

# Decision Notice

---

## Decision 230/2016: Company X and Dumfries and Galloway Council

---

**Waste: contracts, correspondence, data and licences**

Reference No: 201600615

Decision Date: 27 October 2016



Scottish Information  
Commissioner

## Summary

---

On 14 January 2016, Company X asked Dumfries and Galloway Council (the Council) for a range of information about waste management, including contracts, correspondence, data and licences.

The Council informed Company X that its request was manifestly unreasonable.

The Commissioner did not accept that the request was manifestly unreasonable, on the evidence provided by the Council. She also found that the Council did not provide reasonable advice and assistance to Company X. She required the Council to respond afresh to Company X's request for review.

## Relevant statutory provisions

---

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) (definitions (a), (b) and (c) of "environmental information"); 5(1) and (2)(b) (Duty to make available environmental information on request); 9 (Duty to provide advice and assistance); 10(1), (2) and (4)(b) (Exceptions from duty to make environmental information available)

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

---

1. On 14 January 2016, Company X made a request for information to the Council. The information requested was:
  1. Any contracts or other agreements between the Council and Oakbank Services ("Oakbank") relating to or governing:
    - i) The provision or delivery of waste by or on behalf of Oakbank Services to the Council; and/or
    - ii) The collection of waste by Oakbank from the Council; and/or
    - iii) The delivery of waste to Locharmoss MBT plant, which is operated by Company X

During the period April 2013 to July 2014 inclusive
2. Correspondence (either electronic or in written form) and any notes of meetings or deliberations both a) internally within the Council and b) between the Council and Oakbank relating to:
  - i) The provision or delivery of waste by or on behalf of Oakbank to the Council;
  - ii) The collection of waste by Oakbank from the Council; and
  - iii) The delivery of waste by Oakbank to Locharmoss MBT plant.

3. Tonnage details by calendar month of all waste collected by Oakbank from 31 December 2011 until 30 June 2014;
  4. Any contract or other agreements between the Council and the producers of waste which is being collected on the Council's behalf by Oakbank.
  5. Copies of all Waste Carrier Licences held by the Council during each of the past three years; and
  6. Copies of all Waste Broker's Licences held by the Council.
2. The Council responded on 12 February 2016. The Council considered that the request was manifestly unreasonable, in line with regulation 10(4)(b) of the EIRs. It stated that 1,700 invoices would have to be considered in relation to the first point alone, and these invoices would also be used as a basis for identifying the correspondence requested in point 2 of the request.
  3. On 18 February 2016, Company X wrote to the Council requesting a review of its decision. Company X did not consider that the first point of its request for contracts could be interpreted as a request for invoices. Company X identified individuals and a team within the Council that would be likely to hold correspondence requested in point 2, and stated that the remainder of the request should be responded to without difficulty.
  4. The Council notified Company X of the outcome of its review on 18 March 2016. It upheld its previous decision without modification. It provided commentary on Company X's request and identified ways in which the request could be modified, such as reducing the time period covered by the requested information.
  5. On 5 April 2016, Company X 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. Company X stated it was dissatisfied with the outcome of Council's review because the Council had failed to properly interpret its request.

## Investigation

---

6. The application was accepted as valid. The Commissioner confirmed that Company X made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 2 May 2016, the Council was notified in writing that Company X had made a valid application and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 26 May 2016, the Council was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of the EIRs it considered applicable to the information requested.
9. The Council provided submissions to the investigating officer. Clarification of some points was sought, and obtained, during the investigation.
10. Company X was invited to provide its comments as to why the information should be disclosed, and did so.

## 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 Company X and the Council. She is satisfied that no matter of relevance has been overlooked.

### EIRs or FOISA?

12. The relationship between FOISA and EIRs was considered at length in *Decision 218/2007 Professor A D Hawkins and Transport Scotland*<sup>1</sup>. Broadly, in the light of that decision, the Commissioner's general position is as follows:
- (i) The definition of what constitutes environmental information should not be viewed narrowly.
  - (ii) There are two separate statutory frameworks for access to environmental information and an authority is required to consider any request for environmental information under both FOISA and the EIRs.
  - (iii) Any request for environmental information therefore **must** be dealt with under the EIRs.
  - (iv) In responding to a request for environmental information under FOISA, an authority may claim the exemption in section 39(2).
  - (v) If the authority does not choose to claim the section 39(2) exemption, it must respond to the request fully under FOISA, by providing the information, withholding it under another exemption in Part 2, or claiming that it is not obliged to comply with the request by virtue of another provision in Part 1 (or a combination of these).
  - (vi) Where the Commissioner considers a request for environmental information has not been dealt with under the EIRs she is entitled (and indeed obliged) to consider how it should have been dealt with under that regime.
13. As the Commissioner has not seen the withheld information in this case, she questioned whether all of the information requested by Company X is environmental information, as indicated by the Council. In response, the Council stated that all information within the scope of Company X's request falls within the definition of environmental information in regulation 2(1) of the EIRs.
14. The Commissioner accepts, from the wording of Company X's request, that any information caught by the request will be environmental information, as defined in regulation 2(1) of the EIRs (the relevant parts of which are set out in Appendix 1). The information relates to waste collection activities which affect or are likely to affect the elements of the environment described in paragraph (a) and the factors detailed in paragraph (b) of the definition of environmental information.
15. During the investigation, the Council confirmed that it wished to rely upon section 39(2) of FOISA.

---

<sup>1</sup> <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600654.aspx>

## **Section 39(2) of FOISA - environmental information**

16. 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. During the investigation, the Council confirmed that it wanted to apply the exemption in section 39(2) to the information requested by Company X. In this case, the Commissioner accepts that the Council was entitled to apply the exemption to the requested information, given her conclusion that it is environmental information.
17. 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 (insofar as it concerns environmental information) in line with the requirements of the EIRs outweighs any public interest in disclosing the information under FOISA.
18. Taking all of the above into account, for the purposes of reaching a decision in this case, the Commissioner will consider the request in terms of the EIRs in what follows.

### **Was the request manifestly unreasonable?**

19. Under the exception in regulation 10(4)(b) of the EIRs, a Scottish public authority may refuse to make environmental information available to the extent that the request for information is manifestly unreasonable. If the authority finds that the request is manifestly unreasonable, it is still required to make the information available unless, in all the circumstances, the public interest in making it available is outweighed by that in maintaining the exception. In considering whether the exception applies, the authority must interpret it in a restrictive way and apply a presumption in favour of disclosure.
20. The Commissioner's general approach is that the following factors are relevant when considering whether a request is vexatious or manifestly unreasonable. These are that the request:
  - (i) would impose a significant burden on the public body
  - (ii) does not have a serious purpose or value
  - (iii) is designed to cause disruption or annoyance to the public authority
  - (iv) has the effect of harassing the public authority
  - (v) would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
21. This is not an exhaustive list. Depending on the circumstances, other factors may be relevant, provided the impact on the authority can be supported by evidence. The Commissioner recognises that each case must be considered on its merits, taking all the circumstances into account. The term "vexatious" or "manifestly unreasonable" must be applied to the request and not the requester, but an applicant's identity, and the history of their dealings with a public authority, may be relevant in considering the nature and effect of the request and surrounding circumstances.

### *The Council's submissions*

22. As made clear in its response to Company X's request and in its submissions to the Commissioner, the Council considered that part 1 of Company X's request ("any contracts or other agreements") would cover information from around 1700 invoices. In its request for review, Company X made it clear that it was not seeking invoices and would be happy for invoices to be excluded from the information covered by part 1 of its request. However, the Council continued to consider information from invoices in relation to the request, even after it was told that the Commissioner was unlikely to accept that invoices were relevant to a request for contracts or other agreements.
23. During the investigation, the Council was asked if it could take a more pragmatic interpretation of the request, perhaps restricting the search to one Council department (as suggested by Company X in its review request). In response, the Council stated that this approach would not meet the terms and / or purpose of the request, and would only serve as an opportunity for further duplicate requests made with the intention of trying to access all of the information Company X had requested in the first place, and to cause further detriment to the Council.
24. When asked about part 5 of the request, for Waste Carrier licences, the Council stated that it had already provided this information to Company X. The Council considered that this was the case with a lot of the other information covered by the request, and explained that it considered Company X's requests "vexatious" because Company X was requesting information it had already requested and received.
25. The Council was asked if it had any further comments on why it considered the request manifestly unreasonable, in addition to the volume of invoices falling in scope, in line with the Council's interpretation of the request. The Council submitted that responding to the request:
  - (i) would impose a significant burden on the Council
  - (ii) was designed to cause disruption or annoyance to the Council
  - (iii) had the effect of harassing the Council.
26. The Council submitted that it considered the following points in favour of disclosure:
  - to meet the principles of FOISA
  - to demonstrate openness, transparency and accountability
  - the general understanding that the information would be of interest to some members of the public
  - to demonstrate the Council's commitment to appropriately disposing of its waste.
27. Against disclosure, the Council submitted:
  - information contained within the scope of the request relates to pricing information which could prejudice the commercial and economic interests of Oakbank Services
  - disclosure would likely impact on the Council's commercial and economic interests due to the current dispute with Company X.
  - the Council's need to ensure the best value for the public purse: this covers the work that would be involved in responding to the request, and the possibility that Company X might use the information to prejudice the Council through its dispute with Company X.

- the precedent it would set “with regards to a private organisation advantaging itself against a public authority through the misuse of FOISA outwith due process i.e. through legal process and fair negotiation”.
28. The Council provided an estimate of the costs that it was likely to incur in searching for the relevant invoices. It submitted that only by searching these invoices could it ascertain what contracts it had in place with Oakbank.
  29. In relation to correspondence requested in part 2 of Company X’s request, the Council submitted that it would be required to contact numerous Council departments and units (which could include going down to school level). Every Council department has at one stage or another used Oakbank to collect waste, but the reasons varied: it could be for emptying a building, road works or simply disposing of small waste that is just too big for the normal bins.
  30. The Council explained that its departments are free to tender work like this on their own accord. Other than the invoices, the other information requested by Company X would be held in the Council’s email system; in notepads (staff can acquire phone call quotes for certain value jobs); and in hard copy filing cabinets. The information could only be retrieved through identifying the relevant Council department through the invoice log.
  31. The Council estimated that it would take 113 hours for a member of staff to look through all the invoices. It also provided an hourly cost for a member of staff to complete the work and the total cost of providing the invoices.
  32. The Council was asked whether it held information for every part of the request. It submitted that, in some cases, information may not be held; however, information would be held in “the high majority of cases”.

*The Commissioner's findings*

33. There is no definition of "manifestly unreasonable" in the EIRs, or in Directive 2003/4/EC<sup>2</sup> from which they are derived. The Commissioner's view is that "manifestly" implies that a request should be obviously or clearly unreasonable and she notes the opinion of the Information Tribunal in *Dr Kaye Little v Information Commissioner and Welsh Assembly Government (EA/2010/0072)*<sup>3</sup>, which considers the equivalent regulation to 10(4)(b) of the Environmental Information Regulations 2004, and states:

“From the ordinary meaning of the words "manifestly unreasonable", it is clear that the expression means something more than just "unreasonable". The word "manifestly" imports a quality of obviousness. What is in issue, therefore, is a request that is plainly or clearly unreasonable. It is a more stringent test than simply "unreasonable".

34. This view was confirmed in the Appeal Court decision *Dransfield & Anor v The Information Commissioner & Anor* [2015] EWCA Civ 454<sup>4</sup> (Dransfield) which comments:

“The word “manifestly...means of course the unreasonableness must be clearly shown. This

---

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0004:EN:HTML>

<sup>3</sup> [http://www.informationtribunal.gov.uk/DBFiles/Decision/i475/%5b2010%5dUKFTT\\_EA20100072\\_\(GRC\)\\_20101230.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i475/%5b2010%5dUKFTT_EA20100072_(GRC)_20101230.pdf)

<sup>4</sup> <http://www.bailii.org/ew/cases/EWCA/Civ/2015/454.html>

saves the authority from having to make any detailed investigation into matters which it does not know or are not in the public domain.”

35. Whether a request is manifestly unreasonable will depend on the facts of each case. It may apply where it can be demonstrated that a request is vexatious, or where compliance would incur unreasonable costs for the public authority or an unreasonable diversion of public resources.
36. *Decision 024/2010 Mr N and the Scottish Ministers*<sup>5</sup> established that the Commissioner was likely to take into account the same kinds of considerations in deciding whether a request was manifestly unreasonable under the EIRs as in reaching a decision as to whether a request was vexatious in terms of section 14(1) of FOISA. In *Dransfield*, Lady Justice Arden commented that while “manifestly unreasonable” differs on its face from “vexatious” (section 14(1) of FOISA), the difference between the two phrases is “vanishingly small”, if the approach to section 14 is objective and takes as its starting point the approach that “vexatious” means without any reasonable foundation for thinking that the information sought would be of value to the requester or the public.
37. In this case, the Commissioner considers that the Council’s submissions are generally poor and unsubstantiated. The Council has been given the opportunity to justify its view that Company X’s request is manifestly unreasonable. Instead, it has chosen to interpret the request as one seeking invoices, and focus on this point to the detriment of its submissions relating to the other parts of the request. The Council also advised the Commissioner that, due to the formal adjudication process (this is understood to relate to the Council’s legal dispute with Company X), staff from the relevant department had been unable to provide suitable evidence “at this time”.
38. The Council has attempted to explain why the invoices are relevant in establishing the contracts which it has with Oakbank Services. However, the Council appears to be arguing that every individual invoice to Oakbank Services represents a separate contract. The Commissioner does not accept that a contract and an invoice are the same thing. An invoice represents payment for services, often agreed through a contract. The Council does not appear to have considered whether it holds any documentation specifically relating to contracts with Oakbank Services. It has not explained why, if such documents are held, the information cannot be retrieved without first referring to the invoices generated by provision of services by Oakbank. The Commissioner notes that the Council has committed to publishing a list of contracts which have gone through formal tendering, in its publication scheme<sup>6</sup>.
39. The Commissioner disagrees with the Council’s interpretation of the first part of the request, and considers that an ordinary reading of the wording of the request should be adopted. A request for a contract should not ordinarily be understood as a request for an invoice. Company X stated in its request for review that it was not interested in invoices, only contracts. The Commissioner considers that the Council’s interpretation of the first part of the request was misguided, if not downright obtuse. If the Council had found any difficulty in determining what information Company X was seeking, it had the opportunity, in line with regulation 9(2) of the EIRs, to seek clarification.

---

<sup>5</sup> <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/200900461.asp>

<sup>6</sup> <http://www.dumgal.gov.uk/CHttpHandler.ashx?id=17253&p=0>



40. In this case, given that Company X had indicated that the information it wished to receive was significantly different to the information which the Council believed to be relevant to the request, it would have been appropriate for the Council to check this point with Company X, perhaps by providing a sample of the information. In submitting a request to an authority, an applicant will generally be unaware of how the information is held by the authority and it is incumbent upon the authority to provide guidance and assistance to the applicant in identifying the requested information.
41. During the investigation, the Council submitted that the Waste Carrier licences requested by Company X in part 5 of its request had had already provided. Later in the investigation, the Council explained that Waste Carrier and Broker licences were accessible on another body's website<sup>7</sup>. However, the Council continued to maintain that the entire request was manifestly unreasonable. If the information was publicly available elsewhere, this should have been confirmed to Company X, and part 5 of the request excluded from consideration, in deciding whether the request was manifestly unreasonable. The Commissioner does not accept that the Council was correct to rely on regulation 10(4)(b) of the EIRs in relation to part 5 of the request.
42. The Commissioner will consider the Council's reasons for regarding the rest of Company X's request as manifestly unreasonable, in terms of regulation 10(4)(b).

#### Significant burden

43. The Council provided an estimate of the costs that would be likely to be incurred in searching for invoices, and for correspondence associated with invoices. However, as noted above, Company X did not request invoices.
44. The Council did not provide any further explanation why the work involved in responding to the request would cause a significant burden to the Council.
45. Having considered the Council's submissions carefully, along with the wording of the request under consideration here, the Commissioner does not accept that the Council has shown why responding to the request would impose a significant burden. In her view, on the evidence available from the Council's submissions, it would not be reasonable to conclude that complying with the request would create a significant burden.

#### Disruption or annoyance

46. The Council submitted that Company X's request was designed to cause disruption and annoyance. The Commissioner is aware that the Council has been involved in a legal dispute with Company X, but, again, the Council provided nothing of real substance to substantiate its assertion. It did not explain how the performance of its functions would be impeded by providing the information.

#### Harassment

47. The Council asserted that the request was designed to cause harassment, but, again, did not provide arguments or evidence of real substance to substantiate the claim. The Council referred to the volume of requests received from Company X, to which it had responded, but it did not provide any evidence to show the harassing effect of the requests.

---

<sup>7</sup> <http://apps.sepa.org.uk/rocas/>

## Conclusions

48. For the reasons set out above, the Commissioner finds that the Council was not entitled to refuse to comply with Company X's request under regulation 10(4)(b) of the EIRs.
49. Having reached this finding, the Commissioner is not required to consider the public interest test in regulation 10(1)(b) of the EIRs.
50. The Commissioner requires the Council to respond to Company X's request in accordance with the requirements of the EIRs (other than in terms of regulation 10(4)(b)). In other words, the Commissioner requires the Council to carry out a fresh review of its response to Company X's request, in accordance with regulation 16 of the EIRs.

## **Duty to provide advice and assistance**

51. The Commissioner has considered whether the Council provided sufficient advice and assistance to Company X in relation to its request of 14 January 2016.
52. Regulation 9 of the EIRs requires a public authority, so far as it is reasonable to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it. The Scottish Ministers' Code of Practice on the discharge of Functions by Scottish Public Authorities under FOISA and the EIRs<sup>8</sup> ("the Section 60 Code") gives guidance to authorities on providing such advice and assistance.
53. The Section 60 Code states, at paragraph 5.1.1:

"Authorities have a duty to provide advice and assistance at all stages of a request. It can be given either before a request is made, or to clarify what information an applicant wants after a request has been made, whilst the authority is handling the request, or after it has responded."
54. The Section 60 Code cautions:

"Applicants should not be expected to always have the technical knowledge or terminology to identify the information they seek".
55. At paragraph 9.8.2 (Providing additional information), the Code says:

"The duty to provide advice and assistance does not extend to providing additional information which falls outside the scope of the information request, or locating information held by other public authorities. However, in some situations it may be helpful to provide some form of clarification or context to their response to avoid the information disclosed being misunderstood or misinterpreted."
56. As has been stated previously, requesters, however experienced they are, are unlikely to have knowledge of the information held by a public authority equal to that of the public authority itself. The Commissioner considers that Company X's request was clear and precise. As noted, she does not accept (on the evidence provided) that it was necessary for the Council to examine all invoices in order to establish whether it held information about contracts and agreements with Oakbank Services. However, if the Council was sure that this was necessary, it should have explained to Company X why this was the case, in order to provide relevant advice and assistance with its request.

---

<sup>8</sup> <http://www.gov.scot/Resource/0046/00465757.pdf>

57. In its review response, the Council purported to provide assistance in the framing of the request, but the Commissioner considers such advice was given too late in the process to be helpful, and the Council should have engaged in dialogue with Company X prior to this point.
58. Accordingly, the Commissioner has concluded that the Council failed to comply with regulation 9 of the EIRs in failing to provide reasonable advice and assistance to Company X.

## Decision

---

The Commissioner finds that Dumfries and Galloway Council (the Council) failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Company X.

The Council was not entitled to refuse to comply with the request as manifestly unreasonable under regulation 10(4)(b) of the EIRs and did not provide advice and assistance to Company X in line with regulation 9 of the EIRs .

The Commissioner requires the Council to respond afresh to Company X's request for review, other than in terms of regulation 10(4)(b) of the EIRs. The Council must provide Company X with the outcome of this review by **Monday, 12 December 2016**.

## Appeal

---

Should either Company X or the 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.

## Enforcement

---

If the Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

**Margaret Keyse**  
**Head of Enforcement**

**27 October 2016**

## Appendix 1: 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;

...

## 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.

...

## 9 Duty to provide advice and assistance

(1) A Scottish public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

(2) Where a request has been formulated in too general a manner, the authority shall-

- (a) ask the applicant as soon as possible, and in any event no later than 20 working days after the date of receipt of request, to provide more particulars in relation to the request; and
- (b) assist the applicant in providing those particulars.

(3) To the extent that a Scottish public authority conforms to a code of practice under regulation 18 in relation to the provision of advice and assistance in a particular case, it

shall be taken to have complied with the duty imposed by paragraph (1) in relation to that case.

...

## **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

...

- (b) the request for information is manifestly unreasonable;

...

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**