

Decision Notice

Decision 073/2015: Mr Brian George and Glasgow City Council

Health and safety inspections

Reference No: 201402321

Decision Date: 05 June 2015



Scottish Information
Commissioner

Summary

On 3 February 2014, Mr George asked Glasgow City Council (the Council) for information about alleged breaches of health and safety legislation by a named hotel. The Council notified Mr George of the outcome of its review on 15 August 2014. The Council stated that Mr George's request did not constitute a valid request for recorded information in terms of FOISA and at the same time served notice under section 17 of FOISA that it did not hold the information requested. Following this review, Mr George remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that the Council had failed to respond to Mr George's request for information in accordance with Part 1 of FOISA or the EIRs. She found that:

- (i) Mr George had made a valid request for information in terms of FOISA or the EIRs
and
- (ii) the Council had failed in its duty to provide reasonable advice and assistance.

The Commissioner required the Council to carry out a fresh review of its response to Mr George's request and respond in terms of FOISA or the EIRs.

The Commissioner also made the observation that the Council was incorrect in the way it served notice under section 17 of FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3) and (4) (General entitlement); 8(1)(c) (Requesting information); 11(1), (2)(b) and (3) (Means of providing information); 15 (Duty to provide advice and assistance); 17(1) (Notice that information is not held); 73 (definition of "information") (Interpretation)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2 (interpretation of "environmental information") (Interpretation); 5(1) and (2)(b) (Duty to make available environmental information on request); 6(1) Form and format of information); 9(1) and (2) (Duty to provide advice and assistance); 10(1), (2) and 4(a) (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 Appendices form part of this decision.

Background

1. On 3 February 2014, Mr George wrote to the Council with nine questions about alleged breaches of health and safety legislation by a named hotel. The questions are reproduced in Appendix 2 to this decision and are referred to below in the *Commissioner's analysis and findings*.
2. On 4 March 2014, Mr George wrote to the Council requesting a review on the basis that the Council had not responded to his request.

3. Following a decision by the Commissioner requiring the Council to respond to Mr George¹, the Council notified Mr George of the outcome of its review on 15 August 2014. It apologised for failing to respond, but took the view that none of Mr George's questions constituted valid information requests in terms of FOISA, as they were not requests for recorded information, but rather a series of questions through which he was seeking to confirm the Council's position on certain matters.
4. The Council stated that it could not provide any confirmation of compliance or non-compliance of a third party with legislation, that it did not hold this information and that it was therefore relying on section 17 of FOISA. The Council confirmed that it had investigated a complaint made by Mr George, and the investigation had included a site visit. It stated that Mr George could make a request for information relating to this investigation, should he wish.
5. On 23 September 2014, Mr George wrote to the Commissioner. Mr George 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.
6. Mr George stated he was dissatisfied with the Council's review response because it:
"...conflated confidentiality with not holding information with legally not being able to release information with not having anything to release because nothing was recorded."
7. Mr George said he was puzzled because the Council's advice and assistance seemed to suggest that it held information which would be covered by his requests. Mr George considered that the Council should have been able to understand what he had requested: he wanted as much information as possible about the named hotel's compliance with health and safety legislation during a certain period. Mr George believed he was entitled to any information the Council held about any investigation into the hotel's compliance with the health and safety legislation.

Investigation

8. The application was accepted for investigation. The Commissioner confirmed that Mr George made an information request to a Scottish public authority and asked the authority to review its response before applying to her for a decision.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council 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.
10. The Council commented that Mr George had referred to the Council's application of a "confidentiality exemption" to his information requests. For the avoidance of doubt, the Council stated that it had at no stage sought to apply a confidentiality exemption to the information, and was unclear where this misunderstanding had come from.

¹ Decision 183/2014 Brian George and Glasgow City Council
<http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2014/201401873.aspx>

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all relevant submissions, or parts of submissions, made to her by both Mr George and the Council. She is satisfied that no matter of relevance has been overlooked.
12. The Commissioner gives no consideration here, and comes to no conclusion, as to whether the Council complied with any rules, guidance or legislation relating to health and safety issues, on how it conducted any investigation into allegations of health and safety breaches, or how it updated or corresponded with Mr George about any such investigation. Such questions are beyond the remit of the Commissioner.

EIRs or FOISA?

13. The Council's review response of 15 August 2014 refers only to FOISA. Its submissions to the Commissioner refer to both FOISA and the EIRs, when discussing whether Mr George had made a valid request. The Commissioner has therefore considered both FOISA and the EIRs in reaching her decision on whether Mr George's request was valid.

General handling of the review by the Council

14. The first point the Commissioner notes is the contradictory manner in which the Council responded to Mr George. On one hand it was saying his request was not valid, yet on the other it served a notice under section 17 of FOISA. This is illogical: the Council would have to have formed a view and have an understanding about what was being requested to enable it to make the decision it did not hold relevant information.
15. For completeness the Commissioner has considered each aspect of the Council's treatment of the review under FOI law – the validity of the request, provision of advice and assistance and application of section 17 – regardless of this contradiction, and, from this, has reached conclusions and made findings about the Council's actions.

Was the information request valid?

16. The Council argued that Mr George's emailed letter of 3 February 2014 did not contain a valid request for information (in terms of either FOISA or the EIRs). The Commissioner must decide whether the Council was correct in this assessment, or whether it should have complied with Part 1 of FOISA or the EIRs in responding to all or any part of Mr George's email.
17. Section 1(1) of FOISA creates a general entitlement to be given information held by a Scottish public authority, subject to the application of any exemptions in Part 2 of FOISA and any other relevant provision in Part 1.
18. Section 8 of FOISA sets out the requirements that a request for information must meet if it is to be dealt with under section 1(1) of FOISA. In terms of identifying what the applicant seeks, all that is necessary is that the request "describes the information requested" (section 8(1)(c) of FOISA). The purpose of this description, as section 1(3) makes clear, is to enable the public authority to identify and locate the information requested. FOISA does not prescribe how the information sought must be described or what constitutes a sufficient description. In this context, information is defined in section 73 of FOISA as "information recorded in any form".

19. 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. There is no equivalent in the EIRs to section 8(1)(c) of FOISA, but regulation 9(2) provides that where a request has been formulated in too general a manner, the authority shall ask the applicant to provide more particulars in relation to the request, and shall assist the applicant in providing those particulars. In the context of the EIRs, environmental information means “any information in written, visual, aural, electronic or any other material form” (regulation 2(1) of the EIRs).
20. From the provisions referred to above (paragraphs 17-19), it can be seen that there is a minimum of formality in the legislation in this respect: what is critical is that the information should be described so that it is possible for the public authority to identify and locate it.
21. The legislation does not exclude information requested in the form of questions. There will be occasions where a question will be worded in such a way that what is being asked for cannot be identified with any degree of certainty without clarification (which the Commissioner would expect the authority to seek). Equally there will be occasions where even when posed as a question, the information asked for is identifiable. The authority may provide advice and assistance in order to provide a better quality or more helpful response, but fundamentally the information requested is sufficiently clear. The point is that each case will rest on its own circumstances. To simply reject a request as invalid because it is made in the form of questions, does not take into account the circumstances of the specific request.
22. In this case, Mr George asked questions of the Council about a particular hotel. Although he was under no obligation to explain why he was seeking the information or the context in which he was making his request, Mr George volunteered the information that it was in the context of his past complaint to the Council. Mr George’s questions all relate to the same subject matter, a subject and context known to the Council.
23. The Commissioner notes that the Council’s review addressed Mr George’s request in the round, rather than considering each question separately. The Commissioner will approach the question of validity in a similar manner rather than breaking down the request into its component parts. Although she invited the Council’s submissions on each part of the request, the Council’s reasons for considering each part of the request invalid are similar in some respects, and the issue of validity can be discussed without dealing separately with each part of the request.
24. It is clear that Mr George intended to make an information request. His email of 3 February 2014 is entitled ‘*Subject: FOI request concerning [reference]*’ and begins:

“I would like to make a Freedom of Information request regarding my complaint about breaches of health and safety legislation at [named hotel].”
25. Whilst making reference to “freedom of information” does not, in itself, guarantee that a question will be a valid request in terms of section 1 of FOISA or regulation 5 of the EIRs, it does indicate a requester’s intent to obtain recorded information from a Scottish public authority through the statutory regime – FOISA or the EIRs. At the very least this should alert a public authority to its duties to provide advice and assistance.
26. The Council submitted that some parts of the request were not valid information requests as they were questions that could be answered with a “yes” or “no”, and therefore were not requests for recorded information held by the Council. Instead, the questions would require the Council to undertake an assessment of recorded information it might hold “in order to

come to a decision in a “yes” or “no” format”. The Council was of the view that FOISA and the EIRs do not require Scottish public authorities to carry out such activities in order to respond to a request.

27. It is true to say that some of Mr George’s questions invite a “yes” or “no” answer. However, it is also evident, from the way the questions were worded and in the context he provided, that he was seeking information about a specific hotel and health and safety. Provided an answer is evident from recorded information held by a Scottish public authority, and the request otherwise identifies the information (as the questions do here), such a question will be a valid information request in terms of FOISA or the EIRs.
28. It is possible that the information held by a public authority does record an explicit “yes” or “no” answer, for example by the completion of a “yes” or a “no” tick box on a form. Even if the answer is not recorded in a “yes/no” format within the authority’s records, the authority may hold information that clearly indicates whether the answer is “yes” or “no”.
29. The overall aim of the legislation is to achieve openness, and its principal objective is to make information accessible, provided it can be identified and located at a cost that is not excessive, and provided it does not fall within one of the statutory exemptions. It would be wholly artificial to accept that a question which could be answered by “yes” or “no” could only constitute a valid request for recorded information if the authority held information with “yes” or “no” recorded next to that information, as the Council appears to be suggesting,
30. In this context, the Commissioner also notes that section 11 of FOISA allows requesters to express a preference for receiving information in various means, one being a provision of a digest or summary of the information. The Commissioner considers that asking a question which requires a yes/no response corresponds with asking for a digest or summary. Similarly, regulation 6 of the EIRs states that, where an applicant requests that environmental information be made available in a particular form or format, a Scottish public authority shall comply with that request.
31. The Council does not consider it is required to undertake an assessment of recorded information it may hold in order to answer “yes” or “no”. That is missing the point. The point is if the information held, of itself provides an answer, in whatever form of words, it is within scope. In the Commissioner’s view, to establish this, an authority is required to undertake the same proportionate, reasonable searches to establish whether it holds the requested information as it would for any other information request.
32. In this case, based on the evidence submitted, it appears likely to the Commissioner that little searching would have been required. The Council confirmed to Mr George that his complaint had been investigated, and went on to suggest that Mr George could request information relating to its investigation of his complaint. This indicates that the Council could identify whether it holds information which would confirm whether it had contacted the hotel in relation to the complaint, whether an inspector had visited the hotel and, possibly, what progress had been made with Mr George’s complaint.
33. In these circumstances, the Commissioner takes the view that it was reasonable (in terms of section 11(3) of FOISA or regulation 6(1)(a) of the EIRs) to expect the Council to locate and, if held (and unless it considered the information to be subject to one of the provisions, exemptions or exceptions in the EIRs or FOISA), provide information which would confirm whether it had contacted the hotel and whether an inspector had visited the hotel, thus providing the “yes” or “no” answer required by Mr George, even if the recorded information upon which the answer was based was not in the form of a literal “yes” or “no”. Depending on

the circumstances, where the position is that the answer is “no”, the correct response will either be to disclose the relevant information or to notify the requester, in terms of section 17 of FOISA or regulation 10(4)(a) of the EIRs, that the public authority does not hold the information.

34. The Council’s position at review was that the requests were “a series of questions for which you [Mr George] are seeking to confirm that Council’s comments or positions on these matters.” The Council commented to the Commissioner that some questions related to a very wide period of time and sought the Council’s opinion on whether, at any time during this period, management of the hotel were in breach of specified legislation, as well as seeking a response from the Council as to whether the management of the named hotel was currently complying or in breach of the legislation. The Council submitted that these requests would require trained Council Officers to interpret any information held to assess whether an answer could be provided, and that such an answer (if an answer was possible) would constitute new information which the Council was not obliged to provide in response to a request.
35. The Council highlighted that Mr George had asked not only whether the hotel was in breach of health and safety legislation while he was working there, but whether it was “currently” in breach. The Council submitted that it could not speak to the position with regard to current compliance, as the information it held related to an investigation which had taken place in the past.
36. The Commissioner considers this argument to be irrelevant to the issue of whether Mr George made valid requests under FOISA or the EIRs, as it focuses on whether the Council holds relevant information rather than whether the request clearly described the information which Mr George required. The Commissioner considers that the Council’s submission shows that it had no difficulty in understanding what information Mr George was seeking, and that these parts of the information request were valid.
37. The Council submitted that the answer to some questions would be based on an opinion from a relevant Council officer, based on such evidence as the Council might have, on whether the hotel was or was not complying with the health and safety legislation. The Council submitted that provision of opinions or judgments do not form information which can be provided in response to a request for information under FOISA or EIRs. It argued that, in any event, this would constitute new information being created in response to a request for information and, in line with the Commissioner’s current guidance, public authorities are not obliged to create new information in response to a request.
38. Section 1(4) of FOISA provides that the general entitlement of an applicant to receive the requested information from a Scottish public authority applies only to information which is “held” by the authority at the time the request is received (see *Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47² [paragraph 15]). Whilst the Council is correct that FOISA and the EIRs do not require the Council to create information in response to an information request, the Commissioner does not accept that opinions and views *automatically* fall outside the scope of an information request under FOISA or the EIRs. Such requests are not *automatically* invalid. The issue is whether the relevant opinions and views have been recorded. If they have, they are held. If they are not, they are not held; the

² <http://www.bailii.org/uk/cases/UKHL/2008/47.html>

underlying point being that to form a view, what is being asked for must, logically, be understood.

39. In this case, if the Council was in a position to make such a judgement, it might well have recorded its conclusion on whether the hotel was currently complying with the legislation. For example, if the Council held an inspection report indicating that night shift staff were in danger of ill-health through managerial neglect of health and safety legislation, this might be recorded information covered by Mr George's request. Equally, the Council may not have held any recorded information that provided the answer. There is no difficulty in accepting that the Council understood what information Mr George required. The difficulty appears to be that the Council did not know whether the risk assessments it held were "current".
40. The Commissioner takes the view that Mr George made a valid request in terms of Part 1 of FOISA or the EIRs, and should have received a response that complied with FOISA or the EIRs from the Council. The Commissioner does not accept that his request was invalid. It is clear that Mr George intended to make an information request, and it is clear what information he was seeking. The Commissioner believes the information requested is adequately described, as required by section 8(1)(c) of FOISA and by the EIRs, and that the Council had no difficulty in understanding what information Mr George wished to receive.

Advice and assistance

41. Section 15(1) of FOISA and regulation 9(1) of the EIRs provide that a Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it. In the case of *Glasgow City Council v The Scottish Information Commissioner [2009] CSIH 73*³, the Court stated [at paragraph 45]:

"If there is any doubt as to the information requested, or as to whether there is a valid request for information at all, the public authority can obtain clarification by performing its duty under section 15. That is reflected in the Code of Practice issued by Scottish Ministers under section 60 of the Act"
42. As the Council's review had referred to the invalidity of Mr George's requests, the Council was asked what it had done to comply with section 15 of FOISA (or regulation 9(1), the equivalent regulation in the EIRs).
43. The Council explained that it had sought to assist Mr George (in relation to some of his questions) by confirming that an investigation was carried out following his complaint. It had also explained to Mr George why (in its view) he had not made a valid request, and suggested that he submit a new request making clear what recorded information he required. The Council had provided contact details to Mr George if he did not wish recorded information, but preferred to discuss the outcome of the investigation with a Council officer. The Council submitted that such a discussion could have assisted Mr George in reframing his request.
44. In the *Glasgow City Council* case referred to above, the Court of Session [again at paragraph 45] clearly distinguished between applicants who may be able to describe precisely what they want and applicants who cannot be expected to do that. The Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations

³ <http://www.scotcourts.gov.uk/opinions/2009CSIH73.html>

2004 (the Section 60/62 Code) also recognises that there will be certain individuals who may not be expected to express themselves with precision and who need more support in describing the information they wish to receive.

45. The Commissioner takes the view that the present applicant, whilst having initiated the complaint against the hotel, would not necessarily know what information the Council would hold on that subject, but might reasonably expect there to be some recorded account of an investigation or consideration of his complaint. Mr George said to the Commissioner:
“If an investigation took place, if the concept at operation here is truly worthy of that name, then compliance or non-compliance with the above legislation must be at the heart of that investigation; and that compliance or non-compliance must be recorded in a written form; questions centring on compliance or non-compliance with that legislation, must then, as a matter of logic, be valid FOI requests.”
46. The Section 60/62 Code (at 1.4) indicates that where the request is not reasonably clear, advice and assistance could include providing an outline of the different information which might meet the terms of the request. This has not been done adequately by the Council in the current case, albeit that the Council’s response did indicate that there had been an investigation and a site visit.
47. The Council provided Mr George with contact details if he preferred to discuss his complaint instead of receiving recorded information. The Commissioner will not comment on the adequacy of this aspect of the Council’s review response, beyond commenting that this seems to relate to Mr George’s role as a complainant rather than as a person making an information request. The Commissioner acknowledges that such a contact *may* have enabled Mr George to reframe his request but in the way submitted to her, the focus appeared to be on the complaint, rather than duties in relation to the information request.
48. In the circumstances of this case, the Commissioner takes the view that it would have been reasonable for the Council to assist Mr George by explaining the nature of the information it held and outlining the difficulty it faced in being sure whether the information it held was actually what Mr George was seeking. Instead, the Council indicated that Mr George’s request was invalid, and yet, confusingly, gave notice in terms of section 17(1) of FOISA that it did not hold at least some of the information he had asked for, suggesting that it understood what was being requested and that it considered the request to be valid. This would be contradictory and confusing even to an experienced requester.
49. On balance, the Commissioner is unable to accept that the Council has complied with its duty to provide reasonable advice and assistance under section 15 of FOISA or regulation 9(1) of the EIRs.

Section 17

50. The Council’s review response referred to section 17 of FOISA. The review stated that the Council did not hold information relating to current compliance with health and safety legislation by the named hotel. To that extent, the Council did not hold the information requested and “accordingly the exemption contained in section 17(1) was applied.” The Council’s review at the same time stated that none of Mr George’s questions constituted a valid information request.
51. Where a Scottish public authority receives a request for information which it does not hold, it must, in line with section 17(1) of FOISA, give the applicant notice in writing that it does not hold that information. Similarly, regulation 10(4)(a) of the EIRs provides that a Scottish public

authority may refuse to make environmental information available to the extent that it does not hold that information when an applicant's request is received.

52. Section 17(1) can only apply where the applicant has made a valid information request. It is not viable for the Council to maintain that a request is not a valid request for recorded information and at the same time give notice that information is not held, in terms of section 17(1) of FOISA. The citing of section 17 would presuppose that the request was a valid request for recorded information in terms of sections 1(1) and 8 of FOISA.
53. Given the Council has reached contradictory conclusions, the Commissioner cannot reach a conclusion about whether the Council was correct to apply section 17, merely that the way in which it did so was incorrect given its stated conclusions about the validity of the request.

Commissioner's conclusions

54. The Council handled and responded to Mr George's request poorly.
55. The duty under section 1(1) of FOISA and regulation 5(1) of the EIRs to disclose information extends only to recorded information. It does not place an obligation on a public authority to answer questions generally or to create information that is not held in recorded form at the time of the request.
56. A question can be a valid request for information under FOISA or the EIRs: a question (even one which can be answered "yes" or "no") is not automatically an invalid request in terms of section 1 of FOISA or regulation 5(1) of the EIRs but must be considered in the circumstances of the request.
57. The Commissioner acknowledges that responding to information requests posed as questions can be challenging for public authorities. Some applicants who ask questions want a simple answer, not all the relevant recorded information held by the public authority. It can therefore be frustrating for applicants to receive a formal response under FOISA or the EIRs stating that the authority holds no recorded information, when this does not answer their question. It may be equally frustrating for the requester if the public authority takes a less formal approach, and fails to provide recorded information or if the authority provides information without directly answering the question (although it has the option to do so).
58. The starting point for an authority has to be that applicants have a right to all the relevant recorded information held by the authority (subject to exemptions and other provisions) and that recorded information may be identifiable from a question. The presumption is disclosure, and there is a duty to provide advice and assistance.
59. The Council commented that if Mr George had framed his request otherwise – e.g. asked for all recorded information held by the Council in respect of the investigation into named hotel, it would have considered all information held, applied any relevant exemptions and released information to Mr George. The Commissioner acknowledges that responding to such a request may have been more straightforward and would possibly have resulted in more information being provided to Mr George had he framed his request in this way. But to even make this statement to her, the Council is demonstrating that it was sufficiently clear about what Mr George was asking for and what was held. At the very least it failed to provide adequate advice and assistance.
60. At the heart of what the Commissioner has been asked to decide is whether Mr George made a valid information request. She has concluded, for the reasons stated above, that on balance, and treating the questions as a request in the round in keeping with the Council's

approach at review, he did. As a consequence, the Council's review response of 15 August 2014 was not compliant with Part 1 of FOISA or the EIRs, in wrongly deeming the request to be invalid and failing to provide the information requested or a refusal notice that complied with section 16 of FOISA or regulation 13 of the EIRs.

61. The Commissioner requires the Council to carry out a new review of its response to Mr George's requests, and to comply with FOISA and/or the EIRs (as appropriate) in dealing with his valid information request.

Decision

The Commissioner finds that the City of Glasgow Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and/or the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr George.

The Commissioner finds that the Council was wrong to find Mr George's request to be invalid, in terms of FOISA and the EIRs. The Commissioner also finds that the Council failed to comply with the requirements of section 15(1) of FOISA and regulation 9 of the EIRs in relation to Mr George's requests.

The Commissioner requires the Council to determine, in relation to the requests, what information it holds and to issue a new review response in compliance with FOISA or the EIRs by **21 July 2015**.

Appeal

Should either Mr George 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.

Rosemary Agnew
Scottish Information Commissioner

05 June 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.

...

- (3) If the authority -

(a) requires further information in order to identify and locate the requested information; and

(b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

8 Requesting information

- (1) Any reference in this Act to "requesting" information is a reference to making a request which-

...

- (c) describes the information requested.

11 Means of providing information

- (1) Where, in requesting information from a Scottish public authority, the applicant expresses a preference for receiving it by any one or more of the means mentioned in subsection (2), the authority must, so far as is reasonably practicable, give effect to that preference.

- (2) The means are-

...

- (b) such provision to the applicant of a digest or summary of the information; and

...

- (3) In determining, for the purposes of subsection (1), what is reasonably practicable, the authority may have regard to all the circumstances, including cost; and where it determines that it is not reasonably practicable to give effect to the preference it must notify the applicant of the reasons for that determination.

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

17 Notice that information is not held

- (1) Where-
 - (a) a Scottish public authority receives a request which would require it either-
 - (i) to comply with section 1(1); or
 - (ii) to determine any question arising by virtue of paragraph (a) or (b) of section 2(1),
if it held the information to which the request relates; but
 - (b) the authority does not hold that information,
it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.

...

73 Interpretation

In this Act, unless the context requires a different interpretation-

...

“information” (subject to sections 50(9) and 64(2)) means information recorded in any form;

...

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;
- (d) reports on the implementation of environmental legislation;
- (e) costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and
- (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.

...

6 Form and format of information

- (1) Where an applicant requests that environmental information be made available in a particular form or format, a Scottish public authority shall comply with that request unless-
 - (a) it is reasonable for it to make the information available in another form or format; or
 - (b) the information is already publicly available and easily accessible to the applicant in another form or format.

...

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.

...

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
 - (a) it does not hold that information when an applicant's request is received;

...

Appendix 2: Requests made by Mr George

I would like to make a Freedom of Information request regarding my complaint about breaches of health and safety legislation at [named hotel].

- 1 Has any contact been made with [named hotel]?
- 2 Has an inspector visited [named hotel]?
- 3 What progress has been made, if any, regarding my complaint concerning breaches of health and safety legislation?
- 4 Were the management at [named hotel] in breach of The Health and Safety at Work Etc Act 1974 at any time during my period of employment from [dates given]? Are they currently in breach of that Act?
- 5 Were the management at [named hotel] in breach of Working Time Regulations 1998 at any time during my period of employment from [dates given]? Are they currently in breach of that Act?"
- 6 Were the management at [named hotel] in breach of The Health and Safety (Display Screen Equipment) Regulations 1992 at any time during my period of employment from [dates given]? Are they currently in breach of that Act?
- 7 Were the management at [named hotel] in breach of The Management of Health and Safety at Work Regulations 1999 at any time during my period of employment from [dates given]? Are they currently in breach of that Act?
- 8 Are the current Night Shift staff at [named hotel] in danger of ill-health through managerial neglect of health and safety legislation?
- 9 What risk assessments are in place for the current Night Shift staff at [named hotel]?

Scottish Information Commissioner

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