

Decision Notice

Decision 054/2015: Mr William Forbes and Transport Scotland

Prestwick Airport Rail Station

Reference No: 201402869

Decision Date: 17 April 2015



Scottish Information
Commissioner

Summary

On 16 October 2014, Mr Forbes asked Transport Scotland for information which would show the content and detail of any discussions between the Scottish Government and Network Rail on the subject of the refurbishment of Prestwick Airport Station. Transport Scotland failed to respond and Mr Forbes asked for a review. Following a review, in which Transport Scotland disclosed some information, but withheld other information, Mr Forbes remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that Transport Scotland had properly responded to Mr Forbes's request for information in accordance with Part 1 of FOISA and the EIRs. The Commissioner accepted that information was correctly withheld under regulation 10(5)(f) of the EIRs and that Transport Scotland had identified all the information it held that fell within the scope of the request.

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), (c) and (f) of environmental information); 5(1) and (2)(b) (Duty to make environmental information available on request); 10(1), (2) and (5)(f) (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 16 October 2014, Mr Forbes made a request for information to Transport Scotland:
"...please provide information which would show the content and detail of any discussions between the Scottish Government and Network Rail on the subject of the refurbishment of Prestwick Airport Station. In the event that the operating body of Glasgow Prestwick Airport (GPA) has not been party to any such discussions I would further ask for any information between GPA and the Scottish Government on the same subject. I confirm that I am content that the period under consideration be limited to the last three years."
2. Transport Scotland wrote to Mr Forbes on 13 November 2014, apologising for the delay in responding to his request and advising him that it hoped to be able to send him a response soon.
3. On 19 November 2014, Mr Forbes wrote to Transport Scotland requesting a review of its decision on the basis that he had received no response to his information request.
4. Transport Scotland notified Mr Forbes of the outcome of its review on 18 December 2014. Transport Scotland again apologised for the delay in responding to the request. It provided Mr Forbes with some information extracted from documents. Transport Scotland withheld other information under regulation 10(5)(f) of the EIRs on the grounds that disclosure would substantially prejudice the interests of Network Rail, which had provided the information to

the Scottish Government. Transport Scotland found that the public interest favoured withholding this information.

5. On 18 December 2014, Mr Forbes 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. Mr Forbes stated he was dissatisfied with the outcome of Transport Scotland's review because his request asked for information on both the content and detail of discussions between the Scottish Government and Network Rail on the matter of Prestwick Airport Station. Mr Forbes explained in detail what information he expected to be held by Transport Scotland. He also submitted that the exception relied upon by Transport Scotland was not appropriate.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Forbes 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. Transport Scotland is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified on 5 January 2015 that an application had been received from Mr Forbes and that an investigation into the matter by the Commissioner had commenced. Transport Scotland was asked to provide to the Commissioner any information withheld from Mr Forbes. The Ministers provided the information and the case was then allocated to an investigating officer.
8. Subsequent references in this decision to submissions sought and received from Transport Scotland are to be read as including submissions sought and received from the Ministers on behalf of Transport Scotland.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Transport Scotland was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of FOISA or the EIRs it considered applicable to the information requested.

Commissioner's analysis and findings

10. In coming to a decision on this matter, the Commissioner considered all of the withheld information and all relevant submissions, or parts of submissions, made to her by both Mr Forbes and Transport Scotland. She is satisfied that no matter of relevance has been overlooked.

FOISA or the EIRs?

11. "Environmental information" is defined in regulation 2(1) of the EIRs (paragraphs (a), (b), (c) and (f) of the definition are reproduced in full in the Appendix to this decision). Where information falls within the scope of this definition, a person has a right to access it under the EIRs, subject to various qualifications and exceptions contained in the EIRs.
12. Transport Scotland acknowledged that, while arguably some of the information requested may not be environmental information, some of the information falling within the scope of the request related to surveys about the condition of Prestwick Airport Station. Transport Scotland felt that this was environmental information as it related to the state of the land in

question, and the request therefore should be handled under the EIRs. Transport Scotland commented that, whilst it would have been possible to handle the request under both FOISA and the EIRs, this would have made the response more complex (both for Transport Scotland and Mr Forbes).

13. The Commissioner has considered the information requested by Mr Forbes in the context of the definition of "environmental information" in regulation 2(1) of the EIRs.
14. She is of the view that the information requested could fall within the definition in paragraph (a), as stated by Transport Scotland, when taken with the definition in paragraph (f): information on the state of human health and safety, including conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraph (c). The Commissioner found that the withheld information does relate to the effect of the elements of the environment on a built structure (namely, Prestwick Airport railway station).
15. 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. Transport Scotland confirmed that it wished to apply the exemption in section 39(2) of FOISA as there was a strong public interest in simplifying the process as much as possible by considering the request under either the EIRs or FOISA, rather than seeking to consider it under both regimes.
16. As there is a separate statutory right of access to environmental information available to Mr Forbes in this case, the Commissioner has concluded that the public interest in maintaining this exemption, and dealing with the request in line with the EIRs, outweighs the public interest in disclosure under FOISA. She accepts that, in practice, there is little public interest in also considering the request under FOISA as this would not have made any difference in terms of the information provided to the requester.

Was all relevant information identified, located and provided by Transport Scotland?

17. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. This obligation relates to the information held by an authority when it receives a request.
18. Transport Scotland submitted that it had identified all the information it held that fell within the terms of Mr Forbes' request.
19. During the investigation, Transport Scotland provided the Commissioner with the information it had extracted from certain documents and disclosed to Mr Forbes: it submitted that the remaining information in these documents was outwith the scope of the request.
20. The Commissioner agrees with Transport Scotland that the other information in the documents under consideration does not fall within Mr Forbes' request.
21. The key question for the Commissioner, therefore, is whether Transport Scotland identified all information covered by Mr Forbes' request.
22. Transport Scotland was asked to explain the steps it took to establish what relevant information it held that fell within the terms of the request. Transport Scotland explained that it uses the Scottish Government's electronic Record and Document Management system (eRDM) to manage its official records and related documents, which has replaced paper

filing systems. Transport Scotland said that a search of the eRDM, using the following criteria, identified 83 documents:

- Name contains “Prestwick”,
- Name contains “station”, and
- “Created after 16/10/2011”.

23. Transport Scotland said that an initial review of these 83 documents, using the additional criteria set by Mr Forbes (i.e. “information that would show the content and detail of any discussions between the Scottish Government (including the operating body of Glasgow Prestwick Airport) and Network Rail on the subject of the refurbishment of Prestwick Airport Station”) narrowed the list to 26 documents. Transport Scotland explained that the 57 documents removed from the list had nothing in them relating to discussions with Network Rail or the refurbishment of the rail station at Prestwick Airport.
24. Of the remaining 26 documents identified, Transport Scotland submitted that only four were partly within the scope of Mr Forbes’ request, in that they included information on discussions with Network Rail and related to the refurbishment of Prestwick Airport Station.
25. Mr Forbes commented on 16 March 2015 that he hoped “Transport Scotland is not reducing the entire exercise to one of semantics”, in relation to the information judged to fall outside the scope of his request. He said he had:

“... been specific on the issue of the refurbishment of the airport station as it cannot be divorced from any other treatment of the property whether it is leased/loaned/sold/given away for nothing/incorporated into a bigger agreement (such as with the bridge connecting the station to the airport, for example).”
26. The Commissioner asked Transport Scotland to provide her with the 26 items it believed fell outside the scope of Mr Forbes’ request. Having studied the information supplied, the Commissioner agrees with Transport Scotland that the information in these items is not covered by the terms of Mr Forbes’ request. The Commissioner accepts that Transport Scotland has interpreted Mr Forbes’ request in a reasonable manner, and not restrictively or employing any unreasonable semantic distinction. The Commissioner is satisfied that the information supplied does not contain any information that shows the content and detail of any discussions between the Scottish Government and Network Rail, or GPA, on the subject of the refurbishment of Prestwick Airport Station.
27. Transport Scotland explained that it had consulted officers in its Aviation team (including the Head of Aviation and senior policy officers) who had confirmed that no paper records were held with regard to the subject of this request. For completeness, Transport Scotland explained that it had also contacted its Rail Directorate and asked it to check for, and provide, any information covered by the request. The Rail Directorate reviewed all the information provided, but confirmed that it too had no further information beyond that already identified in the searches detailed above.
28. Transport Scotland said its searches would have been likely to locate and retrieve all of information covered by the request, as:
 - eRDM contains information held across the whole of the Scottish Government;
 - the search of eRDM was wide enough to capture the information requested; and

- all of the people likely to have information were consulted.

29. In his application to the Commissioner, Mr Forbes explained that he expected information to be held which showed a catalogue of correspondence, including information such as emails, minutes of meetings, ministerial briefings etc. which would allow a picture to be formed of the level of intervention, and other information such as the dates of these communications. Mr Forbes said that part of that catalogue would show not only the selected extracts of emails but the responses; for example, "what caused Network Rail in June 2012 to commission a survey report on what, at that time, was a privately owned property." He commented that Network Rail saw "no business case" in November 2012, but four months later was apparently in favour of purchasing the station.
30. Mr Forbes also submitted that there were clearly one or more omissions from the information he had received.
31. In response, Transport Scotland explained that, despite Mr Forbes' expectations, there had not been a significant amount of recorded discussion with Network Rail about the station. It explained that prior to the Scottish Government's acquisition of GPA in November 2013, the rail station was the only independently owned, operated and maintained station in Scotland. Unlike every other rail station in Scotland, there was no requirement for GPA (as the Station Facility Owner) to enter into a Station Lease or agree a set of Station Access Conditions with Network Rail. Accordingly, there was no formal requirement for Network Rail to discuss the maintenance or refurbishment of the rail station with GPA. Similarly, at that time, there was no formal relationship between GPA and the Scottish Government and, again, no formal requirement for either party to discuss the maintenance or refurbishment of the rail station. Since acquisition, the priority had been to bring GPA fully into public ownership and to establish appropriate corporate governance arrangements for the Airport and its activities.

The Commissioner's view

32. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. She will also consider, where appropriate, any reason offered by the public authority to explain why it does not hold the information.
33. Mr Forbes' request sought information which would show the content and detail of any discussions between the Scottish Government and Network Rail (or GPA) on the subject of the refurbishment of Prestwick Airport Station within a stated time period. During the investigation, he was asked about his request and whether he had intended it to be wider than any discussion on the refurbishment of the station. Mr Forbes explained that he had specifically asked for information on the refurbishment of Prestwick Airport Station because he expected to find this subject being a central feature of discussions between the Scottish Government and Network Rail.
34. The Commissioner observes that Mr Forbes' request is specific. This is often a good thing as it allows a public authority to identify exactly what information an applicant is requesting, but it can also have the effect of limiting the amount of information covered by the terms of the request.
35. Having considered all the relevant submissions, the Commissioner accepts that Transport Scotland has taken adequate and proportionate steps to establish the information it held

which fell within the scope of Mr Forbes' request. In reaching this conclusion, the Commissioner has taken into account the following:

- (i) the information falling within the request is held by the Transport Scotland in a way that the Transport Scotland describes as specific, identifiable and searchable;
- (ii) the searches described were such that they would reasonably locate any information falling with the terms of the request;
- (iii) the Transport Scotland officials involved in searching for the information had experience and knowledge of the subject;
- (iv) Transport Scotland has explained (to the Commissioner's satisfaction) why it does not hold any further information;
- (v) Transport Scotland located and provided relevant information that fell within the terms of the request.

36. The Commissioner is satisfied, on the balance of probabilities, that Transport Scotland has identified all of the information held by the Transport Scotland which falls within the scope of Mr Forbes's request.

Regulation 10(5)(f) of the EIRs

37. In terms of regulation 10(5)(f) of the EIRs, a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially the interests of the person who provided the information where that person:

- (i) was not under, and could not have been put under, any legal obligation to supply the information;
- (ii) did not supply it in circumstances such that it could, apart from the EIRs, be made available; and
- (iii) has not consented to its disclosure.

38. Regulation 10(2) of the EIRs provides that this exception must be interpreted in a restrictive way and that the public authority shall apply a presumption in favour of disclosure. The exception is also subject to the public interest test in regulation 10(1)(b).

39. In the Commissioner's guidance¹ on regulation 10(5)(f), she states that a number of factors should be addressed in considering whether this exception applies. These include:

- Was the information provided by a third party?
- Was the provider, or could the provider be, required by law to provide it?
- Is the information otherwise publicly available?
- Has the provider consented to disclosure?
- Would release of the information cause, or be likely to cause, substantial harm to the interests of the provider?

¹ <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/section33/Section33.aspx>

Does regulation 10(5)(f) apply in this case?

40. In its submissions, Transport Scotland confirmed that it wished to rely on regulation 10(5)(f) to withhold one email in full.
41. Transport Scotland stated, and the Commissioner accepts, that the information was provided by a third party, namely Network Rail.
42. Transport Scotland submitted that Network Rail was under no legal or other obligation to provide the information to Transport Scotland, nor could they have been required by law to provide it.
43. In his application to the Commissioner, Mr Forbes noted that Network Rail is covered by the UK equivalent of the EIRs, the Environmental Information Regulations 2004 (EIR)².
44. Transport Scotland commented (and the Commissioner agrees) that the fact that Network Rail is subject to the EIR is not relevant: the exception in regulation 10(5)(f) can be applied where disclosure of the information would, or would be likely to, prejudice substantially the interests of the person who provided it, regardless of whether they themselves are subject to the EIR (or the EIRs). Transport Scotland argued that is not correct to suggest that Network Rail was under an obligation to provide the information to Transport Scotland because it was subject to the EIR. The information was not formally requested from Network Rail under the EIR and Network Rail had provided the information to Transport Scotland on the assumption that it would be kept in confidence.
45. The Commissioner cannot identify any other legal obligation, apart from those under the EIRs, which would require the disclosure of the withheld information.
46. Transport Scotland submitted that Network Rail did not supply the information in circumstances where it was intended that it could or should become publicly available. (Transport Scotland noted that the email from Network Rail was headed “confidential”.) Given the contents of the email, the Commissioner would accept Transport Scotland’s submission on this point. Similarly, she accepts the information in question is not publicly available.
47. Transport Scotland has explained that Network Rail does not consent to disclosure of the withheld email, and evidenced this to the Commissioner. The Commissioner is satisfied that Network Rail, which provided the information, does not consent to its disclosure.
48. Since the tests in regulation 10(5)(f)(i), (ii) and (iii) have been satisfied, the Commissioner must go on to consider whether disclosure of the information would, or would be likely to, prejudice substantially the interests of the person who provided the information (in this case, Network Rail).

Substantial prejudice

49. Transport Scotland submitted that the withheld information is commercially confidential and its release would substantially prejudice Network Rail’s affairs. Transport Scotland commented that “the email is very frank in nature and was intended as providing frank advice to Transport Scotland about possible options for the station.”
50. Transport Scotland commented that Network Rail is a going concern and is operated on a fully commercial basis, although it was reclassified from the private sector to the public sector

² <http://www.networkrail.co.uk/FOI/>

on 1 September 2014 following changes to European statistical guidance. It is an “at arm’s-length” body and retains the commercial and operational freedom to manage Britain’s railway infrastructure within effective regulatory and control frameworks. Network Rail receives funding from, among other sources, grants from the Department for Transport and Transport Scotland. Transport Scotland argued that the future financial performance of Network Rail, and by extension the public purse, requires that it be able to operate commercially and that it has the confidence and freedom to communicate and negotiate openly and frankly with existing and potential business partners. Transport Scotland argued that disclosure of the information in the email would be likely to significantly harm Network Rail’s ability to have similar frank and confidential discussions in future with its commercial partners and stakeholders, including Transport Scotland.

51. Transport Scotland stated that if such information were to be disclosed, other companies might be concerned that their sensitive and confidential discussions with Network Rail could also be relayed back to the Scottish Government or others in similar terms, and subsequently released under FOISA or the EIRs.
52. Having considered the submissions made by Transport Scotland and Mr Forbes, the Commissioner is of the view that, in some respects, Transport Scotland has overstated the harm likely to be caused by disclosure of the withheld information, in relation to its effect on the future financial performance of Network Rail. Transport Scotland has not provided the Commissioner with any evidence to support its view that disclosure would have a significant impact on Network Rail’s commercial interests.
53. Nonetheless, the Commissioner accepts that disclosure of the withheld information would, or would be likely to, significantly harm Network Rail’s ability to have frank and confidential discussions in future on this subject with its commercial partners and stakeholders. There is therefore potential for the requested information (once in the public domain, which would be the effect of disclosure under the EIRs) to prejudice substantially the interests of Network Rail by adversely affecting its relationships with existing and future commercial partners and stakeholders. Accordingly, the Commissioner therefore finds that Transport Scotland correctly applied the exception in regulation 10(5)(f) to the information under consideration.
54. The exception in regulation 10(5)(f) is subject to the public interest test in regulation 10(1)(b) of the EIRs. If the public interest in making the information available is outweighed by the public interest in maintaining the exception, the information must be disclosed. The Commissioner will now go on to consider the balance of the public interest in relation to the withheld information in this case.

Public interest

55. Transport Scotland acknowledged that there was some public interest in disclosing the information in order to promote openness and transparency. However, given that circumstances had moved on since the email was written, Transport Scotland did not feel that disclosure of this email would actually help to inform public debate. Transport Scotland thought there was a stronger public interest in avoiding significant harm to Network Rail’s commercial interests, and its relations with its stakeholders. Transport Scotland submitted that the release of the information would weaken Network Rail’s ability to develop commercial relationships on the best possible financial terms. Failure to negotiate terms that are profitable to it would, in Transport Scotland’s view, be highly likely to result in a detrimental impact on Scottish taxpayers and therefore would not be in the public interest.

56. Transport Scotland submitted that there was also a strong public interest in ensuring that it could maintain good, close working relationships with Network Rail and other key stakeholders in taking forward rail policy and delivery work. It considered that disclosure of this information would be likely to harm that relationship by making Network Rail wary of providing sensitive or frank comments to Transport Scotland and/or the Scottish Government, for fear they might be released into the public domain. Transport Scotland felt that, on balance, there was a stronger public interest in withholding the information.
57. Mr Forbes submitted that the information should be disclosed in the public interest, as being in the spirit of the Freedom of Information legislation and also in light of questions arising from the review response to his request (12 December 2014). In that respect, he submitted that Parliament had been misled by the now First Minister's suggestion that the acquisition of Prestwick Airport was considered as a last minute reaction to the threat of closure; he also submitted that the information would add to the ongoing investigation of the European Commission into the possible breach of state aid rules.
58. In considering the public interest in disclosure against that in maintaining the exception, the Commissioner acknowledges that there is a legitimate public interest in transparency generally and that there is a strong public interest in transparency in environmental matters.
59. The Commissioner has taken account of the fact that Transport Scotland has disclosed information to Mr Forbes which goes some way towards addressing the issue of transparency, without adversely affecting the interests of Network Scotland or Transport Scotland. While she acknowledges the interests in transparency identified above, it is not entirely clear to her what would be added to the public understanding by the publication of the email in question. Having considered the contents of the email, she does not find that its disclosure would shed light on the issues raised by Mr Forbes in relation to questions of state aid and the alleged misleading of Parliament.
60. As noted previously, the Commissioner takes the view that the potential for disclosure to harm Network Rail's commercial interests may have been overstated. The Commissioner therefore does not accept Transport Scotland's argument that the information should be withheld in the public interest to avoid such harm. However, the Commissioner has accepted above that disclosure would, or would be likely to prejudice substantially the interests of Network Rail. Having accepted that regulation 10(5)(f) applies, the Commissioner acknowledges the associated public interest in avoiding significant harm to Network Rail's interests in being able to communicate frankly and in confidence with its commercial partners and stakeholders such as Transport Scotland.
61. The Commissioner also accepts that there is a public interest in ensuring that Transport Scotland can maintain good working relationships with Network Rail and other key stakeholders in delivering Government policy, and in safeguarding the continued voluntary provision of information and frank views from those stakeholders to the Scottish Government.
62. On balance, the Commissioner has concluded that the public interest in maintaining the exception in regulation 10(5)(f) of the EIRs outweighs the public interest in disclosure of the withheld information. Therefore she finds that the Transport Scotland was entitled to withhold the information under regulation 10(5)(f) of the EIRs.

Commissioner's Conclusions

63. The Commissioner accepts that Transport Scotland has complied with the regulation 5(1) of the EIRs by having identified all of the information held by Transport Scotland which falls within the scope of Mr Forbes' request.
64. On balance, the Commissioner has concluded that regulation 10(5)(f) was correctly applied to the withheld information and that the public interest in maintaining the exception in regulation 10(5)(f) of the EIRs outweighs the public interest in disclosure of the withheld information. Therefore she finds that the Transport Scotland was entitled to withhold the information under regulation 10(5)(f) of the EIRs and complied fully with the EIRs and FOISA.

Decision

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

Appeal

Should either Mr Forbes or Transport Scotland 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.

Rosemary Agnew
Scottish Information Commissioner

17 April 2015

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;

...

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

...

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.

...

- (5) A Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially-

....

- (f) the interests of the person who provided the information where that person-
 - (i) was not under, and could not have been put under, any legal obligation to supply the information;
 - (ii) did not supply it in circumstances such that it could, apart from these Regulations, be made available; and
 - (iii) has not consented to its disclosure; or

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info