



Scottish Information
Commissioner
www.itspublicknowledge.info

Decision Notice 094/2023

IMPACT Centre Project

Applicant: The Applicant

Authority: City of Edinburgh Council

Case Ref: 201901097

Summary

The Applicant asked the Authority for information about the IMPACT Centre Project. The Authority initially withheld information, but, during the investigation, disclosed a large amount of information, while withholding the remainder on the basis that it was excepted from disclosure. The Commissioner ordered the Authority to disclose some additional information to the Applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General Entitlement); 2(1)(b) (Effect of exemptions); 47(1) and (2) (Application for decision by Commissioner)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definitions of "the Act", "applicant" and "Commissioner" and paragraphs (a), (b), and (c) of definition of "environmental information") (Interpretation); 5(1) (Duty to make environmental information available); 10(1), (2), (4)(a) and (d), (5)(d), (e) and (f) (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 Appendices forms part of this decision.

Background

1. On 3 January 2019, the Applicant made a wide-ranging request for information to the Authority about the proposed IMPACT Centre. She requested, from 2017, all correspondence between the Authority and various other authorities and organisations in

respect of matters such as site selection, inclusion of part of the City Deal, approval of the project (including business case) and planning and listed building consent. The Applicant also sought minutes and notes of meetings. The request is set out in full in Appendix 2.

2. The Authority responded on 1 March 2019. It disclosed some information, but withheld other information under various exceptions in the EIRs. It stated that the public interest in making the information available was, given the stage the project was at, outweighed by that in maintaining the exceptions.
3. On 12 April 2019, the Applicant wrote to the Authority requesting a review of its decision. She argued that the exceptions did not apply and that the public interest favoured disclosure. The Applicant queried why the Authority considered the confidentiality of the planning process was provided for by law, highlighting that the planning process is a public decision-making process and that information related to the City Deal fell outwith the planning process.
4. The Applicant also queried the Authority's claim that some documentation was still in the course of completion and highlighted that the IMPACT Centre was a capital project, reliant on public funding, and therefore under an obligation to provide this information to the Authority.
5. The Applicant also queried the existence of a full business case which had not been provided to her.
6. The Authority notified the Applicant of the outcome of its review on 16 May 2019. The Authority separated the request into two distinct areas, i.e. information related to the planning process involving the applications made by IMPACT Scotland and the Authority's involvement as part of the Edinburgh and South East Scotland City Region Deal (the City Deal).
7. In terms of planning information, the Authority stated that, at the point of review:
 - a planning decision had been reached and information relating to the consultation process, the application, and the Authority's considerations had been published as part of the Committee papers – a link to this information was provided to the Applicant;
 - representations received as part of the planning process were published on the Authority's planning portal alongside information related to the Proposal of Application Notice;
 - it did not hold any correspondence in relation to the planning applications for the site between the UK Government, the Scottish Government and the Dunard Fund;
 - correspondence between IMPACT Scotland and the Authority was limited as the application was largely handled by their planning agent, architects and other specialist consultants;
 - although some information was now published, other information was still in the course of completion at the relevant time (regulation 10(4)(d));
 - all pre-planning application correspondence remained excepted from disclosure under regulation 10(5)(d).
8. With respect to information related to IMPACT and the City Deal, the Authority clarified that:

- some decisions around site selection and its inclusion in the City Deal were made prior to January 2017 (the timeframe of this request) so was not captured by the request;
 - information directly related to IMPACT Scotland and its preparation for inviting construction companies to tender for the contract, was held by the Authority in draft form, or not yet complete (regulation 10(4)(d)). This exception was also applied to the draft versions of the business case;
 - a number of documents contained financial and commercial information and the Authority now sought to rely on regulation 10(5)(e); this included costs and risk analysis, project and procurement plans, financial forecasts and tendering information;
 - it continued to rely on regulation 10(5)(f) in relation to one document – IMPACT Scotland’s masterplan.
9. On 26 June 2019, 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 was dissatisfied with the outcome of the Authority’s review because she did not believe the exceptions had been properly applied.

Investigation

10. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
11. On 23 August 2019, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information and the case was allocated to an investigating officer.
12. 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 why the information had been withheld, and how the Authority had assessed what information fell within the request.
13. The Authority provided comments and answered these questions.
14. At this stage, the Authority also offered to disclose more information to the Applicant, as it had reconsidered the information relating to the City Deal.
15. The Authority subsequently informed the Applicant that, following a review of the information held and discussion with the Commissioner, some additional information could be disclosed. The Authority explained that a small number of redactions had been made for the reasons outlined in detail in its review response of 16 May 2019.
16. The Applicant was invited to comment on the information disclosed. The Applicant welcomed the disclosure of the additional correspondence by the Authority, but noted that the Business Case - and related information - had still not been disclosed. She submitted that the latest release of correspondence added weight to her earlier submission that the public interest justified disclosure. The Applicant re-iterated that her “primary position remains that the Authority was not entitled to rely on the exceptions under regulation 10(5)(e) and (f) [of the EIRs] because IMPACT is not operating in a competitive commercial environment.” Even if

the Authority were entitled to consider the commercial interests, the public interest outweighed any economic interest of IMPACT, as a single project charitable trust which has no commercial rivals/competitors.

17. The Applicant said that “[T]hese latest e-mails add weight to that argument as it indicates that there have been a number of queries about the robustness of the information contained in the business case”. For example, in one e-mail from the UK Government it is noted in relation to the economic case that “[o]verall the approach taken here can be described as light touch and does not follow the normal approach taken on large capital cases”. In light of acknowledged departures from the usual approach when large sums of public money are involved, there is greater public interest in openness and transparency on the business and economic case for the project.
18. The Applicant also commented that the emails released referred to attachments at various points which had not been released, and the attachments are required to make sense of the emails released.
19. The Authority also explained that it no longer wished to rely on the exception in regulation 10(5)(f). This exception referred only to one document, the master plan. The Authority said that it had approached IMPACT Scotland about this document and it had agreed that it could now be released. The Authority confirmed that it therefore no longer wished to rely on this exception for the version of the master plan it held (document number 14).
20. In the absence of submissions to the contrary, the Commissioner finds that the Authority was not entitled to withhold the information disclosed to the Applicant during the investigation. This was a breach of regulation 5(1) of the EIRs.
21. The Authority continued to rely on and withhold information under the following exceptions:
 - (i) Regulation 10(4)(a) - Information not held
 - (ii) Regulation 10(4)(d) - Information in the course of completion
 - (iii) Regulation 10(5)(d) – Prejudice to confidentiality of proceedings
 - (iv) Regulation 10(5)(e) – Confidentiality of commercial or industrial information

Commissioner’s analysis and findings

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

Background

23. As noted above, the Applicant’s request of 3 January 2019 related to the proposals for a new concert hall and performance venue to be developed at St Andrew Square, Edinburgh, then known as the IMPACT Centre (the “IMPACT Project”). The IMPACT Project was promoted by the International Music and Performing Arts Charitable Trust (“IMPACT”) and it had been publicly stated that part of the funding secured for the IMPACT Project was being delivered as part of the Edinburgh and South East of Scotland City Region Deal (the “City Region Deal”). The IMPACT Project was also being supported, and partially funded, by Dunard Fund, a charitable trust based in Edinburgh. The Scottish Government provided funds for the City Region Deal.

24. An application for planning permission and for listed building consent was made to the Authority in 2018. The Authority granted planning permission and listed building consent for the IMPACT Project on 30 April 2019. The development site at St Andrew Square was to be leased from the Royal Bank of Scotland plc (“RBS”), the owner of the site, at nominal cost.
25. Following a judicial review, a revised planning application was made. The revised planning application was approved in November 2021. Circumstances are, therefore, now materially different than when the Applicant made her information request. However, the Commissioner is required to consider whether the exceptions were properly applied around May 2019, when the Authority carried out the review.
26. Given the volume of the information covered by this request (albeit some was disclosed during the investigation), this decision notice sets out the Commissioner’s findings with respect to each exception in turn, rather than document by document. The decision notice will only refer to certain documents by name or to classes of documents.

FOISA or the EIRs

27. The Authority dealt with the request under the EIRs. It explained that the request focused on the development of a new music centre in Edinburgh. The request was wide-ranging and encompassed the inclusion of the centre as part of the City Deal, as well as information relating to the planning process of the development. The information therefore fell within the definition of environmental information set out in regulation 2(1)(c) of the EIR: “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”. The definition of “land” includes building and other structures. As this request focused on the building of a music centre, which would impact on the landscape and local environment, the Authority determined that the information fell within the definition of regulation 2(1)(c) of the EIRs.
28. Having studied the information and the Authority’s submissions on this point, the Commissioner is satisfied that the information is environmental information and that the Authority was therefore correct to respond under the EIRs.

Regulation 5(1) - Duty to make environmental information available

29. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make that information 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. On receipt of a request for environmental information, 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)).
30. A Scottish public authority applying any of the exceptions under regulation 10 of the EIRs must interpret them in a restrictive way and apply a presumption in favour of disclosure (regulation 10(2)). Even where the exception applies, the information must be disclosed unless, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception (regulation 10(1)(b)).
31. As described above, the Authority disclosed information to the Applicant during the Commissioner’s investigation. The Applicant acknowledged receipt of that information, but still wished a decision to be issued by the Commissioner.

32. The Commissioner will consider the Authority's compliance with the EIRs in what follows.

Regulation 10(4)(a) - Information not held

33. Regulation 10(4)(a) of the EIRs states that a Scottish public authority may refuse to make environmental information available to the extent that it does not hold that information when an applicant's request is received.

34. 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 of probabilities lies, the Commissioner will consider 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 about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.

35. In its submissions to the Commissioner, the Authority explained why it did not hold some of the information the Applicant had requested. The Authority stated that regulation 10(4)(a) applied to information around the inclusion of the IMPACT project as part of the City Deal. The decisions around which project would form part of the City Deal were taken prior to 2017 (the time frame of the request).

36. The Authority explained that the City Deal comprised 17 different organisations, including local authorities and higher education institutes in the region. In 2015, potential projects were identified for inclusion as part of the City Deal in the Edinburgh area. There followed a two-year negotiation period where cases were presented to the UK and Scottish governments where a package of projects was agreed, culminating in the signing of this city deal on 20 July 2017. The Authority supplied a timeline for this to the Commissioner and listed the City Deal projects.

37. The Applicant requested correspondence about the inclusion of the IMPACT centre in the City Deal from 1 January 2017. As the decision to include the project was made before this date, the Authority stated that it did not hold any information about this decision within the timeframe of the request.

38. The Applicant had noted that the Business Case provided information about the site selection process. The Authority commented that, while the Business Case did contain high level detail on selection, it did not hold correspondence between the parties described in the request, within the timeframe of the request, that considered the best site for a concert hall in Edinburgh. The site selection was mentioned in several documents, including in the Business Case, and within information already published about the IMPACT Centre, but there was no correspondence held that discussed the selection of the site within the request's time frame.

39. The Commissioner is satisfied that the Authority took adequate, proportionate steps to establish whether it held any information that fell within the scope of this part of the request. He accepts the explanations provided by the Authority and that, in the context in which it was applied, regulation 10(4)(a) was justified. He accepts the Authority's explanations and evidence with respect to the timeframe involved in site selection.

Public interest test

40. The exception in regulation 10(4)(a) of the EIRs is subject to the public interest test in regulation 10(1)(b) and so can only apply if, in all the circumstances of the case, the public interest in maintaining the exception outweighs that in making the information available.
41. In this case, the Commissioner is satisfied that the Authority does not (and did not, on receiving the request) hold the information. Consequently, he accepts that there is no conceivable public interest in requiring the disclosure of such information and finds that the public interest in making information available is outweighed by that in maintaining the exception.

Regulation 10(4)(d) - Information in the course of completion

42. During the investigation, the Authority narrowed its reliance on regulation 10(4)(d) to documents 1 and 4. Document 1 included the draft versions of the Outline Business Case (OBC), with tracked changes and comments. Document 4 is a report on the venue. The Authority also withheld information related to planning, which it regarded as in the course of completion. This planning information, although disclosed to the Applicant during the Commissioner's investigation, was originally withheld.
43. Regulation 10(4)(d) of the EIRs provides an exception from the duty to make environmental information available where the request relates to material that is still in the course of completion, to unfinished documents or to incomplete data.
44. The *Aarhus Convention Implementation Guide*¹ (produced by the United Nations Economic Commission for Europe as guidance on the international convention from which the EIRs are derived) provides guidance as to the type of material this exception is intended to cover. It states that the mere status of something as a draft alone does not automatically bring it within the exception. Use of the term "materials in the course of completion" (the Convention does not refer to "unfinished documents") suggests individual documents that are actively being worked on by the public authority. Once those documents are no longer "in the course of completion" they will no longer be subject to the exception, even if they are still unfinished and even if the decision to which they pertain has not yet been resolved. The guidance goes on to say that "in the course of completion" suggests that a document will have more work done on it in a reasonable time-frame.

The Commissioner's view

45. In this case, the Authority's submissions appear to relate to the completion of the planning process, as opposed to the completion of the documents in question. The Authority has not explained why the status of the planning applications would impact on the status of the specific documents. Document 4 appears to be a complete document and document 1 is comprised of various drafts of the business case, each one of which appears to be a complete document in itself. Documents 1 and 4 are dated January and April 2018, respectively, nearly a year before the submission of this current request and retained by the Authority in this current format.
46. In the circumstances, the Commissioner can identify no justification for the Authority to apply regulation 10(4)(d) and finds that the Authority was not entitled to apply regulation 10(4)(d) to these documents. (Although no further exceptions were applied to these documents, there are elements of document 1 (the draft of the business case) that are conveyed in document 2

¹ <https://unece.org/environment-policy/publications/aarhus-convention-implementation-guide-second-edition>

(the final business case) to which regulation 10(5)(e) was applied. Regulation 10(5)(e) is considered below.)

Public interest test

47. Given that the Commissioner has concluded that the exception in regulation 10(4)(d) does not apply, he is not required to go on to consider the public interest test in regulation 10(1)(b).

Regulation 10(5)(d) - Prejudice to confidentiality of proceedings

48. Regulation 10(5)(d) provides that a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially the confidentiality of proceedings of any public authority where such confidentiality is provided for by law.
49. As with all of the exceptions within regulation 10, a Scottish public authority applying this exception must interpret the exception in a restrictive way (regulation 10(2)(a)) and apply a presumption in favour of disclosure (regulation 10(2)(b)). Even where the exception applies, the information must be disclosed unless, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception (regulation 10(1)(b)).
50. *The Aarhus Convention: an Implementation Guide*, referred to above, does not comprehensively define "proceedings of any public authorities". It suggests that one interpretation is that these may be proceedings concerning the internal operations of a public authority, rather than substantive proceedings conducted by the public authority in its area of competence. The confidentiality under this exception must be provided for under national law.

City Deal information

51. The Authority originally classified a significant volume of information related to the City Deal, as falling under the scope of this exception. Although classified as one document, document 30 consisted of over 174 email exchanges.
52. During the investigation, the Authority reviewed the emails and found that 80 email trails could be released either in part or in full to the Applicant. These emails mainly referred to arranging meetings and sharing City Deal meeting agendas. There are several emails which refer to the overall City Deal which mention or provide updates on the IMPACT Centre business case. The Authority supplied the information to the Applicant.
53. The Authority also confirmed that a significant volume of emails were out of scope: they referred to City Deal business, but not the IMPACT Centre specifically, or contained duplicate information. As a consequence, only four exchanges attaching copies of the business case, including appendices remained excepted under regulation 10(5)(e) (considered below).
54. There are a small number of documents, according to the Authority's schedule, that are still withheld under regulation 10(5)(d), excluding those to which regulation 10(5)(e) has now been applied. Having reviewed the content of documents in question, the Commissioner is satisfied that the content is largely innocuous and administrative in nature. In the absence of submissions to the contrary, he finds that the Authority was not entitled to withhold this information.

Public interest test

55. As he has concluded that the exception does not apply to these documents, he is not required to go on to consider the public interest test in regulation 10(1)(b) of the EIRs.
56. The Commissioner therefore requires the Authority to disclose these documents, which appear to have been overlooked in subsequent disclosures. Should the documents have been disclosed already, the Authority must provide him with evidence that this has been done.

Planning information

57. In addition, during the investigation, the Authority reduced its reliance on this exception to documents 19-29 (although document 19 is formed of a large number of separate exchanges/documents). During the Commissioner's investigation, the Authority identified seven planning related emails that it no longer considered excepted from disclosure and supplied to the Applicant.
58. In the absence of submissions to the contrary, the Commissioner must find that the Authority was not entitled to withhold the planning related documents disclosed to the Applicant during the course of the investigation. He therefore finds that the Authority was not entitled to rely on regulation 10(5)(d) to withhold these documents.
59. The Authority continued to withhold the information in documents 19 (parts 1-4) to 29.
60. The Authority explained that the exception in regulation 10(5)(d) was applied to the unpublished correspondence, and included pre-application advice provided by the Authority to the developers of the IMPACT Centre. While the planning legislation supports the publication of decisions and factors that impact on those decisions, it does not, the Authority submitted, offer any instruction on other types of correspondence. As such, the release of pre-application advice was approached by the Authority on a case-by-case basis.
61. The Authority explained that pre-application advice is a service that it provides to developers and can take a variety of forms, from telephone calls to meetings and site visits. (As of July 2019, the Authority formalised this process and now charges a fee for most pre-application advice.) Not all information is recorded, as there may be occasions where developers bring documents to meetings, but do not share them with the Authority to keep on record.
62. In assessing what pre-application advice could be released, the Authority considered that the initial design of the IMPACT Centre was quite different from the final design approved by the Authority in April 2019. The developers engaged with the Authority's Planning department to address concerns that they had prior to the application's submission and altered the design of the building to take account of advice.
63. The Authority confirmed that, during the pre-application advice stage, there is no confirmed position on whether planning permission would be granted. It is in the public interest, the Authority suggested, for the Authority to offer this service to assist in making the planning process for large developments as efficient as possible and more importantly, to ensure that the eventual planning process is cost-effective for the Authority, as early engagement with developers can reduce the amount of correspondence and subsequent costs associated with avoidable delays once the planning application has been submitted.
64. The Authority explained, at review, that at the date of the request the planning application had not been considered: it was still at application stage where members of the public could submit comments. The Authority advised the Commissioner that it adheres to the Town and

Country Planning (Development Management Procedures) (Scotland) Regulations 2013 (the 2013 Regulations), which set out the duties, etc. on the Authority in terms of planning applications, and in making information public. The Authority explained that “there is an inferred level of confidentiality for information that falls outwith the definitions provided in the legislation” and this included correspondence between applicant (in the planning process) and the Authority. Whilst there was an expectation that information about the planning process would be made public, this did not extend to the pre-application stage or the progress of an application “where the parties seek advice”. For the Authority, there was an expectation of confidentiality.

The Commissioner’s conclusions

65. The first matter to consider is whether the information relates to proceedings of the Authority, the confidentiality of which is protected by law. The Commissioner must then consider whether disclosure of the information would, or would be likely to, prejudice substantially the confidentiality of those proceedings.
66. "Proceedings", in the context of this regulation, will cover a range of activities, but are usually confined to internal deliberation in some form or another. For example, proceedings may include (but not be limited to) formal meetings to consider matters within the authority's jurisdiction, or instances where an authority is exercising its statutory decision-making powers, or legal proceedings. In the instance here, as explained by the Authority, it is in respect of the Authority's role as a planning authority, and specifically in respect of pre-planning advice.
67. The Authority has duties and powers under the cited legislation. The Commissioner therefore accepts that the Authority's actions as a planning authority (broadly, its interaction with those involved in a such a significant development such as the IMPACT Centre) falls within the intended meaning of “proceedings”. The pre-application advice is a service that the Authority provides. Having considered the Authority's submissions on this point, the Commissioner also accepts that the Authority's actions - broadly, in engaging with those involved in the pre-application - fell within the intended meaning of "proceedings".
68. Having accepted that the information falls within the definition of "proceedings" for regulation 10(5)(d), the Commissioner must now determine whether the confidentiality of those proceedings is protected by law.
69. In many cases where this exception applies, there is a specific statutory provision prohibiting the release of the information. However, there will also be cases where the common law of confidence will protect the confidentiality of the proceedings.
70. For information to be confidential under common law, two main requirements must be met, i.e. the information must have
 - (i) the necessary quality of confidence about it (it must not be generally accessible to the public already); and
 - (ii) been communicated in circumstances importing an obligation of confidentiality.

Does the information have the necessary quality of confidence?

71. In previous cases, the Commissioner has accepted information conveyed during pre-planning application discussions *may* have the necessary quality of confidence. However, in this case, the Authority applied the exception in a blanket fashion to all information and

correspondence captured during the pre-planning application phase and to everything unpublished during the formal planning application discussions; no account appears to have been taken of the content of the information itself or indeed the timing of this request (i.e. post submission of the formal planning applications), or that the review outcome fell at a point when the formal planning application had been determined by the Authority.

72. The Commissioner cannot accept that anything authored during the pre-planning application advice stage, or information not listed for publication by the relevant planning legislation, will automatically have the necessary quality of confidence. He accepts that in certain scenarios (e.g. where potential developers may have a commercial interest in a site and its potential uses) these discussions may fall to have the necessary quality of confidence. That is not the case here, however, as the site and the fact of the project was already publicly known at the time of the request.
73. With this in mind, he does not accept that documents 19.4 (exchanges 2, 5 and 18) 22, 25 and 27, despite not being generally accessible to the public already, have the necessary quality of confidence. In reaching this conclusion, he notes that these documents are simple template agendas for pre-planning application meetings to discuss the project and a template invite to attend and present at a design panel. These documents do not convey anything of substantive content and they have not been conveyed to, or from the Authority by/to a third party under an obligation of confidentiality.
74. The Commissioner notes that document 19.4 consists of a number of exchanges, a number of which (exchanges 11, 12, 14, 16, 17, 23, 29, 31, 32, 34 and 40) are dated after the submission of a formal planning application and therefore do not form part of the pre-application advice. The Authority has failed to explain to the Commissioner why exchanges, which clearly relate to the consideration of the formal planning applications (a widely recognised public decision-making process), would have the necessary quality of confidence. The Commissioner does not accept that information falling outwith the scope of Schedule 2 of the 2013 Regulations 2013 automatically assumes a quality of confidence. On that basis, the Commissioner must find that the Authority was not entitled to apply this exception to these exchanges.
75. With regards to the remaining documents, the Authority did not point to any legislation or published guidance that would convey or impart the expectation that there was a duty of confidence in the information.
76. However, the Commissioner notes that the Authority's customer service guide on their pre-planning advice service, which was current at the time of the request, stated that the advice provided would remain confidential:
- The Authority will not share or publish pre-application advice other than with statutory external consultees except at the request of the customer or where compelled to do so by a request made under the Environmental Information Regulations. For the purposes of requests made under said Regulations, advice given will be treated as commercially sensitive (and its release contested) until such time as an application has been determined. The letters provided to customers are their property and the customer may share or publish these at their discretion.*
77. Although the Commissioner questions the Authority's pre-emptive and blanket approach to pre-planning advice, he must accept that the users of this service were provided with an expectation that such advice will remain confidential.

78. In addition, some information under consideration clearly indicates that it is supplied in confidence. Whilst this is not conclusive in determining that the information is actually confidential, the Commissioner accepts – having read the content – that the information is confidential.
79. In conclusion, the Commissioner is satisfied that the remainder of document 19 (parts 1-4) and documents 20, 21, 23, 24, 26, 28 and 29 have the necessary quality of confidence, were not already generally accessible, and provided in circumstances importing an obligation of confidentiality.

Substantial prejudice to the confidentiality of proceedings

80. The Authority submitted that, as the formal planning application decision was not based on the information provided at pre-application stage, releasing this information would provide the public with misinformation about the application, and that publishing information which does not reference the final position would be likely to lead to confusion and misinformation and would lead Edinburgh residents to distrust the Authority and its planners.
81. The Authority explains that the pre-application advice service assists in making the planning process for large developments as efficient as possible and more importantly, from a public purse perspective, to ensure that the eventual planning process is cost effective for the Authority as early engagement with developers can reduce the amount of correspondence and subsequent costs associated with avoidable delays once the planning application has been submitted.
82. Having reviewed the content of the documents withheld alongside the Authority's submissions, the Commissioner is not satisfied that the Authority has demonstrated how disclosure would prejudice substantially, or be likely to prejudice substantially, the confidentiality of proceedings. With respect to documents 19.4 (exchanges 1, 3 and 9), 23 and 28, the Commissioner notes that the contents identify the key issues likely to arise in the consideration of the planning application. As largely generic factors, which would be expected to affect any significant development in this location, the Commissioner cannot accept, and the Authority has failed to explain why, disclosure of such information would cause the necessary harm. The Commissioner therefore finds that the exception in regulation 10(5)(d) does not apply to documents 19.4 (exchanges 1, 3 and 9), 23 and 28.
83. However, the Commissioner draws a distinction between the remaining documents (documents 19 (the remainder), 20, 21, 24, 26 and 29) in that they provide more targeted advice to the developers/agents and/or make more specific reference to details of the proposal. Taking into account the expectation of confidentiality provided to the developer, as detailed above, the Commissioner accepts that disclosure of this information would, or would be likely to, prejudice substantially the confidentiality of proceedings, insofar that it could impact upon the future engagement of developers in the pre-application advice process.
84. Having found that the exception in regulation 10(5)(d) applies to documents (documents 19 (the remainder), 20, 21, 24, 26 and 29), he is required to consider the public interest test in relation to these documents.

Public interest test

85. The public interest test in regulation 10(1)(b) of the EIRs states that a Scottish public authority may only withhold information to which an exception applies where, in all the circumstances, the public interest in making the information available is outweighed by the public interest in maintaining the exception.

86. In her submissions to the Commissioner, the Applicant argued that that the public interest favoured disclosure of the information. She maintained that disclosure was in the public interest as this issue affected many local people.
87. The Authority submitted that, as the planning decision for the IMPACT Centre was not made based on the pre-application information and designs, and releasing information about out-of-date plans would provide the public with misinformation about the application, it was not in the public interest to release information that could mislead on what issues were being considered and what information formed the grounds for decision-making.
88. The Authority submitted that the public interest in understanding how a building, such as a new concert hall, will impact on the city was met by publishing the planning application on the public portal, along with objections, supporting comments, consultation documents, environmental impact assessments and the final planning decision. This publication allowed public scrutiny of a planning application and decision based upon the relevant information upon which the decision was made. Publishing information which does not reflect the final position would be likely to lead to confusion and misinformation and would lead Edinburgh residents to distrust the Authority and its planners.
89. The Commissioner has considered carefully all the public interest arguments he has received, alongside the remaining withheld information he has accepted as capable of being withheld under regulation 10(5)(d). He must consider the actual circumstances of the case, and whether the Authority was correct in its decision, at the time it responded to the requirement for review. That position may have changed in time, but the issue here is whether the Authority responded to this particular request correctly at the relevant time.
90. The Commissioner recognises the public interest in accountability and transparency in the decision-making processes of public authorities, and in understanding how particular actions are effected and progressed. He acknowledges that disclosure of this information would help fulfil a public interest in understanding the Authority's handling of the planning application.
91. The Commissioner notes that there is a public interest in transparency of the planning process. In this particular case, the project is significant, with impact on a UNESCO world heritage site. Furthermore, the Authority is clear that the pre-planning application stage is not a process to predetermine the outcome of the formal planning application. The request was also made after a formal planning application was made and harm could have been mitigated by the provision of contextual explanation.
92. Furthermore, he notes, as submitted by the Authority, that the pre-planning application advice stage is a vehicle used to streamline the formal planning application process. Having reviewed the information, he is satisfied that it contains the Authority's and other consultees', consideration of the proposed planning application, which, although not a formal determination, does factor into the formal decision-making process should the application subsequently be made, which it did in this case. In such circumstances, the Commissioner cannot accept a blanket approach to the pre-planning application advice information.
93. The strong public interest in the decision-making behind planning decisions is already widely recognised; it is the Commissioner's view that this public interest extends to pre-planning application advice, where the development is of such significance and translates to a formal application. In this case, the Commissioner notes that the formal planning application was submitted prior to this request, and the Authority's determination of the application was issued in April 2019, prior to the Authority's review outcome for this request.

94. In all of the circumstances of the case, therefore, the Commissioner finds that the public interest in maintaining the exception is outweighed by that in making the information available, at the time the Authority responded to the Applicant's request and requirement for review. He therefore concludes that the Authority was not entitled to withhold this information under regulation 10(5)(d) of the EIRs.

Regulation 10(5)(e) - Confidentiality of commercial or industrial information etc.

95. Regulation 10(5)(e) of the EIRs provides that a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially the confidentiality of commercial or industrial information, where such confidentiality is provided for by law to protect a legitimate economic interest.

96. The Authority withheld various versions of the full OBC and Appendices (I-X) under this exception. Again, from the outset, the Authority appears to have applied a blanket approach to the application of this exception to these documents.

97. The Authority also withheld information under this exception that, on review, the Commissioner is not satisfied falls within the terms of this request. Documents 5, 6, 7, 12, 13, 16 and 17 relate to the procurement process, project management and wider strategic issues related to the City Deal. Document 18 is a duplicate of appendix IX and will be considered below as part of the overall business plan.

Submissions from the Applicant

98. The Applicant's position (also stated above) was that the Authority was not entitled to rely on the exception in regulation 10(5)(e) because IMPACT was not operating in a competitive commercial environment.

99. The Applicant added that the disclosed emails "add weight to that argument as it indicates that there have been a number of queries about the robustness of the information contained in the business case". For example, in one email from the UK Government it is noted in relation to the economic case that "[o]verall the approach taken here can be described as light touch and does not follow the normal approach taken on large capital cases". In light of acknowledged departures from the usual approach when large sums of public money are involved, there was greater public interest in openness and transparency on the business and economic case for the project.

100. The Applicant also commented that the emails released by the Authority referred to attachments and these attachments were not released, and these attachments were required to make sense of the emails disclosed by the Authority.

Submissions from the Authority - City Deal information

101. The Authority submitted that one of the aims of the City Deal was to promote economic growth in the region. The IMPACT Centre was selected as a project under the City Deal banner that would assist in this growth. The request asked for the full business case, and the Authority's review response referenced the part of the business case which was publicly available on the Authority's website. The published information includes:

- estimated numbers of attendees
- expected economic impact
- Potential number of employees

- details of the facilities

102. The review response noted the factors that the Authority considered in applying the exception to the appendices of the report which include what it considered to be commercially sensitive information. Further to the review response, the business case states that:
- “there is a requirement that the IMPACT Centre becomes self-financing over the longer term to satisfy both funding requirements and charitable obligations to seek to maintain a surplus.”
103. Whilst the Applicant was correct that the IMPACT Centre is a charity, it must, as the business case describes, be able to sustain a profit when completed, and to operate without further funding. As such, the Authority submitted, the release of information about costs - including financial forecasts, current risks, procurement plans, and tendering information - could impact on the ability of the organisation to deliver on the project and obtain best value when tendering for contractors.
104. As the Authority is invested in the success of the IMPACT Centre as part of the City Deal, and its benefit to the Edinburgh economy, it was also within the interests of the Authority, and “by extension Edinburgh citizens more generally”, for sensitive commercial information to be withheld at the time of the request. This will assist “in ensuring that the venture is a success by allowing the IMPACT Centre to operate fully within the market economy.”
105. The Authority explained that information relating to cash flow and cost analysis included information about fees paid to consultants and contractors for IMPACT. They also include projected fees and costs up to 2021/2022. The Authority submitted that, as the information referred to how the budget/funds will be spent, it was inherently commercial and releasing this information would give an indication of how much IMPACT Scotland were willing to pay contractors. This information could be used by the contractor’s competitors to undercut or outbid costs for their services. The overall impact of this would mean that IMPACT would be less likely to achieve value for money in the future.
106. The Authority submitted that information relating to risks and mitigating actions that IMPACT have in place would give an indication of their risk appetite around specific issues. This, as with the project plans, was commercial information that organisations outside of the scope of FOISA or EIRs would not put in to the public domain. The Authority only held this information due to its unique position as regards the administration function of the City Deal. Although the Authority understands that information it holds for the City Deal is subject to FOISA and the EIRs, the Authority must balance what is in the public interest to release. The Authority is invested in the City Deal and ensuring it is successful for the long-term economic benefit of the South East of Scotland region. Releasing information beyond what could fairly be expected by a venture of this type, that could be used by third parties to disrupt the progress of the City Deal and its projects would not be in the interest of the public and the economic development of the city of which the IMPACT Centre plays a part. It is in the interest of the public for the Authority and the City Deal to operate efficiently and as effectively as possible to deliver on its commitments through the projects that it is part-funding.

The Commissioner’s conclusions

107. The *Aarhus Convention: an Implementation Guide* notes (page 88) states that the first test for considering this exception is whether national law expressly protects the confidentiality of the withheld information. The law must explicitly protect the type of information in question as commercial or industrial secrets. Secondly, the confidentiality must protect a “legitimate

economic interest": this term is not defined in the Convention, but its meaning is considered further below. Having taken this guidance into consideration, the Commissioner's view is that before regulation 10(5)(e) can be engaged, authorities must consider the following matters:

- (i) is the information commercial or industrial in nature?
- (ii) is the information publicly available?
- (iii) does a legally binding duty of confidence exist in relation to the information?
- (iv) would disclosure of the information cause, or be likely to cause, substantial harm to a legitimate economic interest?

Is the information commercial or industrial in nature?

108. The Commissioner accepts that the information was created in the context of a planning application (and the City Deal). The Commissioner accepts that the Authority and the organisations involved in these communications have commercial interests in relation to the development and the IMPACT Centre. He is satisfied that the information is information that is commercial or industrial in nature. He also agrees with the arguments provided by the Authority that, while IMPACT Centre is a charity, it must, as the business case describes, be able to sustain a profit when completed, and to operate without further funding. As such, the release of information about costs - including financial forecasts, current risks, procurement plans, and tendering information - could impact on the ability of the organisation to deliver on the project and obtain best value when tendering for contractors. This will be commercial information.

109. Having considered the withheld information, with the Authority's submissions, and those of the Applicant, the Commissioner is satisfied that the information is commercial in nature for the purposes of regulation 10(5)(e) of the EIRs.

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

110. In the Commissioner's view, confidentiality "provided for by law" will include confidentiality imposed on any person under the common law of confidence, under a contractual obligation or by statute. The Authority submitted that there existed an obligation of confidentiality in relation to the withheld information: it was only shared on the basis of it being held as confidential and not for disclosure into the public domain.

111. Although there is no evidence to suggest that there was an explicit obligation of confidentiality existed and was in place, the Commissioner notes that the information is only held by the Authority by virtue of its unique position as the administration function of the City Deal. In all the circumstances, the Commissioner is satisfied that the information was exchanged under an implied obligation to maintain confidentiality.

112. Accordingly, the Commissioner is satisfied that an implied duty of confidence existed and applied to the withheld information, at the time the Authority responded to the Applicant's request and its requirement for review.

Is the information publicly available?

113. The Commissioner is aware that information on the IMPACT project is available via the Authority's website (in respect of the planning applications). Information has also been put into the public domain about the project.

114. With respect to the business plan, IMPACT's statutory accounts were supplied as Appendix II. As statutory accounts, these are available to download from Companies House and therefore in the public domain at the time of this request.
115. Equally, appendix I which details the site location, was already public knowledge at the time of this request.
116. As the information described above was publicly available at the time of the request, the Commissioner finds that the Authority was not entitled to rely on regulation 10(5)(e) to withhold this information.
117. The Commissioner is satisfied that the remaining documents were not publicly available at the time of this request.

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

118. The term "legitimate economic interest" is not defined in the EIRs. In the Commissioner's view, the interest in question should be financial, commercial or otherwise "economic" in nature. The prejudice to that interest must be substantial: in other words, it must be of real and demonstrable significance.
119. The Commissioner accepts that the IMPACT centre will be operating in a commercial environment, but the Authority has failed to make a distinction between the trading operations related to the final centre/the commercial interests in the actual build and the wider social-economic business case for the IMPACT centre as a feature of the City Deal.
120. For example, Appendix III sets out in general terms all the benefits and factors for such a Concert Hall. This does not contain detailed commercial information, but focuses more on the socio-economic impact of the centre. As suggested by the title of this document, this is a high-level consideration of the project. The Authority has not evidenced the harm likely to result from its disclosure. Similarly, Appendix V and V11 does not contain any commercial information: rather it is a simple diagram mapping out the team and structure or sets out general procurement options.
121. The Commissioner concludes that the OBC should be disclosed subject to the redaction of operational trade information and strategies and any information which could be used by contractors as leverage during the build project e.g., project plans, risk registers, the operational business plan and operational risk register. The Commissioner accepts that at the time of the request, and at the Authority's review stage, there was an expectation of confidence, and that disclosure of this information would or would be likely to, prejudice substantially both the ultimate operational aspects of IMPACT centre and its board to deliver the build on budget and on time.
122. A distinction can be drawn between information relating to the socio-economic business case for the IMPACT centre and the information relating to the trading-arm of the business centre. Insofar as the information relates to the operational aspect of the centre (ticket sales/business strategies), and information relating to costing forecasting for the building project, the Commissioner would accept that the exception applies. He accepts that the disclosure of this information could provide competitors with an advantage, contractors with potential leverage and highlights key areas of risk, which could be translated into commercial gain. However, for the remaining information – the Commissioner does not accept this and does not accept that the exception applies

123. As the Commissioner is satisfied that the disclosure of some information, in response to the Applicant's request, would, or would be likely to, cause substantial harm to a legitimate economic interest and is therefore satisfied that the exception applies with respect to that information, he must go on to consider the public interest test.

Public interest

124. The Commissioner must consider the public interest test in regulation 10(1)(b) of the EIRs. This specifies that a Scottish public authority may only withhold information to which an exception applies where, in all the circumstances, the public interest in making the information available is outweighed by the public interest in maintaining the exception.

125. The Commissioner has drawn a distinction between the wider socio-economic benefits and the operational and trading aspects of the business plan conveyed in these business cases and their supporting appendices. He has accepted that the exception applies to information which could provide potential contractors and competitors with leverage or an advantage. In relation to this information, he is satisfied that the harm identified by the Authority is a real threat, and not just a hypothetical possibility.

126. The Authority submitted that the release of information beyond what could fairly be expected by a venture of this type, that could be used by third parties to disrupt the progress of the City Deal and its projects would not be in the interest of the public and the economic development of the city. The Authority submitted that it is in the interest of the public for the Authority and the City Deal to operate efficiently and as effectively as possible to deliver on its commitments through the projects that it is part-funding.

127. The Applicant submitted that the public interest outweighed any economic interest of IMPACT. She submitted that correspondence disclosed to her during the course of the investigation added weight to that argument as it indicated that there were a number of queries about the robustness of the information contained in the business case. In light of the acknowledged departures from the usual approach when large sums of public money are involved, she submitted that there was a greater public interest in openness and transparency on the business and economic case for the project.

128. The Commissioner has carefully considered the submissions made by both parties on the public interest test.

129. The Commissioner has already concluded that disclosure of the remaining withheld information would, or would be likely to, cause substantial harm to a legitimate economic interest, and has found an implied duty of confidence in relation to this information. As he has recognised in previous cases, there is a strong public interest in maintaining confidentiality, where confidentiality is provided for by law.

130. The Commissioner also recognises that this protection can only be afforded to information falling within the scope of the exception and he has already concluded that the Authority's application of this exception was too wide with respect to this information as blanket approach.

131. In this case, the Commissioner is satisfied that there is no public interest in disclosing information that would impede the progression of this project or disclosure of commercially confidential information that would impact upon the legitimate economic interests of the developer and to an extent, as a project in receipt of public funds, the taxpayer.

132. In all the circumstances of the case, the Commissioner finds that the public interest in maintaining the exception outweighed that in making the remaining information available. He therefore concludes that the Authority was entitled to withhold trading/operational, risk and procurement information under regulation 10(5)(e) of the EIRs. The Commissioner does not accept the application of this exception to the remaining information contained in the business case and associated appendices.
133. The Commissioner will provide the Authority with a copy of the information he requires it to disclose.

Handling comments

134. It appears to the Commissioner that the Authority did not properly consider the information originally considered to fall within the scope of this request until after the application was made. This is clear from the amount of information disclosed during the investigation, much of which proved to fall outwith the scope of the request.
135. The Commissioner is also concerned that the Authority applied exceptions in a blanket fashion, without considering the actual content of the documents, their context or proper consideration of the legal tests.
136. The way in which the withheld information was presented to the Commissioner made the consideration of this case extremely difficult. While the Commissioner fully takes responsibility for the subsequent delays caused by his office, a lot of the initial delay can be attributed to the way the withheld information collated, considered and supplied by the Authority.

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 the Authority was entitled to rely on regulation 10(4)(a) and 10(5)(e) to withhold some of the information.

However, the Commissioner finds that the Authority was not entitled to withhold the information it disclosed during the course of the investigation and was not entitled to rely on regulations 10(4)(d), 10(5)(d) and 10(5)(e) to withhold information. By failing to make the information available, the Authority breached regulation 5(1) of the EIRs.

The Commissioner requires the Authority to disclose the information which was wrongly withheld (and which had not yet been disclosed to the Applicant) by 23 October 2023. The Commissioner will contact the Authority separately with a list of the information to be disclosed.

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

05 September 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.
- ...

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;

...

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.

...

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
 - (a) it does not hold that information when an applicant's request is received;...
 - (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or

...

- (5) A Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially-
...
 - (d) the confidentiality of the proceedings of any public authority where such confidentiality is provided for by law;
 - (e) the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest;
 - (f) the interests of the person who provided the information where that person –
 - (i) was not under, and could not have been put under, any legal obligation to supply the information;
 - (ii) did not supply it in circumstances such that it could, apart from these Regulations, be made available; and
 - (iii) has not consented to its disclosure; or...

Appendix 2: The request of 3 January 2019

1. All correspondence (written, email, text, etc.) between or involving the employees or elected members of [the Authority] and
 - (i) the Scottish Ministers or employees of the Scottish Government;
 - (ii) employees or representatives of the UK Government;
 - (iii) employees or representatives of Historic Environment Scotland;
 - (iv) employees or representatives of Edinburgh World Heritage;
 - (v) persons or organisations involved with or representing IMPACT; and
 - (vi) persons or organisations involved with or representing Dunard Fund, in relation to:
 - a) The site selection process for the IMPACT Project;
 - b) The inclusion of the IMPACT Project as a project forming part of the City Region Deal;
 - c) The approval of the proposals for the IMPACT Project, including the business case, as a project to receive funding under the City Region Deal;
 - d) Matters connected to the funding of the IMPACT Project, including funding or support from Dunard Fund;
 - e) Matters connected to the planning and listed building consent process for the IMPACT Project;
 - f) Arrangements or agreements between IMPACT or Dunard Fund and RBS including for the acquisition or transfer of land, or an interest in land such as the granting of leases, at St Andrew Square for the development of the IMPACT Project; and
 - g) Any other matters connecting the IMPACT Project and the City Region Deal.
2. All minutes or notes of meetings, or other events, connected to any matters set out at (a) to (g) above.