

Decision Notice



Decision 144/2013 Mr James Cruickshank and Glasgow City Council

Demolition of listed buildings

Reference No: 201301498
Decision Date: 19 July 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 30 April 2013, Mr Cruickshank asked Glasgow City Council (the Council) for information relating to the demolition of listed buildings. The Council advised Mr Cruickshank that it was not required to comply with his request on the basis that doing so would exceed the prescribed limit in FOISA (£600).

The Commissioner found that the information Mr Cruickshank had requested was environmental information (as defined in regulation 2(1) of the EIRs) and that his request should have been dealt with under the EIRs. She therefore required the Council to deal with the request under the EIRs.

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) (definitions (a) and (c) of "environmental information"); 5(1) and (2)(b) (Duty to make available environmental information on request); and 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 30 April 2013, Mr Cruickshank wrote to the Council in the following terms:

I would like to know how many listed buildings, building control has authorised to demolish in the last five years - please break down for each years.

Please also give the name and address of each of the listed buildings and their listings.

2. The Council responded to Mr Cruickshank on 30 May 2013. It concluded that the cost of collating the information would exceed £600: consequently, section 12(1) of FOISA applied and it was not required to comply with the request.



3. Mr Cruickshank wrote to the Council the same day, seeking a review and offering to reduce the time span of his request from five to three years in the hope this will reduce the cost.
4. The Council notified Mr Cruickshank of the outcome of its review on 26 June 2013. The Council maintained that the cost of complying would exceed £600.
5. On 27 June 2013, Mr Cruickshank wrote to the Commissioner, applying 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 certain specified modifications.
6. The application was validated by establishing that Mr Cruickshank 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. The case was then allocated to an investigating officer.

Investigation

7. On 16 July 2013, the investigating officer notified the Council in writing that an application had been received from Mr Cruickshank, 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.
8. In particular, the Council was asked if it had considered whether Mr Cruickshank's information request should have been considered as a request for environmental information which fell to be considered under the EIRs. If so, the Council was also asked whether it wished to apply the exemption in section 39(2) of FOISA, which applies to information that is environmental information which the authority is obliged to make available to the public in accordance with the EIRs.
9. The Council responded on 18 July 2013. The Council agreed that the information requested was environmental information and therefore should have been dealt with in terms of the EIRs: as a result, it applied the exemption in section 39(2) of FOISA (see below).
10. The Council also agreed that it would take steps to deal with Mr Cruickshank's request in terms of the EIRs and issue him with an appropriate response. The Council requested a six week period in which to provide Mr Cruickshank with a response to review meeting the requirements of regulation 16 of the EIRs.



Commissioner's analysis and findings

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

FOISA or EIRs?

12. It is clear from the Council's correspondence with both Mr Cruickshank and the Commissioner that any information falling within the scope of the request would be environmental information, as defined in regulation 2(1) of the EIRs. The information in question concerns the demolition of listed buildings, and the Commissioner is satisfied that it would fall within either paragraph (a) of the definition of environmental information contained in regulation 2(1) of the EIRs (as information on the state of the elements of the environment) or paragraph (c) of that definition (as information on measures affecting or likely to affect those elements).
13. Given that the information requested is environmental information, then the Council has a duty to consider it as a request in terms of regulation 5(1) of the EIRs.

Section 39(2) of FOISA – environmental information

14. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined by regulation 2(1) of the EIRs) is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs. In this case, the Commissioner accepts that the Council was entitled to apply the exemption relative to Mr Cruickshank's request, given her conclusion that it is properly classified as environmental information.
15. As there is a separate statutory right of access to environmental information available to the applicant, the Commissioner also accepts that, in this case, the public interest in maintaining this exemption and in dealing with the request in line with the requirements of the EIRs outweighs any public interest in disclosing the information under FOISA.

Regulation 5(1) of the EIRs

16. 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. Regulation 5(2) requires the request for environmental information shall be complied with as soon as possible and in any event no later than 20 working days after the date of receipt of the request.



Regulation 16 of the EIRs

17. Regulation 16 of the EIRs states that, on receipt of a requirement to conduct a review, the authority shall review the matter and decide whether it has complied with the regulations within 20 working days (regulations 16(3) and (4)). It also states that where an authority has not complied with its duty under the EIRs, it shall immediately take steps to remedy the breach of duty (regulation 16(5)).
18. Although the Council responded to Mr Cruickshank's request on 30 May 2013 and his request for review on 26 June 2013, as explained above, this was as a result of the Council considering the request in terms of FOISA and not the EIRs.
19. It is apparent that the Council has failed to respond to Mr Cruickshank's request of 30 April 2013 in terms of the EIRs, and therefore failed to comply with regulation 5 of the EIRs. It is also apparent that the Council further failed to carry out a review meeting the full requirements of regulation 16 of the EIRs.
20. The Commissioner therefore requires the Council to provide a response to Mr Cruickshank's requirement for review of 30 May 2013, as required by regulation 16 of the EIRs.

DECISION

The Commissioner finds that the Council failed to comply with the requirements of regulations 5 and 16 of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to Mr Cruickshank's request and requirement for review.

The Commissioner requires the Council to provide a response to Mr Cruickshank's requirement for review, in terms of regulation 16 of the EIRs, by 2 September 2013.

Appeal

Should either Mr Cruickshank or Glasgow City 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
19 July 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.

...



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.