

Decision Notice



Decision 040/2011 Mr Craig Mitchell and Fife Council

Kilmundy Steading, Burntisland

Reference No: 201000714

Decision Date: 3 March 2011

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Kevin Dunion

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews KY16 9DS
Tel: 01334 464610



Summary

Mr Mitchell requested a range of information from Fife Council (the Council) in relation to Kilmundy Steading, Burntisland. The Council provided some information in response to his requests, and indicated that it not hold some of the information requested. In some cases, the Council failed to provide any response. Following a review, Mr Mitchell remained dissatisfied and applied to the Commissioner for a decision.

Following an investigation, the Commissioner found that the Council should have dealt with the request under the Environmental Information (Scotland) Regulations 2004 (EIRs), and that, in failing to do so, it had failed to comply with the EIRs.

The Commissioner found that the Council was entitled to refuse requests 10, 13, 16, 24, 28, 33 and 35 in terms of regulation 10(4)(a) of the EIRs on the basis that it did not hold the information requested. However, he found that the Council failed to comply with regulation 5(1) of the EIRs in relation to requests 2, 8, 14, 17, 20, 22, 25, 29, and 30. When responding to these requests, the Council either wrongly indicated that no information was held, or it failed to identify and provide all relevant information to Mr Mitchell.

In addition, the Commissioner found that the Council failed to discharge its duty to provide Mr Mitchell with advice and assistance under regulation 9(1) of the EIRs and the technical requirements of regulations 5(2)(a), 13(a), (b), (c) and (e) and 16(4) of the EIRs.

The Commissioner was satisfied by the end of the investigation that Mr Mitchell had been provided with all the information held by the Council which falls within the scope of the requests under consideration in this decision. He did not require the Council to take action in respect of the failures he has identified.

Relevant statutory provisions and other sources

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

Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation) (definitions (a), (b) and (c) of "environmental information"); 5(1) and (2) (Duty to make environmental information available on request); 9(1) (Duty to provide advice and assistance); 10(4)(a) (Exceptions from duty to make environmental information available); 13(a), 13(b), 13(c) and 13(e) (Refusal to make information available) and 16(4) (Review by Scottish public authority)



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

Background

1. On 12 May 2009, MacRoberts Solicitors on behalf of Mr Craig Mitchell (Mr Mitchell) wrote to the Council requesting a range of information in relation to Kilmundy Steading, Burntisland. Thirty of the thirty-five requests were numbered and set out in an enclosed table, while the other five requests were not numbered but were set out in the body of the letter. The requests are set out in full in Appendix 2 to this decision. Appendix 2 forms part of this decision.
2. The Council responded on 25 June 2009. The Council provided information falling within the scope of requests 12, 18, 19, 26 and 30, and indicated that information falling within the scope of requests 8 and 11 had been posted separately. With respect to the other requests, the Council recorded its responses within a modified version of Mr Mitchell's table of requests. With varying degrees of clarity, the responses for each request variously
 - suggested that the specified information was not held in recorded form (2-6, 9, 10, 13-17, 21, 24, 25, 29)
 - indicated that further clarification was required to identify the relevant information (23)
 - indicated that the information had already been supplied (27)
 - provided some information in response to the request: (20, 22)
 - indicated that a response or information was to be supplied separately: (1, 7, 28)
3. The Council's response of 25 June 2009 made no reference to the five requests (31 through 35) set out in Mr Mitchell's letter of 12 May 2009. However, on 2 July 2009 the Council provided Mr Mitchell with a copy of the file for planning application 04/99329/CFULL (relevant to request 31).
4. On 27 July 2009, the Council contacted Mr Mitchell again to advise him that it did not hold any information in relation to request 28. The Commissioner is not aware of any further response being issued in relation to requests 1 or 7 prior to Mr Mitchell submitting a request for review.
5. On 19 August 2009, Mr Mitchell emailed the Council requesting a review of its responses to his requests. He noted that some of the information requested had not been supplied, and no explanation for this had been given. Mr Mitchell's reasons for dissatisfaction with the Council's handling of his requests were marked in a further modified version of the table setting out the first 30 requests. This expressed dissatisfaction with the Council's failure to supply the requested information, or with the extent of the information supplied in relation to requests 1, 2, 8, 10, 13, 14, 16, 17, 20, 22, 24-26 and 28-30.



6. In the body of his letter, Mr Mitchell also expressed dissatisfaction with the Council's failure to supply any information falling within the scope of requests 33 and 35. He also noted that the copy of the planning file provided in response to request 31 did not include a copy of a particular map that was available for inspection.
7. The Council notified Mr Mitchell of the outcome of its review on 28 September 2009, as follows:
 - With respect to request 1 (seeking the copy of historical file K006), the Council supplied a copy of the file, subject to redaction.
 - With respect to requests 2, 8, 10, 13, 14, 16, 17, 20, 22, 24, 25, 28-30, 33 and 35 the Council notified Mr Mitchell in terms of section 17 of FOISA that no information was held (where relevant, beyond that already supplied)
 - With respect to request 31 (the planning file 04/00320/CFULL), the Council indicated that the maps referred to by Mr Mitchell had been supplied to him by the Council on 3 September 2009.
8. On 4 February 2010, Mr Mitchell emailed the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and 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 certain specified modifications.
9. In particular, Mr Mitchell considered that further information was held by the Council (with respect to the requests the Council had stated that it did not hold any further information on) and requested that the Commissioner comment on the late provision of information in response to his request and request for review, particularly in relation to his requests for the historical file K006 (request 1) and the planning file 04/00320/CFULL (request 31).
10. The application was validated by establishing that Mr Mitchell had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request. The case was then allocated to an investigating officer.

Investigation

11. In the early stage of the investigation, the investigating officer took steps to establish which of the thirty-five information requests made by Mr Mitchell on 12 May 2009 were to form part of the Commissioner's investigation.
12. In correspondence dated in 11 and 28 June 2010 Mr Mitchell confirmed he was dissatisfied with the outcome of the Council's review in relation to requests 2, 8, 10, 13, 14, 16, 17, 20, 22, 24, 25, 28, 29, 30, 33 and 35 of his request in that he considered further information was held by the Council.



13. Otherwise Mr Mitchell has indicated that he was satisfied that he had received the information he requested, but was completely dissatisfied by the time taken by the Council to respond to his request and request for review in relation to all parts of his request and in particular the provision of information within the historical file K006 (request 1) and the planning file 04/00320/CFULL (request 31).
14. Mr Mitchell's application referred also to previous requests for these two files, but it was confirmed that the investigation and decision in this case could not consider these previous requests. The investigation and this decision have considered whether there were delays in the Council's provision of this information, but only in response to Mr Mitchell's request of 12 May 2009.
15. With respect to these two planning files, Mr Mitchell indicated in his application and correspondence in the early stages of the investigation that he had received the information within the two files, and so the matters to be addressed by the Commissioner were limited to any delay.
16. However, in the final stages of the investigation (in December 2010) Mr Mitchell raised concerns as to whether there were gaps in the information supplied to him from file K006 (request 1). Since these concerns were not raised in Mr Mitchell's application for decision, the Commissioner is not entitled to make a decision with respect to these matters within this decision. Should Mr Mitchell wish to have these further issues addressed by the Commissioner, he should make a further application for decision highlighting these new concerns.
17. On 28 June 2010, the investigating officer contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and advising it which of Mr Mitchell's 35 requests of 12 May 2009 were to be considered within the investigation. In seeking comments from the Council, the investigating officer asked it to justify its assertion that it had provided Mr Mitchell with all the information it held that fell within the scope of his requests. The Council was also asked to provide details of the searches it had undertaken to determine this (including which individuals' and departments' records had been searched) and to provide copies of its internal correspondence in dealing with Mr Mitchell's request.
18. The investigating officer also commented that, having considered the nature of the information requested in this case, it appeared likely that any information falling within the scope of the request would be environmental information and therefore subject to the EIRs. The Council was asked to comment on this point and to provide submissions as to whether it considered the requested information fell within the scope of any of the exceptions contained within the EIRs. The Council was also asked if it wanted to rely on section 39(2) of FOISA, which provides that information is exempt from disclosure under FOISA if it is environmental information which the authority is obliged to make available to the public in accordance with the EIRs.



19. The Council responded on 30 July 2010 and provided an overview of the searches it had undertaken to establish what information it held with respect to Mr Mitchell's requests and the other information requested by the investigating officer. The Council agreed that Mr Mitchell's requests sought environmental information and that it should have responded under the EIRs. It apologised for this omission and confirmed that it wished to apply the exemption in 39(2) of FOISA.
20. The Council also provided its submissions on each part of Mr Mitchell's request under investigation. The Council advised that it was applying regulation 10(4)(a) of the EIRs to parts 10, 13, 14, 16, 17, 20, 22, 24, 29, 33 and 35 of Mr Mitchell's request as it did not hold the requested information. The Council also indicated that it considered the information that had been withheld within documents supplied to Mr Mitchell to be excepted from disclosure in terms of regulation 11 of the EIRs (which allows information that is personal data to be withheld in certain circumstances).
21. The investigating officer and the Council entered into further discussions regarding Mr Mitchell's requests and further submissions were sought from the Council to provide further details of the searches undertaken in relation to particular requests, and additional background information about the matters to which Mr Mitchell's requests relate.
22. During the investigation, the Council also explained that it had not retained records which would reveal precisely which information had been supplied to Mr Mitchell in response to this request, or in response to related previous requests, making it difficult to establish with certainty what information had been disclosed to Mr Mitchell and when. Mr Mitchell has provided assistance during the investigation by confirming whether certain information had been made available to him by the Council and when.
23. Due to complexity of this case (given the number of requests under consideration, and their wider context) the investigating officer met with representatives of the Council on 14 September 2010. The purpose of this meeting was to discuss Mr Mitchell's application and, in particular, to gather background information to assist the Commissioner in determining whether all information held by the Council and falling within the scope of the requests under consideration had been disclosed to him.
24. Following this meeting, the Council was asked to provide additional documentation to support its submissions in relation to each request.
25. The investigating officer subsequently wrote to Mr Mitchell on 30 September 2010, to advise him of the outcome of the meeting and summarise the findings in respect of the requests under investigation.
26. With the permission of the Council, the investigating officer also provided Mr Mitchell with copies of further information that had been identified as falling within scope of requests 2, 8, 14, 17, 22 and 29 which had not been provided when the Council had responded to Mr Mitchell's information request (although in most cases the information had been supplied in response to previous information requests). This information was provided subject to the redaction of personal data.



27. Mr Mitchell provided detailed comments in response to this update, highlighting that he still considered that the Council held further information that had not been disclosed in response to some of his information requests.
28. The investigating officer sought further submissions and information from the Council in response to Mr Mitchell's comments at various points in the investigation. The Council was asked to provide a summary of the searches that had been conducted up to that point in the investigation, to undertake further searches and to respond to queries raised with regard to specific parts of Mr Mitchell's request.
29. Mr Mitchell raised additional comments in subsequent communications. In particular, he raised concerns about the Council's approach to the redaction of personal data. While he had not commented upon this in his original application, he asked the Commissioner to consider this point after further information was disclosed during the investigation subject to redaction.
30. Following discussion with the investigating officer, Mr Mitchell confirmed that he did not want the Commissioner to come to a decision as to whether the exception in regulation 11 of the EIRs was applicable to this information (the duty to make information available under the EIRs does not, as a result of regulation 11, apply to certain personal data). However, he highlighted inconsistencies in the Council's approach to redaction of information considered to be personal data when responding to his various requests (both those under consideration and some made previously). He requested that the Commissioner comment on the Council's "erratic" redacting of personal information within different versions of the same documents that had been disclosed to him.
31. Both the Council's and Mr Mitchell's submissions are summarised, where relevant, below.

Commissioner's analysis and findings

32. In coming to a decision on this matter, the Commissioner has considered all of the submissions made to him by both Mr Mitchell and the Council and is satisfied that no matter of relevance has been overlooked.

FOISA or the EIRs?

33. In this case, the Council handled Mr Mitchell's information request and subsequent request for review in terms of FOISA. However, the Commissioner has concluded that the information requested by Mr Mitchell would meet the definition of environmental information within regulation 2(1) of the EIRs. The information requested relates to the right of way at Kilmundy Steading, Burntisland, access to that land and planning matters affecting that land. The Commissioner considers that the information requested by Mr Mitchell concerns measures, including activities, programmes and plans likely to affect the elements of the environment including soil, land and landscape and natural sites or factors that can in turn affect these elements, such as substances, noise and waste.



34. In the circumstances, therefore, the Commissioner considers that the information requested by Mr Mitchell falls within the definition of environmental information set out in regulation 2(1) of the EIRs, and in particular part (c) of that definition, insofar as it relates to plans, activities and programmes.
35. The Commissioner set out his thinking on the relationship between FOISA and the EIRs in some detail in *Decision 218/2007 Professor A D Hawkins and Transport Scotland* and need not repeat it in full here. However, the central point set out therein is that when a person requests information would fall within the definition of environmental information set out in regulation 2(1) of the EIRs, that request should be considered and responded in line with the EIRs.
36. The Commissioner notes that, during the investigation, the Council accepted that Mr Mitchell's information request sought environmental information as defined in regulation 2(1) of the EIRs and it noted that its initial response and review response should have been provided in line with the EIRs. The Council advised that it had recently arranged training for its relevant staff on the EIRs. The Commissioner notes these points but must nonetheless find that by failing to identify the information requested by Mr Mitchell as environmental information (as defined in regulation 2(1)) and deal with his requests accordingly under the EIRs, the Council failed to comply with the EIRs.

Section 39(2) of FOISA – environmental information

37. Having acknowledged that the information under consideration in this case was environmental information as defined in regulation 2(1) of the EIRs, the Council also indicated during the investigation that it wished to apply the exemption in section 39(2) of FOISA to that information.
38. The exemption in section 39(2) of FOISA provides that environmental information as defined by regulation 2(1) of the EIRs is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
39. The Commissioner finds that the Council was entitled to apply the exemption to the information requested by Mr Mitchell, given his conclusion that it is properly considered to be environmental information.
40. As there is a separate statutory right of access to environmental information available to the applicant in this case, the Commissioner also accepts that the public interest in maintaining this exemption and dealing with the request in line with the requirements of the EIRs outweighs any public interest in disclosure of the information under FOISA. The Commissioner has consequently proceeded to consider this case in what follows solely in terms of the EIRs.



General comments

41. Mr Mitchell and the Council have been corresponding about the matters relating to Kilmundy Steading for a considerable period. These ongoing communications have included several requests for information. While it is clear from the terms of the requests under consideration that Mr Mitchell does not consider that he has received satisfactory answers to all of his previous requests, a substantial amount of information was made available to him prior to him submitting his request on 12 May 2009.
42. The Commissioner is aware that there is some overlap between the requests under consideration in this case and those made previously, and, in some cases, the Council has indicated during the investigation that information relevant to Mr Mitchell's requests of 12 May 2009 had been supplied to him prior to making that request. In several instances, Mr Mitchell has confirmed that this is the case.
43. The fact that the Council has not retained records or copies of all of the information disclosed to Mr Mitchell in response to the requests under consideration in this decision, or previously, has made it difficult to ascertain with certainty which information has been made available to Mr Mitchell at which stage.
44. However, it is clear that it would have been open to the Council to indicate to Mr Mitchell in relation to some of the requests under consideration that it was not under an obligation to supply (some or all of) the information in response to his request of 12 May 2009 because the information concerned was already in his possession. Such an approach would have been allowed by the exemption in section 25(1) of FOISA (which applies where information is already reasonably accessible to the requestor) or the provision in regulation 6(1)(b) of the EIRs (which allows an authority to refuse to provide information where it is already publicly accessible and easily available to the applicant in another form or format).
45. The Council has not sought to apply either of these provisions at any stage either before or during the investigation. Since it has not done so (and since the Council has not retained complete records of the information supplied previously to enable it to demonstrate clearly what information had been supplied to Mr Mitchell at which point), the Commissioner has simply considered whether the Council supplied all relevant information falling within the scope of the requests under consideration when to the requests following their submission on 12 May 2009.
46. This approach means that where the Council has failed to supply relevant information to Mr Mitchell in response to his request of 12 May 2009, even where it had been supplied to him previously and was in his possession at the time when he made this request, the Council has technically failed to comply with the requirements of the EIRs.

Searches

47. In his application and subsequent correspondence, Mr Mitchell has indicated with respect to a number of his requests that the Council had failed to identify and supply all relevant information.



48. The key matter to be investigated in this case was whether the Council had, at the point where it notified Mr Mitchell of the outcome of his review, identified and supplied to Mr Mitchell all (non-exempt) information falling within the scope of his requests.
49. As noted in the investigation section above, the investigating officer took various steps to establish what searches had been undertaken by the Council in response to Mr Mitchell's requests and whether these were thorough and appropriate.
50. In its initial submissions, the Council advised that, having recognised that Mr Mitchell's requests sought a large volume of information and involved a number of Council Services (Legal Services, Development Services and Community Services), a single individual co-ordinated the response and she contacted the relevant services for any information held.
51. It was established that the Council's Legal Service held no relevant information (since the requests pre-dated its involvement in relevant matters). The Council's Development Service printed out all information in respect of planning application 04/00320/CFULL and the enforcement log sought by request 30. To identify relevant information held by the Council's Community Service, an individual from that department (the Council's Access Officer) spent several days checking all paper and electronic files of relevance.
52. In relation to each request, the investigating officer took steps to understand their subject matter, and the references to the requested information in associated documents. She sought to establish whether the Council's searches had considered all relevant sources and consulted relevant staff. At the meeting on 14 September 2010 between the investigating officer and representatives of the Council, each of Mr Mitchell's requests were discussed in detail to assist the investigator in understanding what information might be held and fall within the scope of these requests.
53. Several of the requests under consideration sought communications that Mr Mitchell understood to exist after seeing references within other documents available to him. With respect to requests seeking communications involving the Access Officer, the Council stated that the Access Officer had confirmed that, in her line of work, she speaks to people personally on the telephone or at consultation meetings and drop-in events. As a result, it was explained that often the question which resulted in a written answer or email was received verbally, or conversely, her response to a letter or e-mail is given verbally to the correspondent. The Council explained that this was why there appears to be dead-end in correspondence in a number of the cases highlighted by Mr Mitchell's requests.
54. The Council also noted that the Access Officer does not routinely delete or destroy correspondence; therefore, if an electronic or paper copy was held then this would have been identified and provided to Mr Mitchell.



55. A summary of the findings of the investigation to that point was provided to Mr Mitchell after the investigating officer's meeting with Council representatives. Mr Mitchell's subsequent comments led to the investigating officer raising further questions with the Council in relation to the searches it had undertaken and to determine whether additional searches could be completed with respect to certain requests. To assist with the completion of the investigation, the Council was also asked, on 15 October 2010, to summarise all the searches it had undertaken up to this point in time. The Council responded on 15 November 2010 and provided a detailed summary of all the searches it had undertaken. It also undertook additional searches and responded to the investigating officer's questions.
56. During the investigation, it was established that certain relevant information was held by the Council which had not been supplied to him in response to the request of 12 May 2009. Where it was established that relevant information had not been supplied (and was not already in the possession of Mr Mitchell), this information was disclosed to him, in some cases subject to redaction of personal data.
57. The Commissioner's conclusions on the Council's handling of each of requests under consideration are set out in more detail below. In general, however, the Commissioner is satisfied that, by the end of the investigation, the Council had conducted extensive and thorough searches for the information sought by each request under consideration. He has reached this conclusion having considered the nature and extent of the searches undertaken by the Council to identify the information requested (both before and during the investigation), having regard to the nature and age of the information being requested and the Council's comments about the nature of the work undertaken by the Access Officer.
58. On balance of probabilities, he has concluded that the Council has identified (by the time of making this decision) all information falling within the scope of the requests under consideration that was held at the time when Mr Mitchell's information request was received.

Regulation 10(4)(a) of the EIRs and regulation 5(1) of the EIRs

59. 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 an applicant's request is received.
60. The Council's responses to a number of the requests under consideration, although making no direct reference to the exception in regulation 10(4)(a), indicated that no relevant information was held.
61. Regulation 5(1) of the EIRs requires authorities which hold environmental information to make it available to an applicant when requested to do so by any applicant. With respect to other requests under consideration, the Council's responses indicated that it held relevant information and purported to provide this to him.



62. With respect to the requests under consideration in this decision, Mr Mitchell has indicated that the Council has not provided all of the requested information, and so either incorrectly advised him that no information was held, or failed to identify and supply all relevant information. With respect to these requests, therefore, the Commissioner has considered whether the Council had complied fully with the requirements of regulation 5(1) by the time it notified Mr Mitchell of the outcome of its review on 28 September 2009.
63. The following sections sets out the Commissioner's conclusions with respect to each request under consideration, and whether the Council either correctly advised Mr Mitchell that no information was held, or that it had supplied all relevant information that was held.

Request 2

64. Mr Mitchell requested copies of email complaints (which were referred to in an email in his possession) prior to a specified date. The Council's response indicated that most of the complaints received were verbal. When asked to review this response, the Council indicated that no further information was held.
65. During the investigation, it became clear that complaints which fell within the scope of this request were held by the Council. While it is clear that much of this information had been supplied to Mr Mitchell in response to previous requests, no reference to this fact was made in the Council's responses to the request under consideration of Mr Mitchell's subsequent request for review.
66. In order to establish what relevant information is held by the Council, and the extent to which this was already in Mr Mitchell's possession, the Council and Mr Mitchell were asked to provide copies of the information they considered fell within scope and the dates when the information was disclosed (by the Council) and received (Mr Mitchell). There were variances in the information provided by both parties, which the investigating officer clarified.
67. Additional information was supplied to Mr Mitchell during the investigation to ensure that he had received (or was in possession of) all information identified as falling within the scope of this request.
68. Having considered the searches undertaken by the Council and the submissions provided by both parties, the Commissioner is satisfied that, at the end of the investigation, Mr Mitchell had copies of all the email complaints that fell within the scope of his request.
69. However as the Council erroneously indicated to Mr Mitchell that no relevant information was held, and did not supply the relevant information in response to Mr Mitchell's information request, the Commissioner concludes that the Council did not fulfil the requirements of regulations 5(1) of the EIRs when dealing with request 2.
70. The Commissioner is satisfied that the relevant information has either been disclosed during the investigation, or was already in the possession of Mr Mitchell at the time of his request. For this reason, he does not require the Council to take any further steps in response to this failure.



Request 8

71. Mr Mitchell requested a full version of a summary report created by a Community Council, an appendix and information pertaining to an incident noted within the report. In response, the Council indicated that information would be posted to Mr Mitchell. Mr Mitchell's request for review indicated that the information supplied was not what he had requested. The Council's response indicated that no further information was held.
72. During the investigation, the Council was unable to confirm what (if any) information had been posted to Mr Mitchell in response to this request, as indicated in its response. However, it noted that two sets of related minutes were provided to Mr Mitchell in response to other parts of his request on 25 June 2009. During the investigation, a copy of the requested appendix was identified and disclosed to Mr Mitchell on 30 September 2010. The Council informed the investigating officer that there was no full version of the summary report referred to in Mr Mitchell's request. It provided details of the searches conducted to identify any further information relevant to this request, but these had not identified any information relating to the incident.
73. Mr Mitchell then indicated that he believed that further information was held by the Council in particular information pertaining to the incident. Mr Mitchell confirmed that he had received the related minutes and appendix from the Council in response to a previous request.
74. Having considered the searches undertaken by the Council by the end of the investigation and the submissions provided, the Commissioner is satisfied that the only information held by the Council and falling within the scope of this request is the appendix. The Commissioner is therefore satisfied at the end of the investigation that Mr Mitchell had received all information falling within scope of this request.
75. However, the Council did not provide the appendix to Mr Mitchell in response to his request or his subsequent request for review, and it did not cite any provision within the EIRs as justification for not doing so. Accordingly, the Commissioner finds that the Council failed to comply with regulation 5(1) of the EIRs.
76. As all the relevant information has now been disclosed to Mr Mitchell (and it was already in his possession), the Commissioner does not require the Council to take any action with regard to this failing.

Requests 10, 13, 16, 24, 28, 33 and 35

77. Requests 10, 13, 16 and 24 sought communications that Mr Mitchell understood to exist and be held, given references contained in other documents. In requests 33 and 35, Mr Mitchell requested information pertaining to meetings or correspondence between the Council and a specified company. In response to each of these requests the Council advised that it did not hold any information.



78. In request 28, Mr Mitchell requested any information in relation to a reference to a “strong reaction” referred to in a briefing note. In response, the Council initially advised him that information would be provided. However, it subsequently wrote to Mr Mitchell and indicated that no information was held.
79. In relation to all of the requests under consideration in this section, during the investigation the Council explained the searches undertaken to establish whether any information was held which would fulfil these requests. Further queries were raised and further searches were undertaken at the request of the investigating officer in response to comments received from Mr Mitchell.
80. With respect to request 28, the Council provided a copy of its internal emails regarding this request. This provided an explanation as the steps taken by the Council to establish whether any relevant recorded information was held, and an officer’s recollections of the circumstances leading to the reference to “a strong reaction”. This information was provided to Mr Mitchell, who responded by indicating that he considered that further information was still held by the Council.
81. Having considered the searches undertaken in relation to each request and the comments made by both Mr Mitchell and the Council, the Commissioner is satisfied that the Council was correct to advise Mr Mitchell that it did not hold the information sought by his requests 10, 13, 16, 24, 28, 33 and 35. Consequently, he finds that the exception in regulation 10(4)(a) of the EIRs was applicable to the information sought by these requests.
82. The exception in regulation 10(4)(a) is subject to the public interest test in regulation 10(1)(b) of the EIRs. This provides that public authority may only refuse to make available information to which an exception applies where, in all the circumstances, the public interest in making the information available is outweighed by the public interest in maintaining the exception.
83. In relation to requests 10, 13, 16, 24, 28, 33 and 35 the Commissioner is satisfied that no information is held by the Council. Consequently, he does not consider there to be any conceivable public interest in requiring that further information be made available.
84. The Commissioner therefore concludes that, in all the circumstances of this case, the public interest in making the requested information available is outweighed by that in maintaining the exception in regulation 10(4)(a) of the EIRs. Given this conclusion, he is satisfied that the Council was entitled to refuse requests 10, 13, 16, 24, 33 and 35 of Mr Mitchell's request under regulation 10(4)(a).

Request 14

85. Mr Mitchell requested communications raising residents’ concerns. In its response, the Council advised him that telephone conversations took place, but that these were not recorded.



86. During the investigation, it was established that, as a result of such concerns, a meeting was arranged with Mr Mitchell and other relevant individuals. However, the Council noted that this meeting took place two years prior to Mr Mitchell's request, and it could not be confirmed with certainty that the meeting was arranged as a direct result of the concerns. The Council considered it more probable that the meeting was arranged as a result of various events.
87. The Council provided the investigating officer with the information arranging this meeting and the notes. Having reviewed the communications regarding the organisation of this meeting, the Commissioner has concluded that these include content in which the relevant Council officer highlights concerns raised. He therefore considers that these documents do contain information falling within the scope of request 14. This information was passed to Mr Mitchell (subject to the redaction of personal data) on 30 September 2010. Mr Mitchell subsequently confirmed that he had received this information previously on 17 November 2008.
88. The Commissioner is satisfied that, by the end of the investigation, Mr Mitchell had received all information falling within scope of this request. However, as the Council advised Mr Mitchell that it did not hold any information with respect to this request, and did not supply the relevant information, the Commissioner has concluded that the Council acted in breach of the EIRs.
89. The Commissioner notes that, as the relevant information was already in Mr Mitchell's possession, the Council could have applied the provision in regulation 6(1)(b) in this case. Since it did not, the Commissioner can only conclude that by failing to provide the relevant information when by the time when it reviewed its handling of Mr Mitchell's information request, the Council failed to comply with regulation 5(1) of the EIRs.
90. As all relevant information has now been disclosed the Commissioner does not require the Council to take any action with regard to this failing.

Request 17

91. This request sought any information relating to the outcomes of a planning officer's visit. The Council's response indicated that no information was held.
92. During the investigation, it was established that an exchange of emails was held which included information relating to the outcomes of the planning officer's visit. The Council provided a series of emails to the investigating officer, indicating that it considered part of the exchanges to fall outside the scope of the request. However, the exchanges were disclosed to Mr Mitchell in full, subject to the redaction of personal data.
93. Having reviewed the information supplied by the Council and the terms of Mr Mitchell's request, the Commissioner concludes that all of the information therein that was created subsequent to the planning officer's visit falls within the scope of Mr Mitchell's request 17. The Commissioner therefore finds that the Council incorrectly advised Mr Mitchell that it held no information relevant to this request.



94. The relevant information was passed to Mr Mitchell on 30 September 2010. Mr Mitchell subsequently confirmed that he had been supplied with most of this information in response to previous information requests. However, two of the emails had not been supplied in response to any previous request.
95. The Commissioner is satisfied that, at the end of the investigation, Mr Mitchell had received all information falling within scope of this request. However, as the Council advised Mr Mitchell that it did not hold any information with respect to this request, and did not supply the relevant information, the Commissioner has concluded that the Council acted in breach of the EIRs.
96. As above, the Council could have applied regulation 6(1)(b) of the EIRs in relation to the information that had been provided to him prior to him making his request of 12 May 2009. However, since some of the information had apparently never been supplied previously, and in any event the Council did not apply regulation 6 in this case, the Commissioner must conclude that by failing to supply this information, the Council failed to act in accordance with regulation 5(1).
97. As all information has been disclosed the Commissioner does not require the Council to take any action with regard to this failing.

Request 20

98. In this request, Mr Mitchell sought information pertaining to a particular meeting. In response, the Council provided details of the membership of the relevant group and indicated when it met. During the investigation, the Council indicated that it considered regulation 10(4)(a) to be applicable to the information sought by this request.
99. In discussion with the Council about this request, the Council realised that the response provided to Mr Mitchell had been given based on the consideration of the wrong meeting, and that it had incorrectly indicated that there was no relevant record. The Council supplied a note of the relevant meeting, and this was passed to Mr Mitchell during the investigation.
100. Having considered the extensive searches undertaken by the Council by the end of the investigation, the Commissioner considers that the only information held that fell within scope was the note of a meeting provided to Mr Mitchell.
101. As the Council did hold a written note of the meeting, the Commissioner concludes that the Council was incorrect to apply regulation 10(4)(a) of the EIRs. By failing to provide the relevant information to Mr Mitchell, the Council failed to comply with regulation 5(1) when responding to this request.
102. As the meeting note was provided to Mr Mitchell during the investigation, the Commissioner does not require the Council to take any action with regard to this failing.



Request 22

103. In this request, Mr Mitchell requested advice given at a meeting. In response, the Council indicated that the advice given at the relevant meeting was verbal (so suggesting that no relevant recorded information was held), and provided a summary of this advice. During the investigation, the Council indicated that it considered regulation 10(4)(a) to be applicable to the information sought by this request.
104. During the investigation, the Council identified and provided a note of the meeting that had been written by the Access Officer as an *aide memoire*. The Commissioner notes that the substance of this note was provided in response to Mr Mitchell's request 20, except that some names have been redacted from the written note. A copy of this note was provided to Mr Mitchell during the investigation.
105. The Commissioner is satisfied that, by the end of the investigation, Mr Mitchell had received all information falling within scope of this request. However, as the Council advised Mr Mitchell that it did not hold any information with respect to this request, and failed to provide (in full) the information that was identified and provided during the investigation, the Commissioner has concluded that the Council acted in breach regulation 5(1) of the EIRs when responding to this request.
106. Since the relevant information was disclosed to Mr Mitchell during the investigation, and the Commissioner is satisfied that no further relevant information is held by the Council, the Commissioner does not require any further action to be taken by the Council in relation to this breach.

Request 25

107. Mr Mitchell requested the second page of a two page email. In response the Council advised him that the information was "not available".
108. During the investigation, the Council provided copies of the original email and the version provided to Mr Mitchell. The Council also provided a copy of the original email with some information redacted, which was passed to Mr Mitchell on 30 September 2010.
109. Mr Mitchell confirmed that he had been given two different versions of the document by March 2009. The Council acknowledged that the email had been provided in a different layout, but commented that the version provided to Mr Mitchell contained all the information in the email.
110. It is clear that the information contained in the email requested by Mr Mitchell had been provided to him prior to him making his information request of 12 May 2009, albeit subject to redaction and in a format different from that supplied during the investigation. The Commissioner notes that, as the relevant information was already in Mr Mitchell's possession, the Council could have applied the provision in regulation 6(1)(b) to the information sought by this request. However, it did not and simply indicated that it was not available.



111. By failing to supply the information provided during the investigation when responding to Mr Mitchell's request of 12 May 2009 and his subsequent request for review, the Council failed to comply with the requirements of regulation 5(1) of the EIRs.
112. As Mr Mitchell now has been provided with a copy of the email he requested (subject to the redaction of personal data, which he has accepted), the Commissioner does not require the Council to take any action with regard to this failing.

Request 29

113. Mr Mitchell requested any correspondence with other bodies for advice. In response to this request, the Council indicated that "SNH is only one". It provided no additional information, or any explanation as to why no information was supplied. During the investigation, the Council indicated that it considered regulation 10(4)(a) to be applicable to the information sought by this request.
114. During the investigation, the Council confirmed that it held the correspondence sent to and received from SNH and this was disclosed to Mr Mitchell on 30 September 2010. Mr Mitchell then indicated that he believed that further information was held by the Council and confirmed that he had received the correspondence from SNH in response to a previous request on 10 April 2009.
115. The Council provided background information about its communications with other bodies for advice on the matters relevant to Mr Mitchell's requests, and provided details of the searches undertaken to establish whether any further relevant information was held.
116. Having considered the searches undertaken by the Council by the end of the investigation and the submissions provided, the Commissioner is satisfied that the only information held by the Council and falling within the scope of this request is the SNH correspondence. The Commissioner is therefore satisfied that, at the end of the investigation, Mr Mitchell had received all information falling within scope of this request.
117. However, as the Council did not provide the correspondence with SNH to Mr Mitchell in response to his request or his subsequent request for review, and it did not cite any provision within the EIRs as justification or not doing so, the Council failed to comply with regulation 5(1) of the EIRs.
118. As all the relevant information has now been disclosed to Mr Mitchell (and it was already in his possession), the Commissioner does not require the Council to take any action with regard to this failing.



Request 30

119. Mr Mitchell requested a copy of an enforcement log he had previously been given as he considered it was of poor quality and some information was missing. In response, the Council provided a copy of the first page of a two page log. When requesting a review, Mr Mitchell asked for a copy of the second page. The Council's response indicated that no further information was held.
120. During the investigation, a complete copy of the log was provided to the Commissioner and a version with a complainant's name removed was passed to Mr Mitchell on 30 September 2010.
121. Clarification was sought and obtained from the Council as to whether any additional information was held. In considering the searches undertaken and the submissions provided by the Council, the Commissioner is satisfied that no additional information is held by the Council.
122. The Commissioner is satisfied that, at the end of the investigation, Mr Mitchell had been provided with a copy of the enforcement log. However, finds that by failing to supply the full enforcement log when responding to Mr Mitchell's information request, the Council failed to comply with regulation 5(1) of the EIRs
123. As Mr Mitchell now has been provided with a copy of the information he requested, the Commissioner does not require the Council to take any action with regard to this failing.

Handling of Mr Mitchell's request

124. Mr Mitchell has asked the Commissioner to comment on the handling of his requests by the Council, highlighting in particular that he was dissatisfied with delays in the provision of information and responses to both his request and subsequent request for review. As noted above, Mr Mitchell's concerns regarding delays extended to requests other than those under consideration in this decision. In this decision the Commissioner can only comment on delays in relation to the requests made on 12 May 2009.

Timescales for response under regulations 5, 13 and 16 of the EIRs

125. Regulation 5(2)(a) of the EIRs specifies that the duty to provide information in response to a request should be complied with as soon as possible, and in any event no later than 20 working days after the date of receipt of the request (subject to regulations 6 to 12 of the EIRs).
126. Regulation 13(a) of the EIRs provides that where a Scottish public authority refuses to make environmental information available (including on the grounds that the information is not held) the refusal shall be given no later than 20 working days after the date of receipt of the request.



127. The Council provided responses to most of Mr Mitchell's requests of 12 May 2009 on 25 June 2009, outwith the required timescale. The Commissioner notes, however, that this communication still failed to provide any response to requests 31-35, and indicated that some of the others (1, 7 and 28) would be provided separately. Further communications from the Council provided responses and information in the following month, but no response was provided to requests 1, 7 or 32-35 prior to Mr Mitchell submitting his request for review.
128. The Commissioner therefore finds that the Council failed to respond to Mr Mitchell's requests for information within the 20 working days allowed under regulations 5(2)(a) and 13(a) of the EIRs in relation to each of the requests made on 12 May 2009.
129. Regulation 16(4) of the EIRs gives public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review.
130. The Council did not provide a response to Mr Mitchell's requirement for review of 19 August 2009 until 28 September 2009, again outwith the required timescale.
131. The Commissioner therefore finds that the Council failed to respond to Mr Mitchell's requirement for review within the 20 working days allowed under regulation 16(4) of the EIRs.

Duty to provide advice and assistance

132. Regulation 9(1) of the EIRs provides that 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.
133. In this case, the Commissioner considers that the Council's responses to Mr Mitchell were not of the standard to be expected by a public authority with extensive experience of responding to information requests. In particular he considers the following to be areas of concern:
 - the brevity of the responses given, which in several cases did not make clear whether the information was held by the Council, or if the Council was refusing to supply this
 - the fact that the Council indicated in several cases that information was not held, when in fact the Council held information and this had been supplied to Mr Mitchell previously
134. The Commissioner recognises that Mr Mitchell's information requests were complex and presented significant challenges to the Council, particularly in the context of the communications between the Council and Mr Mitchell over a prolonged period. The EIRs contain provisions which enable a public authority to refuse to comply with requests where information is already publicly available and easily accessible to an applicant, or where the burden imposed by a request is manifestly unreasonable.
135. Having elected to simply respond to Mr Mitchell's requests without any recourse to such provisions, the Council could have avoided some of the technical breaches that have been found in this case had it provided further assistance to Mr Mitchell in understanding what information was and was not held by it and, where relevant, to highlight which of this information had already been made available to him.



136. During the investigation, the Council worked very positively with the investigating officer to provide detailed submissions, explain its systems and work, and to enable the resolution of this case.
137. However, the Commissioner considers that it would have been reasonable for the Council to provide further help and assistance to Mr Mitchell prior to his application being made to the Commissioner, to enable him to better understand what information was held and the relationship between his current information request and the information previously supplied. He has consequently found that the Council failed to comply fully with its duty under regulation 9(1) of the EIRs.

Redaction of information

138. Mr Mitchell commented during the investigation that the Council's approach to the redaction of personal data within the information he has received from the Council at various points has been "erratic".
139. The Commissioner has not considered in this decision whether the Council was entitled to withhold the personal data that was removed from information supplied to Mr Mitchell. He has also not considered the manner in which information was supplied to him in previous requests. The Commissioner is therefore not in a position to judge whether the Council had correctly withheld information in the current case or previously.
140. However, it is clear that the Council has not been entirely consistent in its approach to redaction when disclosing information at different points, and in some cases this means that Mr Mitchell has been supplied with the same information with different parts redacted.
141. One factor in this lack of consistency has been that the Council has not always retained copies of the information disclosed to Mr Mitchell in response to the requests under consideration or previous requests. He suggests that the Council consider whether it should retain records of disclosures under FOISA for a longer period to assist it in achieving greater consistency in its decision making and practice.

Content of notices

142. Mr Mitchell also expressed dissatisfaction with the content of the Council's responses to its request for information and requirement for review. Mr Mitchell commented that the initial response failed to provide any proper explanation as to why any relevant exception was considered to apply and made no mention of the public interest test. He also argued that there was inadequate reasoning provided for withholding the requested information in the response to the requirement for review and no analysis of the public interest.



143. Regulation 13 of the EIRs provides that, where a request to make environmental information available is refused by a Scottish public authority, the refusal must be provided in writing and must specify the authority's reasons for refusal. This should include details of any exception the authority considers applicable under regulation 10(4), 10(5) or provision of regulation 11, with the basis on which these are considered to apply, and also how the public authority has reached its decision with respect to the public interest under regulation 10(1)(b).
144. In addition, paragraph 65 of the Scottish Ministers' Ministers Code of Practice on the Environmental Information (Scotland) Regulations 2004 (commonly known as the "Section 62 Code") for Scottish Public Authorities¹ states:
- "Where a request for information is refused or partially refused in accordance with an exception, the [EIRs] require that the Scottish public authority notifies the applicant in writing which exception has been claimed, and the reason that exception applies. Scottish public authorities should not merely paraphrase the wording of the exception unless the statement would involve the disclosure of information which would itself be withheld in accordance with the [EIRs]. The Scottish public authority should state clearly in the decision letter why they have decided to apply that exception in the case in question. The [EIRs] also require Scottish public authorities, when withholding information, to state the reasons for claiming that the public interest in maintaining the exception outweighs the public interest in disclosure. Scottish public authorities should specify the public interest factors - for and against disclosure - that they have taken into account before reaching the decision, unless the statement would involve the disclosure of information which would itself be withheld in accordance with the [EIRs]. They should also include details of procedure for review of the decision and for appeal for a decision by the Scottish Information Commissioner."*
145. The Council's initial response and review response to Mr Mitchell did not comply with the requirements above. In particular, the Council did not cite which exception in the EIRs (or, indeed, under FOISA) it was relying on to withhold the requested information, nor state the basis on which any exception or provision relied upon applied and did not provide any consideration of the public interest. In addition, the Council's initial response did not advise Mr Mitchell how to request a review.
146. For this reason, the Commissioner has concluded that the Council failed to comply with the requirements of regulation 13(b) (reasons for refusal), 13(c) (state the basis on which the exception in regulation 10(4) applied) and 13(e) (advise review provisions) of the EIRs in responding to Mr Mitchell's requests.

¹ This Code or practice has since been superseded. However, reference is included here to the version that was in force at the time when the Council dealt with the requests that are under consideration.



DECISION

The Commissioner finds that Fife Council (the Council) partially failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in dealing with Mr Mitchell's requests for information.

In particular, the Council failed to comply with the EIRs by responding to Mr Mitchell's request for information solely in terms of FOISA.

The Commissioner finds that the Council was entitled to refuse requests 10, 13, 16, 24, 28, 33 and 35 in terms of regulation 10(4)(a) of the EIRs on the basis that it did not hold the information requested.

However, the Commissioner finds that the Council failed to comply with regulation 5(1) in relation to requests 2, 8, 14, 17, 20, 22, 25, 29 and 30. In relation to these requests, the Council either wrongly indicated that no information was held, or it failed to identify and provide all relevant information when responding to Mr Mitchell's requests and his subsequent request for review.

In addition, the Commissioner finds that the Council failed to discharge its duty to provide Mr Mitchell with advice and assistance under regulation 9(1) of the EIRs and the technical requirements of regulations 5(2)(a), 13(a), (b), (c) and (e) and 16(4) of the EIRs.

The Commissioner is satisfied, by the end of the investigation, Mr Mitchell had been provided with all the information held by the Council which falls within the scope of the requests under consideration in this decision. Consequently, he does not require the Council to take action in respect of the failures he has identified.

Appeal

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

Margaret Keyse
Head of Enforcement
3 March 2011



Appendix 1

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

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

...

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

2 Effect of exemptions

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

...

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

...

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)-

- (a) shall be complied with as soon as possible and in any event no later than 20 working days after the date of receipt of the request; and
- (b) is subject to regulations 6 to 12.

...

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.



...

10 Exceptions from duty to make environmental information available–

...

- (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;

...

13 Refusal to make information available

Subject to regulations 10(8) and 11(6), if a request to make environmental information available is refused by a Scottish public authority in accordance with regulation 10, the refusal shall-

- (a) be given in writing as soon as possible and in any event no later than 20 working days after the date of receipt of the request for the information;
 - (b) specify the reasons for the refusal including, as appropriate, any exception under regulation 10(4) or (5) or provision of regulation 11 and how the Scottish public authority has reached its decision with respect to the public interest under regulation 10(1)(b);
 - (c) state the basis on which any exception relied on under regulation 10(4) or (5) or provision of regulation 11 applies if it would not otherwise be apparent;
- ...
- (e) inform the applicant of the review provisions under regulation 16 and of the enforcement and appeal provisions available in accordance with regulation 17.

...

16 Review by Scottish public authority

...

- (4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.

...



Appendix 2

Mr Mitchell's information requests

Note – requests 1-30 were included and numbered within the table enclosed within the letter sent to the Council by Macroberts on behalf of Mr Mitchell on 12 May 2009. The requests referred to in this decision by numbers 31 to 35 were not numbered and were detailed within the letter itself. The text of the requests has been modified to remove names of individuals. Otherwise, the table replicates the text of the requests in full.

No	Information request
1	Historical info file K006 relating to claimed right of way (FK3) – requested on 22.9.08 & 1.10.08 – not received.
2	Email from [named Council employee] to [named Councillor] 31.5.07 re email complaints. Only received copy of one complaint through FOI request copies of the other complaints made prior to this date.
3	Request reply to [named Council employee]'s letter to [name] 23.12.05
4	Request reply from [name] and/or [named Council employee] to letter headed "Community Woodland Grant ..." 23.5.03 from [named Councillor]
5	Letter C Mitchell from [name] of SCOTWAYS 24.7.03 cc to [name] (Burntisland CC) and [named Council employee] (FC) request letters of reply from these bodies.
6	Request FC replies to letter from [name] entitled Burntisland's Paths and Tracks: Community Consultation dated 4.10.04
7	Letter dated 23.5.05 from [named Council employee]; Enforcement Officer to C Mitchell notified C Mitchell that footpaths being constructed on land to north and south of Aberdour Road are being constructed without planning permission. In objections to Fife Draft Core Path Plan from [name] of [address], [name] makes reference to previously notifying FC of his feelings on matter and to letter he received from FIC that suggested [name] may be disappointed with FC's comments. Request copy all correspondence between [name] and FC employees re. construction of footpaths on Newbigging Farm.
8	Request full report version of Burntisland CC summary report Burntisland's Paths and Tracks – Appendix 3 – The Fife Connections 9.2.05 giving ref. on page 3 to incident reported to FC in October 2005. Also request sight of any response from FC.
9	Pg 2 Burntisland CC summary report Burntisland's Paths and Tracks – Appendix 3 – The Fife Connections 9.2.05 refers to provision of form for reports on "access incidents" copied to Fife Access Officer. Request copy FC's reply.
10	Request FC's reply to [name]'s letter 3.2.06 to [named Council employee] entitled Community Consultation paths and tracks around Burntisland. Particularly in answer to his question of funding for a test or demonstration case.
11	Request letter 28.2.06 to Benefits and Council Tax Team from [name] dated 7.4.06 entitled Provision of Street Lighting Kilmundy Steading Burntisland
12	Request email from [named Councillor] which initiated email reply 12.2.07 from [named Council employee] of FC
13	Request letter to FC re. claimed Right of Way at Newbigging as referred to in Burntisland CC minutes of 13.4.07
14	Email from Kilmundy resident to Council or [named Councillor] 29.5.07 re. contact with [named Council employee] and Police re. threatening behaviour. Request letters or emails from [named Council employee] wishing to raise the residents concerns.



15	In reply to above email 29.5.07 [named Councillor] refers to diversion of route at Kilmundy Steading as a condition of planning consent. Request any documentation which records this.
16	Request reply to [named Councillor]'s letter 4.6.07 to FC Law & Admin
17	Request any info re. outcome of planning officer's visit as detailed in email to [named Councillor]'s dated 14.8.07
18	Email from [named Councillor] to Kilmundy residents 17.8.07 re management meeting on following Tuesday – request mins of meeting.
19	Request mins of officers meeting referred to in [named Councillor]'s email to Kilmundy residents 4.10.07.
20	Request information re. Fife Access Forum sub-group formed to look at access issues at Newbigging Farm and details of meeting with [named Council employee] referred to in her letter to C Mitchell 29.10.07
21	Request letter from Kilmundy residents to Fife Access Forum requesting meeting referred to [named Council employee]'s letter to C Mitchell 7.2.08.
22	Request advice from Fife Access Forum to Kilmundy residents referred to in [named Council employee]'s emails 2.3.08 & 4.4.08
23	Request reports of obstruction to walkers referred to in email (possibly from Scotways) 27.4.08
24	Request email reply from FFP reporter to [named Councillor]'s email 7.5.08
25	Request page 2 of email from [named Council employee] to [named Councillor] 7.8.09
26	Request another copy of notes of meeting at Burgh Chambers, Burntisland as page 2 badly copied and text at bottom of page missing
27	Request email 29 Sept referred to in email to [named Council employee] 1.10.08
28	Page one of Briefing Note 3.10.08 re Authorisation to Apply Delegated Powers refers to strong reaction from Burntisland CC request evidence of this strong reaction
29	Any correspondence with other bodies for advice ie Fife Coast & Countryside Trust, Paths for All Partnership, SNH and Police
30	Request another copy Enforcement Complaint Log re. Kilmundy Steading boundary wall as 1 st copy poor quality and text missing and appears page no. has been amended. Also request full complaint log from last entry 7.8.08 to until file closed.
31	Colour Copies of all information in the planning file for planning application reference 04/00320/CFULL.
32	Fife Council Internal mail relating to planning applications submitted by Summerhall (Kilmundy) Ltd.
33	Any information relating to meetings between representatives of Fife Council and representatives of Summerhall (Kilmundy) Ltd including but not limited to notes from meeting between Transportation Services and architects relating to planning application Ref. 04/00320/CFULL on 15th October 2003 as referred to in Pre-Application Enquiry dated 17.10.03. Planning officer's notes from meeting of 23.03.04 between [named Councillor], Summerhall Ltd and planning officer as referred to in email from [named Councillor] dated 17.08.07.
34	All correspondence with Fife Council Transportation department relating to planning application reference. 04/00320/CFULL.
35	All correspondence with Summerhall (Kilmundy) Ltd relating to the Kilmundy Steading boundary wall.