

Decision Notice



Decision 089/2011 Mr Graham McLeod and Mr Brian Coyle and Fife Council

Communications about planning condition

Reference No: 201002305
Decision Date: 13 May 2011

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Kevin Dunion
Scottish Information Commissioner

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Summary

Mr McLeod and Mr Coyle asked Fife Council (the Council) for information from communications between Skene Group Limited and the Council concerning a planning condition in respect of Lomond Quarry, Leslie.

The Council provided what it considered to be all correspondence relating to their request, but Mr McLeod and Mr Coyle were not completely satisfied with the completeness of the response and asked for a review. After review, the Council confirmed that it did not hold any additional information covered by the request, but provided information about another planning application relating to Lomond Quarry. Mr McLeod and Mr Coyle remained dissatisfied and applied to the Scottish Information Commissioner for a decision.

The Commissioner found that the Council had identified and provided all information it held which fell within the scope of the request. In the circumstances, he did not require the Council to take any action.

Relevant statutory provisions and other sources

Environmental Information (Scotland) Regulations 2004 (the EIRs) regulation 5(1) (Duty to make available environmental information on request)

The full text of each of the statutory provisions cited above is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Background

1. On 16 August 2010, Mr McLeod and Mr Coyle wrote to the Council in the course of ongoing correspondence relating to Lomond Quarry. They made reference to two planning applications (02/03004/CFULL and 05/03475/CFULL) and asked to be provided with all written and electronic communication between Skene Group Limited and Fife Council regarding Planning condition number 39 for these two applications. They noted that each application made reference to details “agreed in writing”.
2. On 26 August 2010, the Council provided “all the correspondence within the files relating to your request”.



3. On 6 September 2010, Mr McLeod and Mr Coyle requested a review of the Council's response. They noted the absence of the information on the "adequate security fencing" for the quarry boundary, which was the subject of condition 39. They believed that details of this fencing should have been submitted in writing by Skene Group Limited and agreed in writing by the Council as Planning Authority.
4. On 26 October 2010, the Council wrote to Mr McLeod with the outcome of its review. The Council had decided that the request should have been dealt with under the EIRs and confirmed that it had proceeded to do this on review. It advised that a new planning application had been lodged in relation to the quarry site, confirming that it held information in respect of the security fencing, albeit relating to this new planning application rather than those cited in the request. It explained that the relevant information was included in the Environmental Statement, providing information as to where this might be found on the Council's website. As it was available on its website, the Council took the view that the information was excepted from release under regulation 6(1)(b) of the EIRs.
5. Mr McLeod and Mr Coyle remained dissatisfied with the Council's response, and applied for a decision from the Commissioner on 9 December 2010.
6. The application was validated by establishing that Mr McLeod and Mr Coyle had made a request for information to a Scottish public authority and had applied for a decision from the Commissioner, in terms of section 47(1) of FOISA (the enforcement provisions of FOISA apply, subject to minor modifications, to applications made under the EIRs), only after asking the authority to review its response to that request. The case was allocated to an investigating officer.

Investigation

7. On 7 February 2011, the Council was notified in writing that an application had been received from Mr McLeod and Mr Coyle and was asked to provide any comments it wished to make on their application (as required by section 49(3)(a) of FOISA). The Council was asked to supply copies of the information previously provided to Mr McLeod and Mr Coyle.
8. The Council was asked to confirm that it held no further information about condition 39 in relation to the two earlier planning applications, but had instead directed the applicants to similar information relating to a new planning application for the quarry site. The Council was also asked if it could explain why the information requested by the applicants was not held: for example, whether it had never been provided by Skene Group Limited or had been disposed of.
9. On 3 March 2011, the Council provided a copy of an email from a Planning Officer to the Council's FOI Officer, and a copy of a letter from the Planning Officer to a local MSP. The Council did not provide any other submission in relation to this case.



10. On 5 April 2011, the investigating officer visited Council premises to view two box files of information relating to planning applications for Lomond Quarry.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered all of the submissions which have been presented to him and is satisfied that no matter of relevance has been overlooked.

Scope of the request

12. Lomond Quarry is now the subject of a new planning application (ref. 09/01492/EIA), and the Council directed Mr McLeod and Mr Coyle to information on its website in relation to that application. However, the information request submitted by Mr McLeod and Mr Coyle refers specifically to planning conditions attached to two earlier planning applications (02/03004/CFULL and 05/03475/CFULL) and to information they believed would be contained in correspondence relating to those applications. Information relating to planning application 09/01492/EIA therefore falls outside the scope of the request submitted by Mr McLeod and Mr Coyle.
13. The Commissioner's decision in this case, therefore, is limited to considering whether the Council complied with the EIRs in dealing with the request for information relating to condition 39 as attached to planning applications 02/03004/CFULL and 05/03475/CFULL.

Information held by the Council

14. Planning condition no. 39 for planning permissions 02/03004/CFULL and 05/03475/CFULL states:

"Details of the proposed boundary treatment for the site including adequate security fencing, in accordance with details agreed in writing by this Planning Authority shall be erected prior to the implementation of this consent and maintained in an effective manner for the life of the extraction/tipping works."

15. The Council advised that details of the fencing and boundary treatments would have been submitted within an Environmental Impact Assessment (EIA), which is a document containing environmental details relevant to the site in question and is part of the planning process. This document was previously known as an Environmental Statement.



16. EIAs would normally be provided on the Council's website along with other documents relating to the planning application. However, no applications prior to 2005 have been scanned and made available in this way, so while the planning permission for 02/03004/CFULL is available online, the planning application and associated documents are not. Both the planning application and planning permission for 05/03475/CFULL are online, but no EIA is available online with the other planning application documents.
17. The Council initially advised that the EIA or Environmental Statement for 02/03004/CFULL and 05/03475/CFULL had been misplaced. Fife Council has a "no paper" policy and currently destroys all files after the scanning process. The Council suggested that the documents might have been contained in files no longer required, and might have been destroyed.
18. The Council added that the fact that planning permission had been granted for both applications meant that the relevant details must have been submitted in the EIA and approved by the Planning Authority: planning permission would not have been granted if all the required fencing and boundary treatment details were not provided in the EIA. The fact that the applications had been approved could be seen from information on the Council website.
19. The Council advised that copies of the EIAs might have been retained by its Legal Services section: however, after being asked to check this point, it advised that this was no longer current practice.
20. The Council advised that the original files for the two planning consents were available to be viewed by members of the public, and stated that Mr Coyle and Mr McLeod had previously been made aware of this fact (a point denied by Mr McLeod). The investigating officer carried out a search of these files during the investigation, and found a letter which indicated that no EIA had been required in relation to planning application 02/03004/CFULL. It therefore seems likely that this document is not misplaced, but has never existed.
21. The Council has explained that planning application 05/03475/CFULL relates only to amendments to certain conditions in 02/03004/CFULL, and that condition 39 was not one of the conditions involved. Therefore, even if an EIA was prepared in relation to 05/03475/CFULL, which has not been established, it seems unlikely that it would include information about condition 39.
22. The investigating officer did not find any additional information in the Council's box files which would fall within the scope of the information request submitted by Mr McLeod and Mr Coyle, other than copies of information already provided to them in response to their request.
23. The Commissioner is therefore satisfied that the searches carried out by the Council have been adequate, in terms of identifying any information falling within the scope of the request submitted by Mr McLeod and Mr Coyle. The Commissioner is satisfied that all relevant information has been provided, and consequently that the Council has complied with regulation 5(1) of the EIRs.



DECISION

The Commissioner finds that Fife Council complied with the Environmental Information (Scotland) Regulations 2004 in responding to the information request made by Mr McLeod and Mr Coyle.

Appeal

Should either Mr McLeod and Mr Coyle or Fife Council wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Margaret Keyse
Head of Enforcement
13 May 2011



Appendix

Relevant statutory provisions

Environmental Information (Scotland) Regulations 2004

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.