

Decision Notice

Decision 051/2017: Mrs Margaret Laing and Dundee City Council

Information on traffic restrictions

Reference No: 201602300

Decision Date: 5 April 2017



Scottish Information
Commissioner

Summary

The Council was asked for information about traffic restrictions. The Commissioner was satisfied that the Council disclosed all the information it held falling within the scope of the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and 1(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) (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 26 July 2016, Mrs Laing made a request for information to Dundee City Council (the Council). She asked for information about the Council's application of temporary and permanent road restrictions, including guidelines, policies and procedures for informing residents and all documentation relating to yellow lines at a specified location. She also asked about the application of yellow lines outside residential properties.
2. This request was first considered in *Decision 269/2016: Mrs M Laing and Dundee City Council*¹, issued on 15 December 2016. In that decision, the Commissioner found that the Council had failed to respond to the request and requirement for review within the required timescales, but accepted that the Council had now responded to the requirement for review.
3. On 16 December 2016, Mrs Laing 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. Although the Council had provided information in its review response, Mrs Laing did not accept that it had provided all relevant information.

Investigation

4. The application was accepted as valid. The Commissioner confirmed that Mrs Laing 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.
5. On 31 January 2017, the Council was notified in writing that Mrs Laing had made a valid application and the case was allocated to an investigating officer.
6. In discussion with Mrs Laing, she explained that the Council had not provided her with information (documents, procedures or policies) which authorised the Council to apply temporary and permanent road restrictions, including yellow lines, outside residential properties.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2016/201602130.aspx>

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. The Council was asked to describe the searches it had undertaken and to explain whether it held information about its application of temporary and permanent road restrictions.
8. The Council responded on 13 March 2017. It explained the searches that it had undertaken and why it was satisfied that it did not hold any further information.

Commissioner's analysis and findings

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

Application of the EIRs

10. The Commissioner is satisfied that the information covered by this request is environmental information, as defined in regulation 2(1) of the EIRs (see paragraphs (a) and (c) of the definition of "environmental information" in Appendix 1). Mrs Laing asked for information about traffic restrictions, which are measures affecting, or likely to affect, the elements of the environment.
11. Mrs Laing has not disputed the Council's decision to handle the request under the EIRs and the Commissioner will consider the information solely in terms of the EIRs in what follows.

Has all information held by the authority been identified and made available?

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 any applicant. This is subject to various qualifications contained in regulations 6 to 12 (regulation 5(2)(b)).

The Council's submissions

13. The Council summarised the searches it had conducted following receipt of Mrs Laing's request for review. It listed the locations, individuals and records that had been searched. These included:
 - City Development Committee Reports over the past 24 months;
 - Network Management Traffic Regulation Order database and progress spreadsheet, which includes consultation, advertising and making of the order dates;
 - Scottish Roadworks Register for restrictions / road closures associated; with roads maintenance and utility plant replacement;
 - Dundee City Council complaints database;
 - The email account of the Head of Roads and Transportation; and
 - The email account of the Network Management Team Leader.
14. The Council told the Commissioner it had identified and made the following information relating to temporary and permanent road restrictions available to Mrs Laing:
 - Committee Report No. 158-2015 (submitted and approved at City Development Committee meeting on 27 April 2015);

- Public Notices (displayed from 8 to 29 January 2016);
 - A Traffic Regulation Order (which was signed and came into force on 12 February 2016); and
 - The Road Traffic Regulation Act 1984 (the 1984 Act).
15. The Council explained that the decision to apply parking restrictions on the road in the vicinity to Mrs Laing's residence was taken by the Council's City Development Committee. All information available to the Committee had been provided to Mrs Laing. Information from the Traffic Regulation Order, public notices and a press release (Evening Telegraph of 8 January 2016) that made the residents aware of the parking restrictions was already in the public domain. The same applied to information such as the 1984 Act (which provides guidelines upon which the City Development Committee must base a decision to apply parking restrictions) and the associated Committee Report, documenting the decision of the Committee.
 16. The Council stated that there is no Council policy document that is applicable in this regard (i.e. relevant to the City Development Committee's decision on 27 April 2015). Therefore, no other documentation was considered when making the decision to apply parking restrictions near Mrs Laing's residence.
 17. The Council was asked to clarify whether it held any document which states the actions or steps the Council must take when it puts in place a temporary or permanent road restriction. The Council confirmed that there is no overall policy or procedure document relating to when or how the Council invokes the statutory provisions of the 1984 Act.

The Commissioner's Findings

18. In this case, the Commissioner must decide whether the Council identified and provided all of the information falling within Mrs Laing's request and therefore complied with regulation 5(1) of the EIRs when responding to this request.
19. The standard of proof to apply in determining whether a public authority holds the requested information (or, as in this case, whether it holds more information than has been made available) is the civil standard of the balance of probabilities. In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the steps taken by the public authority to identify and locate the information in question. She will also consider, where appropriate, any other reason offered by the public authority to explain why it does not hold information. While it may be relevant as part of this exercise to explore expectations as to what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).
20. The Commissioner has considered all the relevant submissions, including the explanations and information which the Council gave Mrs Laing in relation to the road restrictions in her neighbourhood. She is satisfied that the Council has taken adequate and proportionate steps to establish the information it held which fell within the scope of Mrs Laing's request, and to establish that it does not hold any other information covered by that request.
21. It is clear that Mrs Laing believed there would be two separate sets of guidelines available, one relating to the application of temporary road restrictions and one relating to the application of permanent road restrictions (including yellow lines). However, on the basis of

the responses provided by the Council, the Commissioner is satisfied that it does not hold more information than has already been provided to Mrs Laing.

22. The Commissioner accepts that the Council disclosed all relevant information which it held when it responded to Mrs Laing's requirement for review. Accordingly, she accepts that the Council complied with regulation 5(1) of the EIRs in responding to Mrs Laing's request.

Decision

The Commissioner finds that Dundee City Council (the Council) complied with Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mrs Laing.

The Commissioner finds that the searches conducted by the Council were proportionate and adequate and capable of identifying all relevant information falling in scope of the request.

The Commissioner is satisfied that the Council made all the information it held which was covered by her request available to Mrs Laing, and therefore complied with regulation 5(1) of the EIRs.

Appeal

Should either Mrs Laing or the 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

5 April 2017

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.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info