

Decision Notice



Decision 148/2011 Mr Craig Mitchell and Fife Council

Forth Ports PLC and port of Burntisland; Fife Council Core Path Plan;
National Farmers Union

Reference Nos: 201100480, 201100546 and 201100637
Decision Date: 8 August 2011

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Summary

This decision considers a series of information requests made by Mr Craig Mitchell. Two of these requests were refused on the grounds that they were vexatious in terms of section 14(1) of FOISA, after Mr Mitchell declined to narrow the scope of the request in response to a request for clarification from the Council. The Council failed to provide response to a third request (in relation to which the Council had also requested clarification). Mr Mitchell requested a review of the Council's failure to respond to that third request, and subsequently received the information requested.

Mr Mitchell requested reviews in the Council's decisions on the requests judged to be vexatious. He also indicated that he was willing to clarify the requests, and specified revised terms. No reviews were conducted in relation to the two requests judged to be vexatious, and the Council treated his clarification of the previous requests as new requests for information. It failed to respond to one of these requests, and Mr Mitchell subsequently requested a review and received the information requested, subject to the redaction of some content.

After the Council responded to the second revised request, Mr Mitchell wrote to the Council, highlighting references in the disclosed information to a particular meeting minute, and asking for this to be provided. The Council treated this communication as a further, new request for information, but failed to provide a response. The requested information was provided after Mr Mitchell requested a review of the Council's failure to respond.

Mr Mitchell was dissatisfied with the way the Council dealt with his requests and applied to the Commissioner for a decision. Following an investigation, the Commissioner found that in some respects the Council had complied with Part 1 of FOISA and the EIRs in dealing with Mr Mitchell's requests. However, he also found that in some aspects the Council had failed to deal with his requests for information in accordance with Part 1 of FOISA and the EIRs. The Commissioner identified breaches of Part 1 of FOISA and the EIRs that the Council had failed to comply with the required timescales in, in particular by failing to comply with the statutory provisions of sections 10(1) and 21 of FOISA and regulations 5(1) and (2) and 16(4) and (5) of the EIRs, and by failing to provide advice and assistance as required by section 15(1) of FOISA and 9(2) of the EIRs. However, he did not require the Council to take any action.

Relevant statutory provisions and other sources

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3) and (6) (General entitlement); 10(1) (Time for compliance); 15 (Duty to provide advice and assistance); 20(1), (3), (5) and (6) (Requirement for review of refusal etc.) and 21(1), (4), (5), (8) and (9) (Review by Scottish public authority)



The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation – definition of “environmental information”); 5(1) and (2) (Duty to make available environmental information on request); 9(1) and (2) (Duty to provide advice and assistance) and 16 (Review by Scottish public authority)

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 Mitchell had been in correspondence with the Council regarding various matters and submitted a number of requests for information to be considered by the Council in terms of both FOISA and the EIRs. The various requests for information resulted in Mr Mitchell making three separate applications to the Commissioner for a decision. The Commissioner has decided to deal with the three applications for a decision within this one decision.
2. Some of the correspondence with the Council and the Commissioner was conducted by a Mr Smith on behalf of Mr Mitchell, and subsequent references to correspondence to and from Mr Mitchell should be read as including correspondence to and from Mr Smith on his behalf.

Request 1

3. On 7 July 2010, Mr Mitchell wrote to Fife Council requesting the following:
... all the information contained in all documents held by Fife Council relating to Fort Ports plc and the port of Burntisland. This should include but not be limited to all information contained in the following:
 - *Copies of any correspondence between Fife Council employees including minutes, memos and notes.*
 - *Copies of any correspondence between Fife Council's elected representatives and Fort Ports.*
 - *Copies of any correspondence between MSPs and Fife Council.*
 - *Copies of any correspondence between Fife Council and all non-Fife Council employees and organisations and members of the public.*
 - *Details of any assessments, searches, reports or otherwise carried out by or on behalf of the Council.*
4. Mr Mitchell added that if any of the requested information contained personal data, the disclosure of which is exempted under section 38 of FOISA, then the Council should provide the information with such data redacted. With respect to any information to which the exemption in section 25 of FOISA applied, he requested that the Council advise where that information was accessible.



5. On 14 July 2010, the Council wrote to Mr Mitchell and requested clarification of his request as follows:
To allow us to provide you with the information you are requesting I require further clarification from you relating to your request:
Can you confirm that it is only Forth Ports and Port of Burntisland you require information relating to?
Can you provide time-scales for your request?
6. On 30 July 2010, Mr Mitchell wrote to the Council confirming that he only required information relating to Forth Ports and the Port of Burntisland. He indicated that he would prefer not to narrow down his request within set time limits as this may result in the exclusion of potentially important information.
7. The Council subsequently responded to request 1 on 9 September 2010, stating that the request would not be complied with as it was vexatious in terms of section 14(1) of FOISA. The Council explained that it had reached this conclusion on the basis that this request was the latest in a series of requests, which impose a significant burden on the Council, and which seemed to be designed to cause disruption and have the effect of harassing the Council. The Council went on to state that the request did not appear to have a serious purpose or value; complying with it would involve incurring a disproportionate amount of time and the diversion of an unreasonable proportion of the Council's financial and human resources from its core operations; and it would, in the opinion of a reasonable person, be considered manifestly unreasonable or disproportionate.
8. The Council added that it had sought to assist Mr Mitchell in narrowing down the scope of his request, but he had refused to specify a subject matter involving Forth Ports plc and the Port of Burntisland, or a reasonable timeframe. The Council commented that, to respond to his request, it would potentially have to look through every Council file in the relevant Services. It noted that the Commissioner's guidance on section 14 of FOISA¹ advises that if processing a request is likely to impose a significant burden on an authority, an applicant should be consulted to help them refine their request in order to make it more manageable. This guidance goes on to state that if an authority has taken reasonable steps to explain the difficulties involved in processing a request and offered assistance, and the applicant (without good cause) refuses to refine their request, it may be vexatious.
9. The Council advised Mr Mitchell, however, that if there was a subject matter that he was interested in involving Forth Ports plc and the Port of Burntisland (for example, a specific project or area of interest) and a reasonable time frame then he may wish to submit a fresh request for this specific information.

¹ <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=2513&SID=2591>



Request for review of Request 1/Request 2

10. On 13 September 2010, Mr Mitchell wrote to the Council requesting a review of its decision with respect to request 1. He disputed the Council's conclusion that this request was vexatious, and indicated that he would rather not submit a fresh request, but would be grateful if the Council would review its decision. In turn, Mr Mitchell indicated that he was willing to clarify his original request by refining the subject matter to specifically include:

"all information relating to Fort Ports plc and the Local Plan Allocation at Burntisland Docks East, the Burntisland Strategic Land Allocation and its residential housing, commercial and retail uses".
11. On 16 September 2010, the Council wrote to Mr Mitchell acknowledging this communication, and stating that it was treating this narrowed request as a new request for information (request 2).
12. The Council informed Mr Mitchell that it was unable to take into account his clarification within a review, which would consider only the Council's decision that request 1 was vexatious, based on the information presented to the Council at that time. The Council asked for confirmation as to whether Mr Mitchell wished the Council to carry out a review, indicating that it would then be passed to the relevant Council officer.
13. The Commissioner understands that Mr Mitchell did not respond to the Council's request that he confirm if he wished a review to be undertaken, and no review was carried out by the Council.
14. On 13 October 2010, the Council responded to request 2, indicating that the request fell to be considered in terms of the EIRs (and accordingly the information requested was exempt from disclosure under section 39(2) of FOISA). The Council provided the requested information and informed Mr Mitchell of his right to request a review if dissatisfied with the Council's response, and to make a subsequent application to the Commissioner if dissatisfied with the outcome of such a request for review.

Request for review of Request 2/Request 3

15. On 11 November 2010, Mr Mitchell emailed the Council, acknowledging receipt of the information provided in response to request 2. However, he noted that a Minute of 13 March 2008, which was referred to within the disclosed information, had not been provided. He asked for this information to be provided.
16. The Council treated this email as a new request for information (request 3) rather than a request for review of the handling of request 2.



17. The Council provided no response to request 3 within the 20 working days allowed within FOISA and the EIRs. On 28 January 2011, Mr Mitchell again contacted the Council highlighting that he had not received a response to his communication of 11 November 2010, and seeking an update. This was acknowledged by the Council on the same date, and treated as a request for review in relation to its failure to respond to request 3.
18. On 3 February 2011, the Council responded to Mr Mitchell's request 3, notifying him that it did not hold the Minute of 13 March 2008. The Council informed him that he was entitled to request a review of this response.
19. On 9 February 2011, Mr Mitchell wrote to the Council informing it that his email of 28 January 2011 had been his request for review and that the legislation did not allow for a further review to be requested. He also commented that it could also be argued that his email of 11 November 2011 was not a new information request, but a request for review in relation to request 2.
20. On 24 February 2011, the Council notified Mr Mitchell of the outcome of a review that had been undertaken in relation to request 3, following his communication of 28 January 2011. This disclosed a copy of the minutes that were requested, and acknowledged that the Council had failed to conduct a thorough search before providing the previous response. The Council apologised for failing to respond to the request of 11 November 2010, noting that this had not been forwarded to the appropriate members of staff.
21. On 15 March 2011, Mr Mitchell wrote to the Commissioner, 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. This application expressed dissatisfaction of the Council's handling of the communications described as requests 1, 2 and 3 above.
22. The application was validated by establishing that Mr Mitchell had made these requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its (lack of) response to each of those requests. The case (reference 201100480) was then allocated to an investigating officer.

Request 4

23. On 10 July 2010, Mr Mitchell wrote to the Council requesting the following;

... all information contained in all correspondence between Fife Council and the Scottish Government Directorate of Planning and Environmental Appeals relating to the Fife Council Core Path Plan.



24. Mr Mitchell added that if any of the requested information contained personal data, the disclosure of which is exempted under section 38 of FOISA, then the Council should provide the information with such data redacted. With respect to any information to which the exemption in section 25 of FOISA applied, he requested that the Council advise where that information was accessible.
25. On 14 July 2010, the Council acknowledged Mr Mitchell's request for information and sought clarification as follows:

I would like to take the opportunity to request further clarification from you relating to your request. Can you please provide us with a more specific request which provides more direction for our search, such as time-scales?
26. On 28 July 2010, Mr Mitchell wrote to the Council explaining that he would prefer not to narrow down his request within set time limits as this may result in the exclusion of potentially important information.
27. On 2, 13, 16 and 29 September and 1 and 20 October 2010, Mr Mitchell wrote to the Council advising that a response had still to be received regarding the request of 10 July 2010.
28. On 27 October 2010, Mr Mitchell wrote to the Council requesting a review of his request of 10 July 2010 on the basis that no response had been received.
29. Both FOISA (in section 20(5)) and the EIRs (in regulation 16(2)) specify that a request for review must be made within 40 working days after the date at which the public authority responded, or should have responded to, a request for information. In this case, Mr Mitchell requested a review outwith this period. Since the EIRs do not contain any provision allowing a public authority to exercise discretion and conduct a review where a request is received outwith this period, this communication did not constitute a valid request for review for the purposes of regulation 16 of the EIRs. However, section 20(6) of FOISA does allow public authorities to exercise discretion and conduct a review following the submission of a late request. Mr Mitchell's request for review was therefore valid for the purposes of FOISA, but the Council was not obliged to conduct a review.
30. On 23 November 2010, the Council (exercising its discretion in line with section 20(6) of FOISA) responded to Mr Mitchell's request for review and apologised for its failure to comply with the statutory timescales. It indicated that the request had been dealt with under the EIRs, and that the information requested was considered exempt from disclosure in terms of section 39(2) of FOISA. The Council provided Mr Mitchell with the requested information, which it stated had been collated but not passed to him due to the volume of requests the Council had received at that time.
31. On 1 April 2011, Mr Mitchell wrote to the Commissioner, 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.



32. The application was confirmed as valid for the purposes of FOISA by establishing that Mr Mitchell 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 (reference 201100637) was then allocated to an investigating officer.
33. This application, however, was not valid as it related to a request made under the EIRs, since Mr Mitchell's request for review was not made in accordance with the timescale specified within regulation 16(2) of the EIRs. For this reason, the Commissioner's decision in relation to request 4 will only consider the handling of that request in terms of the Council's obligations under FOISA.

Request 5

34. On 19 August 2010, Mr Mitchell wrote to the Council requesting the following information:
... all information contained in all correspondence between Fife Council and representatives and office-bearers of the National Farmers Union of Scotland, including meeting minutes, transcripts of telephone calls, memos and notes.
35. Mr Mitchell again added that if any of the requested information contained personal data, the disclosure of which is exempted under section 38 of FOISA, then the Council should provide the information with such data redacted. With respect to any information to which the exemption in section 25 of FOISA applied, he requested that the Council advise where that information was accessible.
36. On 24 August 2010, the Council wrote to Mr Mitchell and requested clarification of his request as follows:
There will be correspondence between different Services within Fife Council and the National Farmers Union of Scotland on a number of issues. To assist us in providing you with the information you require, please refine your request further by describing the information you are seeking in more detail, providing further information on the subject matter (or excluding some subjects). If you can also identify a timescale and indicate which Services would be relevant to your enquiry this will also assist in providing you with a response.
I'd be grateful if you could contact me to agree a revised request.
37. On 25 August 2010, Mr Mitchell wrote to the Council indicating he would prefer not to exclude any subjects from the request, but narrowed his request to focus on four Council Services and restricted the timescale from 1 January 2002 until that date.
38. On 9 September 2010, the Council responded to Mr Mitchell's narrowed request, noting that Mr Mitchell was still looking for information held by four of the Council services, spanning eight years. It indicated that it considered this request to be vexatious in terms of section 14(1) of FOISA, for the same reasons as were set out in paragraph 7 in relation to request 1.



39. The Council again commented that it had sought to assist Mr Mitchell in narrowing the scope of his request, and explained the reason for it asking to do this. It indicated (in similar terms to the comments concerning request 1, set out in paragraph 8 above) that in order to respond to the request, it would be necessary to look through every file held by four services from 2002. The Council again referred to the parts of the Commissioner's guidance on section 14 of FOISA summarised in paragraph 8.
40. The Council advised Mr Mitchell that if there was a subject matter that he was interested in involving the Farmers Union of Scotland, then he may wish to submit a fresh request for this specific information.

Request for review of request 5/Request 6

41. On 13 September 2010, Mr Mitchell wrote to the Council requesting a review of its decision with respect to request 5. He disputed the Council's conclusion that this request was vexatious, stating he would rather not submit a fresh request, but would be grateful if the Council would review its decision. In turn Mr Mitchell indicated that he was willing to clarify his request by confining the subject matter to:

"All matters and issues which have arisen as a result of the implementation of The Land Reform (Scotland) Act 2003". (Request 6)
42. On 16 September 2010, the Council wrote to Mr Mitchell, acknowledging the clarification of his request, and stating that it was treating this narrowed request as a new request for information (request 6).
43. The Council informed Mr Mitchell that it was unable to take into account Mr Mitchell's clarification within a review, which would consider only the Council's decision that request 6 was vexatious, based on the information presented to the Council at that time. The Council asked for confirmation as to whether Mr Mitchell wished the Council to carry out a review, indicating that it would then be passed to the relevant Council officer.
44. The Commissioner understands that Mr Mitchell did not respond to the Council's request that he confirm if he wished a review to be undertaken, and no review was carried out by the Council.
45. On 29 October, 2 and 9 November 2010, Mr Mitchell wrote to the Council asking when he could expect a response to his request.
46. On 24 November 2010, Mr Mitchell wrote to the Council requesting a review of its handling of Request 6, on the basis that no response had been received.
47. The Council responded on 22 December 2010. It apologised for not responding, stating that the information had been collated in October 2010, but due to pressure of work the information had not been provided to Mr Mitchell. The Council disclosed the requested information to Mr Mitchell, subject to the redaction of personal data considered to be excepted from disclosure in terms of regulation 11 of the EIRs.



48. On 25 March 2011, Mr Mitchell wrote to the Commissioner, 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. As noted above, 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. This application expressed dissatisfaction of the Council's handling of the communications described as requests 5 and 6 above.
49. Mr Mitchell's application was validated by establishing that Mr Mitchell had made his requests for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its (lack of) response to both requests. The case was then allocated to an investigating officer.

Investigation

50. Mr Mitchell's applications to the Commissioner raised a number of concerns with how the Council dealt with his requests for information. Mr Mitchell highlighted the following reasons for his dissatisfaction :
51. In relation to requests 1, 2 and 3 (case 201100480) Mr Mitchell highlighted what he considered to be the Council's unreasonable behaviour in respect to:
- Unreasonably requesting clarification of request 1.
 - a. Its decision that request 1 was vexatious.
 - b. Its decision to treat Mr Mitchell's clarification of request 1 (provided with his request for review) as a new request (request 2)
 - c. Its decision to treat Mr Mitchell's request for a specific Minute (request 3) as a new request
 - d. Its failure to comply with the statutory timescales
 - e. Its decision to notify Mr Mitchell of his right to a further review when a review had already been requested internally by the Council.
52. In relation to request 4 (case 201100637), Mr Mitchell expressed dissatisfaction with respect to the Council:
- a. Seeking clarification of the request, in his view unnecessarily.
 - b. Failing to comply with the required timescales, unjustifiably delaying or withholding information in circumstances which might expose it to criticism.
53. In relation to requests 5 and 6 (case 201100546), Mr Mitchell sought a decision regarding:
- a. The Council's decision to deal with the request 5 in terms of the FOISA and not the EIRs
 - b. Its decision that request 5 was vexatious



- c. Its decision to treat Mr Mitchell's clarification of request 5 (provided with his request for review) as a new request (request 6)
 - d. Its failure to comply with statutory timescales. Mr Mitchell expressed particular concern about the Council having collated information in October, but not releasing it until the end of December, and the Council having cited staff resources and volume of requests as reasons for non-compliance. Mr Mitchell expressed concern that the information was unreasonably delayed and information redacted to defeat the purpose of the information request
 - The redaction of information considered to be personal data from information disclosed.
 - The redaction of place names, path names and the subject headings of emails from the information provided.
54. On 5 April 2011 (in relation to case 201100480), 18 April 2011 (in relation to case 201100546) and 19 April 2011 (regarding case 201100637), the investigating officer notified the Council in writing that the relevant application had been received from Mr Mitchell, giving it an opportunity to provide comments on that application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked explain why it had dealt with Mr Mitchell's request as it did and to comment on the issues raised by Mr Mitchell as outlined in the above paragraphs.
55. The Council responded to the invitation to comment regarding case 201100480, regarding requests 1, 2 and 3 on 27 April 2011 and provided further submissions on this case on 23 May 2011. The Council provided its comments on request 4 on 7 June 2011 (case 201100637), and on requests 5 and 6 (case 201100546) in a letter of 13 June 2011.
56. In relation to the redactions of information in response to request 6, the Council confirmed that it had provided Mr Mitchell with further information. After other correspondence during the investigation, further information was provided to Mr Mitchell. Mr Mitchell subsequently confirmed receipt of this further information. While he raised concern with regards to the inconsistency of the Council's redactions under regulation 11 of the EIRs, he indicated that he did not wish to progress his application regarding the remaining redactions of personal data. The Commissioner's analysis and findings below will therefore make no decision on this particular matter.
57. The submissions obtained from Mr Mitchell and the Council will be considered fully, where relevant, in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

58. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Mitchell and the Council and is satisfied that no matter of relevance has been overlooked.



FOISA or EIRs

59. The Council responded to Mr Mitchell's requests 2, 3, 4 and 6 in terms of the EIRs. However, it responded to requests 1 and 2 solely in terms of FOISA.
60. The Commissioner first considered whether the information sought by Mr Mitchell's various requests fell within the definition of environmental information contained in regulation 2 of the EIRs, and so whether the Council should have considered these requests in terms of FOISA alone, or also the EIRs.
61. The Commissioner set out his thinking on the relationship between FOISA and the EIRs in some detail in *Decision 218/2007 Professor A D Hawkins and Transport Scotland*² and need not repeat it in full here. However, it is relevant to reiterate some of the key points which are relevant in this decision:
- The definition of what constitutes environmental information should not be viewed narrowly, but in line with the definition of environmental information in the EIRs.
 - There are two separate statutory frameworks for access to environmental information and an authority is required to consider any request for environmental information under both FOISA and the EIRs.
 - Any request for environmental information therefore **must** be dealt with under the EIRs.
 - In responding to a request for environmental information under FOISA, an authority **may** claim the exemption in section 39(2), thereby removing the need to consider that request further in terms of FOISA.
62. The definition of environmental information for the purposes of the EIRs is set out in regulation 2(1). This definition is reproduced in full in the Appendix to this decision.
63. In considering whether Mr Mitchell's information requests should have been handled in terms of FOISA and/or the EIRs, the Commissioner has considered this definition, alongside each requests terms and (where relevant) the type of information disclosed in response to them.
64. He noted the general wording of requests 1 and 5, which simply sought "all information held by Fife Council relating to Forth Ports Plc and the port of Burntisland" and "all correspondence between Fife Council and representatives and office bearers of the National Farmers Union for Scotland". He recognises that Council's responses (indicating that requests 1 and 5 respectively were considered to be vexatious) were made without it having undertaken searches to locate and review that information. Given the broad nature of the requests, it could not be assumed that all of the information that would fall within the terms of these requests would be environmental information.

² <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600654.asp>



65. However, the Commissioner considers that requests 2, 3 and 6 all sought information which formed subsets of that sought by 1 and 5. Given the subject matter of these requests (focusing in requests 2 and 3 on land allocation and use at the Port of Burntisland, and in request 6 on issues arising from the implementation of the Land Reform Act 2003), the Commissioner agrees with the Council that each of these requests sought environmental information. In each case, the requested information relates to measures (including legislation, plans, programmes and activities) affecting or likely to affect the state of the elements of the environment (especially the land) and factors which can influence the state of the elements.
66. As such, the Commissioner considers that the information sought by requests 2, 3 and 6 sought environmental information, as defined in part (c) of the definition set out in regulation 2 of the EIRs. Since the Commissioner considers that this information would also fall within the terms of requests 1 and 5, he also considers that a significant portion of the information sought by those requests would also be environmental information.
67. The Commissioner is therefore satisfied that each of requests 1, 2, 3, 5 and 6 sought (either entirely or partially) environmental information, and so each should have been handled in terms of the EIRs (to the extent that the information requested was environmental information) as well as in terms of FOISA.
68. The Commissioner therefore concludes that the Council was wrong to consider requests 1 and 5 solely in terms of FOISA and in doing so failed to deal with these requests as required by regulation 5(1) and 2(b) of the EIRs. However, he notes that there was no detriment to Mr Mitchell in it having done so. He considers that, had the Council addressed these requests also in terms of the EIRs, their response would most likely have been made in similar terms, albeit expressed in terms of regulation 10(4)(b), which allows a request to be refused (subject to a public interest test) on the grounds that it is manifestly unreasonable. The Commissioner notes that when Mr Mitchell sought a review and submitted narrower requests for information, these were correctly identified and handled as requests for environmental information, in line with the EIRs.
69. In what follows, the Commissioner has considered the matters raised by Mr Mitchell in relation to requests 1, 2, 3, 5 and 6 in terms of the requirements of both FOISA and the EIRs.
70. Turning to request 4, this sought all correspondence between the Council and the Scottish Government Directorate of Planning Appeals regarding to the Fife Core Path Plan. Since this plan constitutes a measure which is likely to affect the state of the elements of the environment, and factors affecting these elements, the Commissioner is also satisfied that this information would also be environmental information as defined in part (c) of the definition. As such, the Council was obliged to respond to that request in terms of the EIRs.
71. Since the Council failed to respond to that request within the required timescales, Mr Mitchell sought a review of that failure. However, he did not do so within the timescale required by regulation 16(2) of the EIRs. As such, Mr Mitchell made no request for review in terms of the EIRs in relation to request 4.



72. Since the Council did conduct a review of its failure to respond to request 4, and provide a response (which referred to both FOISA and the EIRs), the Commissioner considers that the Council exercised its discretion allowed by section 20(6) of FOISA and accepted Mr Mitchell's late request for review. The Commissioner is therefore entitled to consider the Council's handling of request 4 in terms of FOISA alone.

The Council's requests for clarification (requests 1 and 4)

73. Mr Mitchell indicated in the relevant applications that he considered the Council's requests that he "clarify" his requests 1 and 4 to be unreasonable and unnecessary (respectively).
74. Section 1(3) of FOISA states that if an authority requires further information in order to identify and locate the requested information, and 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.
75. Section 15(1) of FOISA requires a Scottish public authority, so far as it is reasonable to expect it do so, to provide advice and assistance to a person proposes to make, or has made, a request for information to it.
76. One context in which it might be appropriate to provide advice and assistance to a requestor is where the request would impose a significant burden on a public authority. The Commissioner's guidance on section 14 of FOISA³ states the following:
- "Remember the duty under section 15 of FOISA to provide reasonable advice and assistance to applicants [...]. If processing a request is likely to impose a significant burden on an authority, an applicant should be consulted to help them refine their request in order to make it more manageable. Whether this is best done by letter, over the phone, or in a face-to-face meeting will depend on the circumstances of each case. If an authority has take reasonable steps to explain the difficulties involved in processing a request, and offered assistance with refining the request, and the applicant (without good cause) refuses to refine their request, it may be vexatious."*
77. Regulation 9 of the EIRs (Duty to provide advice and assistance) contains provisions parallel to those in section 1(3) and 15(1) of FOISA. Regulation 9(1) provides that 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.
78. Regulation 9(2) states 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. Regulation 9(4) continues that the date on which the further particulars are received by the authority shall be treated as the date of the request for the purposes of regulations 5(2)(a), 6(2)(a) and 13(a) and any period within which the authority is required to respond to that request by these Regulations shall begin on the day following that date.

³ <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=2513&sID=2591>



79. Regarding request 1 (which had sought all information regarding Forth Ports and the Port of Burntisland), the Council wrote to Mr Mitchell asking him to provide clarification by responding to the following questions:

Can you confirm that it is only Forth Ports and Port of Burntisland you require information relating to?

Can you provide time-scales for your request?

80. Regarding request 4 (which had sought correspondence between the Council and a specified Directorate within the Scottish Government relating to the Fife Council Core Path Plan), the Council asked:

Can you please provide us with a more specific request which provides more direction for our search, such as time-scales?

81. In each case, Mr Mitchell declined to “clarify” his request in the manner requested, indicating that he did not want to exclude information that was potentially of interest to him.

Request 1

82. The Council’s comments on the handling of request 1 indicated that, on its receipt, it had recognised that this request was wide ranging, that it had been made alongside further requests of a similar nature, and would have imposed a significant burden on the Council. It indicated that, in seeking clarification, it was seeking to offer advice and assistance to Mr Mitchell, in the event that he was able to narrow his request. The Council noted that the alternative to it doing so was simply to refuse the request outright on cost grounds or on the ground that the request was vexatious.
83. The Commissioner understands from these comments that the Council’s request for clarification of request 1 was sent in pursuit of the duty to provide advice and assistance in section 15(1) of FOISA or regulation 9(2) of the EIRs, rather than seeking further information to assist it in locating information in line with section 1(3) of FOISA or regulation 9(1) of the EIRs.
84. As the guidance on section 14 cited in paragraph 76 makes clear, the Commissioner recognises that the provision of advice and assistance in such circumstances is an appropriate initial step in a case where otherwise the authority would be likely to determine that it is not obliged to respond to a request on the grounds that it is vexatious or manifestly unreasonable. However, the Commissioner would expect any such advice and assistance to make clear to the applicant why they were being encouraged to consider narrowing their request, explaining the nature of the burden that would be caused by responding to the request, and the response that would be likely if the applicant chose not to narrow the request.
85. The Council’s request for clarification of request 1 did none of these things. It simply invited Mr Mitchell to confirm the subject matter (regarding Forth Ports and the Port of Burntisland) of his request, without asking him to specify this more narrowly, and to specify a timescale.



86. In the absence of any further explanation from the Council as to why it was asking him to narrow his request, and the implications for the handling of his request should he not do so, the Commissioner considers it understandable that Mr Mitchell's response reiterated his request as originally specified.
87. The Commissioner notes that, once the Council's response to request 1 explained that his request would involve significant burden, and refused it on the grounds that it was vexatious, Mr Mitchell agreed to make a narrower information request. There is no reason to believe that he would not have done so at the stage where the Council asked for clarification if it had provided an explanation of its reasons for making that request.
88. In the light of the above, the Commissioner has concluded that while the Council might well have acted reasonably by advising Mr Mitchell to narrow the scope of his request in this case, it did so in a manner that failed to clearly explain the purpose of its request for clarification, or its reasons for making it. In this respect, the Commissioner considers that the Council failed to comply with its duty to provide advice and assistance to Mr Mitchell in terms of section 15(1) of FOISA and regulation 9(2) of the EIRs when requesting clarification of Mr Mitchell's request 1.

Request 4

89. Turning to request 4 (which is being considered solely in terms of FOISA), the Council noted that (in terms of section 1(3) of FOISA), it was entitled to seek clarification of a request, if it considered this was required. It noted that when requests are forwarded to its staff for location of information, these are on occasion returned with a request for a time-scale.
90. The Commissioner does not consider the Council's request for clarification in this case to be one made in terms of section 1(3) of FOISA. This provision applies only in circumstances where a public authority requires additional information in order to identify and locate the requested information. However, the Commissioner's view is that the Council's request for clarification did not seek additional information that would have enabled it to identify or locate the information. Rather, it simply invited Mr Mitchell to narrow the scope of his request for information. The purpose of this request appears to have been to prompt Mr Mitchell to limit the task for the Council in locating and retrieving relevant information, rather than to enable it.
91. The Commissioner's view is that Mr Mitchell's request was clearly specified, seeking information of a defined type on a particular subject. While no timescale was specified, the period across which information would be held is restricted by the reference to the Council's Core Path Plan. The duty to create such a plan has been in existence only since the implementation of the Land Reform (Scotland) Act 2003, and so the period concerned was limited to a maximum of approximately eight years.
92. When the Council ultimately provided a response to this request, it disclosed the information in full. In these circumstances, the Commissioner does not consider the Council's request for clarification was made in compliance with section 1(3) of FOISA, since it is clear that the Council did not require any additional information to identify or locate the relevant information.



93. The Council has also commented that it considered that its request for clarification of request 4 was made in compliance with duty to advise and assist Mr Mitchell, since it considered that this would allow the Council to identify the information quickly and correctly for him.
94. The Commissioner recognises that there is value (for both the applicant and public authority) in a public authority checking with an applicant to ensure that the scope of a request is properly understood prior to undertaking searches for that information and issuing a response. However, the Commissioner again notes that the Council's request for clarification of request 4 appears to have been designed to prompt Mr Mitchell to narrow his request, rather than assist it in correctly and quickly identifying the requested information.
95. Once again, the Commissioner would note that if the Council considered that it would be in Mr Mitchell's interests to narrow his request (for example, to ensure that a response could be provided more swiftly than it would be in relation to his original request, or because it might otherwise refuse it on the grounds that it was vexatious or involved excessive cost), then it would have been appropriate for the Council to explain the reasons for its suggestion that he clarify his request.
96. Since it did not do so (and particularly since the Commissioner considers that request 4 clearly specified the nature and subject matter of information of interest to Mr Mitchell), the Commissioner considers that the Council did not comply with the duty to provide advice and assistance to Mr Mitchell in its handling of this request, and in particular in relation to its request that he modify his request. The Commissioner therefore finds that the Council failed to comply with section 15(1) of FOISA in relation to request 4.

Should requests 2, 3 and 6 have been treated as requests for review?

97. The Commissioner next considered whether the Council was correct to handle requests 2, 3 and 6 as distinct requests for information, as opposed to requests for review of the requests that preceded them (1, 2 and 5).
98. On 13 September 2010, Mr Mitchell (separately) requested reviews of the Council's decisions that it was not obliged to respond to requests 1 and 5 on the grounds that these were vexatious in terms of section 14(1) of FOISA. These communications both clearly constituted requests for review in line with both section 20(3) of FOISA and regulation 16(1) and (2) of the EIRs. They referred to the previous requests, and expressed dissatisfaction with the Council's decisions to treat those requests as vexatious.
99. In the same communications, Mr Mitchell also indicated in each case that, although he did not wish to make a new request, he was willing to clarify his original for information. He went on to specify a narrower subject matter for his request and ask the Council to review this matter.
100. The Council's acknowledgements of these communications indicated that it was required to consider the refined requests as new requests, which it went on to handle as requests 2 and 6, as set out above, and it indicated that any review could only consider its handling of the requests 1 and 5 as originally specified.



101. Mr Mitchell has expressed dissatisfaction with the Council's decision to treat these clarified requests as new requests to the Council rather than within its review process.
102. The Commissioner has considered this point, but is satisfied that the Council was correct to consider requests 2 and 6 as new and distinct requests for information. He notes that the review processes in FOISA and the EIRs are both intended to allow an applicant to express dissatisfaction with an authority's response to a request for information. It is not open to the applicant to modify that request when making their request for review in order to avoid the decision reached in response to the original request.
103. Where an authority is asked to consider a different or narrower request, particularly in cases where it has refused to respond to the prior request due to the cost or burden of so doing, it must be afforded the opportunity to respond to that revised request in all the circumstances of the case. Once it has done so, the applicant can seek a review of its handling of the new request, if dissatisfied.
104. The Commissioner is therefore satisfied that the Council complied with FOISA and the EIRs when responding to requests 2 and 6 as new requests for information.
105. However, he does not consider Mr Mitchell's email of 11 November, which the Council also handled as a separate request for information (request 3), should have been treated as such.
106. In his email of 11 November 2010, Mr Mitchell acknowledged receipt of the information provided in response to request 2, but noted that a Minute of 13 March 2008, which was referred to within the disclosed information, had not been provided. He asked for this information to be provided to him.
107. The Council has argued that Mr Mitchell's email of 11 November 2010 was not a request for review. However, the Commissioner considers that Mr Mitchell's comments, which referred back to request 2, and highlighting an area where it appeared to him that the Council's response to request 2 was not fully compliant with the EIRs, constituted representations seeking a review of the Council's handling of that request (on the basis that it had failed to supply all relevant information that it appeared to hold), in line with regulation 16(1) of the EIRs. He considers that it also fulfils the requirements of section 20(3) of FOISA, by indicating the matters giving rise to Mr Mitchell's dissatisfaction of the Council's handling of his request 2.
108. However, the Council did not conduct a review, and it subsequently treated this email as if it was a new request for information (request 3) rather than representations seeking a review of the handling of request 2.



109. When invited to comment on this matter, the Council indicated that it would not have been clear to the person receiving Mr Mitchell's email of 11 November 2010 whether the requested Minute referred to therein fell within the scope of request 2. The Commissioner notes this point, and recognises that, had the Council concluded that the information fell outwith the scope of request 2, then the appropriate response to Mr Mitchell's request for review would have been to indicate that this information had been correctly excluded from the information supplied for that reason. In those circumstances, it would have been good practice to consider Mr Mitchell's communication of 11 November also as a new request for information.
110. However, having reviewed the Minute in question, the Commissioner considers that it does indeed fall within the terms of Mr Mitchell's request 2. The Council's handling of Mr Mitchell's request for review of that request as a new "request 3" disadvantaged Mr Mitchell by significantly delaying the completion of the Council's handling of request 2.
111. The Commissioner has therefore concluded that the Council acted incorrectly by handling "request 3" as a new request for information. However, since it did so, the Commissioner has considered whether it did so otherwise in accordance with Part 1 of FOISA and the EIRs in what follows in this decision.

Failure to conduct reviews in relation to requests 1, 2 and 5

112. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case. The remainder of section 21 governs the review process and the giving of notice of the outcome to the applicant (see the Appendix below, particularly subsections (4), (5), (8) and (9)).
113. Regulation 16(4) of the EIRs gives authorities a maximum of 20 working days after the date of receipt of the applicant's representations to notify the applicant of its decision on review. Other parts of regulation 16, particularly paragraphs (3) and (5), govern the review process and the giving of notice of the outcome to the applicant (again, see the Appendix below).
114. Although the Council treated Mr Mitchell's communications of 13 September and 11 November as new requests for information, the Commissioner has concluded that each of these communications also contained or constituted a valid request for review.
115. Although the Council was not obliged to consider requests 2 and 6 as part of the relevant reviews, Mr Mitchell's communications were worded in such a way that the Council was obliged to review its decision to treat requests 1 and 5 as vexatious. As noted above, in response to Mr Mitchell's email of 11 November, the Council should have considered whether the requested Minute should have been disclosed in response to request 2.
116. However, no reviews were undertaken in relation to any of requests 1, 2 or 5.



117. The Commissioner recognises that the Council acknowledged both of Mr Mitchell's requests for review of 13 September 2010, indicating that it was treating his narrowed requests as new requests. In each case, the Council also informed Mr Mitchell that, if he still wished the Council to carry out reviews, he should contact the Council to let it know.
118. Mr Mitchell did not confirm with the Council whether or not he still wished reviews to be carried out. However, there is no legal obligation for him to do so and since the requests for review submitted by him on 13 September 2010 were valid for the purposes of both FOISA and the EIRs, the Council's obligation to conduct a review remained in place.
119. The Commissioner accepts that where a Scottish public authority initially responds in terms of section 14(1) of FOISA, it is under no obligation to carry out a review by virtue of section 21(8) of FOISA. The authority would still, however (within the 20 working days specified in section 21(1)), be obliged to give the applicant notice in writing that it considered the requirement to be vexatious (section 21(9)). There is, however, no equivalent to section 21(8) of FOISA within the EIRs and as such there is always a duty to respond to a request for review in terms of regulation 16 of the EIRs.
120. In the circumstances, the Commissioner must conclude, in relation to each of requests 1, 2 and 5, that the Council failed to comply with the obligations set out in section 21 of FOISA, and regulation 16 of the EIRs.
121. Whilst the Commissioner is satisfied that the Council failed to carry out reviews in relation to requests 1, 2 and 5, he notes that the Council thereafter dealt with the matters raised therein as new requests. He also notes that Mr Mitchell did not express any continued expectation that the Council should conduct reviews solely on the question of whether the requests 1 and 5 were vexatious. In the circumstances, he does not require the Council to take any action in relation to its failure to carry out the reviews as required.
122. Since the Council has not reviewed its decisions that requests 1 and 5 were vexatious in terms of section 14(1), the Commissioner is unable to consider in this decision whether those decisions were correct. The Commissioner has therefore made no further comment on this point in this decision.

Compliance with timescales

123. Mr Mitchell has expressed dissatisfaction with the Council's failure to comply with the timescales required by FOISA and the EIRs in relation to each of his requests for information (although the Commissioner's consideration of request 4 will again be restricted solely to its handling under FOISA).
124. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exceptions which are not relevant in this case.



125. Regulation 5(2)(a) of the EIRs gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain exemptions which are not relevant in this case.
126. The following table shows when the requests were made to the Council, the date of response if complied with, the date of the request for review and the date of the review outcome if complied with:

Request	Date of request	Response	Request for Review	Response to review
1	7.07.10	09.09.10	13.09.10	None
2	13.09.10	13.10.10	11.11.10	None
3	11.11.10	None	28.01.11	3 and 24.02.11
4	10.07.10	None	27.10.10	23.11.10
5	19.08.10	09.09.10	13.09.10	None
6	13.09.10	None	24.11.10	22.12.10

127. Section 74(2) of FOISA states that for the provision of FOISA, a thing transmitted by electronic means is presumed to be received on the day of transmission. As Mr Mitchell's correspondence with the Council was in all cases conducted by email, the above dates are considered to be the dates on which the Council received the communications.
128. As can be seen from the above table, the Council did not respond to Mr Mitchell's requests 1, 2, 3, 4 or 6 within 20 working days after the date of receipt of the relevant request, and so the Commissioner therefore finds that the Council failed to respond to these requests for information within the timescale allowed by section 10(1) of FOISA. In relation to requests 1, 2, 3, and 6, the Commissioner finds also that the Council failed to comply with the timescale required by regulation 5(2)(a) of the EIRs.
129. However, the Commissioner notes that the Council did respond to request 5 before the twentieth working day after its receipt, and so it complied with the requirements of section 10(1) of FOISA and regulation 5(2)(a) of the EIRs when dealing with request 5.



130. The Commissioner notes the Council's apology regarding the time taken to deal with Mr Mitchell's requests and the submission that this was due to staff shortages and an excessive workload. The Commissioner however reiterates that there is a legislative duty on the Council to comply with the requirements of FOISA and the EIRs and Scottish public authorities should have resilience to comply within the time allowed. The Commissioner further notes that the Council has indicated that it has now put in new systems to ensure that this will not be repeated in the future.
131. Section 21(1) of FOISA gives authorities a maximum of 20 working days after receipt of the requirement to comply with a requirement for review, subject to exceptions which are not relevant in this case. The remainder of section 21 governs the review process and the giving of notice of the outcome to the applicant (see Appendix below, particularly subsections (4), (5), (8) and (9)).
132. Regulation 16(4) of the EIRs gives authorities a maximum of 20 working days after the date of receipt of the applicant's representations to notify the applicant of its decision on review. Other parts of regulation 16, particularly paragraphs (3) and (5), govern the review process and the giving of notice of the outcome to the applicant (see Appendix below).
133. The Commissioner has already commented on the Council's failure to carry out reviews relative to requests 1, 2 and 5 earlier in this decision.
134. With respect to requests 3, 4 and 6, reviews were undertaken by the Council, with the outcome being (in line with section 21(4)(c)) that the previous failure to respond to these requests was rectified and a response issued. The Commissioner finds that these reviews were each undertaken and Mr Mitchell was notified of the outcome within the time allowed by section 21(1) of FOISA. The reviews conducted in response to requests 3 and 6 were also undertaken within the timescale required by regulation 16(4) of the EIRs.
135. The Commissioner notes with respect to request 3, that two responses were sent to Mr Mitchell following the submission of his request for review. The first indicated that Mr Mitchell was entitled to seek a review of that decision if he was dissatisfied. Mr Mitchell has correctly pointed out that there was no need for him to seek a further review, since this response was issued to him after he had requested a review of the Council's failure to respond within the required timescale.
136. It appears to the Commissioner that there was some confusion within the Council about the handling of request 3, as the Council subsequently sent a further response to Mr Mitchell's request for review, which clearly indicated that he was then entitled to make an application to the Commissioner. Since this response was issued within the required timescale, the Commissioner is satisfied that, by issuing this second response to Mr Mitchell's request for review, the Council fulfilled the requirements of section 21 and regulation 16.



Mr Mitchell's comments on delays

137. The Commissioner has noted the comments made by Mr Mitchell in each of his applications regarding the impact of the delay in provision of information in response to his requests. He has highlighted that his requests were made in the context of his interest in and representations to local inquiries regarding the Fife Core Path Plan and the Fife Local Plan.
138. With respect to requests 2 and 3, Mr Mitchell noted that the delays in the handling of his request for review/request 3 meant that the relevant minute was not available to him in time to consider its relevance in advance of a hearing regarding the Mid Fife Local Plan.
139. In his applications regarding requests 4, 5 and 6, Mr Mitchell highlighted that these requests were made in the context of the Inquiry regarding the Fife Core Path Plan. He noted that the Scottish Government had requested that he provide a written statement on this subject by 22 November 2010, but the information sought by request 4 was not provided until 23 November, following a review of the Council's failure to respond. Mr Mitchell noted that he had arranged for the 22 November deadline to be extended, but the information sought by request 6 was only received after the later deadline had passed, and so he was unable to utilise the information to support his case. In relation to these requests, he expressed concern that the Council had unjustifiably delayed or withheld information where it might expose it to criticism, or to thwart the purpose of the request.
140. The Commissioner notes with concern that the Council, when notifying Mr Mitchell of the outcome of its review in relation to requests 4, indicated that the information requested had been collated but not provided to him until that point, on 23 November 2010. With respect to request 6, the Council indicated that the information held had been collated in October 2010, but had not been provided to Mr Mitchell until 22 December 2010.
141. Having been informed of Mr Mitchell's belief that delaying tactics had been used, the Council intimated that at no stage did the Council's FOI team know the reason for Mr Mitchell's requests and under no circumstances would the Council deliberately delay the provision of information for any reason.
142. The Commissioner is unable in this decision to conclude whether or not there was any deliberate intention to delay Mr Mitchell's access to the information he had requested. However, he is concerned by the delays that Mr Mitchell has experienced, particularly when these are viewed in the wider context of the findings set out in this decision. He recognises that FOISA and the EIRs are valuable tools for accessing information that will enable effective public participation in public inquiries and similar processes. However, the value of these tools is diminished if delays in compliance mean that information is not made available in time to allow its use.
143. In this case, the Commissioner also wishes to record his concern at the time taken by the Council to respond to the investigating officer at a number of points during the investigation. This appeared to reflect the frustration and delays experienced by Mr Mitchell in his dealings with the Council. These issues will be taken up with the Council as part of the Commissioner's assessment strategy under section 43(3) of FOISA.



DECISION

The Commissioner finds that, with respect to the matters under consideration in this decision, Fife Council (the Council) partially failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and (where relevant) the Environmental Information (Scotland) Regulations 2004 (the EIRs) in dealing with Mr Mitchell's requests for information. In particular, he has found that:

- the Council breached regulation 5(1) and (2)(b) by responding to requests 1 and 5 solely in terms of FOISA
- the Council failed to respond to requests 1, 2, 3, 4, and 6 within the timescale required by section 10(1) of FOISA. He also finds that the Council failed to respond to requests 1, 2, 3, and 6 within the timescale required by regulation 5(2)(a).
- the Council failed to conduct reviews in relation to requests 1, 2 and 5, and in so doing it breached the requirements of section 21 of FOISA and regulation 16(3), (4) and (5) of the EIRs.
- the Council did conduct reviews in compliance with section 21 of FOISA (and in particular sections 21(1), (4) and (5)) in dealing with requests 3, 4 and 5. With respect to requests 3 and 5, the Commissioner also found that the Council complied with regulation 16(3), (4) and (5) of the EIRs.
- the Council complied with Part 1 of FOISA and the EIRs by treating requests 2 and 6 as new requests for information.
- the Council failed to comply with the duty to provide reasonable advice and assistance within section 15(1) when seeking clarification of Mr Mitchell's requests 1 and 4. With respect to request 1, the Commissioner has also found that the Council failed to comply with the duty in regulation 9(1) of the EIRs.

For the reasons set out above in this decision, the Commissioner does not require the Council to take any action in response to this decision. However, the breaches identified above will be noted and may be taken into account in determining whether any future action should be taken in respect of Fife Council under the Commissioner's Enforcement Strategy.

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and Fife Council



Appeal

Should either Mr Mitchell 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
8 August 2011



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.

...

- (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.

...

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

10 Time for compliance

- (1) Subject to subsections (2) and (3), a Scottish public authority receiving a request which requires it to comply with section 1(1) must comply promptly; and in any event by not later than the twentieth working day after-

- (a) in a case other than that mentioned in paragraph (b), the receipt by the authority of the request; or
- (b) in a case where section 1(3) applies, the receipt by it of the further information.

....



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).

20 Requirement for review of refusal etc.

- (1) An applicant who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information made under this Part of this Act may require the authority to review its actions and decisions in relation to that request.

...

- (3) A requirement for review must-
 - (a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);
 - (b) state the name of the applicant and an address for correspondence; and
 - (c) specify-
 - (i) the request for information to which the requirement for review relates; and
 - (ii) the matter which gives rise to the applicant's dissatisfaction mentioned in subsection (1).

...

- (5) Subject to subsection (6), a requirement for review must be made by not later than the fortieth working day after-
 - (a) the expiry of the time allowed by or by virtue of section 10 for complying with the request; or
 - (b) in a case where the authority purports under this Act-
 - (i) to comply with a request for information; or
 - (ii) to give the applicant a fees notice, a refusal notice or a notice under section 17(1) that information is not held,



but does so outwith that time, the receipt by the applicant of the information provided or, as the case may be, the notice.

- (6) A Scottish public authority may comply with a requirement for review made after the expiry of the time allowed by subsection (5) for making such a requirement if it considers it appropriate to do so.

...

21 Review by Scottish public authority

- (1) Subject to subsection (2), a Scottish public authority receiving a requirement for review must (unless that requirement is withdrawn or is as mentioned in subsection (8)) comply promptly; and in any event by not later than the twentieth working day after receipt by it of the requirement.

...

- (4) The authority may, as respects the request for information to which the requirement relates-
- (a) confirm a decision complained of, with or without such modifications as it considers appropriate;
 - (b) substitute for any such decision a different decision; or
 - (c) reach a decision, where the complaint is that no decision had been reached.
- (5) Within the time allowed by subsection (1) for complying with the requirement for review, the authority must give the applicant notice in writing of what it has done under subsection (4) and a statement of its reasons for so doing.

...

- (8) Subsection (1) does not oblige a Scottish public authority to comply with a requirement for review if-
- (a) the requirement is vexatious; or
 - (b) the request for information to which the requirement for review relates was one with which, by virtue of section 14, the authority was not obliged to comply.
- (9) Where the authority considers that paragraph (a) or (b) of subsection (8) applies, it must give the applicant who made the requirement for review notice in writing, within the time allowed by subsection (1) for complying with that requirement, that it so claims.

...



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)-



- (a) shall be complied with as soon as possible and in any event no later than 20 working days after the date of receipt of the request; and
- (b) is subject to regulations 6 to 12.

...

9 Duty to provide advice and assistance

- (1) A Scottish public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
- (2) Where a request has been formulated in too general a manner, the authority shall-
 - (a) ask the applicant as soon as possible, and in any event no later than 20 working days after the date of receipt of request, to provide more particulars in relation to the request; and
 - (b) assist the applicant in providing those particulars.

...

16 Review by Scottish public authority

- (1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant's request.
- (2) Representations under paragraph (1) shall be made in writing to the Scottish public authority no later than 40 working days after either the date that the applicant receives any decision or notification which the applicant believes does not comply with these Regulations or the date by which such a decision or notification should have been made, or any other action should have been taken, by the authority but was not made or taken.
- (3) The Scottish public authority shall on receipt of such representations-
 - (a) consider them and any supporting evidence produced by the applicant; and
 - (b) review the matter and decide whether it has complied with these Regulations.
- (4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.
- (5) Where the Scottish public authority decides that it has not complied with its duty under these Regulations, it shall immediately take steps to remedy the breach of duty.

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