



Scottish Information
Commissioner

**033/2008 Ms Jean Mullan and North Ayrshire
Council**

Copies of plans presented at a Planning Committee Meeting

**Applicant: Ms Jean Mullan
Authority: North Ayrshire Council
Case No: 200800087
Decision Date: 26 February 2008**

**Kevin Dunion
Scottish Information Commissioner**

Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS



Decision 033/2008 Ms Jean Mullan and North Ayrshire Council

Request for a copy of plans presented on screen at a Planning Committee Meeting on 9 July 2007 – dispute over whether Council held additional information that it had not disclosed – Commissioner concluded that Council had released the requested information to applicant

Relevant Statutory Provisions and Other Sources

Freedom of Information (Scotland) Act 2002 (FOISA) section 1(1)

Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation) (definition (a) of environmental information)

The full text of each of these provisions is reproduced in the Appendix to this decision. The Appendix forms part of this decision.

Decision 218/2007 Professor A D Hawkins and Transport Scotland
(<http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600654.asp>)

Facts

Ms Jean Mullan requested a copy of plans presented at a specified Planning Committee Meeting from North Ayrshire Council (the Council). The Council responded by advising Ms Mullan that the plans she sought could be viewed free of charge at its Cunninghame House office and that it was therefore withholding the plans in terms of section 25(2)(a) of FOISA. This decision was upheld on review. The Council subsequently provided a copy of the plans to Ms Mullan, but she disputed that these were the plans she sought. Ms Mullan remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council had dealt with Ms Mullan's request for information in accordance with Part 1 of FOISA.



Background

1. On 7 August 2007, Ms Mullan wrote to the Council requesting the following information:

A copy of the updated plans which were shown on the screen at the day of the Council meeting (dated 9 July 2007)

2. The Council wrote to Ms Mullan on 27 August 2007 in response to her request for information, and advised that it was refusing to provide her with a copy of the plans she requested as they were available to be scrutinised as part of the Council's Public Planning Register which is available for public inspection at Cunninghame House. The Council informed Ms Mullan that as the plans were already publicly available it was withholding them in terms of section 25(2)(a) of FOISA.
3. On 6 September 2007, Ms Mullan wrote to the Council requesting a review of its decision.
4. The Council wrote to notify Ms Mullan of the outcome of its review on 1 November 2007. In this letter, the Council advised Ms Mullan that it upheld its original decision to withhold the plans in terms of section 25(2)(a) of FOISA, on the basis that the requested plans were already publicly available at its office in Cunninghame House.
5. On 16 November 2007, after discussions with my Office, the Council provided Ms Mullan with a copy of the plans she requested.
6. Ms Mullan was not satisfied with the copy of the plans she received from the Council (as she believed them to be different from the plans she had viewed at the Council meeting) and on 13 January 2008 she wrote to my Office stating that she was dissatisfied with the outcome of the Council's review and applying to me for a decision in terms of section 47(1) of FOISA (which, in terms of regulation 17 of the EIRs, applies for the purposes of the EIRs as it applies for the EIRs).
7. The application was validated by establishing that Ms Mullan had made a request for information to a Scottish public authority and had applied to me for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.



The Investigation

8. On 4 February 2008, the Council was notified in writing that an application had been received from Ms Mullan and was asked to provide my Office with specified items of information required for the purposes of the investigation. The Council was also asked to provide comments on the application and to respond to specific questions about the application.
9. The Council responded on 8 February 2008, and provided me with an electronic copy of the plans that were displayed at the Council meeting on 9 July 2007. The Council also provided comment on the application itself and the issues raised.
10. In further correspondence, the Council was asked for further information to assist in clarifying the circumstances on the case. It was also asked to comment on whether the information under consideration was environmental information.
11. The Council responded and advised me that it now considered the content of the withheld information to be environmental information and that it was withdrawing its earlier application of 25(2)(a) to the plans.

The Commissioner's Analysis and Findings

12. In coming to a decision on this matter, I have considered all of the information and the submissions that have been presented to me by both Ms Mullan and the Council and I am satisfied that no matter of relevance has been overlooked.

Scope of the investigation

13. In this case, Ms Mullan has disputed that the plans provided to her by the Council during this investigation are not the same as the plans presented at the Council's Planning Committee Meeting, held on 9 July 2007.
14. The investigation carried out into this application aimed to determine whether the Council holds a separate copy of the plans presented at the meeting, and if so, whether these plans differ from the plans disclosed to Ms Mullan.



Does the Council hold another version of the disclosed plans?

15. In this case, the Council has argued that not only has it provided Ms Mullan with a copy of the plans she seeks, but the plans can be freely viewed by any member of the public at its offices in Cunninghame House. The Council has refuted Ms Mullan's allegation that it has failed to provide her with the plans she seeks, and has submitted that the plans which were presented at the Council meeting were the same as the ones released to Ms Mullan, and that they had not been amended in any way.
16. Ms Mullan contends that when she attended the meeting on 9 July 2007, that the first part of the plans shown on the screen contained details of a boundary wall. Ms Mullan maintains that when she (and her friend) saw these plans they left the meeting and did not stay for the remainder of the presentation. Ms Mullan contends that when she later tried to obtain from the Council a copy of the plans shown at the meeting, the Council provided her with a copy of the plans available at Cunninghame House (which do not contain details of the wall). Ms Mullan asserts that the plans disclosed by the Council are not the finalised plans (as shown on the screen at the planning meeting) and that she requires access to the updated set of plans (which detail the boundary wall) which are held by the Council.
17. I have compared both the print version of the plans disclosed to Ms Mullan along with the electronic version provided to me by the Council, and I could discern no difference between the two sets of plans. Both sets of plans contain the appropriate stamps and signatures that mark them as being genuine, and the content is identical.
18. I have been provided with no additional evidence to substantiate the claim that the Council presented a different set of plans at the Committee meeting to those it now holds (and which it has since released to Ms Mullan). In summary, I am satisfied that the electronic version of the plans provided to me by the Council are those which were presented at the 9 July 2007 Planning meeting.
19. As I have found that the Council has already disclosed the information requested by Ms Mullan, I am satisfied that the Council has complied with Part 1, and particularly section 1(1), of FOISA.



EIRs or FOISA

20. I would briefly note that I consider the information under consideration in this case to be environmental information as defined in the EIRs. The plans concerned contain information directly relating to the extension of a dwelling and I am of the view that the construction of a building would affect the state of the land, which is one of the elements of the environment listed in paragraph (a) of the definition of environmental information in regulation 2(1).
21. In line with my *Decision 218/2007 Professor A D Hawkins and Transport Scotland* (in which I set out in detail my thinking on the relationship between FOISA and the EIRs), I note that public authorities are entitled to consider requests for environmental information in terms of either the general rights contained in FOISA, or the specific rights contained in the EIRs. Section 39(2) of FOISA provides a technical exemption allowing environmental information to be considered solely under the terms of the EIRs.
22. In this case, the Council applied the provisions of FOISA to Ms Mullan's request. However, having supplied all relevant information to Ms Mullan, the Council has not sought to rely upon any exemption in the course of my investigation.
23. I have made my decision in this case in terms of FOISA, having noted that the outcome would be no different had I considered it under the EIRs. However, consideration under both laws will not always yield the same outcome. I would note also that the Council should take care to recognise requests for environmental information when they arise, and to have regard to the EIRs provisions providing rights to such information.

Decision

I find that North Ayrshire Council acted in accordance with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by Ms Mullan. In particular, I have concluded that the Council has supplied the plans requested by Ms Mullan, and so complied with the requirements of section 1(1).



Appeal

Should either Ms Mullan or North Ayrshire Council wish to appeal against this decision, there is an appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision notice.

Signed on behalf of Kevin Dunion, Scottish Information Commissioner, under delegated authority granted on 14 November 2007.

Margaret Keyse
Head of Investigations
26 February 2008



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002:

1 General entitlement

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

[...]

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;

[...]