

# Decision Notice

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**Decision 106/2015 Mr Y and City of Edinburgh Council**

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**Advertisement drums**

Reference No: 201500994

Decision Date: 7 July 2015



Scottish Information  
Commissioner

## Summary

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On 11 March 2015, Mr Y asked City of Edinburgh Council (the Council) for the number of “advertising drums” currently in operation on Council-owned land, with a list of locations. The Council provided some information to Mr Y. During the investigation, the Council notified the Commissioner that it held additional information and that this had now been provided to Mr Y. While the Council failed to comply with the EIRs in not providing this information earlier, the Commissioner was satisfied by the end of the investigation that all relevant information had been provided to Mr Y.

## Relevant statutory provisions

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The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (paragraphs (a) and (c) of definition of "environmental information"); 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

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1. On 11 March 2015, Mr Y wrote to the Council asked how many advertising structures, known as advertising drums, were currently in operation around Edinburgh and managed by a specific company to generate advertising revenue whilst positioned on Council-owned land. Mr Y asked for a definitive list of locations.
2. The Council responded on 8 April 2015. It provided Mr Y with a list of locations where 11 such advertising drums were situated.
3. On 15 April 2015, Mr Y wrote to the Council requesting a review of its decision. He believed there to be more advertising drums currently in place.
4. The Council notified Mr Y of the outcome of its review on 8 May 2015. It informed Mr Y that it had undertaken additional searches, but that these had found no further information. It informed Mr Y that this letter should be considered a formal notice under regulation 10(4)(a) of the EIRs (Information not held).
5. On 26 May 2015, Mr Y wrote to the Commissioner. He 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. Mr Y remained of the opinion that he had not been given the correct number of advertising drums.

## Investigation

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6. On 12 June 2015, the investigating officer notified the Council in writing that an application had been received from Mr Y, 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 Council was asked to explain the steps it had taken to identify and locate the information Mr Y requested.
7. The Council provided submissions to the effect that, having carried out further searches, it had located additional information falling within the scope of Mr Y's request. Mr Y confirmed receipt of the information (a revised list and total, with additional explanatory material).
8. The Council's submissions to the investigating officer also confirmed that it should not have applied regulation 10(4)(a) of the EIRs within its review response, explaining that it had been seeking to establish that no further relevant information had been located at the time of the review.

## Commissioner's analysis and findings

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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 Mr Y and the Council. She is satisfied that no matter of relevance has been overlooked.

### Application of the EIRs

10. It is clear from the Council's correspondence with both Mr Y and the Commissioner, and from the information itself, that the information sought by Mr Y is properly considered to be environmental information, as defined in regulation 2(1) of the EIRs. It relates to the number and location of structures known as advertising drums situated in public view on Council-owned land, and the Commissioner is satisfied that it falls within either paragraph (a) of the definition of environmental information contained in regulation 2(1) (as information on the state of the elements of the environment, specifically land and landscape) or paragraph (c) of that definition (as information on measures affecting or likely to affect those elements). Mr Y has not disputed this and the Commissioner will consider the information in what follows solely in terms of the EIRs

### Regulation 5(1) of the EIRs

11. Regulation 5(1) of the EIRs (subject to the various qualifications contained in regulations 6 to 12) 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 is not in fact held.
12. The Commissioner notes the submissions from Mr Y, both in his requirement for review and in his application to the Commissioner, that the Council did not provide him with a definitive list of the number of advertising drums as sought in his original request.

13. During the investigation, the Council provided submissions in response to the questions put by the investigating officer on this matter. The Council explained that during the investigation it had carried out additional searches for the information falling within the scope of Mr Y's request, and these searches had identified further information. It confirmed that this information had been provided to Mr Y.
14. The Council described the searches and enquiries carried out in relation to the request, the resources searched and the staff involved. It confirmed that all relevant information it held had now been given to Mr Y.
15. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that (by the close of the investigation) the Council had carried out adequate, proportionate searches to ascertain whether any relevant information was held. She is also satisfied that the information located during the investigation has now been provided to Mr Y.
16. However, it is also evident that adequate searches were not carried out in dealing with Mr Y's information request and requirement for review. If they had been, the Commissioner believes all of the information would have been located at that time. This may have avoided an application from Mr Y.
17. In failing to take adequate steps to identify, locate and provide the requested information, the Council failed to comply with regulation 5(1) of the EIRs.

## Decision

The Commissioner finds that City of Edinburgh Council (the Council) failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr Y. By failing to provide Mr Y with all of the information it held and which fell within the scope of his request, the Council failed to comply with regulation 5(1) of the EIRs.

Given that the information held has now been provided to Mr Y, the Commissioner does not require the Council to take any action regarding this failure, in response to Mr Y's application.

## **Appeal**

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Should either Mr Y or City of Edinburgh 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**  
**7 July 2015**

## Appendix 1 Relevant statutory provisions

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### Environmental Information (Scotland) Regulations 2004

#### 2 Interpretation

(1) In these Regulations –

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"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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