

# Decision Notice 148/2021

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## Drainage system – whether requests manifestly unreasonable

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**The Applicant**

**Public authority: Orkney Islands Council**

**Case Refs: 202100139, 202100343, 202100344, 202100345**



Scottish Information  
Commissioner

## Summary

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The Council was asked about a private drainage system. The Council considered that the requests were manifestly unreasonable. The Applicant disagreed and believed that his requests should be answered by the Council and the information provided to him. The Commissioner agreed that the requests were manifestly unreasonable, when considered in the context created by previous correspondence on the matter.

## Relevant statutory provisions

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

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)(b) (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. Both Appendices form part of this decision.

## Background

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1. On 18 November 2020 and on 26 January 2021, the Applicant made requests for information to Orkney Islands Council (the Council). The information requested concerned a drainage connection issue. The full wording of the requests can be seen at Appendix 2.
2. The Council responded on 8 December 2020 and on 9 February 2021. It responded in terms of regulation 10(4)(b) of the EIRs in respect of both requests, stating that it would be manifestly unreasonable for it to provide responses. The Council stated that all of the information sought had either already been provided to the Applicant or was available in the public domain. The Council noted that it had already undertaken voluminous correspondence with the Applicant and that the public interest weighed in favour of ensuring that the EIRs were not used in a manner which was manifestly unreasonable.
3. On 22 December 2020 and on 14 February 2021, the Applicant wrote to the Council requesting a review of its decisions on the basis that he did not agree with the Council's views that it would be manifestly unreasonable to provide him with responses to his requests.
4. The Council notified the Applicant of the outcome of its reviews on 22 January 2021 and on 12 March 2021. The Council upheld its application of regulation 10(4)(b) of the EIRs in respect of both of the Applicant's requests
5. On 31 January 2021 and on 16 March 2021, the Applicant wrote to the Commissioner, applying 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 specified modifications. The Applicant stated he was dissatisfied with the outcome of the Council's reviews because he had not received responses to his requests or to his review requirements. He did not believe that the Council's application of regulation 10(4)(b) of the EIRs was valid and stated that he required responses which told the truth of the matter.

## Investigation

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6. The applications were accepted as valid. The Commissioner confirmed that the Applicant made requests for information to a Scottish public authority and asked the authority to review its responses to those requests before applying to him for a decision.
7. On 9 February 2021 and 23 March 2021, the Council was notified in writing that the Applicant had made valid applications. The cases were then 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 related to its reasoning for finding the requests to be manifestly unreasonable and on the public interest test.
9. The Applicant was also asked for any submissions he wished to make.
10. Both the Council and the Applicant provided their submissions to the Commissioner.

## Commissioner's analysis and findings

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11. In coming to a decision on this matter, the Commissioner 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

12. The Council considered the Applicant's request under the EIRs, having concluded that the information requested was environmental information as defined in regulation 2(1) of the EIRs.
13. Where information falls within the scope of this definition, a person has a right to access it (and the public authority has a corresponding obligation to respond) under the EIRs, subject to the various restrictions and exceptions contained in the EIRs.
14. The Commissioner accepts that, as the requests concern information relating to drainage and sewers and related planning matters, and the information requested by the Applicant falls within the definition of environmental information set out in regulation 2(1), in particular paragraphs (a), (b) and (c) of that definition, the Council was correct to consider the requests under the EIRs.

### Section 39(2) of FOISA - Environmental information

15. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined by regulation 2(1) of the EIRs) is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs. In this case, the Commissioner accepts that the Council was entitled to apply this exemption to the information withheld under FOISA, given his conclusion that it is properly classified as environmental information.
16. As there is a statutory right of access to environmental information available to the Applicant in this case, the Commissioner accepts, in all the circumstances, that the public interest in maintaining this exemption (and responding to the request under the EIRs) outweighs any public interest in disclosing the information under FOISA.

17. The Commissioner therefore concludes that the Council was correct to apply section 39(2) of FOISA, and consider the Applicant's information requests under the EIRs.

### **Regulation 5(1) of the EIRs - Duty to make environmental information available**

18. 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.
19. 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 provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
20. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 applies.

### **Regulation 10(4)(b) of the EIRs - Manifestly unreasonable**

21. Regulation 10(4)(b) provides that a Scottish public authority may refuse to make environmental information available to the extent that a request for information is manifestly unreasonable. In considering whether the exception applies, the authority must interpret it in a restrictive way and apply a presumption in favour of disclosure. Even if it finds that a request is manifestly unreasonable, it is still required to make the information available unless, in all the circumstances, the public interest in doing so is outweighed by that in maintaining the exception.
22. The Commissioner's general approach is that the following factors are relevant when considering whether a request is manifestly unreasonable. These are that a request:
  - (i) would impose a significant burden on the public body;
  - (ii) does not have a serious purpose or value;
  - (iii) is designed to cause disruption or annoyance to the public authority;
  - (iv) has the effect of harassing the public authority; or
  - (v) would otherwise, in the opinion of a reasonable person, be considered manifestly unreasonable or disproportionate.
23. This is not an exhaustive list. Depending on the circumstances, other factors may be relevant, provided the impact on the authority can be supported by evidence. The Commissioner recognises that each case must be considered on its merits, taking all the circumstances into account.

#### *The Applicant's submissions*

24. The Applicant stated that in 2016 he received a copy of an Independent Review of Regulatory Process on the matter of the drainage connection. He felt that the Review was deeply flawed and questioned its findings. He stated there had been no open or constructive response from the Council in response to the report and that the Policy on Unacceptable Actions and Challenging Behaviour by Service Users and Complainants was imposed on him by the Council.

25. The Applicant submitted that what he was trying to achieve through his correspondence with the Council was to establish the full truth with respect to the drainage installation in question, but that he had not yet done so.
26. He advised the Commissioner that he was attempting to have the Council recognise and accept the full truth, which was (in his view) that the drainage system at the property in question did not comply with Building Standards and therefore put at risk the health, safety, welfare and convenience of persons in or about the buildings and of others who may be affected by matters connected with the buildings. He stated that the public, as well as the owner of the property in question, were at risk and that the Council neither recognised nor accept this.
27. He emphasised that he wanted to have the Council take action, which, in his opinion, it had sole authority to do, to require the property owner to address the drainage in accordance with Building Standards. He stated that no action had been taken by the Council in this respect.

#### *The Council's submissions*

##### *Background to the applications to the Commissioner*

28. By way of background, the Council explained that a dispute had arisen between the Applicant and the Council on the matter of the drainage issues surrounding the Applicant's [redacted], and neighbouring houses. The correspondence relating to the issue started in 2009. Over the next three years there followed various correspondence between the Applicant's [redacted], Building Standards department and the Council's Environmental Health team. The matter has been pursued by the Applicant ever since.
29. The Council considered the matter to be essentially a dispute between neighbours. On 13 September 2013, the Council's Planning and Environmental Control Officer advised the Applicant that the matter was a civil one between the Applicant's family and neighbouring properties. On 23 May 2014, the Council allowed the Applicant to inspect the files it held on the properties in question and provided a room for the Applicant to go through these.
30. The Applicant alleged breaches of Building Warrants and Regulations and the Council advised him to contact the Scottish Public Services Ombudsman (the SPSO) if he was unhappy with its handling of the situation.
31. On 1 August 2016, the SPSO wrote to the Applicant (in connection with a complaint he had made about the Council's issuing of a House of Multiple Occupation (HMO) licence for the property which he believed was responsible for the drainage issue). The SPSO stated that the Applicant's complaints would not be considered further by it.
32. On 11 May 2017, the Applicant wrote to the Council's Chief Executive, seeking "assistance and co-operation" from the Council in requiring [redacted] neighbour to disconnect her drain. Following internal discussion between the Executive Director of Corporate Services, Head of Legal Services and Head of Planning and Regulatory Services, it was concluded that there was no new information held by the Council that could be provided to the Applicant and that the Council did not have a locus in assisting with what was a private matter between neighbours.
33. On 13 August 2019, the Applicant was asked to refrain from lobbying members of the Licencing Committee in relation to an application from the HMO. The Council stated that the Applicant's letters and emails to the Council (some of which could run to over 20 pages)

continued, and contained nothing new to the matters which the Council had already addressed.

34. On 14 January 2020, the Applicant lodged another complaint with the SPSO. However, the SPSO determined that the complaint was not a matter that it could take forward.
35. On 1 November 2020, the Applicant wrote again to the Council's interim Chief Executive asking for his complaint to be reinvestigated. The interim Chief Executive responded that the Applicant had not raised any new matters and that any future correspondence from him would be read, but not responded to, unless it contained new information (the Council's Policy on Unacceptable Actions and Challenging Behaviour by Service Users and Complainants).
36. While the Applicant required the Council to compel the owner of the HMO to "have the drains brought up to the standards applicable at the time they were installed", the Council's position was that it had taken all reasonable steps to ensure that the building in question complied with the approved plans and specifications. Numerous site inspections had been undertaken at the relevant times. The Council emphasised that it did not have an obligation to consider whether drainage work complied with Building Regulations when considering an HMO application. The Council stated that it had satisfied all of its statutory duties in respect of planning and building approvals and HMO licensing.
37. On 18 November 2020 and on 26 January 2021 the Applicant made his requests to the Council for information on the drainage matter.

#### *Significant burden*

38. The Council provided the Commissioner with copies of correspondence on the matter from the Applicant and his sister from May 2012 to present day. The Council stated that, while initially trying to address the Applicant's and his sister's concerns, it had eventually had to apply its Unacceptable Actions Policy in respect of correspondence on the matter. Such correspondence, while being read, would be no longer responded to unless it raised a new matter. During periods when the Council rescinded these restrictions, the voluminous correspondence began over again and the policy had to be re-instated.
39. The Council acknowledged that responding to the requests alone would not necessarily impose a significant burden when taken in isolation. However, the Council pointed out that it was the cumulative effect of the Applicant's correspondence on the matter over a number of years, which had diverted an unreasonable proportion of the Council's financial and human resources away from its other statutory or core operations, which were deemed to be of fundamental importance to the Council.
40. The Council explained that the Applicant had been in contact with the Executive Director of Corporate Services, the Head of Planning and Regulatory Services, and the Head of Legal Services. There was also a significant body of internal correspondence between Council officers, as responding to the Applicant's queries often required co-ordination between different services.
41. The Planning Department also had files containing correspondence relating to the Applicant's objections to his neighbour's planning permissions. The Environmental Health Department too had separate files relating to the specific drain which is of concern to the Applicant.

42. The Council submitted that many different staff members in different departments were having their time taken up by having to respond to the Applicant's correspondence on the matter.

*Serious purpose or value*

43. The Council stated that the Applicant's requests covered matters which had already been dealt with by it. The Council's position was that there was simply nothing more it could add on these matters, but that the Applicant continued to attempt to find new ways to ask the same questions, or to manipulate information so that it looked like there was new material to be addressed.
44. The Council submitted that the Applicant had not achieved the outcome he would like to have achieved through several years of persistent, direct correspondence with senior Council officials, Elected Members and his MP and that he has therefore turned to Freedom of Information legislation as a final attempt at coercing the Council into further interaction with him, as opposed to genuinely seeking access to information.

*Designed to cause disruption or annoyance*

45. The Council stated that it fully recognised that, in normal circumstances, FOI requests are to be treated as applicant blind. There are, however, occasions where the intention behind a request cannot, in the whole circumstances of the case, be disregarded. The Council argued that, in light of the sheer volume of previous correspondence and the timescale over which it had taken place, it was of the view that these particular requests were as much designed to cause disruption or annoyance to the public authority as anything else.
46. The Council noted that, over the years of correspondence on the matter of drainage from the HMO, it had spent hundreds of personnel hours and thousands of pounds in responding to the Applicant's requests, yet he continued to seek different ways to draw the Council's attention to what appeared to be, in the Council's view, a personal crusade.

*Effect of harassing the public authority*

47. The Council argued that the Applicant's requests did have the effect of harassing the Council and the cumulative impact of his correspondence rendered the requests manifestly unreasonable due to their effect of harassing the Council.
48. Despite Council staff spending hundreds of hours dealing with the Applicant's correspondence on this matter over the years, and finding no evidence that they, or their predecessors, had acted in any way contrary to legislation or relevant professional standards, the Applicant continued to be critical of the Council. This was despite his having exhausted the Council's complaints process, with the SPSO declining to consider his complaints, and an Independent Surveyor finding that officers acted appropriately.
49. It was the Council's view that the Applicant had shown little regard for the fact that he continued to take up a disproportionate amount of officer time during a period when the Council was attempting to focus its resources on the matters which were of greatest importance to the people of Orkney as a whole.

*Otherwise manifestly unreasonable or disproportionate*

50. Taken in isolation, the Council stated, the Applicant's requests might not appear to be manifestly unreasonable. However, the Council argued that it was extremely difficult to view these requests as reasonable and proportionate in light of the context created by previous and ongoing correspondence from the Applicant.

51. In conclusion, the Council's view was that the voluminous correspondence represented the continuation of a pattern of behaviour which could only be seen as manifestly unreasonable.
52. The Council considered it highly unlikely that any information it held would shed light on, or alter, the Applicant's position. The subject in question had already been thoroughly addressed, including through the relevant complaints procedure and the Applicant's key aim appeared to be to continue his grievance against the Council.

*All information held has been provided*

53. The Council provided the Commissioner with information outlining that the Applicant had been provided with, or had had the opportunity to view, all the relevant information held by the Council relating to all of the parts of the information requests being considered in this appeal.

## **The Commissioner's findings**

*Significant burden*

54. In his briefing on regulation 10(4)(b) of the EIRs,<sup>1</sup> the Commissioner indicates that a request will impose a significant burden on a public authority where dealing with it would require a disproportionate amount of time and the diversion of an unreasonable proportion of its financial and human resources away from its other statutory or core operations.
55. In this case, the Commissioner notes that the Council has not stated that a significant burden has been imposed by the Applicant's two requests as they stand alone. As stated in the Commissioner's guidance, the history of the Applicant's dealings with an authority may be relevant in determining whether a request is manifestly unreasonable. The Commissioner is of the view that this decision should take account of the history of correspondence and dealings between the Council and the Applicant. He is therefore not reaching his decision solely on the basis of the requests made on 18 November 2020 and 26 January 2021.
56. Taking account of the timespan over which the Applicant has been in correspondence with the Council over the drainage issue and the volume of correspondence that he has submitted to the Council on, what the Council deems to be a fully investigated and closed matter, the Commissioner finds that this has placed a significant burden on the Council.

*Designed to cause disruption and annoyance*

57. While the Commissioner accepts that the Applicant's reasons for persisting with his enquiries and correspondence with the Council is because he feels that the Council should compel the owner of the property in question to make changes to her private drainage system, he accepts that the Council appears to have taken all reasonable steps, within its jurisdiction, to address the matters raised by the Applicant. While the Applicant may not intend to cause disruption and annoyance to the Council and its officers, the fact is that such disruption and annoyance does appear to be the end result of the Applicant's continued correspondence on the matter. While accepting that there may not be a deliberate intent, the Commissioner must acknowledge that a substantial degree of disruption and annoyance appears to have been endured by the Council over the years in question.

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<sup>1</sup> [https://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Manifestly\\_unreasonable\\_requests.aspx](https://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Manifestly_unreasonable_requests.aspx)



*Serious purpose or value*

58. The Applicant wants the Council to require changes to be made to the private drainage system. There is nothing to suggest that the Applicant considers his requests to have anything other than a serious purpose or value. However, from the Council's point of view, it has done all that can be reasonably expected of it within its own jurisdiction and can identify no serious purpose or value in repeatedly going over old ground.
59. In the circumstances, having familiarised himself with the background of the case and having considered the voluminous correspondence between the Applicant and the Council and the wording of the requests, the Commissioner can come to no other conclusion than the requests do not, objectively, have a serious purpose or value.

*Effect of harassing the public authority*

60. Given that the Council has been fielding correspondence from both the Applicant and his sister on this specific matter since 2009, and given that the Applicant appears to have exhausted the Council's internal complaints procedures (and those of the SPSO) in relation to the matter, and yet the Applicant continues to send lengthy correspondence to the Council and the scattergun approach to his correspondence (often copying the same correspondence to various individuals or departments within the Council), the Commissioner accepts the Council's position that it has the effect of harassing the Council. The Commissioner notes that whether or not the actual intent is to harass, he must take account of the actual effect that it has on the Council.

*Otherwise manifestly unreasonable or disproportionate*

61. As noted earlier, taken in isolation, the Applicant's requests of 18 November 2020 and 26 January 2021 might not appear to be manifestly unreasonable. But they are both intrinsically connected to the subject matter, i.e. the drainage issue in question. The Commissioner considers, from the information supplied to him by the Council, that the Council has attempted to be as fair and open with the Applicant as it could be. For example, when it applied the Unacceptable Actions Policy in the Applicant's case, it did not do so on a permanent basis. Rather it applied the policy for limited periods and then removed it, in the hope that the Applicant would cease the repetitive correspondence. However, the correspondence resumed at previous levels. Also, the Council provided access to its files to the Applicant and his sister and provided them with a space to study these files to check information that may have been of interest to them. In the light of the fact that the Council has acted with a degree of patience and helpfulness towards the Applicant, the Commissioner understands why the Council has now reached the stage where it believes that it is manifestly unreasonable and disproportionate to expect it to continue to deal with the Applicant's persistent contacts on the matter of the drainage issue.
62. Given the number and frequency of the Applicant's contacts with the Council on the matter in question (of which his information requests are an integral part), and the matters considered above, the Commissioner is satisfied that the requests would, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.

*Outcome on regulation 10(4)(b)*

63. For the reasons set out above, the Commissioner is satisfied that the Applicant's requests for information are manifestly unreasonable and that, in line with regulation 10(4)(b) of the EIRs, the Council was entitled to refuse to make information available in response to those requests.

## **EIRs: the public interest test**

64. As noted above, the exception in regulation 10(4)(b) is subject to the public interest test in regulation 10(1)(b) of the EIRs. This means that, although the Commissioner is satisfied that the requests are manifestly unreasonable, he must require the Council to respond to the requests if the public interest in making the information available outweighs that in maintaining the exception.

### *Public interest submissions from the Applicant*

65. The Applicant commented that an HMO Licence is a legal requirement for houses of multiple occupation. He stated that it was therefore imperative, and in the public interest, that the correct procedures were followed and the correct information was provided by the Council to the Licencing Committee.
66. The Applicant submitted that the HMO in question (which is the subject of the drainage matter) was not the only HMO in Orkney. He was of the view that it was clearly in the public interest that all such houses and their owners are treated fairly, equitably and consistently by the Council.
67. The Applicant also argued that the purpose of the Building Standards system is to protect the public interest. He commented that the Council should be adhering to this, but said it had taken no action in response to his complaints about the private drainage system. He stated that *all* drainage systems should fully comply with Building Standards and that the public interest must over-ride the arbitrary selection of an exemption by the Council for a particular HMO.

### *Public interest submissions from the Council*

68. The Council stated that responding to the Applicant's requests was not something that served the public interest. The Council believed that there was a more compelling public interest in ensuring that the EIRs were not used in a manner which was manifestly unreasonable, for example in a situation such as this one, where a significant amount of correspondence had already been entered into and there was no new information to provide.
69. In reaching this conclusion, the Council stated that they had taken into account a number of factors:
- A significant amount of resource had already been diverted towards responding to the Applicant's correspondence over the years, including commissioning an independent review.
  - The Council's complaints procedure has been utilised, and exhausted.
  - External bodies (Scottish Water, the SPSO) had also entered into substantial correspondence with the Applicant, and these avenues had also now been exhausted.
  - The Applicant appeared unable or unwilling to accept the Council's position, and continued to pursue his grievance.
70. The Council's view was that there was no public interest in responding to the Applicant's requests. The Council believed that it had a duty to draw a line under correspondence with the Applicant on the matter of the drainage in and around his [redacted] property. The Council considered that the public would have reason to feel aggrieved if they were to become aware of the extent of the resources expended on this particular issue over a number of years. The Council believed the public interest would be best served by directing

the Council's resources towards continuing to provide day-to-day services of importance to Orkney residents, and focusing on the Council's post-pandemic priorities for recovery.

#### *The Commissioner's conclusion on the public interest*

71. In reaching his conclusion on the public interest, the Commissioner has considered the submissions made by both the Applicant and the Council. He has also taken account of the fact that, during the long course of the Applicant's pursuit of this matter, other agencies and an independent surveyor have also been involved, and that the Applicant appears to have exhausted all the avenues open to him.
72. In the Commissioner's view, there is an inherent public interest in the disclosure of information to ensure that an authority is transparent and accountable to allow its decisions and actions to be scrutinised.
73. Against this, the Commissioner has considered the strong public interest in ensuring that an authority can carry out its statutory functions without unreasonable or disproportionate disruption. There is also a public interest in ensuring that the EIRs are used responsibly. While the Commissioner encourages public authorities to act in a transparent and accountable way, which benefits the wider public, he is satisfied that the Council has already devoted a large amount of time in attempting to address the Applicant's concerns. There is a public interest in ensuring that the Council's resources are not diverted from its other statutory functions – or from responding to other information requests – in responding to manifestly unreasonable requests.
74. After careful consideration, the Commissioner must find that the public interest in responding to the information requests made by the Applicant is outweighed by the public interest in maintaining the exception in regulation 10(4)(b) of the EIRs. The Council was, therefore, entitled to apply that exception to refuse to respond to the Applicant's requests.

## **Decision**

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The Commissioner finds that Orkney Islands Council complied with Part 1 of the Freedom of Information (Scotland) Act 2002 and with the Environmental Information (Scotland) Regulations 2004 in responding to the information requests made by the Applicant.

## **Appeal**

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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**  
**30 September 2021**

## Appendix 1: Relevant statutory provisions

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### Freedom of Information (Scotland) Act 2002

#### 1 General entitlement

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

...

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

#### 2 Effect of exemptions

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

...

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

...

#### 39 Health, safety and the environment

...

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

...

### 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;

...

## **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;

....

## Appendix 2: Information requests

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### 1 request made 18 November 2020 (request A)

#### Part 1 of request A

What information does Orkney Islands Council hold which allowed the Council to categorically state in 2016 that the drainage from [redacted] connected to the Scottish Water sewer system?

With respect to the application for a House in Multiple Occupation Licence for [redacted], the Executive Director of Corporate Services [redacted] and the Executive Director of Development & Infrastructure ([redacted] provided a Joint Report to the Licensing Sub-committee in [redacted] and [redacted]. Appendix 2 of the Joint Reports was a Site Plan prepared by Orkney Islands Council. The Site Plan had the following note –

“Exact run of drains/sewers not known, connects to SW sewer system.”

#### Part 2 of request A

What information does Orkney Islands Council hold which allowed the Council to categorically state in 2018 that [redacted] had prevented the drainage of [redacted] via the private drain to the public sewer?

In June 2018, [redacted].

#### Part 3 of request A

What information does Orkney Islands Council hold in relation to the change in destination of [redacted] drainage from a connection to the Scottish Water Sewer System [redacted] to a connection through to [redacted] Private Drain [redacted]?

#### Part 4 of request A

With respect to a House in Multiple Occupation, which Building Regulations, Planning Consents or other Statutory Controls apply to the drainage system(s) from the curtilage of the House in Multiple Occupation to the public sewer?

A Report (Review of Regulatory Processes by Orkney Islands Council) provided by Orkney Islands Council states –

“It is the building owners who have the responsibility to comply with minimum standards and ensure that works are carried out in accordance with the building warrant and with the building regulations, planning consents and other statutory controls.

Licensing of Houses in Multiple Occupation: Statutory Guidance for Scottish Local Authorities states (para 4.16.8) –

“The building would be expected to be provided with a safe and hygienic drainage system which complies with the relevant British or European Standards.”

### 3 requests made on 26 January 2021 (requests B, C and D)

#### Request B

What investigations did Orkney Islands Council undertake and what actions did Orkney Islands Council take when the Council identified that the drainage serving [redacted] was connected to [redacted] private drain and therefore:

- a. Did not correspond to the Building Inspection information as reported in the [redacted] letter from the Executive Director of Development & Infrastructure?
- b. Did not comply with the requirements of Building Warrant [redacted] as reported in the [redacted] letter from the Executive Director of Development & Infrastructure?
- c. Did not correspond to any of the statements in the [redacted] letter from the Executive Director of Development & Infrastructure?

### Request C

What investigations did Orkney Islands Council undertake and what actions did Orkney Islands Council take when the Council identified that the drainage serving [redacted] was connected to [redacted] private drain and therefore:

- a. Did not correspond to the Building Inspection information as reported in the [redacted] letter from the Executive Director of Development & Infrastructure?
- b. Did not comply with the requirements of Building Warrant [redacted] as reported in the [redacted] letter from the Executive Director of Development & Infrastructure?
- c. Did not comply with the Property Report for Grant Assessment as reported in the [redacted] letter from the Executive Director of Development & Infrastructure?
- d. Did not correspond to any of the statements in the [redacted] letter from the Executive Director of Development & Infrastructure?

### Request D

What investigations did Orkney Islands Council undertake and what actions did Orkney Islands Council take when the Council identified that the drainage serving [redacted] was connected to [redacted] private drain and therefore:

- a. Did not correspond to the Building Inspection information as reported in the [redacted] letter from the Executive Director of Development & Infrastructure?
- b. Did not comply with the requirements of Building Warrant [redacted] as reported in the [redacted] letter from the Executive Director of Development & Infrastructure?
- c. Did not correspond to any of the statements in the [redacted] letter from the Executive Director of Development & Infrastructure?

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