

Decision Notice



Decision 080/2012 Mrs Lynne Mochrie and the City of Edinburgh Council

The Fort, Leith

Reference No: 201100858
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www.itspublicknowledge.info

Rosemary Agnew
Scottish Information Commissioner

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Summary

Mrs Mochrie requested from the City of Edinburgh Council (the Council) information about the Fort, Leith. The Council responded by providing some information. Following a review, as a result of which the Council withheld certain information in terms of sections 30(c) (effective conduct of public affairs) and 35(1)(a) (prevention or detection of crime) of FOISA, Mrs Mochrie remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that, by withholding information, the Council had failed to deal with one of Mrs Mochrie's requests for information in accordance with Part 1 of FOISA. In particular, she found that the Council had not met the tests of substantial prejudice required for it to withhold the information under sections 30(c) and 35(1)(a) of FOISA. The Commissioner required the Council to provide Mrs Mochrie with this information.

However, the Commissioner accepted that the other request covered by Mrs Mochrie's application (which she found to be a request for environmental information and therefore subject to the EIRs) was manifestly unreasonable and therefore regulation 10(4)(b) of the EIRs applied. She also found that the Council had failed to identify and locate all information covered by this request in dealing with it prior to the application to the Commissioner.

Finally, the Commissioner found that the Council had failed to respond Mrs Mochrie's requirement for review within the requisite timescale.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 21(1) (Review by Scottish public authority); 30(c) (Prejudice to effective conduct of public affairs); 35(1)(a) (Law enforcement); 39(2) (Health, safety and the environment)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of "environmental information"); 5(1) and (2)(b) (Duty to make available environmental information on request); 10(1), (2) and (4)(b) (Exceptions from duty to make environmental information available); 16(4) 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. On 26 January 2011, Mrs Mochrie wrote to the Council requesting the following information:
 - a. How many properties are still occupied in The Fort, Leith? (Request 1);
 - b. What is the deadline for those properties to be vacated? (Request 2);
 - c. All information given to tenants of The Fort, Leith to explain the situation and their options for re-housing (Request 3);
 - d. All information relating to the project that is overseeing the re-housing of these occupants – including the project plan, terms of reference, etc. (Request 4);
 - e. All information relating to the future proposals for the site (Request 5).
2. The Council responded on 23 February 2011, providing certain information.
3. On 3 March 2011, Mrs Mochrie wrote to the Council requesting a review of its decision. She expressed dissatisfaction with the Council's responses to requests 1 and 5. In failing to provide a number, she did not believe the Council had answered request 1 appropriately. For her fifth request, Mrs Mochrie did not believe she had been provided with any information regarding the Council's "preferred investment option", or any information relating to the work of the project team established to carry out an options appraisal on the future of the site. She also commented that she could not find any information through the website address provided by the Council for information about the project.
4. Following an application to the Commissioner, the Council notified Mrs Mochrie of the outcome of its review on 4 May 2011. For request 1, the Council refused to provide a number, providing reasons why it considered disclosure of an exact figure would be likely to prejudice substantially (a) the effective conduct of public affairs (section 30(c) of FOISA) and (b) the prevention of crime (section 35(1)(a) of FOISA).
5. In respect of Mrs Mochrie's request 5, the Council stated that there were no further proposals for the site beyond those indicated in the report submitted to its Health, Social Care and Housing Committee on 6 October 2009. The Council attached a copy of this report for information, explaining that it indicated the likely proposals for the site.
6. On 11 May 2011, Mrs Mochrie wrote to the Commissioner, stating that she 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.
7. The application was validated by establishing that Mrs Mochrie had made 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 responses to those requests.



Investigation

8. On 13 May 2011, the Council was notified in writing that an application had been received from Mrs Mochrie and was asked to provide the Commissioner with any information withheld from her.
9. The Council responded with the information requested (for request 1) and the case was then allocated to an investigating officer.
10. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
11. During the investigation, Mrs Mochrie supplied the investigating officer with a media article¹ of 19 May 2011, which referred to there being “fewer than ten” tenants remaining in the building. In response to a further request for comment, the Council confirmed that it remained of the view that the information covered by request 1 should be withheld, for reasons it had supplied earlier.
12. In respect of request 5, it transpired in the course of the investigation that the Council held a considerable amount of information in addition to that contained in the Committee report referred to in the review outcome. The Council indicated that it would endeavour to supply this information, but asked that Mrs Mochrie explain more fully what she wished.
13. In response for a request for further clarification, Mrs Mochrie indicated that she would like to see all information relating to the timescales, demolition and rebuild proposal (what would be replacing the current building, who would own the end product [Council, housing authority, private owners], who would be building the future proposal, and so on). Mrs Mochrie stated that she was sorry she could not be more specific, but was of the view that her initial request had been specific enough to warrant an appropriate response at that time.
14. Having been provided with the clarification from Mrs Mochrie, the Council responded with a summary of the information it held, and indicated that it would be happy to speak to Mrs Mochrie directly if she would like further explanation. This summary was forwarded to Mrs Mochrie by the investigating officer, with contact details should she wish to deal directly with the Council.
15. Following further communications with Mrs Mochrie, the investigating officer contacted the Council, asking it to either supply Mrs Mochrie with the information which fell within the scope of request 5, or alternatively to supply the investigating officer with its reasoning for withholding that information.

¹ http://www.scotsman.com/news/notorious_leith_tower_block_to_make_way_for_110_new_homes_1_1649526



16. The Council responded to the investigating officer, providing arguments in support of its position that (a) the information covered by request 5 was environmental information and therefore subject to the EIRs, and (b) it considered the request to be manifestly unreasonable and therefore wished to apply regulation 10(4)(b) of the EIRs. Mrs Mochrie was given the opportunity to comment on these new arguments.
17. The relevant submissions received from both the Council and Mrs Mochrie will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

18. In coming to a decision on this matter, the Commissioner has considered all the submissions made to her by both Mrs Mochrie and the Council and is satisfied that no matter of relevance has been overlooked.
19. In terms of Mrs Mochrie's application, the Commissioner will now consider how the Council dealt with requests 1 and 5.

Request 1

20. The Council relied on sections 30(c) and 35(1)(a) of FOISA in respect of the information withheld for request 1 ("How many properties are still occupied in The Fort, Leith?").

Section 30(c) – Effective conduct of public affairs.

21. Section 30(c) of FOISA exempts information if its disclosure "would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs". The use of the word "otherwise" distinguishes the harm required from that envisaged by the exemptions in section 30(a) and (b). This is a broad exemption and the Commissioner expects any public authority citing it to show what specific harm would (or would be likely to) be caused to the conduct of public affairs by release of the information, and how that harm would be expected to follow from release. The harm must be substantial, and therefore of real and demonstrable significance. This exemption is subject to the public interest test laid down by section 2(1)(b) of FOISA.
22. The Council submitted that one of the most fundamental means by which it could conduct its business effectively was by the efficient use of resources. It explained that, when already limited resources were diverted to meet the increased security needs of a vulnerable group of individuals and the additional security need had arisen unnecessarily, then there was an inefficient use of resources which prejudiced the Council's ability to conduct its affairs effectively. The Council explained that the level of crime had increased in the empty properties, necessitating additional security measures to support the safety of the remaining occupants. Disclosing a number would, the Council argued, increase the risk.



23. The Commissioner notes that the increased security measures referred to by the Council were put in place because of an already increased level of crime. While criminal activity may be inevitable in the vicinity of obviously empty properties, the Commissioner does not believe the Council has evidenced that disclosure of an actual number of tenants would have caused (or would have been likely to cause) an increased risk of such criminality. Against the background of public awareness of the Council's plans for The Fort and media reporting of the low number of tenants remaining at the time, it is not apparent why awareness of the relative emptiness of the Fort should have been increased materially by disclosure of an actual number.
24. The Commissioner acknowledges that disclosures which would (or would be likely to) lead to significant – and otherwise avoidable – demands on a Scottish public authority's resources may, depending on the circumstances, engage the exemption in section 30(c) of FOISA. For the reasons given above, however, she cannot accept the Council's premise that an increased risk of crime would, or would be likely to, follow disclosure of the information requested in Mrs Mochrie's request 1. Consequently, she cannot accept that disclosure of this information would have prejudiced substantially, or would have been likely to prejudice substantially, the effective conduct of public affairs as the Council has argued. In this case, therefore, the Commissioner does not accept the application of the exemption in section 30(c) of FOISA to that information.
25. Because she is not satisfied that the Council was justified in applying the exemption in section 30(c) to the information withheld under that exemption, the Commissioner is not required to go on to consider the public interest test under section 2(1)(b) of FOISA.

Section 35(1)(a) – Law enforcement

26. Section 35(1)(a) exempts information if its disclosure would, or would be likely to, prejudice substantially the prevention or detection of crime. As the Commissioner's guidance on this exemption highlights, the term "prevention or detection of crime" is wide ranging, encompassing any action taken to anticipate and prevent crime, or to establish the identity and secure prosecution of persons suspected of being responsible for crime. This could mean activities in relation to a specific (anticipated) crime or wider strategies for crime reduction and detection.
27. As stated above, there is no definition in FOISA of what is deemed to be substantial prejudice, but the Commissioner considers that a public authority would have to identify harm of real and demonstrable significance. The harm would also have to be at least likely, and therefore more than simply a remote possibility.
28. The Council's arguments are similar in this regard to those submitted for section 30(c): that is, awareness of the actual number of remaining tenants would indicate the relative uninhabitedness of The Fort and lead to increased criminality. The Council explained that it had had to increase security within The Fort as it had become emptier but, notwithstanding such measures, there had been a progressive increase in problems with vandalism, fire and flooding of properties. Accordingly, to make public knowledge the number of occupied properties would prejudice substantially the Council's ability to protect the occupants of these properties and prevent an increase in the level of vandalism already being experienced.



29. The Commissioner acknowledges the importance of having security measures in place to protect inhabitants and property. However, the question for the Commissioner, in relation to the exemption in section 35(1)(a), is the extent to which the effectiveness of this security would be compromised if the number of remaining inhabitants were to be disclosed.
30. For the exemption in section 35(1)(a) of FOISA to apply, the harm to crime prevention must be at least likely (as well as substantial) and must be a consequence of disclosure of the information. The question is whether the harmful consequences specified by the Council (increased crime and the corresponding threat to the remaining inhabitants) are likely to come about simply because the number of remaining inhabitants is made known. The Commissioner is of the view that the Council has provided no evidence of this. The Council has not provided evidence of an increased crime rate as the properties became less inhabited, but even had it done this, that in itself would not indicate that disclosure of the number would cause a further increase in the crime rate. The Council also appears to have acknowledged, in any event, the limited effectiveness of the increased security measures it did put in place in preventing further criminal activity.
31. Section 35(1)(a) of FOISA is a qualified exemption, which means that it is subject to the public interest test set out in section 2(1)(b) of FOISA. In this case, having decided that the information is not exempt under section 35(1)(a), the Commissioner is not required to consider whether, in all circumstances of the case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exemption.
32. As the Commissioner has not accepted the exemptions the Council has applied to this information, she requires the Council to disclose to Mrs Mochrie the relevant information it held at the time it received Mrs Mochrie's request 1.

Request 5

33. Request 5 was for "all information relating to the future proposals for the site".
34. In the preceding sections of this decision, the Commissioner has already set out how request 5 was addressed by the Council. Towards the end of the Commissioner's investigation, the Council submitted that the information requested was environmental information as defined by regulation 2(1) of the EIRs. Accordingly, the Council sought to apply section 39(2) of FOISA, which states that environmental information as defined by regulation 2(1) of the EIRs is exempt from disclosure under FOISA, thereby allowing such information to be considered solely in terms of the EIRs. The Council also submitted that the information fell within regulation 10(4)(b) (manifestly unreasonable) of the EIRs and provided details of the cost of providing Mrs Mochrie with the information.

Section 39(2) of FOISA

35. The previous Commissioner set out his thinking on the relationship between FOISA and the EIRs in detail in *Decision 218/2007 Professor A D Hawkins and Transport Scotland*² and need not repeat it here.

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



36. For the exemption under section 39(2) of FOISA to apply, any information requested would require to be environmental information as defined in regulation 2(1) of the EIRs, which is reproduced in the Appendix below. The Council did not explain why it believed the information to be environmental information.
37. The information relates to proposals for the development of a significant urban site. The Council explained that the information held included project management documentation, reports, survey results, briefing notes, correspondence with tenants, minutes of meetings, development plans and numerous other records. The Commissioner has considered this description, together with the information³ recently put in the public domain which relates to the development of the site. In the circumstances, she is satisfied that she is able to determine whether the information is environmental without considering it in detail. She accepts that it is, by its nature, information on measures and activities affecting, or likely to affect, the elements of the environment, in particular land and landscape. She therefore accepts that the information falls within paragraph (c) of the definition of environmental information contained in of regulation 2(1) of the EIRs.
38. The Council did not deal with this request under the EIRs, either initially or on review. In failing to do so, the Commissioner finds that the Council failed to comply with regulation 5(1) of the EIRs.
39. 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. This exemption is subject to the public interest test in section 2(1)(b) of FOISA. In this case the Commissioner accepts that the Council is (and was, at the time it dealt with Mrs Mochrie's request) entitled to apply the exemption in section 39(2) of FOISA to the withheld information, given her conclusion that it is environmental information.
40. As there is a separate statutory right of access to environmental information available to the applicant in this case, the Commissioner 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 disclosure of the information under FOISA. The Commissioner is therefore satisfied that the Council is (and was) entitled to withhold the information under section 39(2) of FOISA, and consequently has proceeded to consider request 5 in what follows solely in terms of the EIRs.
41. As the Council has acknowledged, it is unfortunate that it took so long to apply exemptions (and exceptions under the EIRs) to the information it held and which fell within the scope of this request. It is also clearly unfortunate that it took the Council so long to identify all of this information. This appears to have been the result of an overly narrow interpretation of the request, rather than any inadequacy in the Council's arrangements for searching for the information. Having considered the descriptions of the information provided by the Council in the course of the investigation, together with Mrs Mochrie's own comments on the request during the investigation, the Commissioner finds the Council's more recent interpretation of request 5 to be a reasonable and appropriate one in the circumstances.

³ http://www.edinburgh.gov.uk/info/209/regeneration_and_town_centre_management/969/21st_century_homes_for_edinburgh/5



42. Having concluded that the Council's original interpretation of request 5 was unduly narrow, the Commissioner must now find that in failing to identify and locate all of the relevant information when dealing with this request or the subsequent request for review, the Council failed to deal with request 5 fully in terms of regulation 5(1) of the EIRs.

Regulation 10(4)(b) - manifestly unreasonable

43. There is no definition of "manifestly unreasonable" in the EIRs, or in Directive 2003/4/EC from which they are derived. There is no single test for what sort of request may be manifestly unreasonable. Rather, it is to be judged on each individual request, bearing in mind all of the circumstances of the case. The Commissioner is of the view, however, that regulation 10(4)(b) will provide an exception to the duty to comply with a request where that request is vexatious, where it would incur unreasonable costs for the public authority or where responding would be an unreasonable diversion of the authority's resources.

44. It does not follow, therefore, that a request is only manifestly unreasonable under the EIRs if it is vexatious under FOISA: the concept is wider. In particular, there may be circumstances where the burden of responding alone justifies deeming a request to be manifestly unreasonable. There is no equivalent in the EIRs to section 12 of FOISA (excessive cost of compliance) and the Commissioner recognises that there may be cases where the time and expense involved in complying with a request for environmental information mean that any reasonable person would regard them as excessive.

45. That, in essence, appears to be what the Council is arguing in this case in relation to request 5. It has submitted that it would be unreasonable, and not in the public interest, to ask a public authority to spend an estimated 80 hours to collate, check and copy records relating to that request.

46. Although the cost limit prescribed by the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 may be a useful starting point in considering the application of regulation 10(4)(b), the fact that a similar request may be rejected under the provisions of section 12 of FOISA is just one factor to consider and does not, in itself, render a request made under the EIRs manifestly unreasonable. It should be borne in mind that, in terms of regulation 8, there are circumstances in which an authority can charge for the provision of environmental information.

47. There are other important factors which should be taken into consideration before concluding that environmental information can be withheld under regulation 10(4)(b): these include the proportionality of the burden on the public authority's workload, taking into consideration the size of the public authority; the presumption in favour of disclosure in regulation 10(2); the requirement to interpret exceptions restrictively (in that same paragraph), and any other relevant circumstances particular to the case.



48. The Council explained that the project (in respect of The Fort) had been on-going since 2004 and, as a consequence, the information it held on the project was substantial. The Council estimated (conservatively, in its view) that the cost of responding would be £2,160.50. This cost included staff time of 80.5 hours to check, collate and copy records (£1,207.50), and reproduction costs for 9,532 sheets/pages of £953.00. The Council explained that staff time had been calculated at £15.00 per hour and copying charges at £0.10 per sheet (as detailed in the Council's Publication Scheme). Some of the information was held in hard copy and some electronically. The Council went on to describe this information in greater detail, with breakdowns of the associated costs.
49. The Council could not be classed as a small or medium sized public authority. The Commissioner acknowledges that, in common with all other Scottish public authorities, the Council is subject to a considerable volume of other demands on its time and resources, in addition to complying with requests for information under FOISA and the EIRs. Compliance with such requests should, however, be considered as an element of the authority's core business, and the Commissioner will not accept lightly arguments that such compliance, in any given case, represents an unreasonable diversion from compliance with other core responsibilities.
50. The Commissioner has interpreted this regulation in previous decisions. In *Decision 029/2012 Alexander Hughes and Transport Scotland*⁴, a previous Commissioner was satisfied that regulation 10(4)(b) was applicable where the costs to Transport Scotland would exceed £1,000.
51. A previous Commissioner has also had regard to two recent decisions of the (UK) Information Commissioner (both referred to in *Decision 029/2012*), *FER0377283 Rochford District Council*⁵ and *FS50364144 Yorkshire Forward*⁶. Both these cases considered requests judged to be manifestly unreasonable on the grounds that they would place unreasonable burden on the public authorities concerned. In case FER0377283, it was estimated that compliance with the request would take 230 hours work, and in case FER50364144 the time required for compliance was estimated as 77 hours. In both cases, the Information Commissioner accepted the estimates and found the requests to be manifestly unreasonable.
52. The Commissioner notes that each case must be decided on its own particular circumstances, but she recognises that the burden following from Mrs Mochrie's request appears to be of an order comparable with the requests considered by the Information Commissioner in the above cases and by the previous Scottish Information Commissioner in *Decision 029/2012*.
53. Having taken into account the burden discussed above and all other relevant considerations, the Commissioner accepts that dealing with request 5 would have demanded a disproportionate amount of the Council's time and diverted a disproportionate quantity of its resources away from other core operations. Consequently, the Commissioner is satisfied that Mrs Mochrie's request 5 fell within the terms of regulation 10(4)(b) of the EIRs.
54. The Commissioner must now go on to consider the public interest test.

⁴ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2012/201101436.asp>

⁵ http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fer_0377283.ashx

⁶ http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50364144.ashx



Consideration of the public interest test

55. In common with all the other exceptions in the EIRs, regulation 10(4)(b) is qualified in that it is subject to the public interest test set out in regulation 10(1)(b). Consequently, information can be withheld under the exception only where, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
56. In the Commissioner's view, there is an inherent public interest in disclosure of information to ensure that an authority is transparent about the nature and extent of the information that it holds, and to permit adequate public scrutiny of its funding, expenditure and work. This is the case even where the information, and the work involved in making it available, is considerable. Additionally, the Commissioner understands the future of this site to be a matter of some public interest locally.
57. Conversely, however, there is a strong public interest in a Scottish public authority being able to carry out its other core functions without the disruption that would be caused by complying with requests which place excessive demands on its time and resources.
58. The Commissioner considers there is a public interest in protecting the integrity of the EIRs and ensuring that they are used responsibly. While public authorities are encouraged towards acting in a transparent and accountable nature which benefits the public as a whole, it is not the intention of the legislation to require public authorities to devote excessive amounts of time to one particular request. The Council has a responsibility to respond to other requests it receives, as well as carrying out its other statutory functions, and there is a public interest in ensuring resources are not diverted away from this.
59. In this case, the Commissioner is satisfied that if the Council were required to respond to this request it would place a significant burden on the Council in terms of time and expense, even taking into consideration its size and the resources available to it, and to a commensurate (and disproportionate) extent divert the Council away from its other statutory functions. On balance, therefore, while there are certainly public interest arguments in favour of disclosure, the Commissioner accepts in the circumstances that the burden created by making the information available would outweigh that acknowledged public interest. The Commissioner therefore concludes that the Council was entitled to withhold the information covered by request 5 under the exception in regulation 10(4)(b) of the EIRs.

Timescales

60. Section 21(1) of FOISA gives public authorities a maximum of 20 working days after receipt to comply with a requirement for a review, subject to exceptions which are not relevant to this case. In respect of environmental information, the same timescale is laid down by regulation 16(4) of the EIRs.
61. The Council apologised for not responding within the required timescale. Since the Council did not provide a response to Mrs Mochrie's requirement for review within 20 working days, however, the Commissioner must find that it failed to comply with section 21(1) of FOISA (in respect of request 1) and regulation 16(4) of the EIRs (in respect of request 5).



62. As Mrs Mochrie has now received a response to her requirement for review, the Commissioner does not (in response to Mrs Mochrie's application) require the Council to take any further steps in relation to this matter.

DECISION

The Commissioner finds that the City of Edinburgh Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mrs Mochrie.

The Commissioner finds that the Council failed to deal with Mrs Mochrie's request 1 in accordance with Part 1 (and in particular section 1(1)) of FOISA, by withholding the information under the exemptions referred to above. The Commissioner requires the Council to provide Mrs Mochrie with the information she requested in request 1, by 18 June 2012.

The Commissioner also finds that in failing to identify the information requested in request 5 as environmental information (as defined in regulation 2(1) of the EIRs) and deal with the request accordingly under the EIRs, and in failing (in responding to that request) to identify and locate all of the information falling within its scope, the Council failed to comply with regulation 5(1) of the EIRs.

However, the Commissioner finds that the Council was entitled to withhold the information covered by request 5 under section 39(2) of FOISA and regulation 10(4)(b) of the EIRs.

The Council failed to respond Mrs Mochrie's requirement for review within the timescale laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs. In the circumstances, the Commissioner does not require the Council to take any action in respect of this failure in response to Mrs Mochrie's application.

Decision 080/2012
Mrs Lynne Mochrie
and the City of Edinburgh Council



Appeal

Should either Mrs Mochrie or the City of Edinburgh 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
3 May 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.

...

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.

...

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.



35 Law enforcement

- (1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice substantially-
- (a) the prevention or detection of crime;
- ...

39 Health, safety and the environment

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

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

- (1) In these Regulations –

...

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on -

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely



to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;

- (d) reports on the implementation of environmental legislation;
- (e) costs benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c); and
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

5 Duty to make available environmental information on request

(1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.

(2) The duty under paragraph (1)-

...

(b) is subject to regulations 6 to 12.

...

10 Exceptions from duty to make environmental information available–

(1) A Scottish public authority may refuse a request to make environmental information available if-

(a) there is an exception to disclosure under paragraphs (4) or (5); and

(b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.

(2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall-

(a) interpret those paragraphs in a restrictive way; and

(b) apply a presumption in favour of disclosure.

...

(4) A Scottish public authority may refuse to make environmental information available to the extent that



...

- (b) the request for information is manifestly unreasonable;

...

16 Review by Scottish public authority

...

- (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.

...