

Decision Notice

Decision 008/2015: Ms Fiona Powell and City of Edinburgh Council

Breakdown of statutory notice costs

Reference No: 201402357

Decision Date: 19 January 2015



Scottish Information
Commissioner

Summary

On 6 August 2014, Ms Powell asked the City of Edinburgh Council (the Council) for a breakdown of quantities and items for each of five numbered statutory notices. The Council informed Ms Powell that, in response to previous requests, it had already provided her with all the breakdown information that it held.

Following an investigation, the Commissioner accepted that the Council did not hold a more detailed breakdown of the information requested by Ms Powell and that it had complied with the EIRs in the way it dealt with her request.

Relevant statutory provisions

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

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 6 August 2014, Ms Powell made a request for information to the Council. Part of her request asked for "a breakdown of quantities and items for the Final Account Sum Total (after adjustment) of ..." in respect of 5 numbered statutory notices. She also asked for "a breakdown of quantities and items for the ... for works falling outside the statutory notices".
2. The Council responded on 2 September 2014, stating that it did not hold separate itemised breakdowns for each of the individual statutory notices. The Council also stated that it did not hold an itemised breakdown for those items falling outside the scope of the statutory notices and stressed that owners were not being charged for these items. For the information it held on these matters, the Council referred Ms Powell to the Deloitte Report and Final Account previously provided to her. It applied regulation 10(4)(a) of the EIRs to the request.
3. On 3 September 2014, Ms Powell wrote to the Council, requesting a review of its decision on the basis that she required a more itemised breakdown in order to verify that there had been no overcharging or misappropriation of shares of the total cost.
4. The Council notified Ms Powell of the outcome of its review on 30 September 2014. The Council upheld its reliance on regulation 10(4)(a) and informed Ms Powell of the searches it had carried out to locate any more detailed breakdowns. It confirmed that it held no such information.
5. On 1 October 2014, Ms Powell wrote to the Commissioner. She applied to the Commissioner 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. Ms Powell stated she was

dissatisfied with the outcome of the Council's review because she believed it must hold a more detailed breakdown of the costs pertaining to the five numbered statutory notices, in order to substantiate the final bill.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Ms Powell made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions, focused on the steps taken to identify and locate and relevant information it held.
8. Both the Council and Ms Powell provided the Commissioner with comments.
9. During the investigation, the Council disclosed some further information to Ms Powell which it felt might be of interest to her, although it did not consider this information fell within the scope of her request. It included contractors' invoices, but not the breakdown she was seeking.

Commissioner's analysis and findings

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

FOISA or EIRs?

11. In its initial response of 2 September 2014, and its review outcome of 30 September 2014, the Council stated that it considered the requested information was environmental information and that the request should be handled under the EIRs. The Commissioner agrees with the Council that the information under consideration is environmental and Ms Powell has not challenged its decision to handle the request under the EIRs. She will therefore consider Ms Powell's application solely in terms of the EIRs.

Regulation 10(4)(a)

12. 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.
13. In her application Ms Powell stated that the Council had failed to provide her with a sufficiently detailed breakdown of items, quantities and costs for the works carried out at her address.
14. Ms Powell argued that the Council should be accountable for the bills it was asking her to pay, being her share of the overall costs of the works to the building. She was concerned about possible overcharging, or misappropriation of shares.
15. The Council submitted that Ms Powell had made a total of four information requests for the breakdown information and that it had provided her with various items, such as letters from contractors and architects, payment certificates, the Deloitte Report for the address in

question (prepared following Deloitte's investigation of allegations relating to the management of the Council's statutory notices), the Final Account and the End of Works Report.

16. Ms Powell acknowledged that she had been provided with a breakdown in respect of the works carried out under the statutory notices, in the Final Account and End of Works Report. However, she expected this to be broken down further, in respect of each individual notice.

Searches carried out by the Council

17. The Council explained that it conducted a general search of its G:Drive against the street name, name of contractor, consultant, project reference and the names of relevant Council officers (which it listed). It confirmed that it examined all information produced by these searches. Emails saved within the shared areas of the G:Drive were also examined, as was the project file for the address in question.
18. The Council confirmed that it had considered its Property Conservation service to be the only one likely to hold information falling within the scope of the request. During the investigation, however, it carried out further investigations to check whether any information might be held by its Finance Department or the Chief Executive's office. No further information was identified, but both departments confirmed that any relevant information would have been held by the Property Conservation service.
19. The Council submitted that there was no evidence in the paper file or in the electronic records to suggest that a detailed breakdown for each individual statutory notice was ever held by the Council, other than the information previously disclosed. There was no evidence of any such information having being destroyed.
20. The Commissioner notes that there is a single Final Account for the works carried out under the five statutory notices, with a detailed breakdown of items, quantities and costs for the works as a whole. The Final Account total attributable to each notice is to be found in the End of Works Report, with the apportionment to individual properties. Ms Powell has confirmed that each individual tenement flat at her address is responsible for an equal (one-sixteenth) share of the works carried out under the relevant statutory notices: this appears to be borne out by the End of Works Report.
21. Having considered the submissions received from both parties, the Commissioner is satisfied that the Council took steps which should, in the circumstances, have identified and located all of the information it held and which fell within the scope of Ms Powell's request. In all the circumstances, therefore, the Commissioner accepts that the Council carried out adequate, proportionate searches for the information and is satisfied, on the balance of probabilities, that it held no further information which would fulfil Ms Powell's request.
22. In accepting that the Council does not hold any further information, the Commissioner acknowledges that Ms Powell may believe more information should have been held, in the interests of accountability. However, the Commissioner can only consider whether such information was in fact held.

The public interest test

23. The exception in regulation 10(4)(a) is subject to the public interest test in regulation 10(1)(b) of the EIRs, so a public authority can refuse a request under it only if, in all the circumstances, the public interest in maintaining the exception outweighs the public interest in making the information available.

24. In this case, the Commissioner is satisfied that the Council does not hold the information sought by Ms Powell. Consequently, she does consider there to be any conceivable public interest in requiring that the information be made available. The Commissioner therefore concludes that the public interest in making the requested information available is outweighed by that in maintaining the exception in regulation 10(4)(a) of the EIRs.
25. The Commissioner is satisfied, therefore, that the Council was entitled to rely on regulation 10(4)(a) of the EIRs, on the basis that it did not hold the requested information.

Decision

The Commissioner finds that the City of Edinburgh Council complied with the Environmental Information (Scotland) Regulations 2004 in responding to the information request made by Ms Powell.

Appeal

Should either Ms Powell or City of Edinburgh Council wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Margaret Keyse
Head of Enforcement

19 January 2015

Appendix 1: Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

(1) In these Regulations -

...

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on

-

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

...

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;

...

5 Duty to make available environmental information on request

(1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.

(2) The duty under paragraph (1) -

...

(b) is subject to regulations 6 to 12.

...

10 Exceptions from duty to make environmental information available-

(1) A Scottish public authority may refuse a request to make environmental information available if-

(a) there is an exception to disclosure under paragraphs (4) or (5); and

(b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.

...

(4) A Scottish public authority may refuse to make environmental information available to the extent that

(a) it does not hold that information when an applicant's request is received;

...

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