

Decision Notice



Decision 179/2013 Grundon Waste Management Limited and the Scottish Ministers

Recalled planning appeal

Reference No: 201301142
Decision Date: 21 August 2013

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Rosemary Agnew
Scottish Information Commissioner

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Summary

On 10 January 2013, Grundon Waste Management Limited (GWM) asked the Scottish Ministers (the Ministers) for specific information relating to a recalled planning appeal. The Ministers responded by providing information to GWM. The Commissioner carried out an investigation and found that the Ministers had provided GWM with all of the relevant information they held.

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 "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 the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 10 January 2013, solicitors acting on behalf of GWM wrote to a named person at the Ministers and requested the following information:
... a copy of all information held by the Scottish Government that contains or relates to the reasons why the Scottish Ministers recalled planning appeal: PPA-340-2068 - Shore Road, Perth; and the reasons why the Directorate of Local Government & Communities, and in particular you, recommended that the appeal be recalled by Ministers.
2. Subsequent references to correspondence to and from GWM should be read as including correspondence to and from the company's solicitors acting on its behalf.
3. The Ministers responded on 6 February 2013. They provided information to GWM. The Ministers also informed GWM that certain information was publicly available on their website.



4. On 19 March 2013, GWM wrote to the Ministers requesting a review of their decision. They did not accept that the Ministers had provided all the relevant information they held, noting that the publicly available information was general in nature and did not deal with the specific case GWM was interested in.
5. The Ministers notified GWM of the outcome of their review on 30 April 2013. The Ministers confirmed that all the relevant information they held had been provided to GWM.
6. On 10 May 2013, GWM wrote to the Commissioner, stating that they were dissatisfied with the outcome of the Ministers' review and applying 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 certain specified modifications.
7. The application was validated by establishing that GWM 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 their response to that request. The case was then allocated to an investigating officer.

Investigation

8. GWM's application to the Commissioner was based on their dissatisfaction that they had not been provided with all of the information held by the Ministers and falling within the scope of their request.
9. On 29 May 2013, the investigating officer notified the Ministers in writing that an application had been received from GWM, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to respond to specific questions. In particular, the Ministers were asked to justify their reliance on any provisions of FOISA and the EIRs they considered applicable to the information requested and to explain the steps they had taken to identify and locate the information GWM had requested.
10. The Ministers responded, providing submissions to the effect that the request fell to be dealt with in terms of the EIRs and, as a result, applying the exemption in section 39(2) of FOISA (see below). They also provided submissions to support of their position that they had provided GWM with all relevant information they held.



Commissioner's analysis and findings

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

FOISA or EIRs?

12. It is clear from the Ministers' correspondence with both GWM 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 recall by the Ministers of a planning application for a significant development, 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, including land and landscape) or paragraph (c) of that definition (as information on measures – including plans – affecting or likely to affect those elements).

Section 39(2) of FOISA – environmental information

13. 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 Ministers were entitled to apply the exemption to the withheld information, given her conclusion that it is properly classified as environmental information.
14. 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 in dealing with the request in line with the requirements of the EIRs outweighs any public interest in dealing with the request under FOISA.

Regulation 5(1) of the EIRs

15. Regulation 5(1) of the EIRs (subject to the various qualifications contained in regulations 6 to 12, which are not applicable in this case) 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.
16. The Commissioner notes the submissions provided by GWM. GWM believes the Ministers should hold further detailed information, noting that the information provided is general in nature rather than relating to the specific case GWM is interested in.
17. The Ministers submitted that they had responded adequately to GWM's request, and explained the searches and enquiries they carried out to ascertain whether they held information falling within the scope of GWM's request.

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18. The Ministers explained (with details and evidence of the outcomes) that they had carried out specific searches and enquiries in locating the information provided to GWM. They confirmed that further enquiries had been carried out during the investigation and that no further relevant information was identified. The Commissioner is satisfied that these measures were adequate in the circumstances.
19. Having considered all relevant submissions and the terms of the request, the Commissioner accepts that the Ministers interpreted GWM's request reasonably and took adequate, proportionate steps to establish what information they held and which fell within the scope of the request, in addition to that provided. Consequently, in respect of the information actually held, she is satisfied that the Ministers dealt with the request in accordance with section 1(1) of FOISA and regulation 5(1) of the EIRs.

DECISION

The Commissioner finds that the Scottish Ministers complied with Part 1 of the Freedom of Information (Scotland) Act 2002 and with the Environmental Information (Scotland) Regulations 2004 in responding to the information request made by GWM.

Appeal

Should either Grundon Waste Management Limited or the Scottish Ministers 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 August 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.

...