



Scottish Information
Commissioner
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Decision Notice 245/2024

Correspondence regarding Homewards Initiative

Authority: Aberdeen City Council

Case Ref: 202400120

Summary

The Applicant asked the Authority for correspondence between the Authority and Prince William, the Royal Foundation and the Homewards Initiative on specified subjects. The Authority disclosed some information but withheld other information under various exemptions under FOISA. Following an investigation, the Commissioner concluded that at least some of the information requested was environmental information (and therefore subject to the EIRs) and that the Authority had failed to satisfy him that it had identified all relevant information falling within the scope of the request. He required the Authority to issue a revised review response.

Relevant statutory provisions

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

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of “the Act”, “applicant”, “the Commissioner” and “environmental information”) (Interpretation); 5(1) (Duty to make environmental information available on request); 16 (Review by a Scottish public authority); 17(1), (2)(a),(b) and (f) (Enforcement and appeal provisions)

Background

1. On 12 July 2023, the Applicant made a request for information to the Authority. He asked for correspondence between the Authority and Prince William, The Royal Foundation, the Homewards Initiative or anyone writing on behalf of Prince William on the following subjects:
 - (a) Homelessness and/or a shortage of homes within the [Authority's] geographical area and or the issue of homelessness and or a shortage of homes anywhere else in the UK
 - (b) The problems faced by rough sleepers in the [Authority's] own geographical area and or in any other parts of the UK. This will include but will not be limited to the health and safety of those who are sleeping rough and have no proper protection from the elements
 - (c) The Prince's new Homewards initiative.
 - (d) The Royal Foundation of the Prince and Princess of Wales.
 - (e) The shortage of housing whether in the [Authority's] own geographical area and or in any other part of the UK.
 - (f) The need to build and/or to secure and or to provide more homes in the [Authority's] own geographical area and or in any other part of the UK.
 - (g) The use of vacant land sites within the [Authority's] own geographical area and or in any other parts of the country to provide new homes and or new facilities for those regarded as being homeless or those in urgent need of new houses.
 - (h) The need to build more housing and or facilities for the homeless on either brown field or green field sites within the [Authority's] area.
 - (i) The use of existing properties that are either empty and or derelict to provide new homes and or new services for the
 - (j) The existing housing stock within the [authority's] area.
2. The full text of the request, subject to personal data redactions, is set out in Appendix 1, below.
3. The Authority wrote to the Applicant on 18 September 2023 apologising for its delay in responding, but it did not provide a formal response to the request.
4. On 1 November 2023, the Applicant wrote to the Authority, requiring a review in respect of its failure to respond.
5. The Applicant did not receive a response to his requirement for review, but the Authority issued an acknowledgement on 6 November 2023.
6. On 6 January 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated he was dissatisfied with the outcome of the Authority's review because the Authority had not responded to his request or his requirement for review.

7. On 26 January 2024, the Authority responded to the Applicant's requirement for review. The Authority provided the Applicant with some of the requested information and withheld other information under sections 30(b)(i), 30(b)(ii) 38(1)(b), 36(2) and 41(a) of FOISA.
8. On 31 January 2024, the Applicant wrote again to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he considered that his request should have been considered under the EIRs and he did not agree that the exemptions claimed had been properly applied.

Investigation

9. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
10. On 12 March 2024, 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.
11. 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.

Commissioner's analysis and findings

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

FOISA or EIRs?

13. The relationship between FOISA and the EIRs was considered at length in [Decision 218/2007](#)¹. Broadly, in the light of that decision, the Commissioner's general position is as follows:
 - (i) The definition of what constitutes environmental information should not be viewed narrowly.
 - (ii) There are two separate statutory frameworks for access to environmental information and an authority is required to consider any request for environmental information under both FOISA and the EIRs.
 - (iii) Any request for environmental information therefore must be handled under the EIRs.
 - (iv) In responding to a request for environmental information under FOISA, an authority may claim the exemption in section 39(2).
 - (v) If the authority does not choose to claim the section 39(2) exemption, it must respond to the request fully under FOISA: by providing the information; withholding it under

¹ <https://www.foi.scot/decision-2182007>

another exemption in Part 2; or claiming that it is not obliged to comply with the request by virtue of another provision in Part 1 (or a combination of these).

(vi) Where the Commissioner considers a request for environmental information has not been handled under the EIRs, he is entitled (and indeed obliged) to consider how it should have been handled under that regime.

14. Given the subject matter of the request, the Commissioner found it appropriate to consider whether the information requested by the Applicant should properly be regarded as environmental information and therefore subject to the EIRs.
15. In response to a request for comments on this point, the Authority submitted that the information it held relative to the request did not satisfy the definition of environmental information under the EIRs as it related almost entirely to arrangements around a Royal visit and the launch of the Homewards Initiative, which was not information that was environmental in nature.
16. The Commissioner accepts that information will not necessarily be environmental simply because it had a slight or tangential association with the state of the elements of the environment. On the other hand, he acknowledges that no types of information are excluded from the potential ambit of environmental information and that court cases have confirmed that environmental information, and the scope of the Directive, should be interpreted broadly.
17. Having considered both the terms of the request and the withheld information, the Commissioner finds it reasonable to conclude that some of the information requested in this case should, at least in part, properly be considered to be environmental information. It would be surprising, to say the least, if a request of this breadth relating largely to the alleviation of homelessness did not yield up at least some environmental information.
18. Given that the Authority failed to deal with it as such, the Commissioner also finds that the Authority failed (to the extent that the information was environmental) to deal with the Applicant's request for that information in accordance with regulation 5(1) of the EIRs.
19. The Commissioner notes that one of the reasons the Applicant requested that the Authority respond his request under the EIRs was because he considered disclosure of the information requested was more likely, as some of the exemptions the Authority relied on (such as section 41 of FOISA) do not have direct counterparts under the EIRs.
20. While, as rehearsed earlier, the Commissioner is satisfied that some of the information requested was properly considered to be environmental information, the key factor in his determination was the nature of the information – not any perceived or actual advantage to either the Applicant or the Authority of responding to the request under either regime.
21. Where the information falling within the scope of a request comprises both "environmental" and "non-environmental" information, then the specific component information must be processed in accordance with the appropriate regime. Environmental information falling within the scope of the request, therefore, must be processed in accordance with both FOISA and the EIRs, while any non-environmental information should be processed in accordance with FOISA alone.

Section 39(2) of FOISA – environmental information

22. 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.
23. In this case, as stated above, the Authority responded to the request for review solely under FOISA.
24. The Commissioner finds that the Authority would have been entitled to apply this exemption to some of the information requested, given his conclusion that some of the information requested was properly classified as environmental information.
25. As there is a separate 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 parts of the request under the EIRs) outweighs any public interest in disclosing the information under FOISA.

Regulation 16 of the EIRs

26. Regulation 16 of the EIRs states that, on receipt of a requirement to conduct a review, the authority shall review the matter and decide whether it has complied with the EIRs, within 20 working days (regulations 16(3) and (4)). It also states that, where an authority has not complied with its duty under the EIRs, it shall immediately take steps to remedy the breach of duty (regulation 16(5)).
27. Although the Authority responded to the Applicant's requirement for review on 26 January 2024, as explained above, this was a result of the Authority considering the request solely in terms of FOISA and not, at least in part, under the EIRs.
28. It is apparent that the Authority failed to respond to the Applicant's request of 12 July 2023 in terms of the EIRs, and therefore failed to comply with regulation 5(1) of the EIRs. It is also apparent that the Authority failed to carry out a review meeting the requirements of regulation 16 of the EIRs.
29. The Commissioner therefore requires the Authority to provide a revised response to the Applicant's requirement for review of 1 November 2023 in terms of regulation 16 of the EIRs (to the extent that the information requested was environmental).

Information falling within the scope of the request

30. In considering whether a Scottish public authority has complied with the requirements of FOISA or the EIRs in any given case, the Commissioner must be satisfied that the authority has carried out adequate, proportionate searches in the circumstances, taking account of the terms of the request and all other relevant circumstances.
31. The Commissioner will consider the scope, quality, thoroughness and results of those searches, applying the civil standard of proof (the balance of probabilities). Where appropriate, he will also consider any reasons offered by the public authority to explain why it does not, or could not reasonably be expected to, hold the information.
32. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold the information (or holds no more information than it has identified and located in response to the request).

33. In this case, notwithstanding the opportunity given to provide comments and the substantial volume of information it identified, the Commissioner is not satisfied that the Authority has achieved this.
34. When the Commissioner requested comments from the Authority, he asked for a description of the searches carried out, including the records which were searched and any keywords and other search parameters used. While the Authority outlined which colleagues it asked to conduct searches, it did not describe these searches in sufficient detail to satisfy the Commissioner that adequate searches were conducted.
35. The Commissioner also notes that there are references within the withheld information provided by the Authority to further information that was not identified as a result of its searches, including an attachment, a WhatsApp chat and several video files. It appears likely that this information would fall within the scope of the request, if it was held by the Authority at the time of the request.
36. During the investigation, the Commissioner requested the missing attachment from the Authority. The Authority provided a copy of the missing attachment and explained that it did not consider it fell within the scope of the request as it was an “internal working document”.
37. Having reviewed the attachment, the Commissioner is satisfied that it did fall within the scope of the request as it was edited by the Royal Foundation, received by the Authority from the Royal Foundation, and still held by the Authority at the time of the request.
38. In all the circumstances, the Commissioner cannot therefore conclude that the Authority identified all relevant information falling within the scope of the request.
39. Consequently, the Commissioner requires the Authority to carry out fresh searches for the information and to issue the Applicant with a revised review outcome.
40. In doing so, the Authority should ensure that it has correctly understood the scope of the Applicant’s request. If the Authority is unsure of the correct scope of this request, the Commissioner would remind the Authority that it should, in line with the requirements of the [Scottish Ministers’ Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the EIRs²](#) (the Section 60 Code), engage with the Applicant to clarify the precise scope of the request.

Handling of the request

41. In the circumstances, the Commissioner must comment on two aspects of the Authority’s handling of the request.
42. First, the Authority failed to respond to the Applicant’s request and requirement for review within the timescales laid down by both FOISA and the EIRs.
43. The Authority explained that there were several reasons for delays, including engagement with third parties. The Commissioner would remind the Authority that paragraph 7.4.1 of the Section 60 Code makes clear that responding to requests and requirements for reviews must always take priority over consulting third parties.

² <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf>

44. Second, the Authority did not treat the individual elements of the Applicant's request (elements (a) to (j)) as separate items.
45. The Authority explained that it had asked the Senior Officer involved in the launch of the Homewards Project and asked that they search and provide recorded information falling within the scope of the request (i.e. which mentioned or in any way related to any and or all of the issues and topics listed in elements (a) to (j) of the Applicant's request). The Authority confirmed that it did not treat elements (a) to (j) of the request as "separate items", but as "qualifiers" for the request.
46. Because of the way the Authority handled the Applicant's request, it is not clear whether it does, in fact, hold information for each element of the request or what information relates to which element. For the vast majority of the withheld information that it provided to the Commissioner, the Authority simply stated that individual documents related to all parts of the request.
47. It is important that the Commissioner is given adequate information by authorities to identify what element or part of a request withheld information relates to and whether information is, in fact, held relative to a particular element or part of a request.
48. Given the terms of some elements of the request, particularly elements (a), (b), (f), (g), (h) and (i), it is highly unlikely that the information requested (whether held or not) would not be environmental information (as defined by regulation 2(1) of the EIRs).
49. When issuing its revised review outcome, the Commissioner requires the Authority to consider each element of the Applicant's request and to respond accordingly under FOISA or, to the extent that the information requested is environmental, under the EIRs.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by the Applicant.

The Authority has failed to satisfy the Commissioner that it does not hold any further information in addition to that identified already. As a result, the Commissioner finds that the Authority failed to comply with section 1(1) of FOISA and regulation 5(1) of the EIRs.

To the extent that some of the information requested is environmental information, as defined by regulation 2(1) of the EIRs, the Commissioner also finds that the Authority failed to comply with the requirements of regulations 5(1) and 16 in responding to the Applicant's information request and requirement for review.

The Commissioner therefore requires the Authority to carry out adequate, proportionate searches for the information; reach a decision on the basis of those searches and notify the Applicant of the outcome (in terms of section 21 of FOISA or regulation 16 of the EIRs, as appropriate), **by 16 December 2024.**

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.

Euan McCulloch
Head of Enforcement

31 October 2024

Appendix 1: Request for information

I would like to request the following information via the Environmental Information Scotland Regulations (EIRs).

I understand my request will take twenty days to process but I would be grateful if you could acknowledge receipt via ...

Please note that the reference to Prince William in the questions below should be taken to mean the Prince himself (irrespective of the royal and or aristocratic and or constitutional title (s) used by him). It should also include anyone able to receive and or compose and or send correspondence on behalf of the Prince.

Please note that the reference to the council in the questions below should be restricted to the Council Leader and his or her office, the Chief Executive [or equivalent] and his or her office, the council's press and public relations office, the council's legal department, the council's housing department, any council employees who work directly with the homeless and or the issue of homelessness and or any council employees who are known to have been in contact with either the Prince (and or his team) and or The Royal Foundation of The Prince and Princess of Wales and or any employee and representative of the prince's Homewards initiative.

Please note that the reference to correspondence and communications in the questions below should include all traditional forms of correspondence such as letters, faxes and memos; all emails irrespective of whether they were sent and or received via official or private accounts; all Gmail messages; all telephone text messages and all messages sent through encrypted messaging services including but not limited to WhatsApp. Please provide copies of actual correspondence and communication and not just excerpts from that correspondence and communication. In the case of actual letters can you provide a copy which includes the letter head, any other design features, and the actual signatories. If you feel the need to redact information, please redact it where it appears in the correspondence and communication. That way I will be able to judge the extent and location of any redaction.

Please note that I am only interested in information generated between 1 February 2023 to the present day.

...

1...During the aforementioned period has Prince William (and or anyone able to correspond and communicate on his behalf) written to and or communicated with the council. Please note that I am only interested in that correspondence and communications which mentions and or in any way relates to any and or all of the issues and topics listed below. If the answer is yes, can you, please provide copies of this correspondence and communication.

- (a) ... Homelessness and or a shortage of homes within the council's geographical area and or the issue of homelessness and or a shortage of homes anywhere else in the UK.
- (b) ... The problems faced by rough sleepers in the council's own geographical area and or in any other parts of the UK. This will include but will not be limited to the health and safety of those who are sleeping rough and have no proper protection from the elements.
- (c) ... The Prince's new Homewards initiative.
- (d) ... The Royal Foundation of the Prince and Princess of Wales.

(e) The shortage of housing whether in the council's own geographical area and or in any other part of the UK.

(f) The need to build and or to secure and or to provide more homes in the council's own geographical area and or in any other part of the UK.

(g) The use of vacant land sites within the council's own geographical area and or in any other parts of the country to provide new homes and or new facilities for those regarded as being homeless or those in urgent need of new houses.

(h) ... The need to build more housing and or facilities for the homeless on either brown field or green field sites within the council's area.

(i) ... The use of existing properties that are either empty and or derelict to provide new homes and or new services for the

j) The existing housing stock within the council's area.

.... During the aforementioned period has the council written to and or communicated with Prince William (and or anybody able to correspond and or communicate on his behalf) about any of the issues outlined in question one (a to j). If the answer is yes, can you, please provide copies of this correspondence and communication.

3 ... During the aforementioned period did either the Royal Foundation of the Prince and Princess of Wales and or any employee and representative of the Prince's Homewards initiative write to and or communicate with the council. Please note that I am only interested in that correspondence and communication which mentions and or in any way relates to any and or all of the topics and issues listed in question one (a to j). If the answer is yes, can you, please provide a copy of this correspondence and communication.

4 ... During the aforementioned period did the council write to and or communicate with the Royal Foundation of the Prince and Princess of Wales and or any employee and or representative of the prince's Homewards initiative. Please note that I am only interested in that correspondence and communication which mentions and or in any way relates to any and or all of the topics and issues listed in question one (a to j). If the answer is yes, can you, please provide a copy of this correspondence and communication.