

Decision Notice



Decision 132/2012 Mr Ian Johnston and East Renfrewshire Council

Planning application

Reference No: 201200521

Decision Date: 8 August 2012

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle
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Summary

Mr Johnston asked East Renfrewshire Council (the Council) for information about a planning application. Mr Johnston was not satisfied that he had received all of the information he was looking for. The Commissioner carried out an investigation and accepted that the Council had supplied Mr Johnston with all of the information it held within the scope of his request.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and 1(6) (General entitlement); 2(1)(b) (Effect of exemptions); 39(2) (Health, safety and the environment)

Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definitions (a) and (c) of "environmental information"); 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. Mr Johnston had been in correspondence with the Council regarding a particular planning application and, on 27 September 2011, wrote to the Council requesting copies of the case notes and "any other document or communication" relating to that application, "including the local review". He confirmed that he did not require any documents available on the Council's planning website.
2. The Council responded on 24 October 2011, enclosing what it stated to be the information Mr Johnston had requested.
3. On 7 November 2011, Mr Johnston wrote to the Council and acknowledged the information provided. He asked the Council to confirm that he had been provided with all of the information requested, noting that he expected to find notes of two specific meetings. He also queried the absence of any information supporting the Council's position that material planning consideration had been taken into account.



4. The Council notified Mr Johnston of the outcome of its review on 28 November 2011. It confirmed there were no notes of the meetings in question and provided further explanation of its position in relation to the planning application. It also identified one further item of information relevant to Mr Johnston's request, which it provided.
5. Following further correspondence with the Council, Mr Johnston wrote to the Commissioner on 12 March 2012, stating that he was dissatisfied with the outcome of the Council's review and applying 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 certain specified modifications.
6. The application was validated by establishing that Mr Johnston had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

7. On 7 May 2012, the investigating officer notified the Council in writing that an application had been received from Mr Johnston, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA). It was asked to describe the steps it had taken to identify and locate the requested information.
8. The Council responded on 28 May 2012, informing the Commissioner that it considered the request to be for environmental information and therefore should be dealt with in terms of the EIRs: in this connection, it applied the exemption in section 39(2) of FOISA. It provided details of the searches carried out in response to Mr Johnston's request, adhering to its position that all relevant information had been provided to Mr Johnston.
9. While noting Mr Johnston's concerns regarding the handling of his planning application and his interaction with the Council generally, the Commissioner can only consider any submissions which are relevant to his request for information as outlined above. Specifically, his application to the Commissioner relates to his belief that the Council must hold further information falling within the scope of the request, and this was the focus of the Commissioner's investigation.
10. The relevant submissions obtained from Mr Johnston and the Council will be considered fully in the Commissioner's analysis and findings below.



Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner has considered the information provided and the submissions made to her by both Mr Johnston and the Council, and is satisfied that no matter of relevance has been overlooked.

FOISA or EIRs?

12. It is clear from the Council's correspondence with both Mr Johnston and the Commissioner that any information falling within the scope of the request would be environmental information, as defined in regulation 2(1) of the EIRs. The information in question concerns planning permission for a dwellinghouse and the Commissioner is satisfied that it would fall within either paragraph (a) of the definition of environmental information contained in regulation 2(1) of the EIRs (as information on the state of the elements of the environment) or paragraph (c) of that definition (as information on measures affecting or likely to affect those elements).

Section 39(2) of FOISA – environmental information

13. 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. In this case, the Commissioner accepts that the Council was entitled to apply the exemption to the withheld information, given her conclusion that it would be environmental information.
14. 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 dealing with the request in line with the requirements of the EIRs outweighs any public interest in disclosing the information under FOISA.

Regulation 5(1) of the EIRs

15. 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. While this duty is subject to certain qualifications, none of them appear to be relevant in this case. It is important to bear in mind that this obligation relates to information actually held by an authority when it receives the request, as opposed to information an applicant believes the authority should hold (but which is not in fact held at that time).
16. The Council provided submissions in response to the questions put by the investigating officer on this matter. The Council described the searches carried out to establish what relevant information it held. These had covered both hard copy and electronic filing systems, including the relevant case file (which would include any documentation on the local review), the Council's electronic document management system and the emails of the officers involved in dealing with Mr Johnston's planning application and the related complaints. It also explained its email retention arrangements.



17. Having considered the Council's submissions, the Commissioner is satisfied that it carried out adequate searches, with a view to identifying and locating the information requested by Mr Johnston. She accepts that Mr Johnston was provided with all of the information held by the Council and falling within the scope of his request. Consequently, the Commissioner is satisfied that in this regard the Council complied with regulation 5(1) of the EIRs.

DECISION

The Commissioner finds that, in respect of the matters raised in Mr Johnston's application, East Renfrewshire Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002, and with the Environmental Information (Scotland) Regulations 2004, in responding to the information request made by Mr Johnston.

Appeal

Should either Mr Johnston or East Renfrewshire 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
8 August 2012



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

39 Health, safety and the environment

...

- (2) Information is exempt information if a Scottish public authority-
- (a) is obliged by regulations under section 62 to make it available to the public in accordance with the regulations; or
- (b) would be so obliged but for any exemption contained in the regulations.

...



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;

...

(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.

...