following factors are relevant. The request:
- would impose a significant burden on the public body
 - does not have a serious purpose or value
 - is designed to cause disruption or annoyance to the public authority
 - has the effect of harassing the public authority
 - would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
15. This is not an exhaustive list. Depending on the circumstances, other factors may be relevant, provided the impact on the authority can be supported by evidence. The Commissioner recognises that each case should be considered on its own circumstances at the time.
16. As with a “vexatious” request, there may be circumstances where the burden of responding alone justifies deeming a request to be “manifestly unreasonable”. Unlike FOISA, there is no cost limit on complying with a request for environmental information under the EIRs, but there may be cases where the time and expense involved in complying with a request would be regarded as excessive by any reasonable person.
17. While the Commissioner's view is that the designation "manifestly unreasonable" must be applied to the request and not the requester, she acknowledges that the applicant's identity, and the history of their dealings with a public authority, may be relevant in considering the nature and effect of a request and its surrounding circumstances. It may be reasonable, for example, for the authority to conclude that a request represents a continuation of a pattern of behaviour it has deemed manifestly unreasonable or vexatious in another context.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF>

³ <http://www.itspubliknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.aspx>

18. Transport Scotland told BHLCC that there were three reasons why it considered its request to be manifestly unreasonable:
 - (i) collation of the large amount of information requested would impose a significant burden on its staff.
 - (ii) the request did not seek to address the key issue which would allow the matter to be resolved, and therefore had no purpose or value.
 - (iii) Transport Scotland had already made clear its position regarding title to the land in question on a number of occasions, making it reasonable to consider the request as disproportionate or manifestly unreasonable.
19. In its submissions to the Commissioner, Transport Scotland also argued that the request had had the effect of harassing the authority and, in the opinion of any reasonable person, the series of correspondence from BHLCC would appear to be manifestly unreasonable.

Consideration in the context of previous correspondence etc.

20. The Commissioner acknowledges that the vexatious nature of a request may only emerge after considering the request in context. Such context may include previous or ongoing correspondence between the authority and the applicant. In this case, Transport Scotland argued BHLCC's wider pattern of communications with them was relevant.
21. In considering this point, while not binding on her, the Commissioner has taken account of the First Tier Tribunal (Information Rights) ruling EA/2011/0079 Alan Dransfield and the Information Commissioner⁴. In paragraph 36 of this ruling, the Tribunal draws a distinction between prolonged correspondence on a single issue, and ongoing correspondence on a variety of different issues, and the relevance of these two types of correspondence when considering whether an information request is vexatious.
22. The Tribunal considered it "entirely proper and valid" to take account of the first kind of correspondence in assessing whether a request was vexatious. It distinguished the second kind, commenting that taking this into account risked "crossing the line" from treating the request as vexatious to treating the requester as vexatious.
23. Transport Scotland acknowledged that, if looked at in isolation, the request might not appear to be unreasonable. However, the request of 10 October 2013 was the latest in a series of communications about the land at Banknock and did not seek to address the key subject of land valuation, which Transport Scotland considered to be the only issue that remained to be agreed with the private land owner in question, Mr X.
24. Transport Scotland provided the Commissioner with a timeline of correspondence with BHLCC, supported by copy correspondence. Having considered the correspondence in detail, the Commissioner agrees that its focus is the land at Glenview Avenue.
25. In the circumstances, given the nature of the communications and the request under consideration here, the Commissioner is satisfied that it was reasonable for Transport Scotland to take into account the context of the previous correspondence, in deciding whether the current request was manifestly unreasonable.

⁴ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i573/20110920%20Decision%20EA20110079.pdf>

Significant burden

26. Transport Scotland stated that it had received 30 items of correspondence from BHLCC, as well as numerous phone calls where officials had repeatedly informed BHLCC of the situation and discussed how it could be resolved to the satisfaction of both Scottish Government and Mr X. Transport Scotland provided an itemised list of its correspondence and phone contacts with BHLCC.
27. Transport Scotland acknowledged that BHLCC had tended to ask for different information each time it made contact, but argued this could be viewed as a series of related communications in that they all sought information or made points designed to support the view that Transport Scotland did not own the land in question.
28. Transport Scotland acknowledged that most of the emails/letters/phone calls from BHLCC did not impose a significant burden when taken on their own; however, it argued that the continuing correspondence required officials to divert their attention from core business areas. Transport Scotland considered that, cumulatively, the contacts with BHLCC had imposed a significant burden on its staff.
29. Transport Scotland made reference to the decision by the Upper Tribunal in the Dransfield case in 2013 (UKUT 440 AAC)⁵, in which the Tribunal accepted that a request was vexatious in light of the previous course of dealings between the applicant and the public authority. It noted that, in the Dransfield case, the previous correspondence was related (in that it all covered some aspect of health and safety), but did not cover exactly the same topic, while only some of the requests were in the form of FOI requests; Transport Scotland believed that the same circumstances applied to BHLCC's request and correspondence.
30. Transport Scotland stated that a great deal of staff time and resources had already been spent in dealing with BHLCC's correspondence at official, Director and Chief Executive levels, to the extent that nothing more could be added to its previous responses. It did not believe that further correspondence would resolve the issue in question, which was effectively a commercial land transaction between the Scottish Government and Mr X. Transport Scotland considered that complying with the request would not be an efficient and effective use of public resources.
31. The Commissioner concurs with Transport Scotland's view that BHLCC's correspondence had been continuous, noting that contact was sometimes made on a weekly basis and occasionally several times in one week. The correspondence started in early July 2013 and still continued at the date of BHLCC's application to the Commissioner. The Commissioner acknowledges that, at the time the request of 10 October 2013 was received, the correspondence had already involved a significant amount of work for Transport Scotland's staff.
32. Having said that, the Commissioner takes the view that it was reasonable for BHLCC to pursue responses to requests or queries which appeared to have received no answer, or where it was unclear when a response would be issued (e.g. after receiving an "out of office" email), and perhaps less reasonable for Transport Scotland to present such correspondence as part of a "burden" created by BHLCC.
33. As the Commissioner's decision is based on circumstances as they existed at the time Transport Scotland dealt with the request for review from BHLCC (13 December 2013), correspondence which post-dates 13 December 2013 cannot be considered by the Commissioner in this case. The Commissioner has also noted that Transport Scotland's

⁵ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i573/20110920%20Decision%20EA20110079.pdf>

correspondence log itemises separately every single request or comment contained within each piece of correspondence from BHLCC (so that, for example, one email had been logged as ten separate entries), suggesting that BHLCC's correspondence was not as extensive as presented by Transport Scotland.

34. Transport Scotland submitted that BHLCC was continuing to correspond on the same topic of the ownership of the land in question. The Commissioner accepts that the request of 10 October 2013 was part of an ongoing correspondence on the subject of the land at Glenview Avenue, and that each response from Transport Scotland had required staff time and resources. Having said that, she finds that the request of 10 October 2013 differs from BHLCC's previous correspondence in making a formal request for specific information about the land under dispute; the majority of the correspondence pre-dating 10 October 2013 was either complaining about the land transaction or was seeking information about the processes involved in the purchasing and use of the land.
35. Transport Scotland was asked to explain why BHLCC's correspondence created a cumulative burden that made the request of 10 October 2013 manifestly unreasonable, and was advised to provide detail on this point.
36. Transport Scotland argued that researching and collating the information requested would impose a significant burden on staff. The information was likely to be held in a range of places, such as its electronic Records Management System (eRDM), or to be held by certain members of staff. It would take a significant amount of time to locate and compile all of the information covered by the request as a number of staff would need to search for different pieces of information; for example, in order to respond to questions 2, 4 and 6 a number of staff would need to trawl for information in their inboxes, as well as conducting eRDM keyword searches.
37. Transport Scotland noted that question 6 covered a large number of meetings over a significant period of time and believed that considerable searches would be required to inform its response, although (in its view) it was unlikely that any of the information it held would relate to the land at Glenview Avenue, in which BHLCC is interested.
38. In relation to question 4, Transport Scotland anticipated that considerable searches involving a large number of files would be required to locate all the information regarding competing titles on the A9 and the M74. It stated that while the information held in its eRDM can be accessed by all Transport Scotland or Scottish Government staff, the information held elsewhere (in email inboxes or hard copies) could generally be accessed only by individual members of staff (or, in some cases, their assistants, if they have access to the email inbox). Any staff member could access old paper files, but in some cases these files could be stored elsewhere and have to be requested, adding to the time required to locate and retrieve the information.
39. Given the wide-ranging nature of the request, the Commissioner accepts that it is likely to cover information held in several different formats and filing systems, and that locating and retrieving the information would require significant staff time. However, Transport Scotland has not provided any sort of estimate of how much staff time might be required (perhaps by carrying out a sample search), or indicated how many staff were likely to be involved. It has not attempted to quantify the impact of dealing with the request, in terms of diversion from other business activities.
40. The Commissioner acknowledges that, in common with all other Scottish public authorities, Transport Scotland has many demands on its time and resources, in addition to complying with requests for information under FOISA and the EIRs. Compliance with such requests

should, however, be considered as an element of the authority's core business, being a statutory requirement. It is incumbent on Transport Scotland to demonstrate why the impact of complying with the statutory duty imposed by FOISA and the EIRs, is less of a priority than other business activity.

41. As noted above, the Commissioner accepts it is relevant to consider the previous correspondence from BHLCC on the subject of the land at Glenview Avenue, but also finds that the extent of that correspondence has been presented in a way which could be misleading, by itemising separately every question in the correspondence. On balance, the Commissioner does not accept that Transport Scotland has provided sufficient evidence to support its position that responding to the request of 10 October 2013 would have imposed a significant burden, even in the context created by the previous correspondence.

Lacking serious purpose or value

42. Transport Scotland considered that its position on the ownership of the land at Glenview Avenue had been made clear to BHLCC on numerous occasions. It had also made clear its view that resolution of the dispute would require agreement between Mr X or his agent and the District Valuer on the value of the land; something not within the control of Transport Scotland. Transport Scotland commented that, whilst BHLCC initially seemed to accept this, it had since changed its position and claimed repeatedly that Mr X was the owner of the land.
43. Transport Scotland had informed BHLCC it did not propose to enter into any further substantive correspondence on these matters, because it did not believe that continuing the correspondence would result in BHLCC being satisfied, or that BHLCC would accept that the information provided by Transport Scotland has been accurate, supported and evidenced. Transport Scotland considered that it could do no more to meet BHLCC's expectations.
44. Transport Scotland concluded that responding to the request of 10 October 2013 would not serve in any way to help resolve the issues relating to the land at Glenview Avenue as, regardless of any information provided by Transport Scotland, BHLCC was unlikely to be convinced of Transport Scotland's ownership of the land. Transport Scotland noted that BHLCC was still continuing to refuse to accept its position and has continued to contact Transport Scotland on the subject.
45. In its application to the Commissioner, BHLCC explained that it had made the request of 10 October 2013 because it had serious concerns about the way Transport Scotland had handled issues relating to the land at Glenview Avenue, particularly in relation to the accuracy of title deeds and plans and in keeping local people and others informed. It stated it required the information in order to understand and resolve whether the land at Glenview Avenue was correctly owned by Transport Scotland and whether the application for rectification to the Keeper of the Registers of Scotland had been dealt with equitably. BHLCC made it clear to the Commissioner that it considered the request of 10 October 2013 to be of significance and importance; it hoped that the response from Transport Scotland would resolve the questions it has about the land at Glenview Avenue.
46. Having considered the request in the context of BHLCC's correspondence with Transport Scotland, the Commissioner has concluded that the request was not lacking serious purpose or value. In reaching this conclusion, the Commissioner has separated her consideration of the purpose or value of the request from any consideration of the manner in which BHLCC pursued related or underlying issues. Considered objectively, it appears to her that there was some purpose to be served by submitting the request, given that it pre-dated any dialogue between the land owner Mr X and Transport Scotland (this dialogue began in February 2014). In the circumstances, the Commissioner does not consider it necessary for

her to determine whether the requested information, if provided, would have resolved BHLCC's concerns about the land transaction.

47. In order to conclude that a request was manifestly unreasonable, the Commissioner would have to find it so obviously lacking in serious purpose or value that it could only be seen as manifestly unreasonable. After considering the evidence and explanations provided by both parties, the Commissioner does not accept that this request lacked serious purpose or value, as claimed by Transport Scotland.

Effect of harassing the authority

48. A request which has value and serious purpose can still be manifestly unreasonable, if it has the effect of harassing, or distressing, the public authority and/or its staff.
49. "Harassing" is not defined in FOISA or the Commissioner's guidance. The First Tier Tribunal (Information Rights) ruling EA/2011/0224 Roger Conway and the Information Commissioner⁶ was of the view that "harassing" should be given its ordinary meaning, that is, to disturb persistently, bother continually, pester or persecute. The Commissioner is also of this view.
50. The question is whether the request has the effect of harassing the authority and/or its staff, viewed from the perspective of a reasonable person, whether or not the requester intended that effect.
51. Transport Scotland considered that the request of 10 October 2013 had the effect of harassing the authority and, in the opinion of any reasonable person, BHLCC's series of correspondence would appear to be manifestly unreasonable. Transport Scotland acknowledged that it may not have been BHLCC's intention to harass its staff, but it took the view that its continuing correspondence and phone calls did not seek information to assist BHLCC or help it understand the issues in question, but instead sought to keep open issues that had already been explained and evidenced to BHLCC and Mr X.
52. The Commissioner appreciates that the matters underlying this case are important to BHLCC, as reflected by her acceptance that the request had serious purpose and value. But however important they are to BHLCC as a community council lobbying on behalf of one its constituents, it is reasonable for public authorities and their officials to expect such matters to be pursued in a manner that does not have the effect of harassing them.
53. The Commissioner considers that there is some evidence that BHLCC conducted its correspondence and contact with Transport Scotland in a way which was likely to harass staff, both in the frequency of contact and in its tone. She notes that BHLCC has pursued the subject without hesitation, with no time for reflection, and has concluded that BHLCC's persistent correspondence has become disproportionate, in terms of understanding Transport Scotland's position on the ownership of the land at Glenview Avenue. Transport Scotland had made its position clear, regarding title to the land in question, and it was highly unlikely that further requests would change this.
54. Transport Scotland stated that, by the time the decision was made to treat the request as manifestly unreasonable, BHLCC had made some disturbing allegations (such as accusations of fraud) and expressed some insulting opinions about the integrity of senior staff who were trying to help it understand the situation: this was done orally and in writing. Transport Scotland stated that the tone of the correspondence from BHLCC, and BHLCC's accusations that Transport Scotland staff had been lying or otherwise behaving inappropriately, had been distressing for staff dealing with the phone calls. Transport

⁶ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i690/20120301%20Decision%20EA20110224.pdf>

Scotland explained that, although BHLCC has contact details for a number of senior staff, some calls were made to fairly junior staff and the tone of these calls had the effect of making these staff very uncomfortable.

55. Taking into account all the circumstances of this case, the Commissioner is satisfied that it was reasonable to conclude that BHLCC's information request had the effect of harassing Transport Scotland.
56. Given that the Commissioner has accepted that the request had the effect of harassing Transport Scotland, she accepts that Transport Scotland was correct to determine that the request was manifestly unreasonable. Therefore, in terms of section 10(4)(b) of the EIRs, Transport Scotland was not obliged to comply with the request.

Consideration of the public interest test

57. In common with all the other exceptions in the EIRs, regulation 10(4)(b) is subject to the public interest test set out in regulation 10(1)(b). Consequently, information can be withheld under the exception only where, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
58. In its application, BHLCC argued that Transport Scotland had acted improperly and had made a series of mistakes in relation to the land at Glenview Avenue. Among the allegations raised by BHLCC was that Transport Scotland had not taken care to ensure title plans and title deeds were accurate and when shortcomings were drawn to their attention, Transport Scotland had not responded to these points. BHLCC considered that it was a matter of public interest to understand whether Transport Scotland had acted correctly in this matter.
59. The Commissioner accepts that it would be in the public interest for information to be disclosed where this would add to residents' understanding of how the land transaction was undertaken, especially as other land developments, including road expansions, are likely to take place in the future.
60. Transport Scotland was given an opportunity to comment on the balance of public interest in this case, but did not do so; the Commissioner has therefore referred to Transport Scotland's initial response to BHLCC, which sets out brief reasons to support the view that the public interest lies in maintaining the exception in regulation 10(4)(b). In this letter, Transport Scotland acknowledged there was some public interest in disclosing information about the Scottish Ministers' ownership of the land in question, but found this was outweighed by the public interest in ensuring the efficient and effective use of public resources by not complying with information requests which are both manifestly unreasonable and disproportionate.
61. As noted in previous decisions, the public interest does not mean "of interest to the public" but "in the interest of the public", i.e. something that serves the interests of the public.
62. The Commissioner considers that it is in the public interest for a Scottish public authority to be able to carry out its functions without unreasonable disruption. The Commissioner also considers there is a public interest in protecting the integrity of the EIRs and ensuring that they are used responsibly.
63. While public authorities are encouraged to act in a transparent and accountable nature which benefits the public as a whole, in this case, the Commissioner is satisfied that, if Transport Scotland was required to respond to this request, it would place a burden on Transport Scotland in terms of time and expense, and she acknowledges the disruption that would create. On the basis of the evidence and explanations from Transport Scotland, the

Commissioner considers this disruption is unreasonable given the strong likelihood that the underlying issue, the ownership of land, will not be resolved by responding to the request.

64. The Commissioner accepts that, in the circumstances of this case, and on balance, the public interest lies in preventing the disruption to Transport Scotland's functions that would result if resources were diverted to provide all the information requested by BHLCC on 10 October 2013. She is not persuaded that disclosure of the information requested by BHLCC would be strongly in the public interest, in providing resolution to the matter under dispute or in achieving greater transparency in relation to Transport Scotland's actions in the matter. She finds that Transport Scotland was entitled to withhold the requested information under the exception in regulation 10(4)(b) of the EIRs.

Decision

The Commissioner finds that Transport Scotland complied with the Environmental Information (Scotland) Regulations 2004 in responding to the information request made by Banknock Hags & Longcroft Community Council.

Appeal

Should either BHLCC or Transport Scotland wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Rosemary Agnew
Scottish Information Commissioner
16 July 2014

Appendix

Relevant statutory provisions

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;

...

(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.

...

- (4) A Scottish public authority may refuse to make environmental information available to the extent that

...

(b) the request for information is manifestly unreasonable;

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