

Decision Notice

Decision 078/2016: Mr William Chisholm and Scottish Borders Council

Risk assessments

Reference No: 201501105

Decision Date: 4 April 2016



Scottish Information
Commissioner

Summary

On 4 March 2015, Mr Chisholm asked Scottish Borders Council (the Council) for information regarding risk assessments it undertook before amending the contract with New Earth Solutions (Scottish Borders) Ltd (NES).

The Council withheld all information. Following a review, the Council disclosed two documents but withheld the remainder. Mr Chisholm remained dissatisfied and applied to the Commissioner for a decision.

The Commissioner investigated and found that the Council partially failed to respond to Mr Chisholm's request for information in accordance with the EIRs. The Council failed to identify that the withheld information was environmental information and to provide reasonable advice and assistance to Mr Chisholm.

The Commissioner found that the Council was correct to withhold information under the exception in regulation 10(4)(b) of the EIRs, accepting that responding to the request would be manifestly unreasonable.

The Commissioner required the Council to offer Mr Chisholm advice and assistance, to enable him to narrow his request.

Relevant statutory provisions

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) (Interpretation) (definitions (a), (b) and (c) of "environmental information"); 5(1) and (2)(b) (Duty to make environmental information available on request); 7(1)(a) (Extension of time); 9(1) and (3) (Duty to provide advice and assistance); 10(1), (2) and (4)(b) (Exceptions from duty to make environmental information available on request)

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. In February 2015, the Council announced that it was not proceeding with a 24-year contract for an integrated waste management facility near Galashiels. The contract had been agreed with New Earth Solutions Ltd. (NES). (The Commissioner is aware of a number of trading vehicles set up by New Earth Solutions, but in this decision, NES should be taken to refer only to New Earth Solutions (Scottish Borders) Ltd.)
2. On 4 March 2015, Mr Chisholm made a request for information to the Council. The information requested was:
 - (i) Information contained in risk assessments carried out by, for, or on behalf of the Council prior to the contract being awarded to New Earth Solutions (NES) Group Ltd.

- (ii) Steps taken by the Council prior to April 2013 - when the decision was taken jointly to amend the proposals – to satisfy itself that NES possessed the technology and the funding to deliver the project. Mr Chisholm asked the Council to supply information contained in any documentation/emails relating to this aspect of the ground work.
- 3. The Council responded on 6 April 2015. It notified Mr Chisholm that it was withholding information under section 33(1)(b) of FOISA (Commercial interests and the economy), as its contract with NES classified such information as commercially confidential and confidentiality clauses remained in place for six years following the end of the contract.
- 4. The same day, Mr Chisholm wrote to the Council requesting a review of its decision on the basis that, given that the termination of the contract led to the loss of £2 million of public money, all documentation regarding the matter should be published.
- 5. The Council notified Mr Chisholm of the outcome of its review on 8 June 2015. The Council explained that it had reviewed the withheld information in order to ascertain whether there was any information it could disclose without breaching the confidentiality agreement it had signed, but it found that the information was intertwined to such an extent that it was not possible to produce documents, even in redacted form, which could be disclosed. The Council provided Mr Chisholm with two reports which had been laid before the Council and which it considered it could disclose.
- 6. On 11 June 2015, Mr Chisholm applied to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. Mr Chisholm stated he was dissatisfied with the outcome of the Council's review because it was in the public interest to have the key elements of the Council's decision making released into the public domain.

Investigation

- 7. The application was accepted as valid. The Commissioner confirmed that Mr Chisholm made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
- 8. On 30 June 2015, the Council was notified in writing that Mr Chisholm had made a valid application. The Council was asked to send the Commissioner the information withheld from him.
- 9. The Council did not initially provide the Commissioner with the withheld information; instead, it provided the Commissioner with a copy of the confidentiality agreement it had signed with NES. It raised concerns with regard to the withheld information being subject to this confidentiality agreement.
- 10. The case was allocated to an investigating officer and after, an exchange of correspondence, the Council provided the withheld information.
- 11. 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 answer specific questions including justifying its reliance on any provision of FOISA or the EIRs it considered applicable to the information requested.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Mr Chisholm and the Council. She is satisfied that no matter of relevance has been overlooked.

FOISA or the EIRs?

13. During the investigation, the Council indicated that it had changed its position and now considered the withheld information to be environmental, as defined in regulation 2(1) of the EIRs. The Council provided submissions solely in terms of the EIRs.
14. 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.
15. Having considered the nature of the withheld information, the Commissioner is satisfied that it is environmental information as defined within regulation 2(1) of the EIRs. The Commissioner considers it would fall within paragraphs (a), (b) and (c) of the definition of environmental information (as information on the state of the elements of the environment).
16. The Commissioner must, therefore, conclude that by initially failing to consider and respond to Mr Chisholm's request and requirement for review under the EIRs, the Council failed to comply with regulation 5(1) of the EIRs.

Section 39(2) of FOISA (Health, safety and the environment)

17. 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 Council informed the investigating officer that it wished to apply the exemption in section 39(2) to the withheld information.
18. Given her conclusion that the withheld information is properly classified as environmental, the Commissioner is satisfied that the Council was correct to apply the exemption in section 39(2) of FOISA. The exemption is subject to the public interest test in section 2(1)(b) of FOISA. As there is a separate statutory right of access to environmental information available to Mr Chisholm in this case (something he has not disputed), the Commissioner finds that the public interest in maintaining this exemption and dealing with the request in line with the EIRs outweighs any public interest in disclosure of the information under FOISA.
19. The Commissioner will, therefore, consider this case in what follows solely in terms of the EIRs.

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

20. Regulation 5(1) of the EIRs, subject to the various qualifications contained in regulations 6 to 12, requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant.
21. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 apply and, in all the circumstances of the

case, the public interest in maintaining the exception or exceptions outweighs the public interest in making the information available.

22. In its submissions, the Council confirmed that it wished to rely on regulation 10(4)(b) in respect of all of the withheld information.

Regulation 10(4)(b) (Manifestly unreasonable)

23. Under regulation 10(4)(b) of the EIRs, a Scottish public authority may refuse to make environmental information available if the request is manifestly unreasonable. This exception can only apply where, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception. In addition, a Scottish public authority must apply a presumption in favour of disclosure (regulation 10(2)(b)) and it must interpret the exception restrictively (regulation 10(2)(a)).
24. There is no definition of "manifestly unreasonable" in the EIRs, or in Directive 2003/4/EC¹ from which the EIRs 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.
25. Generally, in applying this exception, the Commissioner is likely to take into account the same kinds of considerations as she would in reaching a decision as to whether a request is vexatious in terms of section 14(1) of FOISA, as detailed in her briefing². The Commissioner's general interpretation, as set out in her briefing, is that the following factors are relevant. The 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
 - (v) would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
26. 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 should be considered on its own circumstances at the time.
27. As with a "vexatious" request, there may be circumstances where the burden of responding alone justifies deeming a request to be "manifestly unreasonable". Unlike FOISA, there is no cost limit on complying with a request for environmental information under the EIRs, but there may be cases where the time and expense involved in complying with a request would be regarded as excessive by any reasonable person.
28. The Council submitted that the process of risk assessment was not a single action, nor was it encapsulated in a single document. The Council submitted that risk assessment formed part of the entire process from the tender for the project, together with the competitive dialogue process that followed thereafter.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF>

² <http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Section14/Section14Overview.aspx>

29. The Council explained that, prior to the decision of the Council in April 2013, the risk assessment process was a continuous programme of meetings, discussions, conversations and challenging information provided by NES. The Council noted that there were literally hundreds of documents produced during that process. This was because NES were subject to a contractual obligation to demonstrate that they were pursuing “all reasonable endeavours” to meet their obligations under the contract.
30. The Council submitted that, given the terms of the request, the request made by Mr Chisholm should be considered manifestly unreasonable as the volume of documentation falling within the scope of the request was enormous. The Council provided the Commissioner with copies of the information falling within the scope of the request and submitted that she would be able to appreciate the scale of the work required to copy, collate and redact the information so that it could be provided in response to the request. The Council stated that this could not be readily managed within the statutory timeframe, even with the additional 20 working days available under the EIRs (regulation 7(1)).
31. The Council argued that the cost of complying with Mr Chisholm’s request, in terms of officers’ time being diverted from its core functions, would be significantly disproportionate. The Council noted that its officers have already spent many hours preparing information to release to Mr Chisholm on the subject of this project. The Council acknowledged that while it is not Mr Chisholm’s intent to harass the Council, in this particular instance, and given all the circumstances, the request does in fact have that effect.
32. Mr Chisholm argued that his request was not unreasonable, that he had never asked for the information before, and that this request is clearly separate from the other requests he had made. Mr Chisholm challenged the Council’s assertion that thousands of documents were captured by his request; he had spoken to a procurement expert who had dismissed the idea that there could be thousands of relevant risk assessments. Mr Chisholm submitted that the procurement expert had indicated that there should only be about 5-10 financial reports and perhaps 3-8 technology reports.
33. Mr Chisholm argued that there was no evidence of harassment on his part and if the Council made available the financial and technology reports referred to by the procurement expert, there were no grounds on which to deny his request as manifestly unreasonable.
34. The Commissioner acknowledges that Mr Chisholm is only seeking information that encapsulate the steps taken by the Council to manage risk or demonstrate that the Council was aware of the risks associated with the NES waste management project, and that he believes this should be available in a few key documents. However, the Commissioner also recognises that “risk assessment” may be a continuous process, rather than a judgement made at a particular point. This is especially so in relation to an ongoing project, where risks may have to be assessed continually as circumstances change.
35. With regard to the NES project, the Commissioner accepts that the Council was continuously assessing risk and that all correspondence between NES and its own advisors formed part of that risk assessment process. The Commissioner has taken into account the views of the procurement expert referred to by Mr Chisholm, but she considers that while Mr Chisholm may only be seeking a handful of documents concerned specifically with an assessment of risk, the Council’s broader interpretation of his request is also valid, to the extent that the request encompasses information from many more documents than Mr Chisholm intended.
36. The Commissioner notes that the Council has provided her with more than 3,000 documents which it claims fall within the scope of Mr Chisholm’s request. These documents differ in type

and content, but it is clear that they all relate to the NES project and record information exchanges between the Council, NES and external third parties. The Commissioner is satisfied that all of these documents form part of the risk assessment process referred to by the Council.

37. The Commissioner must now consider whether it was reasonable for the Council to comply with Mr Chisholm's information request.
38. The Council claims responding to the request would divert significant resources from its "core" functions. It is the Commissioner's view that as a statutory function, responding to information requests under FOISA and the EIRs is part of its core functions; the issue is whether the demand on resources is manifestly unreasonable in the circumstances of this case.
39. The Commissioner has considered the withheld information and she notes that the documents contain some information that is commercially or otherwise sensitive as well as the personal data of third parties. The Commissioner considers it likely that in order for the Council to comply with this request, it would have to redact many of the 3,000 documents it has identified as falling within the scope of Mr Chisholm's request, in order to remove third party personal data and sensitive information.
40. Given the number of documents under consideration and the significant amount of redactions that would have to be made before disclosure, the Commissioner is minded to accept the Council's arguments that it could not comply with this request within the timescales set out in regulation 5(2)(a) of the EIRs, even if it extended the timescales by a further 20 working days as permitted by regulation 7(1) of the EIRs. The Commissioner acknowledges that compliance with the request would be take a significant amount of staff time and would involve several officers.
41. The Commissioner recognises that it was not Mr Chisholm's intent that his request for information would involve more than 3,000 documents, and that he had not intended to harass the Council. She acknowledges that he only expected a small amount of information would fall within the scope of his request. Nevertheless, the Commissioner considers that the Council's interpretation of the scope of his request is valid. She accepts that the information covered by his request is voluminous and that preparing it for disclosure under the EIRs would place an unreasonable burden on the Council.
42. In all the circumstances, the Commissioner accepts that Mr Chisholm's request was manifestly unreasonable. As such, she finds that the Council correctly applied the exception in regulation 10(4)(b) in this case.

Consideration of the public interest test

43. In common with all the other exceptions in the EIRs, regulation 10(4)(b) 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.

The Council's submissions

44. The Council recognises that there is a public interest in information regarding the waste treatment project being in the public domain, particularly with regard to ensuring that there was proper diligence to protect the public purse.

45. However, the Council argued that the information captured by Mr Chisholm's request goes well beyond that, and includes every piece of risk assessment that was carried out. The Council noted that it has received a number of information requests regarding this project and it has released what it considers reasonable within the confines of the confidentiality to which it has bound itself.
46. The Council referred to the confidentiality agreement it had entered into with NES, which is active until 2021. It explained that the Clause 50 is wide-ranging, and captures all information created before or after the contract start date. The Council argued that there is a public interest in ensuring that local authorities can enter into complex, contractual arrangements with third parties in a way in which each party has confidence that information which is commercially valuable will not be released into the public domain. The Council indicated that if information captured by the confidentiality agreement were to be disclosed, it could dissuade any of the Council's future business partners from openly sharing information with the Council and this would not be in the public interest.
47. The Council submitted that in order to satisfy the public as to the probity of its actions, it invited its own auditors to consider the matter during its audit last year. The Council noted that no concerns were raised by the auditors. The Council also noted that Audit Scotland instructed an audit which has also taken place and that the probity of its actions has therefore been subject to proper scrutiny.
48. The Council argued that the current request is disproportionate and manifestly unreasonable and that the public interest in the release of the information does not outweigh that unreasonable burden.

Mr Chisholm's submissions

49. Mr Chisholm submitted that the reasons given for the failure of the NES project was that the scheme encountered insurmountable technological and financial issues with the resultant loss of millions of pounds of taxpayers' money. Mr Chisholm argued it was vital for the public to be aware of the checks and assessments undertaken by the parties involved in the project. Mr Chisholm noted that the Council had to "write-off" £2,000,000 of public funds when it decided to terminate its contract with NES.
50. Mr Chisholm outlined his concerns about the background of the parties providing funding for the project, and argued that it was in the public interest to know whether the Council was aware of these considerations, and had taken all reasonable steps to make sure there were no associated risks.
51. Mr Chisholm argued that the form of technology for the project, to be provided by companies within the NES Group, turned out to be completely unfit for purpose, and has since been "sold" for no monetary consideration to an Australian bank which loaned the company the money for the development. In the context of the loss of millions of pounds of taxpayers' money, Mr Chisholm argued that there was an overwhelming public interest in disclosure of information which would show whether the waste disposal technology had been risk assessed in advance.

The Commissioner's conclusion

52. In the Commissioner's view, there is an inherent public interest in disclosure of information that would permit public scrutiny of the Council's actions, particularly with regard to its role in overseeing the expenditure of significant amounts of public funds. In this case, there is a clear public interest in the disclosure of information which would permit scrutiny of the risk

assessment undertaken by the Council with regard to the waste contract with NES; a contract which was terminated in February 2015 with a loss of some £2,000,000 of public money.

53. On the other hand, there is also a strong public interest in a Scottish public authority being able to carry out its statutory functions without unreasonable disruption. In this case, the Commissioner is satisfied that if the Council was required to provide all information covered by this request, it would place a significant burden on staff responsible for some functions of the Council, in terms of the time commitment that would be required. While providing information under FOISA or the EIRs is a statutory responsibility of the Council, the Commissioner accepts that providing all of the information falling within the scope of Mr Chisholm's request would, to a disproportionate extent, divert resources away from the Council's other core functions.
54. The Commissioner considers there is a public interest in protecting the integrity of the EIRs. While public authorities are encouraged to act in a transparent and accountable way, which benefits the public as a whole, it is not the intention of the legislation to require public authorities to devote excessive or disproportionate amounts of time to one particular request, at the expense of other areas of work. 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.
55. The Commissioner has also taken into account that Mr Chisholm did not intend to make a request for information covering thousands of documents: he believed the information he sought would be contained in a small number of documents.
56. On balance, therefore, while there are strong public interest arguments in favour of disclosure of the information covered by Mr Chisholm's request, the Commissioner accepts that, in the circumstances of this case, these are outweighed by the public interest in preventing the disproportionate levels of disruption to the Council's functions that would result if the necessary staff resources were diverted to provide all the information requested by Mr Chisholm. The Commissioner therefore concludes that the Council was entitled to withhold the requested information under the exception in regulation 10(4)(b) of the EIRs.

Regulation 9(1) (Advice and assistance)

57. Regulation 9(1) of the EIRs provides that a Scottish public authority must, so far as it would be reasonable to expect it to do so, provide advice and assistance to applicants and potential applicants. Regulation 9(3) provides that a Scottish public authority which conforms to the relevant Code of Practice is to be taken to have complied with this duty.
58. The Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the EIRs (the Section 60 Code³) states (at paragraph 5.1 in Part 2), that authorities should offer advice and assistance at all stages of a request. This can be given before a request is made, whilst the authority is handling the request, or after it has responded.
59. The Commissioner notes that it is evident, from Mr Chisholm's submissions, that the information covered by the scope of his request was far more voluminous than he expected or required.

³ <http://www.gov.scot/About/Information/FOI/Section60Code/s60codeofpractice>

60. It is clear to the Commissioner that Mr Chisholm's request could be interpreted in two ways, as a narrow request seeking specific documents that considered the risks inherent in the project, and as a broader request that sought all evidence of risk assessment undertaken by the Council. The Council has chosen to interpret the request broadly, arguing that risk assessment is a continuous process that cannot be limited to a few standalone documents. The Commissioner has accepted this as a reasonable interpretation, although it became clear, during the investigation, that Mr Chisholm was seeking a few distinct documents and not the entire project file.
61. The Commissioner considers that where there is any doubt over the scope of a request, it is incumbent on the authority to contact the applicant and clarify matters.
62. The Commissioner notes that in the Scottish Ministers' Code of Practice⁴ it states that, where a request is not reasonably clear, appropriate assistance could include:
- (i) providing an outline of the different kinds of information that might meet the terms of the request;
 - (ii) providing access to detailed catalogues and indexes, where available, to help the applicant ascertain the nature and extent of the information held by the authority;
 - (iii) providing a general response to the request setting out options for further information that could be provided on request;
 - (iv) contacting the applicant to discuss what information the applicant wants.
63. In this case, the Council made no attempt to clarify or assist Mr Chisholm in narrowing the scope of his request to make it more manageable. The Commissioner considers that had the Council done this, it is likely Mr Chisholm would have confirmed that he was not looking for documentary evidence of the process of risk assessment but was, instead, seeking specific documents that summarised the conclusions on the risk assessment undertaken by the Council.
64. In correspondence with the Commissioner, the Council provided her with several documents which might satisfy Mr Chisholm's request, as he intended it to be understood.
65. The Commissioner considers that these specific documents, which the Council has admitted had a strong bearing on its decision-making, are likely to go some way to satisfying Mr Chisholm's request for information. If the Council had advised him of these documents, it is possible that he would have limited the scope of his request to these items and responding to the request would no longer constitute an undue burden upon the Council.
66. The Commissioner finds that by not contacting Mr Chisholm to explain the nature of its risk assessment process or otherwise helping him to identify the information he was seeking, the Council failed to comply with the duty to provide advice and assistance required by regulation 9(1) of the EIRs. The Commissioner requires the Council to provide such advice and assistance to Mr Chisholm now.

⁴ <http://www.gov.scot/About/Information/FOI/Section60Code3>

Decision

The Commissioner finds that Scottish Borders Council (the Council) partially complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr Chisholm.

The Commissioner finds that:

- (i) by failing to identify the withheld information as environmental information the Council failed to comply with regulation 5(1) of the EIRs.
- (ii) by failing to provide advice and assistance to Mr Chisholm, the Council failed to comply with regulation 9(1) of the EIRs.
- (iii) the Council was entitled to withhold information from Mr Chisholm under regulation 10(4)(b) of the EIRs.

The Commissioner requires the Council to provide Mr Chisholm with advice and assistance to help him narrow the scope of his request by 19 May 2016.

Appeal

Should either Mr Chisholm or Scottish Borders 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.

Enforcement

If Scottish Borders Council (the Council) fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Rosemary Agnew
Scottish Information Commissioner

4 April 2016

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.

...

7 Extension of time

(1) The period of 20 working days referred to in–

(a) regulation 5(2)(a);

...

may be extended by a Scottish public authority by a further period of up to 20 working days if the volume and complexity of the information requested makes it impracticable for the authority either to comply with the request within the earlier period or to make a decision to refuse to do so.

9 Duty to provide advice and assistance

(1) A Scottish public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.

...

(3) To the extent that a Scottish public authority conforms to a code of practice under regulation 18 in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with the duty imposed by paragraph (1) in relation to that case.

...

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;

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info