

# Decision Notice



Decision 050/2014 Mr James Noble and South Lanarkshire Council

Access to development site

Reference No: 201302418

Decision Date: 26 February 2014

[www.itspublicknowledge.info](http://www.itspublicknowledge.info)

**Rosemary Agnew**

Scottish Information Commissioner

Kinburn Castle  
Doubledykes Road  
St Andrews KY16 9DS  
Tel: 01334 464610



## Summary

On 7 July 2013, Mr Noble asked South Lanarkshire Council (the Council) for information relating to site access for construction traffic at a particular location in South Lanarkshire. Following a review, the Council withheld the information as personal data, disclosure of which would breach the first data protection principle.

Following an investigation, the Commissioner found that the Council had failed to respond to the first part of Mr Noble's request and required it to do so. She also found that the Council did not hold any information falling within the scope of the second part of the request: it had wrongly identified the withheld information as relevant.

## Relevant statutory provisions

---

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) (paragraphs (a) and (c) of definition of "environmental information"); 5(1) and (2)(b) (Duty to make environmental information available on request); 16 (Review by Scottish public authority)

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. On 7 July 2013, Mr Noble wrote to the Council and asked when the Clydesdale Area Planning Department was informed that site access for construction traffic for planning application CL/13/0025 would be down a newly constructed road in Delves Park, Lanark. He also asked for minutes/notes of any meeting(s) where the planning department was informed of site access for construction traffic.



2. The Council responded on 22 July 2013 and explained that it was processing Mr Noble's request in accordance with the EIRs, applying section 39(2) of FOISA. The Council informed Mr Noble that it was also applying the exception in regulation 10(4)(a) of FOISA, as it did not hold a written record of the on-site meeting on 20 June 2013, where it was suggested that the track in Delves Park should be used for construction traffic. The Council also pointed out that the use of a temporary access for construction traffic did not require planning consent.
3. On 24 July 2013, Mr Noble requested a review of the Council's decision.
4. The Council notified Mr Noble of the outcome of its review on 27 September 2013. The Council now told Mr Noble that it held information falling within the scope of his request, and therefore withdrew its reliance on regulation 10(4)(a) of the EIRs. Instead, it stated that it considered the information it held to be personal data, which it was withholding under regulation 11(2) of the EIRs. It provided comprehensive reasoning as to why it believed regulation 11(2) to apply.
5. On 15 October 2013, Mr Noble wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying 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.
6. The application was validated by establishing that Mr Noble made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request.

## Investigation

---

7. On 25 October 2013, the Council was notified in writing that an application had been received from Mr Noble and was asked to provide the Commissioner with the information withheld from him. The Council responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the Council, 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. As the Council had given comprehensive reasoning on its application of regulation 11(2) of the EIRs in its response to Mr Noble's requirement for review, questions to the Council focussed on matters raised by Mr Noble in his application. These included the Council's failure, in Mr Noble's view, to respond to the first part of his request.
9. During the investigation, further submissions were obtained from the Council. Submissions were also received from Mr Noble.



10. Mr Noble did not take issue with the Council's decision to apply section 39(2) of FOISA and respond to the request under the EIRs. The Commissioner is content that this was the correct decision and will not consider this aspect of the Council's handling of the case further in this decision.

## Commissioner's analysis and findings

---

11. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Noble and the Council. She is satisfied that no matter of relevance has been overlooked.

### First part of request

12. 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 the applicant. In terms of regulation 5(2)(b), this obligation is subject to regulations 6 to 12.
13. In his application to the Commissioner, Mr Noble submitted that the Council did not address the first part of his request (i.e. when the planning department was first informed that site access for construction traffic would be down the road he referred to) in its response to either his request or his requirement for review.
14. The Council explained its position in relation to the road in question. It also explained that it had not intended to ignore this part of the request. It had interpreted the first part of the request as a statement explaining why Mr Noble was seeking the minutes/notes of meeting(s) referred to in the second part of the request.
15. The Commissioner has considered the terms of Mr Noble's request, the Council's responses to him and the Council's submissions to the investigating officer. On a reasonable interpretation, she cannot accept that what Mr Noble considers to be the first part of his request could be interpreted simply as contextual information. While she notes that the Council believes it responded to the whole request in the context of its own understanding of the position in relation to the road, the Commissioner can identify nothing in the Council's responses to Mr Noble which could reasonably be interpreted as answering the first part of the request (i.e. when the planning department was informed of the use of the road for construction traffic for the site).
16. In the circumstances, the Commissioner now requires the Council to respond to the first part of Mr Noble's request, in accordance with the requirements of the EIRs. She notes the Council's position that "it has never been formally advised that the private access would be used for construction traffic". It does not, of course, follow that it has never been informed of such a use, or has no record of when it was so informed, but the Commissioner acknowledges that the appropriate response may be to the effect that the Council does not hold the requested information.



## Second part of request

17. In the second part of his request, Mr Noble asked for minutes/notes of any meeting(s) where the planning department was informed of site access for construction traffic.
18. In response to Mr Noble's requirement for review, the Council confirmed that it had identified one letter containing information falling within the scope of his request.
19. The Commissioner sought submissions from the Council on the searches it had carried out to identify and locate any relevant information. The Council described the searches it had carried out. It explained what records it had searched, the nature of the searches, who undertook the searches, why they were the best person to do this, and why the searches would have been likely to identify any relevant, recorded information if it were held. The Council explained that these searches identified no information falling within scope of Mr Noble's request, other than the withheld letter.
20. The Commissioner is satisfied on the basis of the submissions received from the Council that the searches it carried out were reasonable and proportionate in the circumstances, and should, on the balance of probabilities, have identified any further relevant, recorded information the Council held.
21. The Commissioner has considered the information in the letter withheld from Mr Noble. She notes that the Council considers the entire letter to be covered by Mr Noble's request. The Council has also stated that it is "unsure as to what part of the letter it is believed answers Mr Noble's request and what part does not".
22. The Commissioner acknowledges that requests for environmental information should be interpreted broadly. However, the authority dealing with the request has a responsibility to determine whether information it holds falls within the scope of the request, on a reasonable interpretation. It will not necessarily help the applicant to identify as relevant any information falling within the general subject matter covered by the request, particularly if the authority goes on to withhold information which may not in fact be caught by the request.
23. Here, the second part of the request is relatively straightforward. The applicant is seeking information recording meeting(s) where the planning department was informed of site access for construction traffic. Taken in the context of the request as a whole, it does not appear to the Commissioner that this extends to *anything* discussed at such meetings. The applicant is seeking a record of the authority being informed (at a meeting) of site access for construction traffic.
24. Having considered the withheld letter carefully, the Commissioner can identify nothing in it which could reasonably be interpreted as relating to the Council being informed, at a meeting (or indeed elsewhere), of site access for construction traffic. Consequently, the Commissioner does not consider it appropriate to regard any element of this letter as falling within the scope of Mr Noble's request.



25. In all the circumstances, therefore, the Commissioner must conclude that the Council's initial response to the second part of the request, under regulation 10(4)(a) of the EIRs, was the correct one. The Council did not hold any information falling within the scope of this part of the request, and Commissioner does not consider that it was entitled to conclude otherwise in carrying out its review. In doing so, it failed to deal with the review fully in accordance with regulation 16 of FOISA.

## DECISION

The Commissioner finds that South Lanarkshire Council failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr Noble.

The Commissioner finds that the Council failed to respond to the first part of Mr Noble's request. She requires the Council to do so, in accordance with Part 1 of FOISA, by 12 April 2014.

The Commissioner also finds that the Council did not hold any information falling within the scope of the second part of Mr Noble's request. In reaching another conclusion following a review, the Commissioner finds that the Council failed to deal with Mr Noble's request fully in accordance with the requirements of the EIRs, particularly those of regulation 16. Given the conclusions in this decision, the Commissioner does not require the Council to take any action in respect of this failure, in response to Mr Noble's application.

## Appeal

---

Should either Mr Noble or South Lanarkshire 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**  
**26 February 2014**



## 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.

...

### 16 Review by Scottish public authority

(1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant's request.

(2) Representations under paragraph (1) shall be made in writing to the Scottish public authority no later than 40 working days after either the date that the applicant receives





any decision or notification which the applicant believes does not comply with these Regulations or the date by which such a decision or notification should have been made, or any other action should have been taken, by the authority but was not made or taken.

- (3) The Scottish public authority shall on receipt of such representations-
  - (a) consider them and any supporting evidence produced by the applicant; and
  - (b) review the matter and decide whether it has complied with these Regulations.
- (4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.
- (5) Where the Scottish public authority decides that it has not complied with its duty under these Regulations, it shall immediately take steps to remedy the breach of duty.