

Decision Notice

Decision 079/2016: Mr Alastair Tibbitt and City of Edinburgh Council

Consultancy contract: economic development of Edinburgh's East End

Reference No: 201501686

Decision Date: 5 April 2016



Scottish Information
Commissioner

Summary

On 15 January 2015, Mr Tibbitt asked City of Edinburgh Council (the Council) for information about a consultancy contract relating to the economic development of Edinburgh's East End. The Council responded to Mr Tibbitt's request and his subsequent requirement for review, and he then applied to the Commissioner for a decision. The Commissioner required the Council to consider its response again.

The Council considered the request under the EIRs. It informed Mr Tibbitt that the request was manifestly unreasonable and the information was therefore excepted from disclosure in terms of regulation 10(4)(b) of the EIRs. Mr Tibbitt remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that the Council had failed to respond to Mr Tibbitt's request in accordance with the EIRs, by incorrectly withholding information under the exception in regulation 10(4)(b). She required the Council to give Mr Tibbitt a different response.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation) (paragraphs (a) and (c) of definition of "environmental information"); 5(1) and (2)(b) (Duty to make available environmental information on request); 9(1) and (3) Duty to provide advice and assistance; 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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 15 January 2015, Mr Tibbitt made a request for information to the Council. The information requested was as follows:

On the 06/11/2014 the Council contracted with HG Consulting (Scotland) Limited [HG Consulting] on the Economic Development of Edinburgh's East End (St James) at a cost of £100,000. Please could you send me:

- (i) *Details of the briefing given to the consultants and agreed scope of works documents.*
 - (ii) *Copies of any email correspondence between council officers and the consultants relating to this contract.*
 - (iii) *A timeline setting out when the work will be completed and details of the expected outputs.*
 - (iv) *Any outputs from the work received by the Council to date.*
2. The Council acknowledged Mr Tibbitt's request, informing him that it would be considered under the EIRs. It responded on 12 February 2015, providing Mr Tibbitt with information in response to parts (i) and (iii) of his request, and informing him that the information requested

in part (iv) was already publicly available on its website. In response to part (ii), the Council notified Mr Tibbitt that it was withholding the information under regulation 10(5)(e) of the EIRs, as information it considered commercially confidential.

3. On 12 February 2015, Mr Tibbitt wrote to the Council requesting a review of its decision. He challenged the Council's decision to withhold information as commercially confidential. He indicated that he would be happy to receive the information in a redacted form.
4. The Council notified Mr Tibbitt of the outcome of its review on 13 March 2015. It apologised and informed Mr Tibbitt that regulation 10(5)(e) had been wrongly applied to the information requested in part (ii). The Council advised Mr Tibbitt that it was now relying on regulation 10(4)(a), as searches had led it to conclude that it did not hold any information falling within the scope of that part of his request.
5. On 14 March 2015, Mr Tibbitt wrote to the Commissioner, applying for a decision. The Commissioner subsequently issued *Decision 121/2015 Mr Alastair Tibbitt and City of Edinburgh Council*¹ finding that the Council had interpreted part (ii) of the request too narrowly. She required the Council to provide Mr Tibbitt with a revised review outcome, considering the information it held in the medium of email and otherwise falling within the scope of part (ii) of the request, on the work carried out by HG Consulting under the contract.
6. The Council provided Mr Tibbitt with a revised review outcome on 9 September 2015. The Council explained to Mr Tibbitt that initial investigations had identified that the contract with HG Consulting had generated over 25,000 emails sent and received since 1 June 2014. It informed Mr Tibbitt that it considered this part of his request to be manifestly unreasonable in terms of regulation 10(4)(b) of the EIRs, and so it was under no obligation to respond.
7. On 11 September 2015, Mr Tibbitt wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of the Freedom of Information (Scotland) Act 2002 (FOISA) applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. Mr Tibbitt stated he was dissatisfied with the outcome of the Council's further review response because he did not believe the Council's claim regarding the number of emails generated. Mr Tibbitt was also dissatisfied that the Council had applied the exception in regulation 10(4)(b) without contacting him to discuss whether the request could have been narrowed.

Investigation

8. The application was accepted as valid. The Commissioner confirmed that Mr Tibbitt made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
9. On 15 September 2015, the Council was notified in writing that Mr Tibbitt had made a valid application. The case was allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions. The Council was asked to explain in detail why it considered the request to be manifestly unreasonable. It was asked to confirm how it had established what information fell within the scope of the request, and to provide detailed

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2015/201500513.aspx>

calculations explaining the projected cost of responding to the request. The Council was also asked to explain what steps it had taken to assist Mr Tibbitt to narrow the request so it was not considered manifestly unreasonable.

11. The Council provided submissions to the investigating officer. Mr Tibbitt also provided submissions on why he believed it was in the public interest for the information to be disclosed.

Commissioner's analysis and findings

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

Application of the EIRs

13. It is clear from the Council's correspondence with both Mr Tibbitt and the Commissioner that any information falling within the scope of this request would be environmental information, as defined in regulation 2(1) of the EIRs. Mr Tibbitt has asked for information relating to a consultancy contract concerning the economic development of a significant part of central Edinburgh. The Commissioner is satisfied that it would fall within either paragraph (a) of the definition of environmental information contained in regulation 2(1) (as information on the state of the elements of the environment, in particular land and landscape) or paragraph (c) of that definition (as information on measures, including plans and programmes, affecting or likely to affect those elements). Mr Tibbitt has not disputed this (and, indeed, the Commissioner reached the same conclusion in *Decision 121/2015*) and the Commissioner will consider the information in what follows solely in terms of the EIRs.

Regulation 5(1) of the EIRs – duty to make environmental information available

14. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. This obligation relates to information that is held by the authority when it receives a request.
15. On receipt of a request for environmental information, therefore, the authority must ascertain what information it holds falling within the scope of the request. Having done so, regulation 5(1) requires the authority to provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
16. A Scottish public authority may refuse a request to make environmental information available to the extent that the request is manifestly unreasonable (regulation 10(4)(b)). This exception (as with all the exceptions in regulation 10) can only apply where, in all the circumstances of the case, the public interest in making the information available is outweighed by that in maintaining the exception (regulation 10(1)(b)). In addition, the public authority must apply a presumption in favour of disclosure (regulation 10(2)(b)) and interpret the exception restrictively (regulation 10(2)(a)).
17. In its submissions to the Commissioner, the Council confirmed that it wished to rely on regulation 10(4)(b) in relation to Mr Tibbitt's request.

Regulation 10(4)(b) – manifestly unreasonable

18. As stated above, regulation 5(1) of the EIRs creates a duty on public authorities to make environmental information available upon request, subject to provisions which include the exceptions in regulation 10. There is no definition of "manifestly unreasonable" in the EIRs, or in Directive 2003/4/EC, from which they are derived. The Commissioner's opinion is that "manifestly" implies that a request should be obviously or clearly unreasonable, in which connection she notes the opinion of the Information Tribunal in *Dr Kaye Little v Information Commissioner and Welsh Assembly Government (EA/2010/0072)*², which considered regulation 12(4)(b) of the Environmental Information Regulations 2004:

From the ordinary meaning of the words "manifestly unreasonable", it is clear that the expression means something more than just "unreasonable". The word "manifestly" imports a quality of obviousness. What is in issue, therefore, is a request that is plainly or clearly unreasonable. It is a more stringent test than simply "unreasonable".

19. Whether a request is manifestly unreasonable must depend on the facts of each case. The exception may apply where it can be demonstrated that a request is vexatious, or where compliance would incur unreasonable costs for the public authority or an unreasonable diversion of public resources.
20. There may be circumstances where the burden of responding alone justifies deeming a request to be manifestly unreasonable. While there is no specific provision in the EIRs allowing an authority to refuse to comply with a request on cost grounds (under section 12 of FOISA, public authorities do not have to comply with a request if the cost of compliance exceeds £600), the Commissioner recognises that there may be cases where the time and expense involved in complying with a request for environmental information mean that any reasonable person would regard them as excessive.
21. In this case, the focus of the Council's submissions to the Commissioner appears to be on the burden, in particular the cost, of complying with Mr Tibbitt's request.

Information falling within scope – initial submissions

22. In its initial submissions to the Commissioner, the Council explained that it addressed *Decision 121/2015* by considering how best to identify the information it held and which fell within the scope of Mr Tibbitt's request. The Council explained that HG Consulting had undertaken a wide scope of work for the Council during its appointment, on numerous major projects and coming into contact with a large number of Council officers and service areas. As a result, the information held by the Council would be very broad in scope.
23. The Council determined that there were two routes available to identify the relevant information:
- (i) to request the assistance of HG Consulting to identify, from a single source, the Council Officers involved and the email correspondence within scope, or
 - (ii) to seek to identify all the Council Officers who had corresponded with HG Consulting on the subject matter of the request, subsequently requesting they conduct searches of their email inboxes and email archives to identify the relevant correspondence.

² [http://www.informationtribunal.gov.uk/DBFiles/Decision/i475/\[2010\]UKFTT_EA20100072_\(GRC\)_20101230.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i475/[2010]UKFTT_EA20100072_(GRC)_20101230.pdf)

24. Although the Council recognised that option (ii) would cast a “wide net” to a significant number of service areas, it considered option (i) would enable it to identify those officers involved quickly: they could then be asked to conduct searches to locate the relevant information.
25. The Council went on to describe the searches carried out on its behalf by HG Consulting. The Council explained that the searches covered the period from 1 June 2014 to 31 August 2015.
26. The Council submitted that, in the light of the search results, contacting all 242 employees identified in the searches, and asking them to locate and retrieve all the relevant information held, would cause disproportionate levels of disruption to the work of the Council and a significant diversion of staff resources.
27. Having considered the Council’s submissions which led to its determination that the request was manifestly unreasonable, it was clear to the Commissioner that there were two areas of concern.
28. Firstly, these searches did not evidence the information that was held by the Council. Rather, they related to the information held by HG Consulting, not that held by the Council.
29. Secondly, the searches did not relate to the timeframe of the request. In his request of 15 January 2015, Mr Tibbitt clearly referred to the Council entering into the contract with HG Consulting on 6 November 2014 – there was no mention of any earlier agreement in his request. The Commissioner notes that reference to this contract award is made on page 365 of the Full Meeting Papers of the Council’s Finance and Resource Committee of 15 January 2015, published on the Council’s website³ (detailed on Page 13 of the Report “Contracts awarded under Delegated Authority (Waiver Reports) and Procurement Activity” – Item 7.14). It should have been clear to the Council from *Decision 121/2015* – if it was not before, from the terms of the request – that it was being asked to search for information relating to work done under this contract (in other words, information post-dating its award).
30. The search also extended to 31 August 2015, apparently to capture the most recent relevant correspondence. This seems to have ignored the fact that Mr Tibbitt made his request on 15 January 2015. It could only capture information held by the Council at the time it was received: the following seven months were of no relevance.
31. Accordingly the Commissioner considers the period covered by Mr Tibbitt’s request to be from 6 November 2014 (the date of the contract award) to 15 January 2015 (the date of Mr Tibbitt’s request). She is concerned that this was not apparent to the Council from *Decision 121/2015* (as she believes it should have been) and that unnecessary time was taken up in the present investigation by adopting a far broader timeframe than the request required. This is all the more unfortunate in a case which has already been the subject of a decision criticising the authority’s interpretation of the request.
32. The Council was asked to provide fresh submissions in relation to the information it held and which fell within the scope of the request, covering the period 6 November 2014 to 15 January 2015.

³ http://www.edinburgh.gov.uk/meetings/meeting/3584/finance_and_resources_committee

Information falling within scope – revised submissions

33. The Council provided revised submissions, maintaining its position that it considered Mr Tibbitt's request to be manifestly unreasonable in terms of regulation 10(4)(b) of the EIRs.
34. Following the request for revised submissions, the Council submitted it had reconsidered how best to identify the relevant information held. The Council explained it had sought to identify all of its employees who had corresponded with HG Consulting under the 6 November 2014 contract. These employees, it stated, were requested to conduct searches of their email inboxes and email archives to identify the relevant information.
35. The Council submitted that this approach would seek to identify the relevant information through casting a "wide net" to a significant number of service areas. In doing so, it explained, it had used the guidance previously provided by HG Consulting, as to which Council officers had corresponded with HG. The Council considered this would enable it to identify the officers involved quickly, so they could be asked to search their records to locate and retrieve the relevant information (which could then be considered for disclosure).
36. The Council explained that, for the reduced time period, the number of officers involved was now 68. It was clear to the Council, however, that it still held a high volume of relevant correspondence. It believed contacting all 68 officers identified, asking them to locate and retrieve all relevant information held, would still cause disproportionate levels of disruption to the work of the Council and a significant diversion of staff resources.
37. Referring to the 12.5 hours it had spent (up to that point) on Mr Tibbitt's additional review and application to the Commissioner, the Council projected that it would take an "extremely conservative" average of 15 minutes for each Council officer identified (of whom only 64 remained in the Council's employment) to locate, retrieve and provide the relevant information, which equated to a total of 16 hours. The Council explained that this estimate included time to search email inboxes and email archives, and to save the emails in a format that could be redacted. The Council did not provide any submissions detailing the hourly rates of these members of staff.
38. The Council submitted that, given the time spent on the request to date, it considered it manifestly unreasonable to devote further time and significant staff resource to a single request.
39. At the time of providing its revised submissions, the Council explained that (due to annual leave and sickness absence) it had received confirmation from 36 of the 64 remaining officers as to what information was held. The Council submitted that these responses had identified 1,098 emails falling within the scope of Mr Tibbitt's request. The Council provided copies of the correspondence received from these officers pertaining to the searches carried out.
40. The Council informed the Commissioner that it was still seeking to ensure it received responses from the remaining officers, and any additional individuals identified as a consequence of these searches. Despite being asked by the Investigating Officer to provide an estimated timescale of when this process was likely to be completed, the Council failed to provide a response, or any further information or submissions in this regard.
41. The Council provided the Commissioner with indicative costings. In addition to the 16 hours referred to above, the Council submitted that a further five minutes processing time per email would be required to review the correspondence for disclosure, and apply any exceptions under the EIRs. This, the Council submitted, equated to an additional 91.5 hours.

42. The Council submitted that the FOI Team Leader from its Information Governance Unit was considered to be the most appropriate Council Officer to carry out this task, to ensure a consistent approach when considering the information identified for disclosure. This would incur the maximum hourly rate of £15.00. Following further consideration of this matter, the Council confirmed that its Information Compliance Officers would be the lowest graded members of staff that could carry out the necessary work, at an hourly rate of £12.35. The Council submitted that this illustrated the costs involved would remain unreasonable and excessive.
43. The Commissioner has carefully considered all of the arguments put forward by the Council as to why it considers the request to be manifestly unreasonable in terms of regulation 10(4)(b) of the EIRs.
44. The Commissioner does not consider that the Council has provided sufficient evidence to satisfy her that responding to the request would be manifestly unreasonable.
45. Having considered the Council's submissions, it is clear to the Commissioner that the Council has not established the total extent of the information it holds. She notes that, at the point of its further submissions, the Council had identified 1,098 emails as falling within scope. However, she also notes that it is unknown how many of these emails are, in fact, unique, or indeed contain any actual information falling within the scope of the request. It is not known, for example, how many of the emails are duplicates, or acknowledgements containing nothing of substance. In the absence of any evidence to the contrary, even from a reasonable sample of the information, the Commissioner finds it difficult to accept that the Council's submissions amount to anything more than broadly estimated assertions.
46. The Commissioner is also concerned about the way in which the Council has identified the information. Following its initial submissions, she informed the Council that the searches conducted by HG Consulting could not be considered, yet the Council continued to use these searches as the basis of identifying any information held. She finds it surprising that the Council has no other way of identifying which of its employees were involved in correspondence concerning the contract at the focus of Mr Tibbitt's request. This calls into question whether the Council is practising effective information governance, particularly in relation to high profile matters of considerable interest to the public.
47. With regard to the cost projections submitted by the Council, the Commissioner is concerned that the Council did not provide any submissions evidencing the hourly rates relating to, or the actual time taken by, those 64 Council officers who were asked to identify and locate any information falling within scope. Nor did the Council provide any evidence, or sampling exercise, to support its belief that "15 minutes per officer" was an "extremely conservative" estimate. In fact, the Commissioner considers 15 minutes is quite a long time, particularly in respect of any officer who did not identify any relevant information.
48. Again, with regard to the Council's cost projections, the Commissioner is concerned that the Council appears to have included "thinking time" as part of its cost calculations, that is reviewing any information held and considering whether it could be disclosed or whether any exceptions applied. This cannot be taken into account by a Scottish public authority in estimating the cost of complying with a request.
49. Given the submissions summarised above, the Commissioner does not believe the Council has provided the evidence (or indeed the underlying arguments) required for her to accept that complying with the request would be manifestly unreasonable. In particular, the Commissioner has taken into account that:

- (i) the Council has not located all the information it holds, so it is unknown how many emails are held which may fall within the scope of the request,
- (ii) the Council did not offer a reasonable sample of the information held, or evidence of any sampling exercise carried out, so there would appear to be no substance to support the Council's assertion that it would take 15 minutes per officer to identify and locate any information held, and
- (iii) the Council has erroneously included, in its projected cost calculations, time to review the information identified with regard to suitability for disclosure and application of any exceptions.

50. The lack of substance in the Council's assertions is highlighted above, while the limited evidence the Commissioner has been able to consider fails to bear out a cost as high as the Council has claimed. The Commissioner is not saying the cost would not be that high, but that, despite being given opportunities to do so, the Council has failed to provide submissions which would enable her to accept that they would. No Scottish public authority can be allowed endless opportunities to provide the Commissioner with an acceptable case – and in this connection, the Commissioner must note that this is the second substantive decision she has been required to make on this particular request for information.
51. Having considered all the evidence before her, therefore, the Commissioner finds that the Council has failed to justify its application of regulation 10(4)(b) in this case. As a result, the Commissioner cannot accept that regulation 10(4)(b) applies to the information requested by Mr Tibbitt.
52. As the Commissioner has found that the exception contained in regulation 10(4)(b) does not apply, she is not required to consider the public interest test in regulation 10(1)(b) of the EIRs. She therefore requires the Council to carry out a further review, and provide Mr Tibbitt with a fresh review outcome, otherwise than in terms of regulation 10(4)(b) of the EIRs.

Regulation 9(1) - advice and assistance

53. Regulation 9(1) of the EIRs provides that a Scottish public authority must, so far as it would be reasonable to expect it to do so, provide advice and assistance to applicants and potential applicants. Regulation 9(3) provides that a Scottish public authority which conforms with the relevant Code of Practice (in relation to the provision of advice or assistance) is to be taken to have complied with this duty.
54. The Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the EIRs (the Section 60 Code⁴) states (at paragraph 5.1 in Part 2):

Authorities should offer advice and assistance at all stages of a request

Authorities have a duty to provide advice and assistance at all stages of a request. It can be given either before a request is made, or to clarify what information an applicant wants after a request has been made, whilst the authority is handling the request, or after it has responded.

⁴ <http://www.gov.scot/Resource/0046/00465757.pdf>

55. Further to this, paragraph 9.3.3 in Part 2 of the Section 60 Code states:

Where excessive costs apply

When refusing a request on cost grounds, it is good practice for the authority's response to provide clear advice on how the applicant could submit a new, narrower request within the cost limit. In giving advice you may wish to take account of how much the cost limit has been exceeded. Any narrowed request would be a separate new request and should be responded to accordingly.

56. The Council was asked to comment on what advice and assistance was given to Mr Tibbitt to help him narrow the scope of his request.

57. The Council expressed regret that no further steps had been taken to engage with Mr Tibbitt, to assist him in narrowing the scope of his request. The Council submitted that, to ensure it met the requirements of the EIRs and the guidance set out in the Section 60 code, it did not engage in ongoing dialogue with applicants.

58. The Council acknowledged that Mr Tibbitt believed it should have engaged with him prior to providing him with its revised review outcome of 9 September 2015. However, it believed it could identify the information falling within the scope of his request and so did not require any clarification. The Council submitted that engaging in ongoing dialogue with applicants where clarification was not required would result in it failing to meet the 20 working day deadline for responding.

59. The Council was asked what advice and assistance it could now offer to Mr Tibbitt to allow him to narrow the scope of this request, so that it was not considered manifestly unreasonable. The Council stated that if Mr Tibbitt were to refine his request to a very narrow time period, this would reduce the time required to produce the relevant information (and disclose it, where possible).

60. The Council further submitted that it would be beneficial if Mr Tibbitt contacted the Council prior to submitting a new request, so discussions could take place at that point.

61. Having considered the Council's submissions on this matter, the Commissioner is concerned with the Council's approach to its obligation to provide advice and assistance to an applicant, regardless of the stage the request is at. It appears to her that the Council is placing the onus on the applicant to ask for advice and assistance, rather than the Council proactively taking steps to advise and assist applicants, in order to help them narrow the scope of requests deemed to be manifestly unreasonable where cost is an issue.

62. In the circumstances narrated above, the Commissioner finds that the Council failed to meet its obligations to advise and assist Mr Tibbitt, to help him to narrow the scope of his request so that it was not considered manifestly unreasonable. As the Council failed to provide Mr Tibbitt with the necessary advice and assistance, the Commissioner finds that it failed to comply with regulation 9(1) of the EIRs.

Commissioner's conclusions

63. Having considered the Council's submissions, the Commissioner is satisfied that in responding to Mr Tibbitt's request for information, the Council failed to identify and locate all of the information it held and which fell within the scope of the request. In this regard, she finds that the Council breached regulation 5(1) of the EIRs.

64. In addition, the Commissioner finds that the Council was not entitled to withhold information under regulation 10(4)(b), and failed to comply with regulation 5(1) in that respect also.
65. The Commissioner also finds that, by failing to advise and assist Mr Tibbitt to help him narrow the scope of his request, so that it was not considered manifestly unreasonable, the Council failed to comply with regulation 9(1) of the EIRs.

Compliance required

66. The Commissioner requires the Council to carry out a further review and provide Mr Tibbitt with a fresh review outcome, otherwise than in terms of regulation 10(4)(b) of the EIRs.

Decision

The Commissioner finds that the Council failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to part (ii) of the information request made by Mr Tibbitt.

By failing to identify and locate all of the information it held and which fell within the scope of Mr Tibbitt's request, the Commissioner finds that the Council breached regulation 5(1) of the EIRs.

In addition, the Commissioner finds that the Council was not entitled to apply regulation 10(4)(b) of the EIRs to the request (and in this respect, too, that it failed to comply with regulation 5(1)).

The Commissioner also finds that the Council did not meet its obligations to provide advice and assistance to Mr Tibbitt to help him narrow the scope of his request, and so failed to comply with regulation 9(1) of the EIRs.

The Commissioner therefore requires the Council to carry out a further review (considering the information it holds in the medium of email and otherwise falling within the scope of part (ii) of Mr Tibbitt's request) and to provide Mr Tibbitt with a fresh review outcome, otherwise than in terms of regulation 10(4)(b) of the EIRs.

She requires the Council to do this by **20 May 2016**.

Appeal

Should either Mr Tibbitt or City of Edinburgh Council 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.

Enforcement

If City of Edinburgh Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Rosemary Agnew
Scottish Information Commissioner

5 April 2016

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.

...

9 Duty to provide advice and assistance

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

...

(3) To the extent that a Scottish public authority conforms to a code of practice under regulation 18 in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with the duty imposed by paragraph (1) in relation to that case.

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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