



Decision Notice 051/2024

Reduction in speed limits

Authority: City of Edinburgh Council

Case Ref: 202200331

Summary

The Applicant asked the Authority for all information within a specified time period relating to its decision to reduce the speed limits in Craighall Road and Granton Road to 20mph. The Authority considered the request as seeking environmental information and issued a Fees Notice to the Applicant under the Environmental Information Regulations (Scotland) 2004 (the EIRs).

The Commissioner investigated and found that, while the Authority was entitled to issue a Fees Notice under the EIRs, the fee charge proposed was not reasonable. The Authority later disclosed the information to the Applicant, free of charge. Given this, the Commissioner did not require the Authority to take any further action.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) (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” and paragraphs (a), (b), (c) and (f) of definition of “environmental information”) (Interpretation); 5(1) (Duty to make environmental information available on request); 8(1), (3), (4), (6) and (8) (Charging); 17(1), (2)(a), (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 23 January 2022, the Applicant made a request for information to the Authority. The Applicant asked for copies of all documents relating to the decision to reduce the speed limits in Craighall Road and Granton Road to 20mph from January 28 2021 to the date of his request. He specified that the information should include:
 - All emails, notes of meetings, whether prepared before, during or after the event, whether in person or remotely, records of telephone conversations, reports, memoranda and any other material relating to the design of the speed limit implementation; and
 - All emails, notes of meetings, whether prepared before, during or after the event, whether in person or remotely, records of telephone conversations, reports, memoranda and any other material relating to the work to be done to put the limits in place, including any material relating to the timing of the implementation.
2. The Authority responded on 15 February 2022. The Authority issued the Applicant with a Fees Notice for £208, claiming that the information was environmental information and had to be handled under the EIRs. The Authority explained that regulation 8 of the EIRs allowed public authorities to impose charges for responding to information requests.
3. On 15 February 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he disagreed that the information he requested was environmental information.
4. The Authority notified the Applicant of the outcome of its review on 15 March 2022. It maintained that the information was environmental information, as defined in regulation 2(1) of the EIRs, and it upheld its original decision to issue a Fees Notice for £208 under regulation 8 of the EIRs. The Authority also notified the Applicant that the information was exempt from disclosure under section 39(2) of FOISA.
5. On 16 March 2022, 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 that he was dissatisfied with the outcome of the Authority's review because he disagreed that the information he requested was environmental information and that, even if it was, the Fees Notice was unreasonable.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 11 May 2022, the Authority was notified in writing that the Applicant had made a valid application and the case was subsequently allocated to an investigating officer.
8. 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 its reasons for concluding that the information was environmental information, and details of how it calculated the Fees Notice and determined what information fell within the scope of the request.

Commissioner's analysis and findings

Application of the EIRs

9. In its correspondence with the Applicant, the Authority identified all of the information requested as being environmental information, as defined in regulation 2(1) of the EIRs.
10. The Applicant challenged the Authority's view that the information was environmental. He commented that what he wanted to know concerned the implementation, or non-implementation, of reduced speed limits in two roads in Edinburgh. He argued that none of the five parts of the definition in regulation 2(1) of the EIRs was relevant. He submitted that he was seeking information about the implementation of a policy that was agreed years before, not the policy itself. He argued that even if he had been asking about the policy itself, it would not be covered by the definition of environmental information in regulation 2(1) of the EIRs, as the "policies" mentioned in paragraph (c) of the definition only related to the natural environment, there was no mention of roads, and the effects on it of pollution.
11. The Commissioner has considered the views put forward by the Applicant and the Authority, and he is satisfied that the information covered by this request (information regarding the speed limit on a road) is environmental information, as defined in regulation 2(1) of the EIRs. In reaching this conclusion, the Commissioner has considered the information in question, along with paragraphs (a), (b), (c) and (f) of the definition of environmental information (reproduced in Appendix 1), and he agrees that the Authority was correct to have categorised the information as environmental.
12. Specifically, the Commissioner is satisfied that the information relates to measures and activities (paragraph (c) of the definition of environmental information in regulation 2(1) of the EIRs) that affect the state of the elements contained in paragraph (a), specifically the land and landscape. The information also relates to factors such as pollution and emissions into the environment, as defined in paragraph (b) of regulation 2(1) of the EIRs, and the health and safety of the built environment (which encompasses roads) as described in paragraph (f).
13. The Commissioner has investigated a number of cases where individuals have requested information regarding policies or activities that affect roads or the built environment, and as in this case, he has generally found such information to be environmental. He notes that [Decision 117/2013](https://www.itspublicknowledge.info/decision-1172013)¹ involved information relating to the decision to implement speed bumps, and [Decision 174/2012](https://www.itspublicknowledge.info/decision-1742012)² concerned information relating to changes to national speed limits. In each case, the Commissioner found that the requested information was environmental information. He has reached the same conclusion in this case.

Section 39(2) of FOISA – Environmental information

14. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined by regulation 2(1) of the EIRs) is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs. In this case, the Commissioner accepts that the Authority was entitled to apply the exemption to the

¹ <https://www.itspublicknowledge.info/decision-1172013>

² <https://www.itspublicknowledge.info/decision-1742012>

information withheld in this case, given his conclusion that it is properly classified as environmental information.

15. The exemption in section 39(2) is subject to the public interest test in section 2(1)(b) of FOISA. As there is a statutory right of access to environmental information available to the Applicant in this case, the Commissioner accepts, in all the circumstances, that the public interest in maintaining this exemption (and responding to the request under the EIRs) outweighs any public interest in disclosing the information under FOISA. Both regimes are intended to promote public access to information and there would appear to be no reason why (in this particular case) disclosure of the information should be more likely under FOISA than under the EIRs.
16. The Commissioner therefore concludes that the Authority was correct to apply section 39(2) of FOISA, and consider the Applicant's information request wholly under the EIRs. In what follows, the Commissioner will consider this case solely in terms of the EIRs.

Regulation 8 of the EIRs - Charging

17. The Authority issued a Fees Notice in terms of regulation 8 of the EIRs. This allows a Scottish public authority to charge a fee for making environmental information available under regulation 5(1) (regulation 8(1)). By virtue of regulations 8(4) and (6), the authority may require the payment of a fee in advance and (if it does so) is not required to make the information available unless a fee is paid.
18. As the Commissioner has concluded that the Authority was correct to consider the Applicant's request under the EIRs, it follows that it is permissible for the Authority to charge a fee for making the information requested available, as provided for in regulation 8.
19. The Commissioner must now consider whether the Authority's Fees Notice complied with the requirements in the EIRs.

Did the Authority have a published schedule of fees?

20. Regulation 8(8) of the EIRs requires a Scottish public authority to publish and make available to applicants a schedule of its fees, and information on the circumstances in which a fee may be charged, waived or required to be paid in advance.
21. The Authority's [Schedule of Fees](#)³ states that it charges a fee, which must be paid in advance, for responses to requests for environmental information under the EIRs. In summary, it makes clear what the proposed fee will incorporate in relation to the actual cost of staff time taken to locate, retrieve, redact (where relevant) and provide the information, together with any additional costs (such as postage or photocopying). The schedule of fees also makes it clear that all costs must be paid in advance.
22. The Commissioner is satisfied that the Authority was entitled to charge a fee for the request under consideration in this decision, under regulation 8(1) of the EIRs, and that it has published a schedule of its fees, as required by regulation 8(8) of the EIRs.

Was the fee reasonable?

23. Regulation 8(3) of the EIRs states that fees charged shall not exceed a reasonable amount and shall not exceed the costs to the authority of producing the information requested.

³ <https://www.edinburgh.gov.uk/downloads/file/33488/schedule-of-fees>

24. In considering what is reasonable, the Commissioner has taken account of the considerations set out in his guidance on "[Charging for Environmental Information](#)"⁴ under the heading "Is the charge reasonable or excessive?" (paragraph 12). These include:
- any costs charged must not be such that applicants are dissuaded from seeking to obtain environmental information or that the right to access is restricted;
 - public authorities should be able to demonstrate to the Commissioner that, in setting charges, they have undertaken a proper study of all of the relevant factors which should be taken into account, that they have given those factors proper consideration and that they have not taken into account any other, irrelevant, factors; and
 - account should be taken of the actual costs to the authority of providing the information. For example, it is likely to be cheaper to provide a document on the website or by email than to send it out in hard copy, and this should be reflected in the charge.
25. In seeking to establish whether the Authority's fee was reasonable, the Commissioner asked the Authority to provide him with details of the amount of work required to locate, retrieve and provide the information covered by the Applicant's request.
26. The Authority was unable to evidence the work it had undertaken to inform the original Fees Notice it issued to the Applicant. It explained that the staff member who acted as the point of contact within its Transport department had since left its employment. The Authority submitted that this structural change, allied with the passage of time, had created several challenges in re-visiting the cost calculations involved at the time of the request. It noted that there was no record of how the staff member had calculated the original Fees Notice, or how their searches were carried out.
27. The Commissioner asked the Authority to carry out, and provide evidence of, searches to allow him to determine whether the original Fees Notice was reasonable. This resulted in the Authority arriving at a significantly higher proposed Fees Notice of £2,145.
28. However, the Commissioner noted that the Authority had failed to refine its searches by the date period requested by the Applicant and that it had not specified "road" in its searches, which he considered might have increased the number of irrelevant results and thereby the proposed charge in the Fees Notice. At the Commissioner's request, the Authority carried out further searches.
29. The Authority was asked to carry out new searches, combining the names of the roads specified by the Applicant with the date range 28/01/21 to 23/01/22. The Authority carried out these searches and retrieved only two documents. Given the significant reduction in documents found, the Authority withdrew its reliance on regulation 8 of the EIRs, and it disclosed the information to the Applicant.

The Commissioner's view

30. Having considered the relevant submissions, and the fact that the Authority has withdrawn the Fees Notice it issued under regulation 8 of the EIRs and has since disclosed the information to the Applicant, the Commissioner finds that the original Fees Notice issued by the Authority was not reasonable.

⁴ <https://www.itspublicknowledge.info/sites/default/files/2022-03/Chargingforenvironmentalinformation.pdf>

31. The Commissioner is concerned that the Authority's calculations of the Fees Notice varied from £208 to £2,145 before eventually being withdrawn as only two relevant documents were identified. He recognises that the original officer, who calculated the Fees Notice, left the Authority's employment without leaving any record of their searches or calculations, but it appears that the Authority did not carry out focused searches to ensure that the Fees Notice it calculated was reasonable.
32. When dealing with future requests for environmental information under the EIRs, the Commissioner would urge the Authority to take adequate steps to ensure it is capable of justifying the "reasonable amount" that the EIRs allow public authorities to charge to produce the information requested and so that it does not propose charges that are such that applicants are dissuaded from seeking to obtain environmental information or that the right to access is restricted.

Decision

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

The Commissioner finds that the Authority was correct to consider the request under the EIRs.

However, while the Commissioner acknowledges that the Authority was entitled to issue a Fees Notice to the Applicant, he is not satisfied that the fee charge proposed was reasonable, in line with regulation 8 of the EIRs

Given that the Authority has now disclosed to the Applicant without charge the information it identified as falling within the scope of his request, the Commissioner does not require the Authority to take any action in respect of this failure, in response to the Applicant's application.

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.

David Hamilton
Scottish Information Commissioner

9 April 2024

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.

...

- (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.

...

8 Charging

- (1) Subject to paragraphs (2) to (8), where a Scottish public authority is under a duty to make environmental information available under regulation 5(1), it may charge a fee for so doing.
...
- (3) Fees charged under paragraph (1) shall not exceed a reasonable amount and in any event shall not exceed the costs to the authority of producing the information requested.
- (4) A Scottish public authority may require that payment of the whole or part of a fee under paragraph (1) be made in advance of making information available.
...
- (6) Where a Scottish public authority has notified an applicant that advance payment is required under paragraph (5) then that authority is not obliged to-
 - (a) make the information requested available under regulation 5(1); or
 - (b) comply with regulations 6, 7 or 13,unless the fee is paid; and any such fee must be paid within a period of 60 working days beginning with the day on which the authority gave such notification.
...
- (8) A Scottish public authority shall publish and make available to applicants-
 - (a) a schedule of its fees; and
 - (b) information on the circumstances in which a fee may be charged, waived or required to be paid in advance.

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
 - ...