

Decision Notice



Decision 192/2013 Mr L and West Dunbartonshire Council

Information about property

Reference No: 201201477

Decision Date: 3 September 2013

www.itspublicknowledge.info

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Summary

On 7 February 2012 and 29 March 2012, Mr L made three requests to West Dunbartonshire Council (the Council) for information about specified property. Following a review, Mr L remained dissatisfied with the Council's treatment of his requests and applied to the Commissioner for a decision.

The Commissioner investigated and found that the Council had partially failed to deal with Mr L's requests for information in accordance with Part 1 of FOISA. She found the wording of all three requests was sufficiently clear to have enabled the Council to provide Mr L with a decision. The Commissioner recognised that the Council's communication with Mr L was aimed at trying to help Mr L narrow the scope of the request and was satisfied that, in the circumstances, the Council had provided reasonable advice and assistance to Mr L. However the Commissioner found that it had been unreasonable for the Council to fail to respond to the request with a clear decision, without such clarification.

The Commissioner found that requests 1 and 2 included environmental information. She required the Council to respond to those requests in terms of FOISA and the EIRs, as appropriate to the information held.

By the end of the investigation, the Commissioner was satisfied that the Council had responded to request 3.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (3) and (6) (General entitlement); 2(1) (Effect of exemptions); 12(1) (Excessive cost of compliance); 15 (Duty to provide advice and assistance); 39(2) (Health, safety and the environment)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation) (parts (a), (b), (c) and (f) of the definition of environmental information); 5(1) and (2)(a) (Duty to make environmental information available on request); 8(1) and (3) (Charging) and 9(1) and (2) Duty to provide advice and assistance

The Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004 (the Fees Regulations) regulations 2 (Interpretation); 3 (Projected costs) and 5 (Excessive cost – prescribed amount)



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.

The Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004 (the Section 60/62 Code)

Background

1. On 7 February 2012, Mr L wrote two separate letters to the Council requesting a copy of the information the Council held:
 1. in connection with the disposal of the parade of shops and flats in Main Street containing 182 Main Street, Renton (request 1)
 2. in its Estates file(s) on the parade of shops and flats in Main Street (containing 182 Main Street), Renton (request 2)

Mr L explained that both requests (1 and 2) related to the parade of shops and flats which was demolished and on which a new medical centre and housing was built.
3. Mr L made a further request to the Council on 29 March 2012, for the information it held on Castlehill Community Store Limited (request 3)
2. On 10 February 2012, the Council asked Mr L to clarify the specific information he was looking for. This related to request 1.
3. Mr L replied on 16 February 2012, explaining about the demolition of the property in question and asking for “all information in respect of above sequence of events” (demolition and replacement).
4. The Council wrote to Mr L on 8 March 2012 in connection with requests 1 and 2. It said it had sought clarification from Mr L for both requests and that it held “a great deal of information, even on this particular topic.” Neither the Council nor Mr L have been able to provide the Commissioner with any copies of correspondence relating to this, but both parties are agreed that such an exchange took place.
5. The Council states that it told Mr L that details may not solely be contained in paper format in a filing cabinet, but may also be held digitally, in email or “in many other formats” and the relevant information may not be labelled “Main Street, Renton”. The Council commented that carrying out searches can be time consuming and expensive and asked Mr L to let it know what specific questions he had in relation to the disposal of the parade of shops and flats. The Council indicated that it would not be able to proceed until it had received this clarification.



6. Mr L wrote to the Council on 13 March 2012. He said he had worded his requests to assist the Council. He considered his requests were clear. He was aware that information may be “scattered” throughout the Council, but he had tried to ascertain, in previous requests, how the information was held. Mr L asked the Council to provide an explanation of “what information is held where” in connection with the Main Street Complex by 16 March 2013, otherwise he would consider the Council’s letter of 8 March 2012 as a refusal.
7. In his third request on 29 March 2012, for information held by the Council on Castlehill Community Store Limited, Mr L gave the Council information about the store’s place of business, registered office, company number, etc. He also indicated the type of information he expected the Council to hold in connection with this request
8. The Council wrote to Mr L on 12 April 2012, referring to requests 1 and 2 and his request for an explanation of what information is held where. The Council provided a list of documents and where each document was held, with some file numbers.
9. The Council responded to request 3 on 26 April 2012. It explained that it held a file on this property, but that this contained only information from 30 June 2004 (the previous information having been destroyed in terms of the Council’s Record Management Policy). The Council provided a spreadsheet summarising the information it held.
10. Mr L wrote to the Council on 9 May 2012 and, in respect of all three of his requests, sought a review on the grounds that:
 - the Council had failed to disclose information to him;
 - the Council had failed to provide advice and assistance in respect of what information it held and where; and
 - the Council had not identified all the information it held in relation to his requests.
11. The following day, the Council wrote to Mr L, commenting that it *had* responded to requests 1 and 2. It then wrote to him on 25 May 2012, asking him to clarify his requirement for review in respect of all three requests.
12. Mr L did not otherwise receive a response to his request for review. On 8 June 2012, he wrote to the Commissioner, stating that he was dissatisfied that the Council had not carried out a review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
13. Mr L’s application was investigated by the Commissioner. On 27 July 2012, during the investigation, the Council carried out a review and notified Mr L of the outcome, that:
 - the Council had sought clarification in relation to requests 1 and 2 and that Mr L had responded on 13 March 2012 seeking an explanation of what information the Council held. The Council explained that it had then responded on 12 April 2012 with notes in tabular and text form specifying the information it held.
 - as to Mr L’s dissatisfaction that the Council had not provided him with advice and assistance, it believed, in respect of requests 1 and 2, that it had been helpful in seeking clarification of what he wanted.



- if he wanted to access the files in question, he should let the Council know. The files would then be examined with a view to what exemptions may apply.

The Council referred to the considerable workload involved and to the fact that the upper cost limit may be reached.

14. Regarding request 3, the Council commented that the scope of the request was clear and that its response directly addressed that request (it had told Mr L what information it held but had not disclosed the actual information). The Council also commented that a further search had revealed additional files that fell within the terms of the request. Some of this information was available via its publication scheme and it provided weblinks so that Mr L could locate the information. The Council told Mr L that it would provide the information referred to in its review letter if Mr L wished.
15. On 30 July 2012 Mr L informed the Commissioner that he wished to withdraw his application. This was because the application related solely to the failure by the Council to carry out a review and he had received a response from the Council. Mr L made a new application to the Commissioner, expressing dissatisfaction with the outcome of the Council's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
16. The application was validated by establishing that Mr L had made requests 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 those requests. The case was then allocated to an investigating officer.

Investigation

17. 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.
18. During the investigation, the investigating officer asked the Council if it would be willing to disclose the information it had identified as falling within the terms of the three requests as its correspondence with Mr L had suggested it might be willing to do this.
19. In response, the Council advised the Commissioner that, before disclosing information, it would need to investigate whether providing information would cost less than £600 (in terms of section 12 of FOISA, if complying with an information request costs more than £600, the public authority is not obliged to comply).
20. The Council was also asked its view on whether the information requested, or part of it, fell to be dealt with under the EIRs.



Commissioner's analysis and findings

21. In coming to a decision on this matter, the Commissioner has considered all relevant submissions, and parts of submissions, made to her by both Mr L and the Council. She is satisfied that no matter of relevance has been overlooked.
22. Mr L's application of 31 July 2012 to the Commissioner indicated his dissatisfaction with how the Council had dealt with requests 1, 2 and 3. His dissatisfaction focussed on:
 - (i) the Council's failure to provide information ("absolutely nothing has been disclosed to me"); and
 - (ii) the Council's failure to give an adequate explanation of "what" information is kept "where" regarding requests 1 and 2 (relating to advice and assistance). Mr L referred to the list of information supplied to him by the Council as being incomplete.

The Environmental Information (Scotland) Regulations 2004

23. The Council dealt with Mr L's requests wholly under FOISA.
24. During the investigation, it was raised with the Council whether the requests (or at least, requests 1 and 2) should have been dealt with under the EIRs. The Council was of the view that the EIRs did not apply to the requests.
25. The Commissioner set out her thinking on the relationship between FOISA and the EIRs in some detail in *Decision 218/2007 Professor A D Hawkins and Transport Scotland*¹ and need not repeat it in full here. However, the Commissioner will reiterate some of the key points:
 - (a) The definition of what constitutes environmental information should not be viewed narrowly, but in line with the definition of environmental information in the EIRs.
 - (b) There are two separate statutory frameworks for access to environmental information, and an authority is required to consider any request for environmental information under both FOISA and the EIRs.
 - (c) Any request for environmental information therefore must be dealt with under the EIRs.
 - (d) In responding to a request for environmental information under FOISA, an authority may claim the exemption in section 39(2).

Is the information environmental information?

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600654.asp>



26. The EIRs impose a duty on Scottish public authorities, such as the Council, to make environmental information available, subject to a number of provisions and exceptions. The definition of environmental information, contained in regulation 2 of the EIRs, is wide. From the subject matter of Mr L's requests, the Commissioner considered it likely that some if not all of the information which would fall within the scope of Mr L's requests would be environmental, and the Council and Mr L were invited to comment on this.
27. The Council submitted that the withheld information was not environmental information as defined by regulation 2(1) of the EIRs. Its comments, particularly of 24 July 2013, emphasised its view that Mr L had sought a list of "what" information was kept "where", and that this was not environmental information.
28. During the investigation, Mr L commented that he thought the information he had requested *would* fall within the definition of environmental information, although he had not made any reference to the EIRs in his correspondence with the Council or with the Commissioner.
29. The Commissioner has not viewed the information held by the Council, as in light of the Council's initial response, review response and initial submissions, it was not regarded as necessary to enable her to reach a conclusion about the application.
30. The information in question includes information as to the demolition of a parade of shops and flats in Main Street, Renton, and the replacement of these buildings with a medical centre and new shops.
31. To be environmental information, it will fall within the definition in paragraphs (a), (b), (c) or (f) of regulation 2(1). The relevant definitions are reproduced in full in Appendix but in particular the Commissioner has considered the definition in paragraph (f) and "built structures".
32. In respect of paragraph (f), The Aarhus Convention: An Implementation Guide² states that:
"Built structures' refers to man-made constructions. It is not limited to large buildings and objects such as dams, bridges, highways, etc. but also covers small constructions, and even landscaping or other transformation of the natural environment."
33. Having considered the subject and nature of the request, the correspondence between Mr L and the Council relating to the information held, and the Council's references to the withheld information, the Commissioner is satisfied that some of the withheld information will comprise environmental information as defined within regulation 2(1) of the EIRs.
34. The Commissioner notes that the Council did not identify any information as environmental (and act accordingly under the EIRs) when dealing with Mr L's information requests. Consequently, the Commissioner finds that in this respect the Council failed to comply with regulation 5(1) of the EIRs.

Section 39(2) of FOISA – environmental information

² http://www.unece.org/fileadmin/DAM/env/pp/ppdm/Aarhus_Implementation_Guide_second_edition_-_text_only.pdf



35. The exemption in section 39(2) of FOISA provides, in effect, that environmental information as defined by regulation 2(1) of the EIRs is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs. In this case, the Commissioner is of the view that the Council could have applied the exemption in section 39(2) to at least some of the withheld information, given her conclusion that some of the information is environmental information. However, the Council did not do this.
36. In the absence of section 39(2) being relied on, the Commissioner will address EIRs issues insofar as she is able to in the absence of having seen the information.

Interpretation of requests 1 and 2

37. The different interpretations given to Mr L's requests are at the heart of this dispute. Mr L is dissatisfied at the Council's failure to provide information and by the Council interpreting his requests as being for a list of information it held. Mr L believed his requests were clear and commented that he had made no reference to a list of information.
38. The Council disclosed some information to Mr L (i.e. the lists of what it held in its letter of 12 April 2012), but did not disclose the content of the information listed.
39. In the Council's view, Mr L had *expressly* stated (in his letter of 13 March 2012) that requests 1 and 2) were for lists of information. This letter stated:

"Can you please provide me with an explanation of what information is held where, within WDC [the Council] in connection with the Main Street Complex by Friday 16 March 2012, *otherwise I shall consider your letter as a refusal and this letter should be deemed to be my request for a review* of the refusal to provide me with no [sic] information in respect of both Main Street Complex requests." [Mr L's emphasis]
40. The Council stated that it was on this basis that it responded to Mr L in its initial response and, later, to his request for review. The Council commented that its letter of 23 March 2012 had advised Mr L that this would be the basis on which his request was processed and he had raised no objection, clarification or correction at that point.
41. The Council also commented that this was consistent with Mr L's approach in previous FOI requests, as it had allowed him to select from the list of files those that are of interest to him, avoiding refusal on the grounds of excessive cost. The Council acknowledged that Mr L's aim had been to avoid undue cost to the Council.
42. Mr L was also invited to explain what he had intended by his requests. He responded, on 9 July 2013, that his request was not for lists of information. He was clear that his requests were for the actual information, as opposed to a list of what information the Council held.



43. In interpreting information requests, the Commissioner believes that the words used in the request should generally be given their plain, ordinary meaning. In this instance, the words of Mr L's requests are clear and the Commissioner notes that Mr L's clarification of 16 February 2012 indicated that he was requesting all information. Given that, the Commissioner would therefore expect the Council to interpret these requests using their ordinary meaning.
44. Similarly, the Commissioner expects requests to be interpreted in an objective manner, rather than with reference to what a public authority considers what a requester may have intended.
45. However, there is a further letter from Mr L which was only provided to the Commissioner by the Council at the end of July 2013. In this letter, dated 25 February 2012, Mr L confuses matters somewhat. The final paragraph of the letter states:
- "In relation to the information on the Main Street Complex, if there is a lot of work involved, perhaps you can explain what type of information is held and that may allow me to specify which areas I am interested in."
46. This letter was sent 18 days after Mr L had made requests 1 and 2 and nine days after he clarified that he wanted the information as opposed to a list of the information the Council held.
47. The Commissioner must come to a decision, on balance of probabilities, as to what Mr L sought when he made his requests. The Commissioner considers that Mr L's first and second requests were clear. To the Commissioner's mind there is no ambiguity in them; Mr L asked for copies of information. He confirmed this on 16 February 2013. Whilst the Council's interpretation may have been to assist Mr L, or better to use its resources in the light of its past dealings with Mr L, the Commissioner is of the view that the objective meaning of these requests was clear. His letter of 25 February confuses matters somewhat, but Mr L did not withdraw requests 1 and 2 and it is the wording of the requests at the time he made them that is important. The Commissioner has therefore concluded that requests 1 and 2 were for copies of the information as opposed to a list of what information the Council held.
48. The Council was correct to highlight that Mr L's letter of 13 March 2012 indicates a wish to obtain information about what it held (i.e. a list). However, the Commissioner considers it reasonable to treat this as a new information request made by Mr L because he was unhappy at being asked to clarify what he considered to be an already perfectly clear request.

Clarification

49. Section 1(3) of FOISA and regulation 9(2) of the EIRs, provide that a Scottish public authority is not obliged to respond to an information request if it requires further information in order to identify and locate the information an applicant has requested, and has told the applicant so (specifying what further information is needed). However, a public authority is only entitled to seek such clarification if the requirement for further information is *reasonable*.
50. The Council asked Mr L to clarify his requests on 10 February and 8 March 2012. The Commissioner has considered whether it was reasonable for it to do this.



51. The Council told the Commissioner that Mr L has previously complained about the Council not interpreting his requests properly. It was for this reason that the Council felt it fair to request clarification. The Council was concerned that: if it did seek clarification, it would be criticised for having done so; if it did not seek clarification, Mr L would complain that his requests had been misinterpreted. (The Council made similar comments on obtaining clarification of Mr L's requirement of review, although there is no equivalent of section 1(3) for reviews.)
52. While noting the Council's position, and that the Council may have "expended considerable effort" in dealing with Mr L's past requests, the Commissioner must also note that section 1(3) of FOISA, and regulation 9(2) of the EIRs, would apply only in circumstances where the authority reasonably requires further information in order to identify and locate the requested information.
53. It appears to the Commissioner that the wording of Mr L's requests *did* allow the Council to identify and locate the information he was seeking. For example, the Council's letter of 8 March 2012 asked for more information so it could focus its search for information. It also asked Mr L to say what specific question he had. This does not suggest that the Council could not identify and locate the information, simply that it was trying to narrow down the scope of the request.
54. A request for clarification will not be reasonable if the authority is in a position to identify and locate the information using the request alone. As the Commissioner has said in a previous decision³, the application of section 1(3) carries with it significant consequences (specifically, the authority is not obliged to process the request until it receives the further information it requires) and therefore is not to be resorted to lightly.
55. The Council considered it reasonable to ask for clarification because of the breadth of the requests and because of their past experience of dealing with requests from Mr L. While these factors may be relevant to the application of other provisions of FOISA (two of which, sections 12(1) and 15, are considered below), and the equivalent provisions of the EIRs, it does not follow that the authority could not identify and locate the information the applicant had requested on the basis of the requests as originally submitted.
56. The issue here is about reasonableness, but this must be considered in the appropriate context. As explained, when considering whether seeking clarification was reasonable, this must be done in terms of section 1(3) of FOISA or regulation 9(2) of the EIRs. In other words was it reasonable to seek clarification to understand what information was being requested? In all the circumstances of this case, the Commissioner considers that it was not reasonable for the Council to require Mr L to explain more clearly what information he was seeking for requests 1 and 2.

Excessive costs

³ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2011/201002302.asp>



57. There are very different charging regimes under FOISA and the EIRs. While FOISA allows public authorities to refuse to comply with a request costing more than £600, there is no such limit in the EIRs (subject to a public authority being entitled not to comply with a request if it is manifestly unreasonable).
58. Under the Fees Regulations, in terms of FOISA, a public authority cannot charge a fee note for the first £100 and can only charge 10% thereafter, while public authorities can make a charge at a much lower level under the EIRs. Therefore, an applicant may be required to pay a fee for environmental information at a much earlier stage under the EIRs than under FOISA.
59. The Council explained that to respond to requests 1 and 2 would be likely to exceed the £600 FOISA threshold but it never served notice under FOISA that it was applying section 12.
60. Given that the Council did not serve notice to Mr L in relation to excessive costs of responding to his request, the Commissioner has not made a specific finding in relation to this. However, The Commissioner would comment, on the basis of what she has been told by the Council, that had they done so, it is likely they would have been in breach of Part 1 of FOISA and of regulation 5 of the EIRS because of the underlying failure to identify information as falling under the EIRs and so subject to a different charging regime. In the circumstances, the Commissioner is not in a position (or required) to comment on whether any of the relevant provisions of the EIRs would have applied to these requests.

Request 3

61. As noted above, Mr L made request 3 on 29 March 2012.
62. The Council responded on 26 April 2012, explaining what information it held and providing details by way of a spreadsheet. The Council clearly believed that this was it complying with Mr L's request, although, again as noted above, additional information was located at review, including information available through the Council's publication scheme.
63. The Commissioner has already set out her view on the interpretation of information requests. As with requests 1 and 2, the Commissioner is satisfied that request 3 was clear and that Mr L was seeking the actual information as opposed to information about the information the Council held.
64. The Commissioner therefore finds that the Council's request that Mr L clarify request 3 was not reasonable.
65. The Council's submission to the Commissioner acknowledged that it considered that the information requested fell below the (FOISA) section 12 threshold and it had supplied information to Mr L on 12 September 2012.



66. Mr L was asked to clarify his dissatisfaction with how the Council had dealt with this request. Mr L responded on 7 July 2013 that:
- “...no financial information from [the Council’s] books in respect of this matter has been disclosed. Also, it would be helpful to get an explanation of where relevant information may be kept and what searches were done.”
67. The Council’s initial response to this request, of 26 April 2012, explained that it holds a file on a specified property leased to Castlehill Community Store Ltd until 30 June 2004. The file only contained information from that date, as the previous information had not been retained (in accordance with the Council’s Records Management Policy). The Council disclosed a spreadsheet summarising this information. The Council’s spreadsheet listed 13 items held, most amounting to two pages each.
68. That response also stated that, having checked with the Council’s Finance section, “information regarding any funding is outwith the agreed [Council] timescales for document retention.”
69. The Council’s review (of 27 July 2013) confirmed that the note provided (the spreadsheet) was in line with what Mr L had previously accepted (i.e. a summary of the information).
70. The review identified a file awaiting destruction that fell within the terms of the request. The contents of the file was summarised as including seven items, each of which were described. The review located information held within the Council’s online archive of minutes. A link was provided to the Council’s webpage together with links to the individual documents.
71. Finally, the review confirmed, as with the initial response, that the Council had again checked with its Finance team and there was no record of current debt. The Council commented that, given that the specified company (Castlehill) was dissolved in 2007, this was as the Council would expect.
72. The Council specified the information it held which it believed did not fall within the terms of the request (as they related to the property rather than the company).
73. On 25 September 2012, the Council supplied Mr L with the information it believed fell within his request.
74. On the basis of the description of the information provided to Mr L and the description of the searches carried out, the Commissioner is satisfied that the Council has complied with request 3.

Advice and assistance

75. Section 15(1) of FOISA and regulation 9(1) of the EIRs provide that a Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.



76. Mr L's requirement for review of 9 May 2012 (which covered all three of his requests) stated he was dissatisfied with the Council's failure to provide advice and assistance in respect of what information the Council held and where. He noted that tables had been provided, but that they did not explain where land transfer information was kept. He stressed to the Commissioner that he had asked for advice and assistance to identify which information that would be of interest to him. The lack of advice had, he felt, frustrated his information rights.
77. In contrast, the Council commented that it had:
- “... been exceedingly pro-active in trying to address Mr L's overall information needs in the hope that it will better address his requirements and our own resource demands than the piecemeal and often repetitive approach he currently takes to his requests. Our attempt to address this through what we consider good practice of seeking to address this on a wider basis is now being quoted back at us as a failing and this is indeed disappointing.”
78. Section 15(2)/regulation 9(3) provides that a Scottish public authority which conforms with the Section 60/62 Code is to be taken to comply with its duty section 15(1)/regulation 9(1).
79. The Section 60/62 Code⁴ states (at 1.3):
- “Authorities should be flexible in offering advice and assistance***
- ...
- Advice and assistance can be given either before a request is made, or to clarify what information an applicant wants after a request has been made.”*
80. The Section 60/62 Code (at 1.4) also provides that the advice and assistance will depend on the particular circumstances of the case and notes that there will be certain individuals who may not be expected to express themselves with precision and who need more support in describing the information they wish to receive. The Commissioner is of the view that the present applicant, being a solicitor who is well versed in FOI law, is not such a person and would generally be expected to be able to describe the information he sought, and to understand restrictions on disclosure where they applied.
81. The Section 60/62 Code (at 1.4) also explains that where the request is not reasonably clear, advice and assistance could include providing an outline of the different information which might meet the terms of the request. This has been done by the Council, albeit that Mr L is dissatisfied because he wished the actual content of the information rather than lists.
82. In this case, as the Commissioner sees it, the Council has responded in terms of section 1(3) to seek clarification of what Mr L “really wants” from his requests. It appears to have done this because it knows the information was voluminous and believed that under FOISA it would not have to provide any information on the grounds of excessive costs.

⁴ <http://www.scotland.gov.uk/Resource/Doc/933/0109425.pdf>



83. Although this approach was incorrect, the Commissioner accepts that the Council has attempted to comply with its section 15/regulation 9(1) duty.
84. The Section 60/62 Code (at 1.9) notes that, where the upper cost limit applies, the authority may suggest how the applicant can narrow their request. Mr L has argued that he has not received information to allow this to happen. The Commissioner does not accept this. From the submissions, the evidence demonstrating compliance with section 15/regulation 9 is:
- the Council engaged with Mr L at an early stage to give an indication of the volume of information held and the possibility that Mr L narrow his request
 - the Council offered to meet Mr L to try to resolve matters, for example in its letter of 27 July 2012 to Mr L
 - the Council disclosed a table (13 March 2012) indicating the information it held for requests 1 and 2
 - at review (27 July 2012), the Council explained the information held within its publication scheme that fell within the terms of the request and provided appropriate links to its online archive of minutes.
 - at review (27 July 2013), the Council described in detail the information it held that it believed fell within the request, and also did not fall within request 3. It identified information which (in accordance with its interpretation of the request) did not fall within the request, but, by detailing the information, allowed Mr L to make a request for these items.
85. It is evident that, despite the error in relation to section 1(3), the Council has indeed made considerable efforts to address Mr L's requests. It also appears that Mr L's expectations (expecting the information *and* a detailed list) were unreasonable in the circumstances. Whilst the Commissioner understands that Mr L is of the view that it assists the Council if he asks for explanations of what information is held so that he can then ask for it and save the Council resources in dealing with a request for the actual information, it must be said that, in this instance, this approach has caused problems, contributing to the confusion as to what Mr L actually wanted.
86. On balance, the Commissioner accepts that the Council has conformed to the Section 60/62 Code where relevant to these requests and that it has therefore complied with section 15 of FOISA and regulation 9(1) of the EIRs.



DECISION

The Commissioner finds that West Dunbartonshire Council (the Council) partially failed to comply with Part 1 (and in particular section 1(1)) of the Freedom of Information (Scotland) Act 2002 (FOISA) and with regulation 5 of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information requests made by Mr L.

Although she found that the Council complied with the requirements of section 15(1) of FOISA and regulation 9 of the EIRS in relation to all three requests, she did not consider it was reasonable for the Council to require Mr L to clarify the information he was seeking, in terms of section 1(3) of FOISA or regulation 9(2) of the EIRs.

The Commissioner requires the Council to determine, in relation to requests 1 and 2, what information is and is not environmental information and to issue a response to Mr L in line with Part 1 of FOISA or with the EIRs by 18 October 2013.

Appeal

Should either Mr L or West Dunbartonshire 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.

Rosemary Agnew
Scottish Information Commissioner
3 September 2013



Appendix

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

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

...

- (3) If the authority –

- (a) requires further information in order to identify and locate the requested information; and
- (b) has told the applicant so (specifying what the requirement for further information is),

then provided that the requirement is reasonable, the authority is not obliged to give the requested information until it has the further information.

...

- (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 –

- (a) the provision does not confer absolute exemption; and
- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.



12 Excessive cost of compliance

- (1) Section 1(1) does not oblige a Scottish public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed such amount as may be prescribed in regulations made by the Scottish Ministers; and different amounts may be so prescribed in relation to different cases.

...

15 Duty to provide advice and assistance

- (1) A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
- (2) A Scottish public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects that case, to be taken to comply with the duty imposed by subsection (1).

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...

- (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;
 - (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;
- ...
- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

...

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



...

8 Charging

- (1) Subject to paragraphs (2) to (8), where a Scottish public authority is under a duty to make environmental information available under regulation 5(1), it may charge a fee for so doing.

...

- (3) Fees charged under paragraph (1) shall not exceed a reasonable amount and in any event shall not exceed the costs to the authority of producing the information requested.

...

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.
- (2) Where a request has been formulated in too general a manner, the authority shall—
- (a) ask the applicant as soon as possible, and in any event no later than 20 working days after the date of receipt of request, to provide more particulars in relation to the request; and
 - (b) assist the applicant in providing those particulars.

...



Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004

2 Interpretation

In these Regulations –

"the Act" means the Freedom of Information (Scotland) Act 2002;

"prescribed amount" means the amount prescribed in regulation 5; and

"projected costs" has the meaning set out in regulation 3.

3 Projected costs

(1) In these Regulations, "projected costs" in relation to a request for information means the total costs, whether direct or indirect, which a Scottish public authority reasonably estimates in accordance with this regulation that it is likely to incur in locating, retrieving and providing such information in accordance with the Act.

(2) In estimating projected costs-

(a) no account shall be taken of costs incurred in determining-

(i) whether the authority holds the information specified in the request; or

(ii) whether the person seeking the information is entitled to receive the requested information or, if not so entitled, should nevertheless be provided with it or should be refused it; and

(b) any estimate of the cost of staff time in locating, retrieving or providing the information shall not exceed £15 per hour per member of staff.

5 Excessive cost - prescribed amount

The amount prescribed for the purposes of section 12(1) of the Act (excessive cost of compliance) is £600.