

Decision Notice 017/2020

Transport Assessment

Applicant: The Applicant

Public authority: Culture and Sport Glasgow

Case Ref: 201902008



Scottish Information
Commissioner

Summary

Glasgow Life was asked for information relating to a specific Transport Assessment. Glasgow Life disclosed information.

The Commissioner was asked to investigate whether Glasgow Life had provided all of the information it held falling within the scope of the request. Following an investigation, the Commissioner was satisfied that it had.

Relevant statutory provisions

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

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 29 August 2019, the Applicant made a request for information to Culture and Sport Glasgow (which trades as, and is referred to in this decision as, "Glasgow Life"). The information requested was:
... all documentation related to the Survey Methodology/Data including definitions and qualifications verified by the Consultant Mott MacDonald to inform parking surveys undertaken in 2016 to support the Transport Assessment submitted in support of the Planning Application ref: 17/00470/DC, and revised in August 2019 to support a Section 42 Application ref: 19/02189/FUL to amend Condition 7 of the planning consent no 17/00240/DC to extend the temporary consent.
2. Glasgow Life responded on 26 September 2019. It advised that it had applied section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA), as the request was for environmental information and fell to be considered under the EIRs. It provided some information, explaining that some information had been redacted as it constituted personal data.
3. On 1 October 2019, the Applicant wrote to Glasgow Life, requesting a review of its decision as he did not believe Glasgow Life had identified and disclosed all of the information falling within the scope of his request.
4. Glasgow Life notified the Applicant of the outcome of its review on 29 October 2019. It upheld the original response, with further explanation as to why the personal data had been redacted.
5. On 1 November 2019, the Applicant wrote to the Commissioner. The Applicant 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. The Applicant stated he was

dissatisfied with the outcome of Glasgow Life's review because he believed further information should be held.

6. In further correspondence, the Applicant provided an example, from another authority, of the kind of information he expected to be held. He also advised that he accepted the redaction of personal data, except where it related to Glasgow Life's Leadership Team, all duly elected members of Glasgow City Council, Scottish, Westminster or European Parliaments, Community Councils or office bearers representing any other constitutional organisation.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
8. On 12 November 2019, Glasgow Life was notified in writing that the Applicant had made a valid application. Glasgow Life was asked to send the Commissioner the information withheld from the Applicant. Glasgow Life provided the information and the case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Glasgow Life was invited to comment on this application and to answer specific questions, in particular to explain the steps it had taken to identify and locate the information requested. It was also asked to confirm what personal data had been redacted from the information provided to the Applicant.
10. Glasgow Life responded, confirming its view that the requests fell to be dealt with in terms of the EIRs and, as a result, applying the exemption in section 39(2) of FOISA. It also provided submissions to support its position that, other than the information it had provided to the Applicant, it did not hold any information falling within the scope of his request.
11. Glasgow Life also confirmed that personal data redacted did not relate to Glasgow Life's Leadership Team, any duly elected members of Glasgow City Council; Scottish, Westminster or European Parliaments, Community Councils or office bearers representing any other constitutional organisation. The Commissioner has considered the redactions and accepts that to be the case.
12. Given the applicant's acceptance that he did not object to the redaction of the personal data, the purpose investigation was to consider whether Glasgow Life had located and identified all information held and falling within the scope of the request.

Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and Glasgow Life. He is satisfied that no matter of relevance has been overlooked.

Application of the EIRs

14. It is clear that any information falling within the scope of the Applicant's requests, which relates to aspects of a planning application having a clear impact on the elements of the environment, is properly considered to be environmental information, as defined in regulation 2(1) of the EIRs (the relevant provisions are reproduced in Appendix 1 to this decision). The

Applicant made no comment on Glasgow Life's application of the EIRs in this case and the Commissioner will consider the requests in what follows solely in terms of the EIRs.

Was all relevant information identified, located and provided by Glasgow Life?

15. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. It is important to bear in mind that this obligation relates to information actually held by an authority when it receives the request, as opposed to information an applicant believes the authority should hold (but which it does not in fact hold).
16. The Commissioner notes the submissions provided by the Applicant as to the importance of the information requested and why he believes Glasgow Life should hold further information, including providing an example of what another authority routinely published for such surveys.
17. Glasgow Life submitted that all of the information it held, falling within the scope of the Applicant's request, had been considered at the time it had responded to the request and the information located had been provided to the Applicant, with only personal data (see paragraph 11 above) redacted.
18. Glasgow Life explained (with details and evidence of the outcomes) the searches and enquiries it had carried out in identifying and locating the information requested. These included searches of relevant electronic records, and consultation with staff who had responsibility for the subject matter. It provided details of the resources searched and the search terms and other parameters used. Glasgow Life provided supporting evidence confirming the outcomes of its searches. The conclusion of the searches and enquiries was that, other than the information already provided to the Applicant, no information was held. It confirmed it did not publish any information corresponding to the example by the Applicant.
19. The standard proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
20. Having considered all relevant submissions and the terms of the requests, the Commissioner accepts that Glasgow Life interpreted the Applicant's requests reasonably and took adequate, proportionate steps to establish what information it held which fell within the scope of the request. He accepts that the Applicant was provided with all of the information held by Glasgow Life and falling within the scope of the request. Consequently, in this respect, the Commissioner is satisfied that Glasgow Life dealt with the request in accordance with regulation 5(1) of the EIRs.

Decision

The Commissioner finds that Culture and Sport Glasgow complied with the Environmental Information (Scotland) Regulations 2004 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or Culture and Sport Glasgow 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

28 January 2020

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

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(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.

...

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