

Decision Notice

Decision 089/2018: Mr W and Scottish Borders Council

Planning and building warrant information

Reference No: 201800388

Decision Date: 21 June 2018



Scottish Information
Commissioner

Summary

The Council was asked for information relating to specific planning and building warrant applications. The Council disclosed information.

The Commissioner was asked to investigate whether the Council had provided all of the information it held falling within the scope of the requests. 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 8 August 2017, Mr W made two requests for information to Scottish Borders Council (the Council). The information requested was:
 - a) *"...all correspondence and communication [in relation to planning application 10/00067/FUL] not shown on the Scottish Borders Council Planning portal here: <https://eplanning.scotborders.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=KWSX1FNT02Q00>"*
 - b) *"...all correspondence/communications related to Building Warrant applications Ref. No: 15/01479/EREDWG and Ref. No: 17/00721/EREDWG. Particularly any correspondence/communication not shown on the SBC Planning/building public access portal."*
2. The Council responded to request a) on 25 August 2017. It provided Mr W with information, which had personal data redacted in terms of regulation 11(2) of the EIRs.
3. On 25 August 2017, Mr W wrote to the Council, requesting a review of its decision in respect of this request. He believed further information should be held. He did not question the redaction of personal data.
4. The Council responded to request b) on 24 August 2017. It provided Mr W with information, which again had personal data redacted in terms of regulation 11(2) of the EIRs.
5. On 29 August 2017, Mr W wrote to the Council requesting a review of its decision in respect of this request. He believed further information should be held. Again, he did not question the redaction of personal data.
6. The Council notified Mr W of the outcome of its review for both of the above responses on 18 September 2017. In relation to request a), it provided one additional document it had

identified. In relation to request b), the Council confirmed that it had provided all of the information that it held.

7. On 27 February 2018, Mr W wrote to the Commissioner's office. He applied to the Commissioner for a decision in terms of section 47(1) of the Freedom of Information (Scotland) Act 2002 (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. Mr W stated he was dissatisfied with the outcome of Council's review because he believed further information should be held. Mr W provided his reasons, noting apparent omissions from the files in question and in particular drawing attention to information he believed to be missing from an email exchange dated 16 August 2017.

Investigation

8. The application was accepted as valid. The Commissioner confirmed that Mr W made requests for information to a Scottish public authority and asked the authority to review its responses to those requests before applying to him for a decision.
9. On 27 March 2018, the Council was notified in writing that Mr W had made a valid application. The case was allocated to an investigating officer.
10. 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, in particular to explain the steps it had taken to identify and locate the information requested.
11. The Council responded, providing submissions to the effect 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 Mr W already, it did not hold any information falling within the scope of his requests.

Commissioner's analysis and findings

12. 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 Mr W and the Council. He is satisfied that no matter of relevance has been overlooked.

Application of the EIRs

13. It is clear that any information falling within the scope of Mr W's requests, which relates to a planning application and building warrants, 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). Mr W made no comment on the Council'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 the Council?

14. 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).

15. The Commissioner notes the submissions provided by Mr W as to the importance of the information requested and why he believes the Council should hold further information.
16. The Council submitted that all of the information it held, falling within the scope of Mr W's requests, had been considered at the time it had responded to his requirements for review, and so it had responded adequately to the requests.
17. The Council explained (with details and evidence of the outcomes) the searches and enquiries it had carried out in identifying and locating the information requested. It provided this information for searches carried out at both initial response and review stages of the requests.
18. The Council further explained that the email of 16 August 2017, referred to by Mr W in his application to the Commissioner, had been provided to Mr W in full, with only personal data redacted. It provided a copy of all of the information it held which it regarded as falling within the scope of Mr W's requests, to evidence that only personal data had been redacted prior to disclosure, as explained in its responses to Mr W.
19. The Council therefore confirmed that all information falling within the scope of Mr W's requests had been considered and no further information was held.
20. 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.
21. Having considered all relevant submissions and the terms of the requests, the Commissioner accepts that the Council interpreted Mr W's requests reasonably and took adequate, proportionate steps to establish what information it held and which fell within the scope of the requests. He accepts that Mr W was provided with all of the information held by the Council and falling within the scope of his requests. Consequently, in this respect, the Commissioner is satisfied that the Council dealt with the requests in accordance with regulation 5(1) of the EIRs.

Decision

The Commissioner finds that Scottish Borders Council complied with the Environmental Information (Scotland) Regulations 2004, in responding to the information requests made by Mr W.

Appeal

Should either Mr W or Scottish Borders 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

21 June 2018

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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