

Decision Notice



Decision 009/2011 Jim Keir and Loch Lomond and The Trossachs National
Park Authority

Planning enforcement file

Reference No: 201000594
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www.itspublicknowledge.info

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Summary

Mr Keir requested from Loch Lomond and The Trossachs National Park Authority (the Authority) information in two files which he specified. The Authority responded by withholding the information in the first file under sections 30(c), 34(1)(a) and (b) and 35(1) of FOISA, while explaining he had been given all the information from the second file. Following a review, Mr Keir remained dissatisfied and applied to the Commissioner for a decision relating to the withheld information in the first file.

There followed an investigation, in the course of which the Authority accepted that Mr Keir's information request should have been dealt with under the EIRs. It therefore relied upon section 39(2) of FOISA and the exceptions in regulations 10(5)(b) and (f), and also regulation 11, of the EIRs for withholding information.

Following the investigation, the Commissioner found that the Authority should have dealt with the information request in accordance with the EIRs. While finding that it was entitled to withhold the personal data of complainants under regulation 11 of the EIRs, he also found that the Authority had not been entitled to rely upon regulation 10(5)(b) to withhold the information in the first file, not being satisfied that its release would, or would be likely to, substantially prejudice the ability of any public authority to conduct an inquiry of a criminal nature. Subject to the redaction of the personal data of complainants, he required the disclosure of the withheld information.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 39(2) (Health, Safety and the Environment).

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation) (definition of "environmental information"); 5(1) and (2)(b) (Duty to make available environmental information on request); 9(1) (Duty to provide advice and assistance); 10(1), (2), (3) and (5)(b) (Exceptions from duty to make environmental information available); 11(1), (2), (3)(a)(i) and (3)(b) (Personal data).

Data Protection Act 1998 (the DPA) sections 1(1) (Basic interpretative provisions) (definition of "personal data"); Schedules 1 (The data protection principles) (the first principle) and 2 (Conditions relevant for purposes of the first principle: processing of any personal data) (Condition 6).



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

Background

1. It may be helpful to explain that the Authority was established in July 2002 as the authority for Loch Lomond and The Trossachs National Park, by an Order made under Schedule 1 to the National Parks (Scotland) Act 2000. By virtue of that Order, it exercises most of the statutory functions of the planning authority in relation to the area of the National Park, including those functions relating to the determination of applications for planning permission and the taking of enforcement action in respect of breaches of planning control. For these purposes, the Authority maintains a filing system whereby information is filed in separate planning application and planning enforcement files, depending on the circumstances in which the information is created and in accordance with its own policies and the relevant statutory requirements.
2. This decision relates to a written request Mr Keir made to the Authority on 5 March 2010, requesting the following information:
 - a) a complete copy of file LT/2002/0102/ENF/S [this being an enforcement file]
 - b) a complete copy of file LT/2007/0298/DET/S and any other information omitted from the files including pictures shown to Mr Keir by a named officer at their meeting in Balloch on 27 January 2010.
3. The Authority responded on 11 March 2010, indicating it was applying exemptions to request a) under sections 30(c), 34(1) and 35(1) of FOISA. It also indicated that no information had been withheld in relation to request b), as the “missing documents” to which Mr Keir was referring (the photographs shown to him at the meeting he had referred to) were in fact held separately and not allocated to a specific file. Copies of these photographs were, however, supplied.
4. On 12 March 2010, Mr Keir wrote to the Authority requesting a review of its decision in relation to his request. He contended that documents were missing from file LT/2007/0298/DET/S and submitted that file LT/2002/0102/ENF/S, which he believed had been made available to third parties, should be released in its entirety.
5. Following further correspondence between the Authority and Mr Keir by way of clarification, the Authority notified Mr Keir of the outcome of its review on 31 March 2010. In relation to request a), it upheld its decision to withhold information under sections 30, 34 and 35 of FOISA. In relation to request b), the Authority advised that it was investigating the possibility that documentation had been omitted from the file as previously released and that it would respond on this point as soon as possible.



6. On 29 April 2010 Mr Keir wrote to the Commissioner's Office, stating that he was dissatisfied with the outcome of the Authority's review in respect of file LT/2002/0102/ENF/S (request a)) and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
7. The application was validated by establishing that Mr Keir had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

8. On 15 June 2010, the Authority was notified in writing that an application had been received from Mr Keir and asked to provide the Commissioner with any information withheld from him. The Authority responded with the information requested and the case was then allocated to an investigating officer.
9. The investigating officer subsequently contacted the Authority, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Authority was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested, and also whether it considered any of the information requested to be environmental information in terms of regulation 2(1) of the EIRs (and if it did, which provisions of the EIRs it considered applicable and why).
10. In responding, the Authority acknowledged that any information falling within the scope of the request would be environmental information as defined in regulation 2(1) of the EIRs. It confirmed that it considered section 39(2) of FOISA and regulation 10(5)(b) of the EIRs to apply.
11. The submissions provided by Mr Keir and the Authority, insofar as relevant, will be considered in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to him by both Mr Keir and the Authority and is satisfied that no matter of relevance has been overlooked.



Section 39(2) of FOISA – environmental information

13. The Commissioner set out his thinking on the relationship between FOISA and the EIRs in some detail in *Decision 218/2007 Professor A D Hawkins and Transport Scotland* and need not repeat it in full here. In this case, the Authority confirmed in the course of the investigation that it was entitled to withhold the information requested, as environmental information, under section 39(2) of FOISA. For this exemption to apply, any information requested would require to be environmental information as defined in regulation 2(1) of the EIRs, which is reproduced in the Appendix below.
14. In this case, Mr Keir has requested information relating to enforcement files. Given the terms of the request (and having in any event considered the information in the file which is the subject of Mr Keir's application), the Commissioner takes the view that any relevant information held by the Authority would relate to measures affecting, or likely to affect, the elements of the environment (in particular land and landscape). Consequently, he considers that the information requested by Mr Keir falls within the definition of environmental information set out in regulation 2(1) of the EIRs, specifically paragraph (c) of that definition. However, while he is pleased to note that the Authority accepted this in the course of the investigation, he must also note that it did not do so (and act accordingly under the EIRs) when dealing with Mr Keir's information request. As he found in *Decision 218/2007*, a Scottish public authority has an obligation to deal with a request for environmental information under the EIRs: in failing to do so, he finds that the Authority failed to comply with regulation 5(1) of the EIRs.
15. 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 withheld information, given his conclusion that it is properly considered to be environmental information.
16. This exemption is subject to the public interest test in section 2(1)(b) of FOISA. As there is a separate statutory right of access to environmental information available to the applicant in this case, the Commissioner also accepts that the public interest in maintaining this exemption and dealing with the request in line with the requirements of the EIRs outweighs any public interest in disclosure of the information under FOISA. The Commissioner has consequently proceeded to consider this case in what follows solely in terms of the EIRs.
17. The Authority adopted the position that the contents of file LT/2002/0102/ENF/S, as an enforcement file, should be withheld in full under regulation 10(5)(b) of the EIRs. Additionally, it submitted that the personal data of complainants (which it identified) should be withheld under regulations 10(5)(f) and 11 of the EIRs.

Regulation 10(5)(b) of the EIRs - withheld information

18. Regulation 10(5)(b) 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 course of justice, the ability of a person to receive a fair trial or the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature.



19. In determining whether the withheld information would fall within the scope of this exception, the Commissioner has been mindful of the guidance given in *The Aarhus Convention: An Implementation Guide* (<http://www.unece.org/env/pp/acig.pdf>), where the principles behind the Convention provision on which the exception is based are explained in the following way (page 59):
- "The course of justice refers to active proceedings within the courts. The term 'in the course of' implies that an active judicial procedure capable of being prejudiced must be under way. This exception does not apply to material simply because at one time it was part of a court case. Public authorities can also refuse to release information if it would adversely affect the ability of a person to receive a fair trial. This provision should be interpreted in the context of the law pertaining to the rights of the accused."
- The *Guide* goes on to refer to that part of the exception relating to investigations, pointing out that it applies only to investigations of a criminal or disciplinary nature and therefore does not necessarily cover information about a civil or administrative investigation.
20. Although there is no definition within the EIRs of what would constitute substantial prejudice, it is the Commissioner's view that the standard to be met in applying this test is high. The word "substantial" is important here: the harm caused, or likely to be caused, by disclosure must be of some real and demonstrable significance. The risk of harm must be real or very likely, not simply a remote or hypothetical possibility.
21. The Authority submitted that permitting the general public to access its planning enforcement files, whether historical or active, would prejudice substantially its ability to conduct enquiries of a criminal nature by dissuading members of the public from reporting possible breaches and by prejudicing future inquiries into breaches of planning control on the same land which might necessitate the taking of enforcement action (non-compliance with such action being an offence open to prosecution by the Authority). Any such disclosure would, the Authority argued, have a detrimental effect on public confidence in the confidentiality of its processes. Given the large area it covered with a small enforcement team, it emphasised the importance of reports by the public to the effective discharge of its enforcement function. In this particular case, it acknowledged that the breach to which the particular file related had ceased and there was therefore no active criminal inquiry, but contended that there remained the possibility that the unauthorised use could resume. It did not believe there was any reference in the EIRs to a requirement that information withheld under this exception must relate to an active investigation, but in any event it asked the Commissioner to note the related history of enforcement action.
22. It is clear from the Authority's submissions that its preferred approach is to consider the entire contents of its planning enforcement files as excepted from disclosure under the EIRs. There are, however, few exceptions in regulation 10 of the EIRs which lend themselves to such a "class-based" approach, and that in regulation 10(5)(b) is not one of them. In the Commissioner's view, it should be clear to the Authority after six years of the access to information regimes applied by FOISA and the EIRs that an exception (such as that in regulation 10(5)(b)) which requires the public authority to demonstrate substantial prejudice must be applied on a case-by-case basis, taking into consideration the content of the requested information and all other relevant circumstances.



23. The Authority's submissions are all in respect of that part of the exception relating to the ability of a public authority to conduct an inquiry of a criminal nature. In *Decision 125/2007 Robert Hogg and City of Edinburgh Council*¹, the Commissioner accepted the application of this part of the exception in respect of a planning enforcement process which remained ongoing at the time the authority dealt with the applicant's request and requirement for review. In those circumstances, he concluded that the planning authority's investigations, findings and submissions on the matter would in turn lead to and inform any subsequent decision on prosecution made by the Procurator Fiscal (and therefore that disclosure would be likely to prejudice substantially any future criminal investigation prompted by the planning enforcement process). In *Decision 001/2010 Argyll District Salmon Fishery Board and Loch Awe Improvement Association and the Scottish Ministers*², on the other hand, the Commissioner (having considered the withheld information) could not accept in the circumstances that any enforcement action following on from the relevant recommendations would carry with it any reasonable prospect of an inquiry of a criminal nature or subsequent criminal proceedings: consequently, he could not accept that the part of the exception under consideration here was applicable.
24. As indicated in paragraph 22, therefore, the individual circumstances of the case are crucial here. In this particular case, the enforcement action in question (and for that matter the use of land in breach of planning control which had given rise to it) had ceased some time before the applicant made his request for information. Having considered all the withheld information and the whole circumstances of the case carefully, therefore, the Commissioner cannot accept here that there could (at the time the Authority dealt with Mr Keir's request or subsequently) have been any prospect of an inquiry of a criminal nature or subsequent criminal proceedings deriving from the enforcement action to which file LT/2002/0102/ENF/S relates. He acknowledges that a similar potential breach might be identified in future, but understands that any further enforcement action (and consequently any related criminal inquiry or proceedings) would require a new investigation, taking into consideration any material planning considerations present in respect of the land affected at that particular time: it appears unlikely that any subsequent investigatory process would require reference to the information recorded in file LT/2002/0102/ENF/S, except to the extent that it was relevant to note that previous enforcement action had taken place (which is, in any event, a matter of public record).
25. The Commissioner has noted the Authority's submissions on the deterrent effect of disclosure on future potential complainants. While acknowledging the potential for harm of this kind in certain cases should information relating to planning enforcement matters be released into the public domain (see, for example his *Decision 111/2007 Mr Robert Mathewson and Angus Council*, which considers the application of the exemption in section 35(1)(g) of FOISA to certain non-environmental information on a potential breach of planning control), he cannot accept that it follows (as is the essence of the Authority's argument in this case) that this argument can be employed to justify the withholding of all information from planning enforcement files under the exception in regulation 10(5)(b).

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200601096.asp>

² <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/200901276.asp>



26. In this case, therefore, the Commissioner is not satisfied that disclosure of the withheld information would have prejudiced substantially, or would have been likely to prejudice substantially, the ability of any public authority to conduct an inquiry of a criminal nature. Consequently, he cannot agree with the Authority's application of the exception in regulation 10(5)(b) of the EIRs in respect of the contents of file LT/2002/0102/ENF/S.
27. Having found that the exception in regulation 10(5)(b) did not apply in the circumstances of this case, the Commissioner is not required to go on to consider the public interest test in regulation 10(1)(b) in relation to the withheld information. He must, however, consider whether (as the Authority has also argued) certain references to complainants should have been withheld under either regulation 11 or regulation 10(5)(f).

Regulation 11 – personal data

28. Regulation 10(3) of the EIRs requires that any personal data included in environmental information shall not be made available otherwise than in accordance with regulation 11. Regulation 11(2) prohibits disclosure of personal data of which the applicant is not the data subject, where either "the first condition" (set out in regulation 11(3)) or "the second condition" (set out in regulation 11(4)) applies to the information.
29. The Authority identified a number of specific references to complainants, as described in a schedule to a letter to the investigating officer dated 22 November 2011, as the personal data of those individuals. Although the Authority was not specific as to which part of regulation 11 it considered applicable to the information, it is evident to the Commissioner that its arguments relate to a potential contravention of the data protection principles in the event of disclosure, and therefore to the first condition (as set out in regulation 11(3)(a)(i) or, as appropriate, regulation 11(3)(b)) for the purposes of regulation 11(2).
30. In order for a public authority to rely on the relevant part of this exception, it must show firstly that the information which has been requested is personal data for the purposes of the DPA and secondly that disclosure of the information would contravene at least one of the data protection principles laid down in Schedule 2 to the DPA.

Is the information under consideration personal data?

31. Personal data is defined in section 1(1) of the DPA, which is reproduced in the Appendix to this decision.
32. The Authority submitted that the data in question, comprising the names and contact details for individuals and certain other identifying data within the complaints, would constitute the personal data of these persons.
33. The Commissioner accepts that the references identified by the Authority identify the individuals concerned and relate to them. In the circumstances, he is satisfied that the information constitutes the personal data of the complainants as defined by section 1(1) of the DPA.



Would disclosure of the information breach the first data protection principle?

34. The first data protection principle requires that personal data shall be processed (here, processing being the disclosure of the data in response to a request under the EIRs) fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 (to the DPA) is met and, in the case of sensitive personal data, at least one of the conditions in Schedule 3 to the DPA is also met.
35. The Commissioner has considered the definition of sensitive personal data set out in section 2 of the DPA and is satisfied that none of the data under consideration here are sensitive personal data. Therefore, it is not necessary to consider the conditions in Schedule 3 in this case.
36. There are three separate aspects to the first data protection principle: (i) fairness, (ii) lawfulness and (iii) the conditions in the schedules. However, these three aspects are interlinked. For example, if there is a specific condition which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.
37. The Commissioner will now go on to consider whether there are any conditions in Schedule 2 to the DPA which would permit the personal data to be disclosed. If any of these conditions can be met, he must then consider whether the disclosure of this personal data would be otherwise fair and lawful.

Can any of the conditions in Schedule 2 to the DPA be met?

38. The Commissioner has considered the conditions listed in Schedule 2 of the DPA and concluded that only condition 6 (on which the Authority has provided submissions) might be considered to apply in this case. Condition 6 allows personal data to be processed if the processing is necessary for the purposes of legitimate interests pursued by the data controller or the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
39. There are, therefore, a number of different tests which must be satisfied before condition 6 can be met. These are:
 - a) Does Mr Keir have a legitimate interest in obtaining this personal data?
 - b) If yes, is the disclosure necessary to achieve these legitimate interests? In other words, is the disclosure proportionate as a means and fairly balanced as to ends, or could these legitimate interests be achieved by means which interfere less with the privacy of the data subjects (in this case, the complainants)?
 - c) Even if the processing is necessary for the legitimate purposes of Mr Keir, would the disclosure nevertheless cause unwarranted prejudice to the rights and freedoms or legitimate interests of the data subjects? This will involve a balancing exercise between the legitimate interests of Mr Keir and those of the data subjects. Only if (or to the extent that) the legitimate interests of Mr Keir outweigh those of the data subjects can the



personal data be disclosed: it should be noted that in the case of personal data there is no presumption in favour of disclosure under the EIRs.

Does the applicant have a legitimate interest?

40. In his application, Mr Keir outlined concerns he had about the propriety of the Authority's actions towards him and his business in the course of what he described as "an ongoing planning dispute" with the Authority (which had included the enforcement action for the purposes of which file LT/2002/0102/ENF/S was kept). Having considered these submissions, the Commissioner is satisfied that Mr Keir has a legitimate interest (as indeed do the wider public) in understanding the reasons for planning enforcement action having been taken in his case, and therefore in obtaining the information in the withheld file, which includes the complainants' personal data.

Is disclosure of the information necessary to achieve those legitimate interests?

41. Having accepted Mr Keir's legitimate interest in any ongoing planning dispute for the site in question, the Commissioner must now consider whether disclosure is necessary for those legitimate interests. Whilst the Authority acknowledged that Mr Keir may have a legitimate interest in scrutiny of its actions in relation to activities on the site in question, it contended that it was not necessary for this purpose to discover the identities of complainants.
42. While Mr Keir did not specifically ask who had lodged complaints, the Commissioner accepts that adequate scrutiny of the propriety of the Authority's actions in this case may require the disclosure of information detailing the nature, origin and dates of complaints (which would, of necessity, include the personal data of the complainants). In the circumstances, the Commissioner is satisfied that disclosure is proportionate and that Mr Keir's aims could not be achieved by any other means which would interfere less with the privacy of the individuals in question, although he would also observe that the contribution made by the personal data in question to understanding of the Authority's actions in this case would appear to be limited.

Would disclosure cause unwarranted prejudice to the legitimate interests of the data subjects?

43. The Commissioner's briefing on Personal Information³ sets out factors which should be taken into account in carrying out this balancing exercise. These include:
- whether the information relates to the individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life or finances)
 - the potential harm or distress that may be caused by the disclosure
 - whether the individual has objected to the disclosure
 - the reasonable expectations of the individuals as to whether the information would be disclosed.

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44. The Authority submitted that members of the public reporting alleged breaches of planning control did so with an expectation that they would not be identified. Such identification would, it argued, have a significant impact on its ability to enforce planning breaches by dissuading potential complainants from reporting suspected breaches.
45. The Commissioner accepts in this case that the individuals who submitted complaints to the Authority relative to suspected breaches of planning control referred to in file LT/2002/0102/ENF/S did so without any expectation that information identifying them as the complainant would be made public. In the circumstances, he accepts that disclosure of such information into the public domain in response to a request for information (which would be the effect of a disclosure under the EIRs) would constitute a significant intrusion into the private lives of those persons. The Commissioner must also bear in mind that the EIRs contain no presumption in favour of the disclosure of personal data.
46. Having balanced the legitimate interests of the complainants against the legitimate interests identified by Mr Keir in this case, the Commissioner has found that disclosure would be unwarranted in this case by reason of prejudice to the rights, freedoms and legitimate interests of the data subjects. Accordingly, the Commissioner must conclude that condition 6 in Schedule 2 of the DPA is not met in relation to the complainants' personal data.
47. For the same reasons, the Commissioner has concluded that disclosure would be unfair and, in the absence of a condition permitting disclosure, unlawful. Consequently, the Commissioner finds that the Authority was correct to withhold the personal data of the complainants (as more particularly described in the schedule to the Authority's letter to the investigating officer of 22 November 2010) under regulation 11 of the EIRs.
48. Given that the Commissioner has upheld the withholding of the complainants' personal data in their entirety under regulation 11, he is not required to consider the application of regulation 10(5)(f) of the EIRs to this information.

Handling of Mr Keir's request

49. The Commissioner notes a concern expressed by Mr Keir, both in his requirement for review and in his application for a decision, to the effect that he believed objectors to his planning information to have had access to information from file LT/2002/0102/ENF/S. Having considered this point in the context of the information which led Mr Keir to this conclusion and relative submissions from the Authority, the Commissioner is not satisfied that he is able to draw the same conclusion from the available information. He notes, however, the Authority's acknowledgement that Mr Keir did not appear to have been advised of its duty to maintain a public register of enforcement notices, breach of condition notices and stop notices, under section 147 of the Town and Country Planning (Scotland) Act 1997 (as amended). This information would appear to be of some relevance to the concern expressed by Mr Keir, and in the circumstances the Commissioner considers the Authority's failure to advise Mr Keir of the relevant obligation to have been a breach of its duty to provide reasonable advice and assistance under regulation 9(1) of the EIRs.



DECISION

The Commissioner finds that Loch Lomond and The Trossachs National Park Authority (the Authority) failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs). In particular, in failing to identify the information requested as environmental information (as defined in regulation 2(1)) and deal with the request accordingly under the EIRs, it failed to comply with regulation 5(1) of the EIRs. In addition, he finds that the Authority was not entitled to withhold the information in file LT/2002/0102/ENF/S under regulation 10(5)(b) of the EIRs, and that it failed to discharge its duty to provide Mr Keir with advice and assistance under regulation 9(1) of the EIRs.

The Commissioner also finds, however, that the Authority was entitled to withhold the personal data of complainants under regulation 11(2) of the EIRs.

The Commissioner therefore requires the Authority to release the information in file LT/2002/0102/ENF/S, subject to the redaction of complainants' personal data as specified in the schedule to the Authority's letter of 22 November 2010, by 26 February 2011.

Appeal

Should either Mr Keir or Loch Lomond and The Trossachs National Park Authority wish to appeal against this decision, there is an 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 notice.

Kevin Dunion
Scottish Information Commissioner
11 January 2011



Appendix

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.

...



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.

...

9 Duty to provide advice and assistance

(1) A Scottish public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.



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.
- (3) Where the environmental information requested includes personal data, the authority shall not make those personal data available otherwise than in accordance with regulation 11.
...
- (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-
...
 - (b) the course of justice, the ability of a person to receive a fair trial or the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature;
...

11 Personal data

- (1) To the extent that environmental information requested includes personal data of which the applicant is the data subject then the duty under regulation 5(1) to make it available shall not apply to those personal data.
- (2) To the extent that environmental information requested includes personal data of which the applicant is not the data subject and in relation to which either the first or second condition set out in paragraphs (3) and (4) is satisfied, a Scottish public authority shall not make the personal data available.
- (3) The first condition is-



(a) in a case where the information falls within paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998^[6] that making the information available otherwise than under these Regulations would contravene-

(i) any of the data protection principles; or

...

(b) in any other case, that making the information available otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

...

Data Protection Act 1998

1 Basic interpretative provisions

(1) In this Act, unless the context otherwise requires –

...

"personal data" means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...

Schedule 1 – The data protection principles

Part I – The principles

1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

...



Schedule 2 – Conditions relevant for purposes of the first principle: processing of any personal data

...

- 6(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

...