



Scottish Information
Commissioner
www.itspublicknowledge.info

Decision Notice 078/2023

Designation and specifications of roads in Hamilton

Applicant:

Authority: South Lanarkshire Council

Case Ref: 202101478

Summary

The Applicant asked the Authority for information about the designation and specifications of roads in Hamilton, and about the administration of Council meetings. The Authority made some information available to the Applicant and explained that it held no recorded information which would fulfil parts of the request. The Authority also argued that part (n) of the request was not a valid request for information.

The Commissioner investigated and found that part (n) of the Applicant's request was a valid request for information. He also found that the Authority had been entitled to inform the Applicant that it did not hold information which would fulfil certain parts of his request, but not others.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 39(2) (Health, safety and the environment); 47(1) and (2) (Application for decision by Commissioner)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of "the Act", "the applicant" and "the Commissioner", paragraphs (a), (b), (c) and (f) of definition of "environmental information") (Interpretation); 5(1) and (2)(b) (Duty to make environmental information available on request); 10(1) and (4)(a) (Exceptions from duty to make environmental information available); 17(1), (2)(a) and (b) and (f) (Enforcement and appeal provisions)

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 12 May 2021, the Applicant made a request for information to the Authority. The information requested was:
 - a) What is the policy of South Lanarkshire Council regarding rat-runs through narrow streets in housing estates? If none presently exists, will it now formulate one?
 - b) When was Silvertonhill Avenue designated one-way northwards from the junction with Chestnut Crescent?
 - c) Why was Silvertonhill Avenue designated one-way northwards from the junction with Chestnut Crescent?
 - d) Please exhibit the terms and conditions specifying how and when the Head of Roads and Transportation Services (HRTS) can initiate consultations and the specific terms of his authority for initiating (and delimiting the participants in) such consultations.
 - e) Why did the HRTS; (1) Wish to close Silvertonhill Avenue at the junction with Chestnut Crescent? (2) Wish to put speed humps in Abercorn Drive and Chestnut Crescent?
 - f) Please exhibit the construction specifications in South Lanarkshire for the formation of (1) Arterial roads in the County, (2) Trunk roads in the County and (3) Service roads in housing estates to be constructed in the County.
 - g) Please exhibit the intended traffic capacity of each of these three types of roads in the County.
 - h) What were the approved design and construction specifications for Abercorn Drive and Chestnut Crescent?
 - i) What was the intended daily traffic capacity of each of Abercorn Drive and Chestnut Crescent at the time of construction?
 - j) Please advise the current daily flow of traffic on these 2 roads and the weekday(s) and date(s) when the count(s) was/were taken.
 - k) What oversight does the Council have of decisions by HRTS to hold a consultation?
 - l) Please exhibit details of the briefing of Councillors given prior to the consultations about (1) Silvertonhill Avenue, 2019 and (2) Abercorn Drive and Chestnut Crescent, 2020.
 - m) What is the date of the next meeting of the Council at which members of the public can attend?
 - n) How can I have a specific item added to the Agenda of such a meeting?
2. The Authority responded on 9 June 2021. In response, the Authority disclosed some information to the Applicant, and notified him, in line with section 17 of FOISA, that it did not hold other recorded information.
3. On 28 July 2021, the Applicant wrote to the Authority, requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he considered the Authority had not satisfactorily answered all the points raised.

4. The Authority notified the Applicant of the outcome of its review on 27 August 2021. The Authority informed the Applicant that it considered his request to be for environmental information and so relied on the exemption in section 39(2) of FOISA.
5. The Authority also concluded that part (n) of the Applicant's request was not a valid request for information.
6. The focus of the Authority's review was on parts (a), and (c) to (k) (inclusive) of the Applicant's information request, and it explained that no formal searches had been carried out for information which might fall within scope of the request. This was because the service considered itself fully aware of what information it held. The Authority informed the Applicant that it was relying on the exception in regulation 10(4)(a) of the EIRs as it held no recorded information falling within scope of these parts of his request. It did, however, provide some further explanation as to why information was not held which would fulfil parts (c), (e), (f), (g), (h), (i) and (j) of the request.
7. On 29 November 2021, the Applicant 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 FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he believed the Authority did hold information which would fulfil his request. He disagreed with the Authority's conclusion that part (n) was not a valid request for information.

Investigation

8. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
9. On 17 January 2022, the Authority was notified in writing that the Applicant 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 Authority was invited to comment on this application and to answer specific questions. These related to the reasons why the Authority did not consider part n) of the Applicant's request to be a valid request for information, and sought details of the searches carried out by the Authority to establish that it held no recorded information which would fulfil parts (a), and (c) to (k) (inclusive), of the request.

Commissioner's analysis and findings

11. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Handling in terms of the EIRs

12. The Authority processed and responded to the Applicant's requirement for review in accordance with the EIRs.
13. Where information falls within the scope of the definition of "environmental information" in regulation 2(1) of the EIRs, a person has a right to access it (and the public authority a corresponding obligation to respond) under the EIRs, subject to various restrictions and exceptions contained in the EIRs.

14. The Applicant has not challenged the Authority's decision to deal with the information as environmental information. The Commissioner is satisfied that the information does comprise environmental information (see in particular paragraphs (a), (b), (c) and (f) of the definition in regulation 2(1) of the EIRs) and will consider the handling of the request in what follows solely in terms of the EIRs.

Part (n) – validity

15. As mentioned above, in response to the Applicant's requirement for review, the Authority argued that part (n) was not a valid request for information.
16. In his application to the Commissioner, the Applicant commented that his request to the Authority was for information within its immediate knowledge.
17. The Applicant considered the question of whether the specific syntax used in the information request could lend itself to anything other than its clear thrust was to twist and deliberately misunderstand the meaning of the question. The Applicant considered such an action to be not just obtuse, but wilfully and confrontationally obstructive.
18. Unlike under FOISA, there is no prescribed format that an information request should take for it to be deemed valid under the EIRs. Therefore, a request in any form (verbal, written or recorded) will be a valid request under the EIRs.
19. The Commissioner makes it clear, in his guidance [document "Handling requests for environmental information \(bodies subject to FOISA\)"](#)¹ that "the EIRs apply to environmental information held by a Scottish public authority". A Scottish public authority "holds" environmental information for the purposes of the EIRs if the information is:
 - (i) in its possession and has been produced or received by that authority; or
 - (ii) held by another person on that authority's behalf (e.g. by consultants, private companies or in archives).
20. In justification of its position that part (n) of the Applicant's request was not a valid information request, the Authority stated that it took the view that this was a request for advice or assistance which was demonstrated by the language "How can I ...". The Authority stated that the requester was seeking advice about how to go about doing something, as opposed to seeking "information" which would have involved seeking facts provided or learned about something or someone.
21. It was the Authority's view that the fact that this was not a request for information was also demonstrated by the fact that the original response from the Council provided advice on the matter to the requester, by advising that the relevant details were found in the Council's Standing Orders on Procedures.
22. Having considered the submissions from the Applicant and the Authority, along with the terms of the request, the Commissioner is unable to accept the Authority's position that part (n) of the Applicant's request is not a valid request for information.
23. The Applicant is clearly of the view that he is seeking recorded information in part (n) of his request that would be held by the Authority. The Commissioner is of the view that it would be reasonable for the Applicant to believe the Council would hold information of the nature

¹ [EIRBriefingsHandling.pdf \(itspublicknowledge.info\)](#)

covered by part (n), which sets out the process to be followed when a member of the public wishes to have something added to a Council meeting agenda.

24. The Commissioner considers his view to be further supported by the Authority's response to the Applicant's request, where it referred the Applicant to information available in its Standing Orders on Procedures (in other words, recorded information relating to the subject matter of part (n)).
25. Therefore, for the reasons given above, the Commissioner finds that the Applicant's request in part (n) was a valid request for recorded information which might well be held by the Authority, for the purpose of providing guidance on the process to be followed when a member of the public wishes to have an item added to a Council meeting agenda. The Commissioner therefore requires the Authority to provide a response to this part of the Applicant's request.

Regulation 5(1) – information falling within scope of the request

26. 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 an applicant. It is important to bear in mind that this obligation relates to information actually held by the authority when it receives the request, as opposed to information an applicant believes the authority should hold.
27. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 apply and, in all the circumstances of the case, the public interest in maintaining the exception or exceptions outweighs the public interest in making the information available. If no such information is held by the authority, regulation 10(4)(a) of the EIRs permits the authority to give the applicant notice to that effect.

Regulation 10(4)(a) of the EIRs – Information not held

28. As mentioned previously, the Authority is relying on the exception in regulation 10(4)(a) of the EIRs for information which would fulfil parts (a), and (c) to (k) (inclusive), of the Applicant's request.
29. The Commissioner has taken account of the submissions provided by the Applicant in which he explains why he believes the Authority should hold information which would fulfil parts (a), and (c) to (k) (inclusive) of his request. While the Applicant has genuine reasons for believing that the Authority *should* hold information of the nature covered by these parts of the request, the Commissioner can only consider whether or not the Council identified and located the information it actually held.

Tests to be applied in the use of the exception

30. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations as to what information the authority should hold, ultimately the Commissioner's role (as indicated above) is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).

The Authority's submissions about the exception

31. The Authority informed the Commissioner that all parts of the Applicant's requests for information related to matters falling within the remit of Roads and Transportation Services. As a consequence, the request was responded to by Community and Enterprise Resources. The Authority submitted that officers dealing with the request were aware that any relevant information would only be held within the Roads and Transportation Service, or another part of Community and Enterprise Resources, but not within any other resource of the Authority.
32. The Authority explained that there are various IT systems used by the Roads and Transportation Service and described the relevant ones.
33. Given the role and experience of the Officers involved in responding to the Applicant's request, the Authority submitted that they would be expected to know if relevant information was held. Furthermore, if a record of the information requested by the Applicant existed, it would be held in the electronic systems described by the Authority.
34. The Authority explained that most of the records requested by the Applicant pre-dated the Roads (Scotland) Act 1984 coming into force and were not, therefore, subject to the statutory requirements applicable now. Consequently, there were no relevant records
35. The Authority confirmed that it was under no legal duty to hold this information, and there was no internal or external guidance creating an expectation that it be held.
36. With regard to the reason why a specific road was designated as one-way, the Authority explained that the Traffic Regulation Order for this road had an effective date of 8 November 1982, and it held no records dating back to that time indicating why this order was made.
37. In parts of his information request, the Applicant asked about specifications for Arterial, Trunk and Service roads in the Authority area. The links provided to the Applicant in response to his request were, the Authority submitted, links to technical documents relating to the construction of these types of roads, in the format which is used by Roads Officers. These were, the Authority submitted, the relevant technical documents used by all local authorities in Scotland, and there were no specific parts of more relevance than others to this Authority.
38. In terms of whether it would be able to provide the Applicant with the widths, foundations and intended traffic capacity for Arterial, Trunk and Service roads in the area, the Authority argued that, because the construction pre-dated the Roads (Scotland) Act 1984, the current standards were not applicable then and so the information was not held. Despite the Commissioner highlighting to the Authority that these parts of the Applicant's request related to Arterial, Trunk and Service Roads in general, and not, to specific roads, the Authority maintained its position that, due to the construction date, no relevant information was held.
39. With regard to the specific roads mentioned by the Applicant and, in particular, the approved design and construction specifications and intended traffic capacity, the Authority advised that these roads had been in use since around 1962-1977, and it no longer held any records from that time.
40. The Authority also submitted that there was no requirement for it to update the figures for the 2019 proposals and it held no recorded information relating to that decision. The Authority commented that further information/explanation on this point had been provided in the response to the Applicant's requirement for review.

The Commissioner's view about the exception

41. The Commissioner acknowledges that the Authority has not carried out specific searches for all parts of the Applicant's request. However, having fully considered all of the submissions from the Authority, he is satisfied, from the explanations and evidence provided, that the Authority does not hold recorded information which would fulfil parts (a), (c), (d), (h), (i), (j) and (k) of the Applicant's request.
42. The Commissioner is also satisfied, based on the submissions received from the Authority that no further information (in addition to that disclosed in response to the Applicant's request and requirement for review) is held which would fulfil part (e) of his request.
43. The construction of the specific roads referred to by the Applicant appears to have taken place some time ago and certainly before the Roads (Scotland) Act 1984, as does the decision to designate a named road as being one-way. The Commissioner accepts that it is highly unlikely that records dating back to the date of construction of these roads, and when the decision on designation was taken, would be held by the Authority.
44. However, the Commissioner is not satisfied that the Authority has taken adequate steps to determine, on the balance of probabilities, that it does not hold recorded information which would identify the construction specifications, widths and foundations and intended traffic capacity for Arterial, Trunk and Service roads in the Authority's area.
45. It appears to the Commissioner that the Authority has focused its submissions on that information relating to the specific roads identified by the Applicant (covered by parts (h) and (i) of his request) and not these types of roads in general (as the Applicant intends at parts (f) and (g)). As a consequence, the Commissioner requires the Authority to carry out formal searches to determine if relevant, recorded information is held which would fulfil parts (f) and (g) of the Applicant's request.
46. In all the circumstances, therefore, the Commissioner is satisfied, on the balance of probabilities, that the Authority does not (and did not, at the time the request was received from the Applicant) hold recorded information which would fulfil parts (a), (c), (d), (e), (h), (i), (j) and (k) of the Applicant's request. The Authority was therefore entitled to rely on the exception in regulation 10(4)(a) of the EIRs, on the basis that it did not hold the information requested under these parts of the request.
47. However, for the reasons expressed in paragraph 45 above, the Commissioner is not satisfied that the Authority was entitled to rely on the exception in regulation 10(4)(a) in respect of information which would fulfil parts (f) and (g) of the Applicant's request.
48. Where the Commissioner is satisfied that the Authority was entitled to rely on the exception in regulation 10(4)(a) of the EIRs for information which would fulfil certain parts of the Applicant's request, he is required to go on to consider the application of the public interest test in regulation 10(1)(b) of the EIRs. However, the Commissioner can identify no conceivable public interest in requiring the disclosure of information which the public authority does not hold: on balance, therefore, the Commissioner is satisfied that the public interest in maintaining the exception should prevail.

Decision

The Commissioner finds that the Authority partially complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by the Applicant.

The Commissioner finds that by relying on the exception in regulation 10(4)(a) of the EIRs for information covered by parts (a), (c), (d), (e), (h), (i), (j) and (k) of the Applicant's information request, the Authority complied with the EIRs.

However, the Commissioner finds that the Authority was not entitled to rely on the exception in regulation 10(4)(a) of the EIRs for information which would fulfil parts (f) and (g) of his request.

Furthermore, by deeming part (n) of the Applicant's request to be an invalid request for information, the Commissioner finds that the Authority failed to comply with section 5(1) of the EIRs.

The Commissioner therefore requires the Authority to provide a response to part (n) of the Applicant's request, and also carry out appropriate searches and provide a response to parts (f) and (g) of the Applicant's request, by **8 September 2023**.

Appeal

Should either the Applicant or the Authority 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 the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Margaret Keyse
Head of Enforcement

25 July 2023

Appendix 1: 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.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”
- ...
- (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.
- ...

39 Health, safety and the environment

- ...
- (2) Information is exempt information if a Scottish public authority-
 - (a) is obliged by regulations under section 62 to make it available to the public in accordance with the regulations; or
 - (b) would be so obliged but for any exemption contained in the regulations.
- ...

47 Application for decision by Commissioner

- (1) A person who is dissatisfied with -
 - (a) a notice under section 21(5) or (9); or
 - (b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.
- (2) An application under subsection (1) must -

- (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
- (b) state the name of the applicant and an address for correspondence; and
- (c) specify –
 - (i) the request for information to which the requirement for review relates;
 - (ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c); and
 - (iii) the matter which gives rise to the dissatisfaction mentioned in subsection (1).

...

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

- (1) In these Regulations –

“the Act” means the Freedom of Information (Scotland) Act 2002;

“applicant” means any person who requests that environmental information be made available;

“the Commissioner” means the Scottish Information Commissioner constituted by section 42 of the Act;

“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;

...

- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

...

5 Duty to make available environmental information on request

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

...

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.

...

- (4) A Scottish public authority may refuse to make environmental information available to the extent that
 - (a) it does not hold that information when an applicant's request is received;

...

17 Enforcement and appeal provisions

- (1) The provisions of Part 4 of the Act (Enforcement) including schedule 3 (powers of entry and inspection), shall apply for the purposes of these Regulations as they apply for the purposes of the Act but with the modifications specified in paragraph (2).
- (2) In the application of any provision of the Act by paragraph (1) any reference to -
 - (a) the Act is deemed to be a reference to these Regulations;
 - (b) the requirements of Part 1 of the Act is deemed to be a reference to the requirements of these Regulations;...
 - (f) a notice under section 21(5) or (9) (review by a Scottish public authority) of the Act is deemed to be a reference to a notice under regulation 16(4); and

...