

Decision Notice 135/2021

Parking survey data relating to Transport Assessment

Applicant: The Applicant

Public authority: Glasgow City Council

Case Ref: 202100054



Scottish Information
Commissioner

Summary

The Council was asked for information on parking survey data relating to a specific Transport Assessment and Travel Plan. The Council informed the Applicant that it did not hold any information falling within the scope of the request.

Following an investigation, the Commissioner was satisfied that the Council did not hold the information requested.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (paragraphs (a), (b) and (c) of definition of “environmental information”) (Interpretation); 5(1) and (2)(b) (Duty to make available environmental information on request); 10(1), (2) and (4)(a) (Exceptions from duty to make environmental information available)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 29 October 2020, the Applicant made a request for information to Glasgow City Council (the Council). The information requested was:
... all documentation relating to the Survey Methodology/Data and/or Equivalent Measurement Data including definitions and qualifications submitted by the Consultant Mott MacDonald and verified by the Planning Authority to approve “baseline” evidence-led parking surveys undertaken in 2016 to support the conclusions that: “parking is available in all zones on match days and in the majority of streets parking does not reach beyond 85% of capacity” made in the Transport Assessment and Travel Plan that informed the Planning Decision Notice - Full Planning Permission, granted subject to Condition(s), in respect of Application 17/00470/DC: Erection of three spectator stands for a temporary two-year period at Scotstoun Leisure Centre, 112 Danes Drive, Glasgow G14 9HD.
It is in the public interest to understand the evaluation process that led to the decision to approve documents cited as:
 - *Transport Assessment, by Mott MacDonald, dated February 2017, and*
 - *Travel Plan, by Mott MacDonald, dated February 2017.*
2. The Council responded on 25 November 2020, in terms of regulation 10(4)(a) of the EIRs. It informed the Applicant that, following searches of its Electronic Document and Records Management System (EDRMS), relevant email accounts and hard copy files, it concluded that it did not hold the information requested. The Council explained that the survey methodology data was set by the Consultant preparing the Travel Plan and Transport Assessment, and that general guidance on such plans and assessment was publicly available within the Supplementary Guidance “SG11 Sustainable Transport” of the Council’s City Development Plan and Transport Scotland’s Transport Assessment Guidance (2012). It provided hyperlinks to both sets of guidance. The Council confirmed that, while scoping discussions may have taken place with the Consultant at the time, by telephone, it held no recorded information on any such discussions.

3. On 7 December 2012, the Applicant wrote to the Council requesting a review of its decision, on the basis that it considered the response was incomplete, deceptive and evaded the scope of the request. It also considered the request to be too general and lacking in definition specific to the request's scope. The Applicant explained that it had expected to receive evidence showing how the survey methodology and measurement data supported the conclusion in the Transport Assessment and Travel Plan, which had been accepted by the Planning Authority, that "parking is available in all zones on match days and in the majority of streets parking does not reach beyond 85% of capacity". Referring to the possibility of discussions having taken place, the Applicant considered it unacceptable that there was no audit trail of any methodology for the survey being agreed, to inform past and future planning decision-making.
4. The Council notified the Applicant of the outcome of its review on 8 January 2021, fully upholding its original decision. In relation to possible telephone discussions, the Council stated it had identified Transport Assessment scoping email correspondence regarding discussions held with the Consultant, but this information was no longer held. This, the Council explained, was due to significant disruption to Council IT systems and functionality in December 2015, caused by the catastrophic failure of an air conditioning unit, where access to archived emails was one of the functionalities lost.
5. On 14 January 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated it was dissatisfied with the outcome of the Council's review because it did not believe the Council did not hold the information, and that it was in the public interest for the information to be disclosed. The Applicant disagreed that the Council's IT systems failure was the reason for its failure to disclose information as, in the Applicant's view, public authorities were mandated to have standards which included IT back-up servers.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant had made a request for information to a Scottish public authority and had asked the authority to review its response to that request before applying to him for a decision.
7. On 1 February 2021, the Council was notified in writing that the Applicant had made a valid application and the case was subsequently allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and to answer specific questions. These focussed on the steps taken by the Council to identify and locate any information falling within the scope of the request.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner has considered all of the relevant submissions, or parts of submissions, made to him by both the Applicant and the Council. He is satisfied that no matter of relevance has been overlooked.

Handling in terms of the EIRs

10. Having considered the terms of the request, it is clear that any information falling in scope would be environmental information, as defined in regulation 2(1) of the EIRs. The information in question concerns the parking of vehicles which release emissions into the environment, in connection with aspects of a planning application, and so the Commissioner is satisfied that it would fall within paragraphs (a), (b) and (c) of that definition. The Applicant has not challenged the Council's application of the EIRs in this case and so the Commissioner will consider the request in what follows solely in terms of the EIRs.

Regulation 5(1) – Duty to make environmental information available

11. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any Applicant. This obligation relates to information that is held by the authority when it receives a request.
12. It is important to bear in mind that this obligation relates to information actually held by an authority when it receives the request, as opposed to information which an applicant believes the authority should hold.
13. On receipt of a request for environmental information, therefore, the authority must ascertain what information it holds falling within the scope of the request. Having done so, regulation 5(1) requires the authority to make that information available, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).

Regulation 10(4)(a) – Information not held

14. Regulation 10(4)(a) of the EIRs states that a Scottish public authority may refuse to make environmental information available to the extent that it does not hold that information when the request is received.
15. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority.
16. The Commissioner has taken account of the arguments in the Applicant's requirement for review and its application to the Commissioner, in which it provides reasons why it considers the Council ought to hold the information requested.
17. In its submissions to the Commissioner, the Council stated that it wished to maintain reliance on regulation 10(4)(a) of the EIRs as it held no information falling within the scope of the request.
18. The Council explained that the request had been passed to Development and Regeneration Services (DRS), which was now part of Neighbourhood, Regeneration and Sustainability (NRS), and the staff most likely to hold any relevant information were identified as:

- Planning Officer in DRS/NRS who was the Case Officer for this planning application, identified as best placed to have an overview of any electronic information held falling within the scope of the request.
 - Technical Officer in the Transport Planning Team in NRS, involved in liaising with the Consultant on the scoping for the Transport Assessment and identified as best placed to hold any correspondence with the Consultant which fell within scope.
19. These officers, the Council explained, conducted separate searches at initial request, review and appeal stages, returning a large volume of data which was reviewed for relevance.
20. The Council explained, and provided supporting evidence of, the searches it had undertaken to identify any information falling within the scope of the request. These included searches, by the Case Officer, of:
- Outlook (using keywords “Scotstoun”, “17/00470/DC”, “17-00470”, “Mott MacDonald”, “Glasgow Life”, “Glasgow Warriors” and the names of both the planning applicant’s agent and contact person)- no relevant information was identified.
 - EDRMS Enterprise folder (using the same keyword searches as for Outlook). The Council explained that certain of these searches generated thousands of results (given EDRMS is the storage area for the entire Council), but it was satisfied that none of the content fell within scope, given that the information requested was quite precise. The Council submitted that, if the information were held, it would have been sent to its Planning Department for verification and held by the Case Officer or the Technical Officer. The Case Officer had confirmed she would not normally receive the raw data informing a transport assessment and, had it been received, it would have been forwarded to the Technical Officer (who had the relevant expertise to consider such data).
 - EDRMS Pre-Application Folder - all information saved by the Case Officer relating to Scotstoun was reviewed, but no relevant information was identified.
 - EDRMS Case Folder - all information saved by the Case Officer relating to Scotstoun was reviewed, but no relevant information was identified.
 - C-Drive (using the same keyword searches as for Outlook) - no relevant information was identified.
21. The Technical Officer carried out the following searches:
- Outlook (using keyword searches “Scotstoun Parking”, “Scotstoun”, “Glasgow Warriors”, “Mott” and the email address of the planning applicant’s transport consultant) - no relevant information was identified.
 - EDRMS Transport Planning folders (using keywords “Mott”, “Scotstoun” and the email address of the planning applicant’s transport consultant) - no relevant information was identified.
 - EDRMS Master Planning folder - no specific folder for Scotstoun was identified.
 - EDRMS Planning Applications folder (using keyword “Scotstoun”) - no folder for 17/00470/DC was found.
22. In relation to the data loss in December 2015, the Council explained that this was due to an incident involving the air handling unit and fire suppression system at its primary data centre,

which cause major disruption to its ICT systems. Over 400 systems and applications were impacted, resulting in the majority of users experiencing loss of email, multi-function printing ability, EDRMS, system access (Active Directory), shared drive and most lines of business applications. While the majority of these were restored by early February 2016, issues surrounding the Enterprise Vault (the email archive system) remained, with access to archived emails being one functionality that was lost. In evidence of this, the Council provided the Commissioner with a copy of a report¹ to the Operational Development Scrutiny Committee dated 7 April 2016, which detailed the incident and the services affected, and summarised the restorative work undertaken.

23. With regard to the possibility that scoping discussions had taken place by telephone with the Consultant, the Council explained that the Technical Officer had confirmed he had liaised with, and had archived email correspondence with, the Consultant's transport consultant around December 2015. These emails, however, were no longer accessible and did not appear in the Council's Enterprise Vault (the email archive system) when searched.
24. The Council further submitted that email correspondence relating to the request was lost due to having been stored in a holding folder in Outlook. Only once a planning application is lodged, it explained, is an electronic folder created which generates a reference number. Until then, emails are held in Outlook under a holding name, such as (in this case) "Scotstoun". As the data loss event occurred before the 2017 planning application was lodged, the emails were not saved into the project folder or printed in hard copy.
25. The Council was asked whether it was possible that the Consultant might hold the information on behalf of the Council. In response, the Council explained that normal practice is for the Council, as Planning Authority, to advise prospective applicants, at pre-application stage, on what supporting documentation will be required. In this case, it had informed Glasgow Life (the planning applicant for planning application 17/00470/DC) that a Transport Assessment and Travel Plan were required for the application. The Consultant's report was commissioned by Glasgow Life (as the planning applicant) and was not information the Council would be party to. As Glasgow Life was a separate legal entity, the Council submitted it was not aware whether the Consultant held information on behalf of Glasgow Life.
26. In conclusion, the Council was satisfied that, given the circumstances and the extent and results of the searches carried out, these were sufficient to allow it to conclude that no information was held.
27. Having considered all the relevant submissions and the terms of the request, the Commissioner is satisfied that the Council took adequate, proportionate steps in the circumstances to establish whether it held any information that fell within the scope of the request. He notes that some of the searches described by the Council returned thousands of results which, given the volume, would have been impractical to review comprehensively. However, taking into account the knowledge of the staff members involved in these searches (due to their level of involvement with the development from pre-application stage), the Commissioner is satisfied that any information relevant to the request would have been capable of being identified using their knowledge and the searches described.

¹ <https://www.glasgow.gov.uk/councillorsandcommittees/viewDoc.asp?c=P62AFQDNT1812UDX81>

28. The Commissioner has also taken into account the additional reasons provided by the Council to explain why the information was not held.
29. As explained previously, the Commissioner can only consider what relevant information is actually held by the Council (or was held by it, at the time it received the request). He cannot consider what information it should hold, or what the Applicant might believe it should hold.
30. It is clear that, in its role as the Planning Authority, the Council has an obligation to advise a planning applicant (in this case, Glasgow Life) at pre-application stage on any supporting information or documents that would likely be required. The report by the Consultant was commissioned by Glasgow Life and details a number of parking surveys that were conducted. In the circumstances, the Commissioner can see no reason or requirement for Glasgow Life, or the Consultant, to provide the Council with any raw data from the parking surveys, given the Consultant had been commissioned to conduct these and report on any assessments and conclusions drawn therefrom.
31. Turning to the data loss, the Commissioner acknowledges that the Applicant believes any lost data should have been capable of being recovered through accessing IT back-up servers. Having considered the Council's submissions on this point, including the supporting information in the Committee report referred to, the Commissioner accepts that the Council no longer holds the information referencing the scoping discussions and, in any event, considers it highly unlikely that the information requested would have been present in any lost data.
32. In conclusion, the Commissioner is satisfied, on the balance of probabilities, that the Council does not (and did not, on receiving the request), hold the information requested by the Applicant.

The public interest

33. The exception in regulation 10(4)(a) of the EIRs is subject to the public interest test in regulation 10(1)(b) and so can only apply if, in all the circumstances of the case, the public interest in maintaining the exception outweighs that in making the information available. The question of whether or not a public authority holds information is a factual one, determined on the balance of probabilities. If a public authority does not hold the information, then there is no meaningful public interest test that can be undertaken.
34. In this case, for the reasons set out above, the Commissioner is satisfied that the Council does not (and did not, on receiving the request) hold any information covered by the request. Consequently, he accepts that there is no conceivable public interest in requiring the disclosure of such information and finds that the public interest in making information available is outweighed by that in maintaining the exception.

Decision

The Commissioner finds that Glasgow City Council complied with the Environmental Information (Scotland) Regulations 2004 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or the Council wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Margaret Keyse
Head of Enforcement

6 September 2021

Appendix 1: Relevant statutory provisions

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

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- (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;

...

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

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

...

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