

Decision Notice



Decision 117/2013 Scott Walker and Fife Council

Speed bumps at Tofthill

Reference No: 201300312
Decision Date: 25 June 2013

www.itspublicknowledge.info

Rosemary Agnew
Scottish Information Commissioner

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Summary

On 3 November 2012, Mr Walker asked Fife Council (the Council) for information about the decision to implement speed bumps at Tofthill. The Council disclosed some information, but Mr Walker was dissatisfied as he felt more information would be held.

During the investigation, the Council identified and released further information to Mr Walker. The Commissioner is satisfied that Mr Walker has now been provided with all of the relevant information held by the Council.

The Commissioner finds that the Council failed to comply with regulation 5(1) of the EIRs by not releasing all the information it held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1) (Effect of exemptions); 39(2) (Health, safety and the environment)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definitions (a) and (c) of “environmental information”); 5(1) and (2)(b) (Duty to make environmental information available on request)

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 3 November 2012, Mr Walker submitted a request for information about the decision to install speed cushions in the Tofthill area. Only the second part of Mr Walker’s request is relevant to this decision, in which he asked for “all information from the previous decision in 2010 to impose speed ‘cushions’”.
2. The Council did not initially respond. On 11 December 2012, Mr Walker wrote to the Council requesting a review.



3. A review decision was issued by the Council on 23 January 2013, apologising for the lack of response and providing some information.
4. On 24 January 2013, Mr Walker 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.
5. The application was validated by establishing that Mr Walker had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

6. The investigating officer contacted the Council on 6 February 2013, 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, including what searches were undertaken and where the information Mr Walker described in his request was likely to be held. The Council was also asked to clarify whether all information within scope had now been disclosed to Mr Walker, and to consider whether the request involved environmental information and should have been dealt with under the EIRs.
7. The Council responded on 12 March 2013, explaining that it had identified additional relevant information during the investigation.
8. This information was provided to Mr Walker on 8 April 2013. Mr Walker remained unconvinced that the Council had provided all the relevant information it held.

Commissioner's analysis and findings

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

FOISA or EIRs?

10. The Council was asked whether it considered the information within the scope of Mr Walker's request to be environmental and, if so, whether Mr Walker's request should have been handled under the EIRs. The Council confirmed that the information requested by Mr Walker was environmental and did require to be handled under the EIRs. The information in question concerns the proposals to add traffic calming measures (speed cushions).



11. The Commissioner notes that *Decision 036/2006 Mr Bellfield and Fife Council*¹ also involved information relating to traffic calming measures, including the decision-making process. Part (c) of the definition of environmental information contained in regulation 2(1) of the EIRs is relevant to this case. The Commissioner is satisfied that the information in question here would also come under this same definition, given that Mr Walker's request relates to proposals to introduce speed cushions and these proposals are measures affecting the state of the land.

Section 39(2) of FOISA – environmental information

12. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined by regulation 2(1)) is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs. In this case, the Council confirmed during the investigation that it wishes to rely upon section 39(2) of FOISA.
13. As there is a separate statutory right of access to environmental information available to the applicant in this case, the Commissioner also accepts that the public interest in maintaining this exemption and dealing with the request in line with the requirements of the EIRs outweighs any public interest in disclosing the information under FOISA.

Has all relevant information been identified and retrieved by the Council?

14. The Council released some information to Mr Walker following its internal review and identified further information, which it also released, during the investigation.
15. Mr Walker explained to the investigating officer that, although the Council had supplied a further eight documents to him during the investigation, there were references in the additional disclosures which suggested more information was held. Specifically, he referred the investigating officer to discussions between an employee of the Council and Taylor Wimpey, which led to the traffic calming measures in question being introduced. Mr Walker queried why no meeting minutes or similar records were included which would detail these discussions (and subsequent actions), as such information would fall within the scope of his request.
16. The Council was asked by the investigating officer to check this point and to conduct further searches. The Council was required to explain what searches had been carried out and to undertake checks as to what information it held.
17. The Council subsequently confirmed that no further information had been identified as a result of this process. It confirmed that, having reviewed its records, it had found no record of the discussions to which Mr Walker referred. It explained that the employee in question had retired in 2011, resulting in his email account being closed at that time; this meant no emails sent or received by this employee were held by the time Mr Walker made his request over a year later in November 2012. Also, further checks on the relevant paper filing system had failed to identify details of the discussions to which Mr Walker was referring.

¹ See <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2006/200501975.aspx>



18. The Commissioner has considered the Council's submissions and its explanations of why it does not hold any additional information beyond that already disclosed. Having done so, she is satisfied that the Council has now conducted proportionate and adequate searches; however, it is clear that the Council failed to disclose all relevant information to Mr Walker when it carried out its review of the response to his request.
19. Regulation 5(1) of the EIRs (subject to the qualifications 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. In this case, further information was identified and disclosed during the course of this investigation.
20. Consequently, the Commissioner concludes that the Council failed to comply with regulation 5(1) of the EIRs. In light of the further searches carried out during this investigation, the Commissioner is satisfied that all relevant information held has now been provided to Mr Walker. Although the Commissioner does not require the Council to take any action regarding the failures identified in this decision, if similar breaches occur in future, the Commissioner may take further action against the Council in line with her enforcement strategy.

DECISION

The Commissioner finds that, in respect of the matters specified in the application, Fife Council failed to comply with regulation 5(1) of the EIRs by failing to identify and disclose to Mr Walker all of the information it held.

As the Council has now taken steps to identify and provide the information covered by Mr Walker's request, the Commissioner is satisfied that no further action is required by the Council.

Appeal

Should either Mr Walker or Fife Council wish to appeal against this decision, there is an 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
25 June 2013



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.

...