

Decision Notice



Decision 111/2011 Mr Dave Cuthbert and Perth and Kinross Council

Information relating to the (non) preparation of a planning brief for the former Kinross High School site

Reference No: 201002049
Decision Date: 7 June 2011

www.itspublicknowledge.info

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Scottish Information Commissioner

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Summary

Mr Dave Cuthbert requested from Perth and Kinross Council (the Council) all information about preparing or not preparing a planning brief for the former Kinross High School site. The Council responded by giving Mr Cuthbert notice, in terms of regulation 10(4)(a) of the Environmental Information (Scotland) Regulations 2005 (EIRs), that it did not hold the information he requested. Following a review, during which the Council found and disclosed some information falling within the scope of the request, Mr Cuthbert remained dissatisfied and applied to the Commissioner for a decision.

In the investigation that followed, the Council released further information within the scope of Mr Cuthbert's request (which it had identified during its review, but omitted to disclose). However, it also redacted some of that information, withholding it on the grounds that it was excepted from disclosure in terms of regulation 10(4)(e) of the EIRs.

The Commissioner found that the Council had only partially complied with the EIRs in dealing with Mr Cuthbert's request. The Commissioner concluded that, by disclosing some information when it notified Mr Cuthbert of the outcome of its review, and by withholding some information from Mr Cuthbert in terms of regulation 10(4)(e), the Council complied with the EIRs.

However, the Commissioner found that the Council failed to comply with the EIRs by failing to identify and provide (unless giving notice that it was not obliged to do so) all information that it held and which fell within the scope of Mr Cuthbert's request by the point where it notified Mr Cuthbert of the outcome of its review.

The Commissioner was satisfied that the Council held no further information falling within the scope of Mr Cuthbert's request. As the additional information was disclosed to Mr Cuthbert during the investigation, he did not require it to take any action in response to this decision.

Relevant statutory provisions and other sources

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation – definitions (a) to (c) of environmental information); 5(1) and (2)(b) (Duty to make available environmental information on request); 6(1)(b) (Form and format of information) and 10(1), (2), (4)(a) and (e) (Exceptions from duty to make environmental information available)

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



Background

1. On 23 July 2010, Mr Cuthbert phoned Perth and Kinross Council (the Council) requesting the following information:

All information about preparing or not preparing a planning brief for the former Kinross High School site.
2. The Council emailed Mr Cuthbert to confirm its understanding of his request on the same day. In this email, the Council advised Mr Cuthbert that if he did not agree with its interpretation of his request (which is noted above in paragraph 1) he should contact the Council immediately. Mr Cuthbert did not do so, and so the Commissioner understands that the Council's email correctly specified the terms of Mr Cuthbert's request.
3. The Council responded to the request, having considered it in terms of the EIRs, on 23 August 2010. The Council then gave Mr Cuthbert notice, in terms of regulation 10(4)(a) of the EIRs, that it did not hold any information relating to his request.
4. On 29 September 2010, Mr Cuthbert wrote to the Council, requesting a review of its decision. Mr Cuthbert drew the Council's attention to the minutes of the Council's Strategic Policy and Resources Committee (SP&RC) meeting of 16 April 2008, which had discussed the development of a planning brief for the former Kinross High School site. He noted that this minute had not been supplied to him. He commented that, as the planning brief was never prepared, the Council must have made a decision at some point not to make one. He also asked why this was not in the Council's response
5. The Council notified Mr Cuthbert of the outcome of its review on 22 October 2010. The Council acknowledged that its initial response to Mr Cuthbert's request was incorrect and that it did, in fact, hold some information falling within the scope of his request. Accordingly, the Council disclosed certain information (an email and an extract from a minute of a committee meeting) to Mr Cuthbert. The Council did not provide Mr Cuthbert with a copy of the minutes of the SP&RC meeting referred to in his request for review.
6. On 25 October 2010, Mr Cuthbert wrote to the Commissioner, stating that he was dissatisfied with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to certain specified modifications.
7. The application was validated by establishing that Mr Cuthbert 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

8. The investigating officer subsequently contacted the Council, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. In particular, the Council was asked to justify its reliance on any provisions of the EIRs it considered applicable to the information requested.
9. The Council responded with its comments on 9 December 2010. It provided some background information on the matters to which Mr Cuthbert's request relates. It also indicated that a further document had been found to contain information relevant to Mr Cuthbert's request. It explained that this document had been obtained by the Council's FOI review officer but, due to an oversight, it was omitted when the Council responded to Mr Cuthbert's request for review.
10. The Council supplied extracts of this document to Mr Cuthbert during the investigation, subject to the redaction of certain content that it considered to be excepted from disclosure under regulation 10(4)(e) of the EIRs.
11. The comments received from both Mr Cuthbert and the Council are summarised and considered (where relevant) in the Commissioner's analysis and findings section below.

Commissioner's analysis and findings

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

Handling under the EIRs

13. Environmental information is defined in regulation 2(1) of the EIRs (paragraphs (a) to (c) of the definition are reproduced in the Appendix to this decision). Where information falls within the scope of this definition, a person has a right to access it under the EIRs, subject to various restrictions and exceptions contained in the EIRs.
14. Since Mr Cuthbert's information request sought information relating to the preparation (or non preparation) of a planning brief, the Commissioner has no difficulty in agreeing with the Council that, to the extent that it was held, the information caught by this request is environmental information for the purposes of the EIRs. The information relates to a specific site and its development. This involves measures (such as statutory planning measures) affecting or likely to affect the elements referred to in part (a) of the definition, in particular soil, land, and landscape.



15. As such, the Commissioner is satisfied that any information held by the Council which falls within the scope of Mr Cuthbert's request is environmental information as defined in part (c) of the definition and so the Council correctly identified Mr Cuthbert's request as one made in terms of the EIRs.
16. Where a request for environmental information is made in writing, that request will also fall to be considered in terms of FOISA. However, while the EIRs allow information requests to be made verbally, FOISA does not.
17. Since Mr Cuthbert's request was made verbally, the Commissioner is required to consider Mr Cuthbert's application solely in terms of the EIRs.

Matters to be considered

18. Regulation 5(1) of the EIRs requires authorities which hold environmental information to make it available when requested to do so by any applicant. Regulation 5(2)(b) qualifies regulation 5(1), providing that it is subject to regulations 6 to 12, which contain a number of exceptions from disclosure and other provisions which disapply the right of access in certain circumstances.
19. In his application to the Commissioner, Mr Cuthbert expressed dissatisfaction that the Council's response to his request for review had failed to produce any records relating to the Council's SP&RC minutes of 16 April 2008 (where it was minuted that a planning brief should be prepared for the former Kinross High School site) or any subsequent decision not to produce the planning brief as required by this committee. Mr Cuthbert considered that, as no planning brief was ever produced, the Council must have made a decision at some point not to proceed with the brief.
20. Mr Cuthbert also noted that, since the minute of this meeting was central to any request for information in this matter, he should have been provided with a copy of the minute.
21. As noted above, during the investigation, the Council disclosed further information to Mr Cuthbert that it had omitted when responding to his request for review. Since the Council failed to supply this information by the point where it notified Mr Cuthbert of the outcome of its review, and it did not consider that any provision in regulations 6 to 12 disappplied its duty to make that information available, the Commissioner must conclude that the Council failed to comply with regulation 5(1) by failing to supply the information that was disclosed to Mr Cuthbert (to the extent that this information fell within the scope of his request) prior to the commencement of the Commissioner's investigation.
22. The Commissioner's further analysis in this decision has focussed on two additional matters:
 - a. whether, by the end of the investigation, the Council had identified all information that was held at the time when Mr Cuthbert's information request was received, and had provided this to him (unless it was subject to one of the provisions set out in regulations 6 to 10).



- b. whether the Council was entitled to withhold certain parts of the document supplied to Mr Cuthbert during the investigation, on the grounds that they were excepted from disclosure under regulation 10(4)(e) of the EIRs.

23. The Commissioner first considered whether the Council had identified and considered all relevant information falling within the scope of Mr Cuthbert's information request.

The minute of the SP&RC of 16 April 2008

24. The minute of the SP&RC meeting on 16 April 2008, which is publicly available, contains the following at point 233 (emphasis added at point iii):

233. INVESTMENT IN LEARNING: PROPERTY DISPOSALS

There was submitted a report by the Head of Property (08/212) (Revised) detailing those properties declared surplus to requirements as a result of the Investment in Learning Programme and seeking approval of options for the disposal and future utilisation of each property.

Resolved:

- i. The issues and the proposed site utilisation options highlighted within report 08/212 be noted.*
 - ii. The Council's previous decision of 14 February 2008 to dispose of the surplus Investment in Learning project properties as detailed in Section 4.3 of Report 08/212 be re-affirmed.*
 - iii. A further report be submitted to provide more details of the options in relation to Hill Primary School, Blairgowrie; Kinross High School; and the Glebe Special School, Scone, including a development brief where appropriate.**
 - iv. The preferred option for disposal and future utilisation of the other properties, as highlighted, in Appendix A be approved.*
25. Given the terms of point iii, which clearly raises the possibility of preparing a planning brief for the former Kinross High School site, the Commissioner takes the view that the extract above (excluding bullets i, ii and iv) would fall within the terms of Mr Cuthbert's request, which sought *all information about preparing or not preparing a planning brief for the former Kinross High School site.*
26. However, despite Mr Cuthbert referring to this minute in his request for review, the Council neither supplied this information to Mr Cuthbert, nor indicated that it was not obliged to provide it to him as a result of the application of any provision in regulations 6 to 12 of the EIRs.
27. The information that the Council did supply was an extract from a report considered at meeting of SP&RC on 20 May 2009, in which it was noted at point 2.3:



2.3 *The development briefs are in the form of Planning Position Statements and these appear in this report and have been compiled by the Environment Service on the basis of the existing adopted Local Plans and the guidance contained in current Scottish Planning Policy.[...] A full Development Brief would come within the scope of the Environmental Assessment (Scotland) Act 2005 and as such would be subject to strategic environmental assessment procedures. Such procedures are resource intensive and would introduce significant delays in the disposal process. It is best that the consideration of environmental issues is transferred to the purchaser as part of the planning process. The Planning Position Statements will be incorporated into the marketing literature.*

It also provided a copy of an internal email, which provided some explanation of the process by which the Committee's decision was enacted by the preparation of Planning Position Statements rather than full development briefs.

28. When questioned on the omission of the relevant parts of the SP&RC minute of 16 April 2008, the Council initially informed the Commissioner that it had interpreted Mr Cuthbert's information request as seeking information following the meeting of 16 April. It noted that it had understood his request for review to be prompted by his belief that it held information relating to a decision not to produce a planning brief following that meeting.
29. The Council noted that, when reviewing its handling of Mr Cuthbert's request, it had checked the reference contained in the minutes of 16 April 2008, but since he had already referred to them, it was judged not to be necessary or appropriate to provide these to Mr Cuthbert. It noted that the minutes were publicly accessible, and it had no reason to withhold these from Mr Cuthbert, and it would have supplied these had it considered them to be relevant to his request.
30. The Commissioner has noted these comments. However, Mr Cuthbert's request did not specify any time period in relation to which he wished to access information. He simply sought all information relating to the preparing or not preparing of a planning brief in relation to the relevant site. He is unable to accept that, on a plain reading, the parts of the SP&RC minute of 16 April 2008 identified above would not also fall within its terms. By failing to acknowledge that this information was relevant to Mr Cuthbert's request, the Commissioner considers that the Council's actions raised concerns for Mr Cuthbert about the extent to which other relevant information had been excluded from its consideration.
31. In further communications with the investigating officer, the Council confirmed that it considered that it was not obliged to disclose the relevant parts of these minutes given the terms of regulation 6(1)(b) of the EIRs. Regulation 6(1)(b) of the EIRs states that a Scottish public authority shall comply with a request that environmental information be made available in a particular form or format, unless the information is already publicly available and easily accessible to the applicant in another form or format. This is a two-part test, which must (for the regulation to apply) conclude that the information is both publicly available and easily accessible.



32. Given that the minutes of the meeting are published on the Council website, the Commissioner is satisfied that the minutes are both publicly available and easily accessible to Mr Cuthbert. The fact that he referred to them in his communications with both the Council and the Commissioner show that he was aware of their content. The Commissioner therefore concludes that regulation 6(1)(b) applies, and so regulation 5(1) of the EIRs did not require the Council to disclose this information to Mr Cuthbert.
33. However, regulation 6(2) states that where an authority relies upon any provision in regulation 6(1), the public authority should notify the applicant of the reasons for that decision.
34. The Commissioner notes that, since the Council did not consider the relevant part of the minutes to fall within the terms of Mr Cuthbert's request at the point where it notified him of the outcome of its review, it neither advised Mr Cuthbert that it considered regulation 6(1)(b) to be applicable to the minutes, nor provided them to him. In light of this, the Commissioner must conclude that the Council breached regulation 5 of the EIRs in so doing.
35. However, since Mr Cuthbert is clearly in possession of a copy of these minutes, and the Commissioner accepts that the Council was not obliged to provide a further copy, the Commissioner does not require any action to be taken in response to this breach.

Does the Council hold further information about a decision not to produce a development brief?

36. The Commissioner next considered whether the Council had identified all information that would document or relate to a decision not to produce a development brief in the light of the SP&RC meeting of 16 April 2008.
37. The Council provided the Commissioner with details of the searches that were undertaken in order to locate information falling within the scope of Mr Cuthbert's request. It explained that the principal officers involved were contacted and asked for any relevant information they may have held. These officers checked through their emails and other documents, and took account of their own personal recollections of events. When reviewing its handling of Mr Cuthbert's request, minutes of the Council's Investment in Learning Programme Board meetings were also checked for relevant information.
38. These additional searches led to the identification of the information supplied to Mr Cuthbert in response to his request for review, and parts of an additional document which were erroneously omitted at that time, but supplied (subject to redaction) during the investigation. The Council maintained that, due to the nature of the information concerned, it did not consider it likely that any other officers would hold further relevant information.
39. In its submissions, the Council suggested that Mr Cuthbert's request appears to have arisen from a misunderstanding of a comment made by a Council officer in an email that was disclosed to Mr Cuthbert in a previous request.



40. The Council noted that the original Committee decision was that: “*A further report be submitted to provide more details of the options in relation to Hill Primary School, Blairgowrie, Kinross High School and the Glebe Special School, Scone, including a development brief where appropriate.*” As such, it gave officers discretion as to whether a development brief was produced or not.
41. The Council noted that the original reference is to a ‘development brief’, but elsewhere the phrases ‘planning brief’ and ‘planning framework’ are also used. The further report on this matter (considered by the SP&RC on 20 May 2009) noted that “*the development briefs are in the form of Planning Position Statements*”.
42. The Council submitted that it had spoken with the Council officers involved and it became clear that they did not consider that the SP&RC properly understood the significance of the term “development brief” when it was used in the minutes of 16 April 2008.
43. It might be helpful to note at this stage that the Council’s website provides information on ‘development briefs’ and notes:
- We prepare briefs in consultation with you, businesses and other interested parties. All views are taken into account before the final document is produced. While they are generally written by us in certain circumstances a developer may carry out this task. In either case, it is expected that a number of steps will be followed and criteria met. The briefs are generally adopted formally by us and will be taken into account as a material consideration when we make decisions on planning applications.*
44. The Council explained that officers understood that members of the Committee wanted to know the general situation and possible planning options for the various sites. It indicated that the problems associated with the term “development brief” (in that it was a formal process that required, amongst other things, consultation with the local populace) were explained to the Committee members, and reference to this (stating that “we advised against it”) was made in the email disclosed to Mr Cuthbert in response to his earlier information request.
45. The Council has maintained that the advice/explanation to members (that the use of the term ‘development brief’ was not in fact what they were seeking) was verbal and, consequently, that no record of it exists.
46. The Commissioner recognises that the inclusion of the words “where appropriate” in the minutes of the SP&RC of 16 April 2008 created some discretion around the matter of whether the action taken by officers was to prepare a formal planning brief.
47. He accepts the Council’s explanation that the issue of whether a ‘planning brief’ or ‘development brief’ was produced or not appears to have arisen from the casual use of terminology in the SP&RC meeting. The Commissioner understands that steps were taken afterwards to clarify that the participants did not require a formal ‘development brief’ to be prepared (which is a large undertaking with legal requirements for consultation) but were asking for an outline of the options that were available for developing a number of Council sites.



48. The Commissioner considers it is reasonable for Mr Cuthbert to expect that there would be additional recorded information that would reveal the process by which it was decided that the instructions set out in the minute of 16 April 2008 were implemented by Council officers by producing something other than a development brief. If the Council had made a written record of these post-meeting discussions, it would have helped clarify Mr Cuthbert's understanding of the situation and why the actions taken following the meeting of 16 April 2008 did not include preparing any formal development brief.
49. However, it falls outwith the Commissioner's remit to comment upon the extent to which a public authority records its discussions. His role is to determine only whether the Council acted in accordance with the EIRs when handling Mr Cuthbert's information request, and whether it took reasonable steps to locate any relevant recorded information on the matters he has specified.
50. On balance of probabilities, and having considered the Council's explanation of its searches and the circumstances surrounding the matters giving rise to Mr Cuthbert's request, the Commissioner is satisfied that the Council has located all recorded information that it holds in relation to the question of whether a development brief was to be prepared in relation to the former Kinross High School site. The Commissioner has considered the submissions of the Council, and he is satisfied that the searches carried out were appropriate and thorough. Given the explanation provided by the Council, the Commissioner is satisfied that it did not keep a record of the discussions which clarified this matter, and so no further relevant recorded information was held at the time when the Council received Mr Cuthbert's information request.
51. Having reached this conclusion, the Commissioner has turned next to consider whether the Council was entitled to withhold some information contained in the document which was disclosed to Mr Cuthbert during the investigation.

Regulation 10(4)(e) – Internal communications

52. As noted above, during the investigation, the Council contacted Mr Cuthbert and disclosed to him further information that it had omitted to provide when responding to his request for review.
53. The Council supplied an extract from minutes of a meeting of the Council's Investment in Learning Programme Board with certain content redacted. The Council noted that the majority of the minutes fell outwith the scope of Mr Cuthbert's request, but that it had identified some information within the minutes that was relevant. The Council advised Mr Cuthbert that it had redacted three parts of the minute excerpt on the basis that it considered the information to be excepted from disclosure in terms of regulation 10(4)(e) of the EIRs.



54. The Commissioner has also reviewed the information that was redacted in that document (along with the terms of Mr Cuthbert's request) and he has concluded that only the information contained in paragraph 7.2 of the minutes falls within the scope of Mr Cuthbert's request. Other parts of the extract disclosed to Mr Cuthbert refer to other matters and the disposal of sites other than that of the former Kinross High School and, as such, they do not fall within the scope of Mr Cuthbert's information request. The Council has explained that it had disclosed this additional information to Mr Cuthbert in order to put the information contained in paragraph 7.2 of the redacted minutes into context.
55. The Commissioner considers that the Council's decision to disclose the relevant information in its wider context was helpful to Mr Cuthbert. However, since that wider information fell outwith the scope of Mr Cuthbert's request, he has restricted his consideration here to the information that was withheld from Mr Cuthbert within paragraph 7.2.
56. The redacted information is the name of third parties which had expressed an interest in purchasing the site of the former Kinross High School.
57. Under regulation 10(4)(e) of the EIRs, a Scottish public authority may refuse to make environmental information available to the extent that the request involves making available internal communications. As with all of the exceptions contained in regulation 10, a Scottish public authority applying this exception must interpret the exception in a restrictive way (regulation 10(2)(a)) and apply a presumption in favour of disclosure (regulation 10(2)(b)).
58. For information to fall within the scope of this exception, it need only be established that the information is contained within an internal communication.
59. In this case, the Commissioner is satisfied that the withheld information is contained within an internal communication, i.e. the minutes of the Council's Investment in Learning Programme Board. The Commissioner notes that the minutes of these meetings are intended for restricted access within the Council and that they are also marked as 'private and confidential'. While the marking of a document as 'private and confidential' does not by itself prove that a document is an internal communication, the Commissioner is satisfied (having reviewed the entirety of the minutes under consideration) that the withheld information was generated for internal circulation within the Council only.
60. The Commissioner therefore accepts that the minutes clearly fall within the terms of regulation 10(4)(e) and are an internal communication for the purposes of the EIRs. The Council was entitled to apply this exception to information contained within these minutes.

Public interest test

61. Regulation 10(4)(e) is subject to the public interest test contained in regulation 10(1)(b) of the EIRs, so the request might legitimately be refused only if, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception. The Commissioner has therefore gone on to consider this test in relation to the withheld information.



62. The Council acknowledged that there was a general benefit in the disclosure of environmental information held by a public authority, but commented that there was no other particular benefit from disclosure of the information withheld within paragraph 7.2. However, the Council submitted that there was a significant benefit in withholding commercially sensitive information related to the Council's dealings in property transactions, in order to ensure that the Council is able to conduct its business properly and operate effectively in the commercial property market. Consequently, the Council argued that the public interest was best served by withholding this information.
63. Mr Cuthbert was asked to provide his own public interest arguments in favour of disclosure of the information, but he declined to comment.
64. The Commissioner recognises that some public interest would be served by the disclosure of the withheld information. However, he recognises that the withheld information identifies parties which had expressed an interest in the purchase of land, at a point where no sale had taken place. He considers there would be some commercial sensitivity in this information.
65. At the same time, the Commissioner is aware is that Mr Cuthbert's primary concern in this case was to understand the circumstances surrounding the non-development of a planning brief in relation to the site following the meeting of the SP&RC committee on 16 April 2008. Disclosing the withheld information would contribute nothing to Mr Cuthbert's understanding of these matters.
66. Having considered all of the information laid before him, the Commissioner is satisfied, in all the circumstances of this case, that the public interest in disclosure of the information was outweighed by the public interest in maintaining the exception in regulation 10(4)(e). The Commissioner has concluded that the Council was entitled to withhold the information under the exception in regulation 10(4)(e).



DECISION

The Commissioner finds that Perth and Kinross Council (the Council) partially complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr Dave Cuthbert.

The Commissioner finds that by providing the information supplied to Mr Cuthbert following its review, and by withholding the information discussed above on the grounds that it was excepted from disclosure under regulation 10(4)(e) of the EIRs, the Council complied with the EIRs.

However, the Commissioner finds that the Council failed to comply with of the EIRs, and in particular regulations 5(1) and (2)(b), by failing to identify and provide (unless giving notice that it was not obliged to do so) all information that it held and which fell within the scope of Mr Cuthbert's request by the point where it notified Mr Cuthbert of the outcome of its review.

The Commissioner is satisfied that the Council was not obliged to supply one of the items that it had failed to consider because regulation 6(1)(b) was applicable to this information. The Council disclosed the remaining information to Mr Cuthbert during the investigation, subject to the redaction of content that the Commissioner has found to be excepted from disclosure under regulation 10(4)(e).

On balance of probabilities, the Commissioner is satisfied that no further information is held by the Council which would fall within the scope of Mr Cuthbert's information request.

The Commissioner therefore does not require the Council to take any action in response to these failures in response to this decision.

Appeal

Should either Mr Cuthbert or the 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
7 June 2011



Appendix

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

(1) In these Regulations –

...

“environmental information” has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on –

- (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.

...



6 Form and format of information

- (1) Where an applicant requests that environmental information be made available in a particular form or format, a Scottish public authority shall comply with that request unless-

...
 - (b) the information is already publicly available and easily accessible to the applicant in another form or format.

...

10 Exceptions from duty to make environmental information available–

- (1) A Scottish public authority may refuse a request to make environmental information available if-
 - (a) there is an exception to disclosure under paragraphs (4) or (5); and
 - (b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
- (2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall-
 - (a) interpret those paragraphs in a restrictive way; and
 - (b) apply a presumption in favour of disclosure.

...

- (4) A Scottish public authority may refuse to make environmental information available to the extent that
 - (a) it does not hold that information when an applicant's request is received;

...
 - (e) the request involves making available internal communications.