

Decision Notice



Decision 216/2011 Ivanhoe Cambridge and Glasgow City Council

Tax Increment Finance Business Case: Buchanan Quarter development

Reference No: 201100564

Decision Date: 31 October 2011

www.itspublicknowledge.info

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Scottish Information Commissioner

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Summary

On behalf of Ivanhoe Cambridge, Glasgow City Council (the Council) was asked for information about the business case for a proposed tax increment finance (TIF) initiative (to fund the Buchanan Quarter development). The Council refused to provide the requested information, citing several exemptions in FOISA. Following a review, the Council refused to comply with the request on the grounds that the cost of doing so would exceed the prescribed limit of £600. Ivanhoe Cambridge remained dissatisfied and applied to the Commissioner for a decision.

During the investigation, the Council accepted that the request was for environmental information and should have been dealt with under the EIRs. The Council withheld the information under regulation 10(4)(d) of the EIRs.

Following an investigation, the Commissioner found that the request should have been dealt with under the EIRs, while accepting that the Council was entitled to withhold the information as material in the course of completion under regulation 10(4)(d) of the EIRs. In the circumstances, the Commissioner did not require the Council to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (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) (Interpretation) (definition of "environmental information"); 5(1) and 2(b) (Duty to make environmental information available on request); 10(4)(d) (Exceptions from duty to make environmental information available); 13(d) (Refusal to make information available).

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 23 December 2010, the Council received a request, made on behalf of Ivanhoe Cambridge, for information relating to a “business case” to which reference had been made in a report considered by the Council’s Executive Committee on 9 December 2010. At that meeting, Council members had approved the submission of the business case to the Scottish Futures Trust (the SFT).
2. The business case had been prepared in support of a tax increment finance (TIF) initiative proposed by the Council in order to facilitate development of the Buchanan Quarter in Glasgow city centre. Ivanhoe Cambridge believed that the TIF initiative had changed considerably from the scheme previously considered by the Council in January 2010. The request made on its behalf was for the information contained in the business case, including any earlier drafts; all correspondence relating to the business case; and information from the Memorandum of Understanding to which reference was made in the report to Council members dated 9 December 2010 (“the recommendation report”).
3. The information request was made specifically under the EIRs.
4. On the same day, a second request was submitted on behalf of Ivanhoe Cambridge, this time asking for research undertaken by Halcrow and supported by GVA Grimley, as referred to in paragraph 1.3 of the recommendation report. The Council was also asked who had paid for this research/research validation.
5. The Council responded on 25 January 2011. It advised that certain information had been withheld under one or more of the exemptions in section 33(1)(b), section 36(1) and section 30(b)(ii) of FOISA, and gave reasons for its decision. The Council stated that it did not hold information showing who had paid Halcrow and GVA Grimley for their research, as the Council had not paid for the work. Ivanhoe Cambridge was asked to note that the Council intended to make publicly available, as soon as it deemed appropriate to do so, the business case with “ancillary documentation redacted to the extent that Glasgow City Council deems appropriate to reconcile the public and commercial interests”.
6. On 8 February 2011, a review of the Council’s decision was requested on behalf of Ivanhoe Cambridge. Ivanhoe Cambridge did not accept that the exemptions cited by the Council should apply to the information requested, and provided the Council with a detailed explanation of its views.
7. The Council notified Ivanhoe Cambridge of the outcome of its review on 10 March 2011. It advised that it had become apparent that the cost of providing the information requested would exceed £600 (the upper limit prescribed for the purposes of section 12(1) of FOISA). Consequently, it refused to comply with the request.



8. On 11 March 2011, the Council was advised that (in light of the estimated cost of complying with its requests) Ivanhoe Cambridge would be content to see a copy of the business case submitted to the SFT and copies of the two research reports which supported its findings, prepared by GVA Grimley and Halcrow.
9. On 23 March 2011, the Council provided Ivanhoe Cambridge with a copy of the research report from Halcrow.
10. On 29 March 2011, a letter was sent to the Commissioner on behalf of Ivanhoe Cambridge, expressing dissatisfaction with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. The application was validated by establishing that Ivanhoe Cambridge 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.

Investigation

11. On 15 April 2011, the Council was asked to provide comments on the application (as required by section 49(3)(a) of FOISA) and to respond to specific questions about its decision to withhold information. The investigating officer noted that the application was in respect of the withholding of the business case and the GVA Grimley research report only.
12. The Council was asked to consider whether some or all of the information was environmental information, as defined in regulation 2 of the EIRs, and was also asked if it could indicate when it might be in a position to publish information from the business case, in line with the intention expressed in its letter of 25 January 2011.
13. Having received submissions from the Council, together with the withheld information, the Commissioner concluded that the information was environmental information and advised the Council of this conclusion. He also asked the Council to consider whether it wished to present arguments for withholding the information under the EIRs, and also whether it wished to rely on the exemption in section 39(2) of FOISA. The Council accepted that the information was environmental, confirming that it wished to rely on the section 39(2) exemption and also providing arguments in support of the application of the exception in regulation 10(4)(d) of the EIRs.
14. The Council also advised that the business case, supported by the GVA Grimley report, was still under consideration by Scottish Ministers, and that their approval or otherwise would determine the timing of publication by the Council. The Council could not indicate when the Ministers might revert to the Council with their decision.
15. The Council's arguments are considered in more detail, together with those put forward by Ivanhoe Cambridge, in the next part of this decision notice.



Commissioner's analysis and findings

16. In coming to a decision on this matter, the Commissioner has considered all of the withheld information, with the submissions made to him by both Ivanhoe Cambridge and the Council, and is satisfied that no matter of relevance has been overlooked.

Section 39(2) of FOISA – environmental information

17. The Commissioner set out his thinking on the relationship between FOISA and the EIRs in some detail in *Decision 218/2007 Professor A D Hawkins and Transport Scotland* and need not repeat it in full here. In this case, the Council submitted, in the course of the investigation, that it was entitled to withhold the requested information under section 39(2) of FOISA, concurring with the Commissioner's view that it was environmental information as defined in regulation 2(1) of the EIRs.
18. 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 such information to be considered solely in terms of the EIRs. In this case, having examined the withheld information, the Commissioner advised the Council that he was satisfied that the requested information fell within the definition of environmental information set out in regulation 2(1) of the EIRs, specifically paragraphs (c) and (e) of that definition. Having reached that conclusion, he finds that the Council was entitled to apply the exemption in section 39(2) of FOISA to the requested information.
19. This exemption is subject to the public interest test in section 2(1)(b) of FOISA. As there is a separate statutory right of access to environmental information available to the applicant in this case, the Commissioner also finds 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 disclosure of the information under FOISA. The Commissioner has consequently proceeded to consider this case in what follows solely in terms of the EIRs.
20. However, while he is pleased to note that the Council accepted the information was environmental in the course of the investigation, the Commissioner must also note that it did not do so (and act accordingly under the EIRs) when dealing with the relevant information requests, despite the fact that the applicant had referred to the EIRs in making its initial request. As he found in *Decision 218/2007*, a Scottish public authority has an obligation to deal with a request for environmental information under the EIRs; by failing to do so, the Council failed to comply with regulation 5(1) of the EIRs.

Regulation 10(4)(d) of the EIRs

21. Regulation 10(4)(d) of the EIRs provides an exception from the duty to make environmental information available when requested to do so, where the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data.



22. As with all the exceptions under regulation 10, a Scottish public authority applying this exception must interpret the exception in a restrictive way (regulation 10(2)(a)) and apply a presumption in favour of disclosure (regulation 10(2)(b)). Even where the exception applies, the information must be released unless, in all the circumstances of the case, the public interest in making the information available is outweighed by that in maintaining the exception (regulation 10(1)(b)).
23. Regulation 13(d) provides that where a Scottish public authority refuses to make information available on the basis of the exception in regulation 10(4)(d), the authority shall state the time by which it considers that the information will be finished or completed.
24. The Council submitted that the GVA Grimley report should be considered as part of the draft business case, which was not a completed, fixed document but one which would require review and probably refinement and revision, noting that ongoing negotiations and discussions with the Scottish Ministers could continue to affect this process.
25. The Commissioner can only consider in this decision whether the Council should have disclosed the information it held at the time it received the requests made on 23 December 2010: he cannot consider whether the Council should have disclosed the version of the business case which was submitted to the SFT in March 2011. The Commissioner accepts that, at the time of the request, both the business case and the GVA Grimley report were unfinished documents and material still in the course of completion, to which further amendments and additions were expected (and were in fact made) before submission to the SFT. He therefore accepts that the information under consideration in this decision notice fell within the scope of the exception in regulation 10(4)(d). He also accepts that the uncompleted GVA Grimley report should properly be considered as part of the draft business case, in being information intended to support, and be submitted with, that business case.
26. Having accepted that the exception in regulation 10(4)(d) is engaged by the information withheld from Ivanhoe Cambridge and under consideration in this decision, the Commissioner is required to consider the public interest test in regulation 10(1)(b) of the EIRs. The test specifies that a Scottish public authority may only withhold information to which an exception applies where, in all the circumstances, the public interest in making the information available is outweighed by the public interest in maintaining the exception.

Public interest arguments from Ivanhoe Cambridge

27. Ivanhoe Cambridge believed that the Council's refusal to publish the business case and the principal supporting research report (the GVA Grimley report) raised issues of fundamental public importance. Ivanhoe Cambridge expressed concern that the Council proposed to spend £83 million of public money to assist delivery of what was essentially an expansion of the Buchanan Galleries Shopping Centre in Glasgow, without providing the taxpayers of Glasgow with any opportunity to comment on this matter until the proposal had been approved by the Scottish Ministers.



28. Ivanhoe Cambridge went on to contend that, given the level of public interest in TIF schemes generally and in the Buchanan Quarter TIF proposal in particular, as well as the significant sum of taxpayers' money involved, it was important for the democratic process that the business case and supporting research were subjected to public scrutiny and comment ahead of any ratification by the Scottish Ministers.
29. Ivanhoe Cambridge submitted that the purpose of the business case was to demonstrate why the provision of such a large amount of financial assistance from Glasgow taxpayers was essential if the various retail schemes listed in the report to the Executive Committee of 9 December 2010 were to come forward. They believed it to be in the public interest that the analyses underpinning the conclusions in the business case could be subjected to independent scrutiny, particularly in circumstances where it appeared that the work involved in the preparation of the business case had been carried out by consultants instructed and paid for by the private sector organisation that stood to benefit most from the proposal if implemented in its current form.
30. Ivanhoe Cambridge also argued that it would have been in the public interest if the Council had released the business case and associated Memorandum of Understanding before submitting these documents to the SFT, enabling a period of consultation and permitting representations to be made to the SFT from interested third parties. This would have provided an opportunity to test the robustness of the business case and perhaps also provide an opportunity to put forward alternative proposals, which might have the potential to deliver a more equitable TIF scheme than the one currently proposed (in this context, Ivanhoe Cambridge did not accept the relevance or adequacy of the consultation with "stakeholders" described in paragraph 36 below). Ivanhoe Cambridge noted that there were several key regeneration projects identified in the City Plan which it suggested would benefit from £80 million worth of public sector investment
31. Ivanhoe Cambridge expressed support for TIF as a regeneration tool. However, they argued that it was in the public interest that decision makers (in this case, the Scottish Ministers) should be seen to have had an opportunity to take into account third party comment when making their final decision on an individual business case, rather than simply accepting advice provided by consultants paid by developers with an obvious financial interest in the outcome. Ivanhoe Cambridge took the view that without such an opportunity for third parties to offer their comments, the Scottish Ministers' decision might well be subject to challenge.

Public interest arguments from the Council

32. In its submissions to the Commissioner, the Council confirmed its commitment to freedom of information, pointing to information it had already released into the public domain in relation to the proposed Buchanan Quarter scheme.



33. The Council argued that the Scottish Ministers should be allowed to consider and assess the Council's business case and to relay comments to the Council for consideration, and that individual interests should not interfere with this process. In the Council's opinion, the business case was "of interest to the requestor for their own reasons". It considered that Ivanhoe Cambridge objected to the Council pursuing an application for financial measures to secure funding to improve an area of the city centre which did not encompass their property and which they saw as financially detrimental to their business. In support of this view, the Council provided the Commissioner with a newspaper article which reported that the Buchanan Galleries' biggest rival would sue if the TIF went ahead¹.
34. The Council had taken into account the Commissioner's guidance that the public interest was "something which is of serious concern and benefit to the public, more merely something of individual interest". It stated that, should the visions in the business case come to fruition, the people of Glasgow and the wider area "would receive greater benefit" and therefore, on balance, the public interest in withholding the information outweighed any public interest in disclosure.
35. The Council further argued that disclosure of the business case and report would not enhance scrutiny and thereby improve accountability and participation; it took the view that the document had already been subject to intense scrutiny by the very nature of the process that the Council had been required to go through before the business case was submitted to the Scottish Ministers.
36. The Council also asked the Commissioner to note that it had sought the views of organisations with an interest in the commercial sectors of the city centre by way of a consultation process. While preparing the business case, it had contacted 36 stakeholders for their view, 21 of whom had responded. Six of the respondents had city-centre focussed perspectives, one being Ivanhoe Cambridge itself. While this was not public participation in the sense that members of the public were invited to respond, the Council argued that to some extent the respondents had participated in the drafting and the shaping of the business case.
37. The Council added that if the business case was approved, any subsequent planning applications received by the Council would of course be open to public scrutiny and inspection.
38. The Council noted that TIF was a fairly recent concept, and one which the Scottish Ministers had not opened up to public debate. In the Council's opinion, to release a document which was still in the course of completion and was still subject to ongoing debate and drafting would hinder rather than assist and inform the public.

¹ "Buchanan Galleries tax deal shelved", Evening Times, 28 March 2011.



39. The Council recognised that there were arguments to support disclosure of information which would make up the final submission to the Scottish Ministers, in the public interest. This would enable a public debate around the merits of the business case put to the Ministers. However, the Council believed that the public interest in seeing a draft in the course of completion was far weaker, and (in the Council's view) outweighed by the public interest in maximising benefits for the City of Glasgow through a TIF funding initiative and allowing the Council to prepare the case for using TIF without intervention from "narrow sectoral interests".
40. In its initial response to Ivanhoe Cambridge (25 January 2011), the Council acknowledged that there was a significant public interest in openness and transparency, and recognised that any information request was potentially in the public interest. However, it argued that there was also a significant public interest in authorities such as the Council being able to assess critically all factors involved in decisions of this kind in order to reach the best possible decision. The Council argued that, on occasion, this required candid advice and a free exchange of views, of a sort which could not be achieved if all information were disclosed.
41. The Council believed that disclosure of the information requested by Ivanhoe Cambridge would, or would be likely to, substantially prejudice the free and frank exchange of views for the purpose of deliberation. It explained that the decision-making process, of which the requested information formed a part, involved a degree of "blue sky thinking", given that the subject matter of the Buchanan Quarter TIF was innovative. The Council argued that the decision-making process would be inhibited if information of this type were to be routinely released, which in turn would harm the quality of the decision-making process and the free and frank exchange of views for purposes of deliberation.
42. The Council also argued that there was a significant public interest in authorities such as the Council being able to communicate, negotiate, and ultimately contract with third parties on the basis that information which was private and of commercial value to those third parties was not released into the public domain. The information withheld included commercial analyses, the disclosure of which would, in the Council's view, give a commercial rival of the third party concerned an unfair advantage. In the circumstances of this case, the Council believed that the public interest in safeguarding the legitimate commercial interests of the Council and the external parties concerned outweighed the general public interest in openness and transparency.
43. The Council considered that the public interest in openness and transparency was satisfied by the release of all relevant information concerning the decisions ultimately reached, and the reasons for these, without requiring disclosure of the debate which surrounded these decisions.

The Commissioner's view on the public interest test

44. In considering the public interest test in relation to the information found to be excepted from disclosure under regulation 10(4)(d), the Commissioner accepts that there is a general public interest in making information available to the public, and in transparency and accountability in decision making, but this must be balanced against any detriment to the public interest as a consequence of disclosure.



45. Regulation 10(4)(d) does not contain a “harm test”, but simply requires information to be incomplete or unfinished in order for the exception to be engaged. Any arguments relating to the harmful consequences of disclosure must therefore be considered when reaching a decision on whether the information should be disclosed or withheld in terms of the balance of public interest (the public interest test required by regulation 10(1)(b) of the EIRs).
46. To summarise, in this case, the Council has argued that disclosure would cause several different types of harm:
- Inhibition to the free and frank exchange of views necessary for the process of decision making when dealing with an innovative subject;
 - Harm to the commercial interests of the Council and the third party involved in the development project;
 - Interference with the Scottish Ministers’ consideration and decision on the TIF application, given that the applicants have “their own reasons” for objecting to the proposals put forward by the Council.
47. Against this, the applicants argued (in summary) that disclosure would be in the public interest by opening up the business case proposals for public scrutiny and comment, with the following benefits:
- It would demonstrate why such a large contribution from tax-payers was essential to achieve the planned retail schemes;
 - It would permit independent scrutiny of the analyses underpinning the conclusions in the business case;
 - It would provide an opportunity to test the robustness of the business case and perhaps an opportunity to put forward alternative proposals;
 - It would avoid the possibility of a future challenge to any decision taken by the Scottish Ministers without third party consultation.
48. In assessing the weight that should be attributed to public interest arguments both in favour of disclosing the information and those in favour of maintaining the exception, the Commissioner has focused on the content of the draft business case, and the extent to which this is either incomplete information or information which is already in the public domain. In reaching a conclusion on the balance of public interest, the main consideration has been to what extent disclosure of the withheld information would bring about the advantages identified, in terms of the public interest in disclosure, and to what extent disclosure would result in the negative consequences identified by the Council.



49. The Commissioner has first considered the arguments put forward by Ivanhoe Cambridge. In doing so, the Commissioner has had the advantage of seeing the withheld information, whereas Ivanhoe Cambridge has had to base its arguments on the information it would expect to be included in the business plan. Having examined the withheld information, the Commissioner does not accept the arguments that disclosure would permit independent scrutiny of the analyses underpinning the conclusions in the business case, or would demonstrate why such a large contribution from tax-payers was essential to achieve the planned retail schemes. While both of these outcomes might well be in the public interest, the Commissioner finds that disclosure of the information in the incomplete version of the business case currently under consideration would not achieve these purposes.
50. Similarly, the Commissioner is not persuaded that disclosure of the draft business case would provide an opportunity to test its robustness. The Commissioner has had the opportunity to compare the draft business case as it existed in December 2010 with the version submitted to the SFT in March 2011, and believes that it would be misleading to draw conclusions based on the draft, which contains incomplete information and was further revised before submission to the SFT.
51. Ivanhoe Cambridge also argued that disclosure would be in the public interest because it would avoid the possibility of a future challenge to any decision taken by the Scottish Ministers without third party consultation. As noted above, the Council has confirmed that it consulted with a number of “stakeholders” in the early stages of this project, including Ivanhoe Cambridge. It is not for the Commissioner to determine whether further third party consultation would be required in order to avoid any future challenge to the Scottish Ministers’ decision. However, it seems likely that any such challenge would not be based on the lack of consultation about proposals which, at the time of the request, were still in the form of an unfinished draft, but would instead focus on the expectation of further third-party consultation in the period after the proposals were finalised.
52. The Commissioner has gone on to consider the public interest arguments put forward by the Council.
53. In relation to the public interest in avoiding harm to the commercial interests of the Council and the developer, the Commissioner is not persuaded that any such harm would, or would be likely to, occur if the information in the draft business case was disclosed. The Council did not explain in any detail what kind of harm might affect its commercial interests or those of the developer or any other relevant third party; without any such explanation the Commissioner could not accept that for this reason there would be a strong public interest in withholding the information in the draft business case.
54. Similarly, the Commissioner does not find persuasive the Council’s argument that disclosure would inhibit the free and frank exchange of views necessary for the process of decision-making when dealing with an innovative subject. It is not clear which decisions remained to be taken, in relation to this particular stage of the project, by the time the applicants made their request; information about the proposed development, and some information about the preferred funding mechanism (TIF), were already in the public domain.



55. On the other hand, the Commissioner accepts that situations might occur in which the public interest lay in protecting a drafting process by preserving a space within which draft proposals such as the business plan could be completed as efficiently as possible. He acknowledges that in practice, this might require opportunities for public comment and participation to be limited at certain stages in the drafting process, to allow the proposals to be finalised and presented for consideration with a minimum of delay.
56. The Commissioner accepts that there might be a strong public interest in enabling third party scrutiny of the business case proposals, but he takes the view that this may not be equally strong throughout the drafting process. The Commissioner notes that the Council had provided some opportunity, however limited, for invited third parties to comment on the general proposals at an earlier stage of the project. He also notes that the revised, completed version of the business case was submitted to the SFT some three months after the request was received from Ivanhoe Cambridge. He takes the view that if the draft report had been released, it is likely that further representations would have been made, which would have been likely to delay completion of the business case. The Commissioner is not convinced that this would have been in the public interest, given the incomplete nature of the withheld draft upon which any further representations would have been made.
57. The Commissioner is mindful of the considerable impact that the proposed development of the Buchanan Quarter likely to have on the city of Glasgow, and accepts that this gives some weight to the argument that information about the project should be disclosed, in the interests of accountability and transparency. However, he comes back to the point that the information falling within the scope of the request was not the final version of the business case, which would have given a more complete picture of the Council's proposals. If the withheld information had been the version of the business case submitted to the SFT, this would perhaps have given more weight to the arguments supporting the public interest in disclosure.
58. The Commissioner finds there is a balance to be struck between the public interest in providing opportunities for comment and participation, and the public interest in ensuring effective and efficient working within Scottish public authorities.
59. On balance, the Commissioner finds that in all the circumstances of this case, the stronger public interest lay in protecting the drafting process by providing a space in which the proposals in the business case could be reviewed and completed for submission to the SFT, and consequently that the public interest in maintaining the exception in regulation 10(4)(d) outweighs the public interest in disclosure of the information under consideration in this case. He therefore accepts that the Council was entitled to withhold the information under the exception in regulation 10(4)(d) of the EIRs.

Regulation 13(d) of the EIRs

60. Regulation 13(d) of the EIRs provides that if a request for environmental information is refused by a Scottish public authority in accordance with regulation 10(4)(d), the refusal shall state the time by which the authority considers that the information will be finished or completed.



61. The Commissioner notes that the Council advised the applicants that it intended to publish the business case with ancillary documentation, redacted as deemed appropriate, “as soon as it deems it appropriate to do [so]”; this was reiterated in the Council’s review response. The Council did not specify that publication would not take place until after the Scottish Ministers had considered the business case, although this has now been acknowledged.
62. As noted previously, the Council initially dealt with the information requests under FOISA, not the EIRs. The Commissioner therefore does not consider it appropriate to decide whether the Council complied with regulation 13(d) of the EIRS, which has no direct equivalent in FOISA.

DECISION

The Commissioner finds that Glasgow City Council (the Council) partially complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made on behalf of Ivanhoe Cambridge.

In initially failing to identify the information covered by the request as falling within the scope of the EIRs, and deal with the request accordingly, the Council failed to comply with regulation 5(1) of the EIRs.

Given that the Council has acknowledged this failure, the Commissioner does not require the Council to take any action in this respect in response to Ivanhoe Cambridge’s application.

The Commissioner also finds that the Council was entitled to withhold the requested information (insofar as falling within the scope of Ivanhoe Cambridge’s application) under regulation 10(4)(d) of the EIRs.



Appeal

Should either Ivanhoe Cambridge 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 notice.

Kevin Dunion
Scottish Information Commissioner
31 October 2011



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;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (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;
- ...
- (e) costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and

...

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.

...



10 Exceptions from duty to make environmental information available–

- (1) A Scottish public authority may refuse a request to make environmental information available if-
 - (a) there is an exception to disclosure under paragraphs (4) or (5); and
 - (b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
- (2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall-
 - (a) interpret those paragraphs in a restrictive way; and
 - (b) apply a presumption in favour of disclosure.

...

- (4) A Scottish public authority may refuse to make environmental information available to the extent that

...

- (d) the request relates to material which is still in the course of completion, to unfinished documents or to incomplete data; or

...

13 Refusal to make information available

Subject to regulations 10(8) and 11(6), if a request to make environmental information available is refused by a Scottish public authority in accordance with regulation 10, the refusal shall-

...

- (d) if the exception in regulation 10(4)(d) is relied on, state the time by which the authority considers that the information will be finished or completed; and

...