

Decision Notice



Decision 023/2014 Ms Robyn Staveley and Transport Scotland

Funding of Borders Railway project

Reference No: 201300730

Decision Date: 13 February 2014

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Rosemary Agnew

Scottish Information Commissioner

Kinburn Castle

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Summary

On 11 January 2013, Ms Staveley asked Transport Scotland to provide information on the funding of the Borders Railway project from its communications with the Scottish Government. Transport Scotland disclosed some information to Ms Staveley. Ms Staveley complained that she had not been given all the information held by Transport Scotland.

During the investigation, Transport Scotland identified and disclosed further information to Ms Staveley. The Commissioner found that by failing to identify and provide this information when responding to the request, Transport Scotland failed to comply completely with the EIRs. The Commissioner has also identified a small amount of information within the communications which falls within the scope of Ms Staveley's request but which has not been disclosed by Transport Scotland. She requires Transport Scotland to provide this information to Ms Staveley.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation) (definitions (a) and (c) of "environmental information"); 5(1) and (2)(a) (Duty to make available environmental information on request)

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

Both Appendix 1 and Appendix 2 (a schedule of the information considered in this case) form part of this decision.

Background

1. On 11 January 2013, Ms Staveley wrote to Transport Scotland requesting "all communication, between the Scottish Government and Transport Scotland, in relation to the funding of the Borders Railway project, since May 2011".
2. Transport Scotland responded under the EIRs on 8 February 2013 by disclosing information, "extracted from each document and summarised" and presented in a table format.



3. On 14 February 2013, Ms Staveley asked Transport Scotland to review its response to her request as she did not understand why she had not been given redacted versions of the communications described in her request. She argued that the table contained summarised versions of the information, not the exact information caught by her request.
4. Transport Scotland notified Ms Staveley on 12 March 2013 that it was upholding its original response without amendment. It confirmed that it had identified all the documents containing information within the scope of her request. It explained that some of these documents contained a large volume of information in addition to that which she had requested, which was why she had received only the information relevant to her request, rather than copies of the original documents. Transport Scotland confirmed that the extracts provided were exact quotes, copied from the original documents.
5. On 18 March 2013, Ms Staveley wrote to the Commissioner, stating that she was dissatisfied with the outcome of Transport Scotland's review and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
6. The application was validated by establishing that Ms Staveley made a request for information to a Scottish public authority and applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. Transport Scotland is an agency of the Scottish Ministers (the Ministers) and, in line with agreed procedures, the Ministers were notified in writing on 17 April 2013 that an application had been received from Ms Staveley. (Subsequent references to communications with Transport Scotland should be read as relating to communications with the Ministers acting on Transport Scotland's behalf.)
8. The investigating officer subsequently contacted the Ministers, giving them an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking them to supply to the Commissioner, on behalf of Transport Scotland, full copies of all the communications identified as containing information falling within the scope of Ms Staveley's request. Transport Scotland was also asked to explain in more detail the approach it had used in compiling the information for disclosure.
9. On 16 May 2013, Transport Scotland supplied the original documents to the investigating officer together with a schedule. There are 18 items on the schedule, some of which comprise a string of related emails.
10. The investigating officer emailed Transport Scotland on 2 July 2013 to suggest that more information from the documents fell within the scope of Ms Staveley's request and should be disclosed. Transport Scotland was invited to comment.



11. Having reviewed each document again, Transport Scotland confirmed it had disclosed further information to Ms Staveley on 30 July 2013, and provided the investigating officer with a copy of the disclosures.
12. Ms Staveley felt that the information she had been given did not reflect the full extent of Transport Scotland's communications, and asked the Commissioner for a decision.

Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to her by both Ms Staveley and Transport Scotland. She is satisfied that no matter of relevance has been overlooked.

Environmental information

14. Transport Scotland considered Ms Staveley's request as one seeking environmental information in terms of the EIRs. Environmental information is defined in regulation 2(1) of the EIRs (the relevant parts of the definition are reproduced in Appendix 1 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.
15. Having considered the subject matter of Ms Staveley's request (funding of the construction of 30 miles of railway line known as the "Borders Railway project") and the information caught within the scope of this request, the Commissioner acknowledges that it concerns measures and activities affecting, or likely to affect, the elements of the environment (in particular land and landscape) and factors (such as noise) which in turn affect or are likely to affect the elements of the environment.
16. As such, the Commissioner is satisfied that it falls within the definition of environmental information set out in regulation 2(1) of the EIRs, in particular paragraphs (a) and (c) of that definition. Therefore, the Commissioner considers that the Ministers correctly identified Ms Staveley's request as one covered by the EIRs.

Regulation 5(1) and (2) of the EIRs

17. Regulation 5(1) of the EIRs (subject to various qualifications contained in regulations 6 to 12) requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. This is not an entitlement to copies of documents as such, although often authorities may choose to provide copies of documents rather than extract the information caught within the scope of the request.
18. Regulation 5(2)(a) of the EIRs allows Scottish public authorities a maximum of 20 working days after receipt of a request to comply with a request for information, subject to certain exceptions which are not applicable in this case.



19. The key issues under consideration here are whether Ms Staveley has been given all the information falling within scope of her request, and whether the information was provided within 20 working days.

Ms Staveley's submissions

20. In her email seeking a review, Ms Staveley complained that the information supplied to her by Transport Scotland in its initial response was a summary of the content of the correspondence and not copies of the communications themselves.
21. In her application, Ms Staveley stated that she considered the information in the table to be a "limited response" which did not fully address her request. She clarified that she had expected redacted (blacked out) versions of the communications to be released, but instead had only received "the gist of the communications" in question.

Transport Scotland's submissions

22. Transport Scotland stated that the information supplied was not a summary of what was held, but constituted an exact "lift" of the relevant information from the documents. The information was presented in a table as this was considered likely to be helpful and most user-friendly: sometimes only a few lines of relevant information were contained in several pages.

Has all of the information requested been disclosed?

23. During the investigation, the investigating officer matched the information in the table received by Ms Staveley to all the communications identified by Transport Scotland as containing information relevant to her request. It was evident that the information in the table was an exact match for the phrases and sentences used in the original communications. The Commissioner accepts that the information in the table provided to Ms Staveley was not a summary, as the exact wordings were lifted.
24. That said, the Commissioner notes that some headings and contextual data were not included in the table. This meant that the set of data provided to Ms Staveley might be seen as a summary in the sense that it was not the full information which fell within the scope of her request. The investigating officer alerted Transport Scotland to this matter during the investigation and invited comment.
25. Transport Scotland re-assessed the information it held and the extent of the disclosures to Ms Staveley. Transport Scotland identified further information which it considered to be within scope, including:
1. Email headers, addresses and distribution or "copy" lists.
 2. Contextual information to assist in the understanding of the information that was relevant to Ms Staveley's request.
 3. References to the "public purse".
 4. Information on "NPD" when it related to funding mechanism. (NPD stands for "Non-Profit Distributing" and is a funding vehicle or mechanism.)



26. Transport Scotland also identified additional information for disclosure from two documents (A4511088 and A4623224). These documents are items 12 and 15 in Appendix 2 below.
27. Transport Scotland confirmed to the Commissioner that it had failed to identify all information within the scope of Ms Staveley's request when handling the initial request and requirement for review.
28. Transport Scotland disclosed the additional information it had identified during the investigation to Ms Staveley. The investigating officer invited comment from Ms Staveley who confirmed (16 October 2013) that she remained dissatisfied with the extent of the information disclosed to her. She felt there was more information held.
29. Having cross-matched the original copies of the communications to the second table of information released to Ms Staveley, the Commissioner has identified some additional snippets of information within some of the communications which clearly relate to funding, but which have not been disclosed to Ms Staveley.
30. The Commissioner requires Transport Scotland to disclose to Ms Staveley those snippets of information identified in the documents listed in Appendix 2 as items 1, 2, 3, 4, 5, 6, 7, 9, 10 and 15. The Commissioner will provide Transport Scotland with marked-up copies of the documents, showing which information she requires them to disclose to Ms Staveley.
31. In the circumstances, the Commissioner cannot accept that Transport Scotland correctly identified all the information it held in dealing with Ms Staveley's information request and requirement for review. In failing to identify, locate and provide all the information that was held when dealing with Ms Staveley's request and requirement for review, Transport Scotland failed to comply with regulation 5(1) of the EIRs.
32. In failing to provide information which was covered by Ms Staveley's request within 20 working days, Transport Scotland also failed to comply with regulation 5(2)(a) of the EIRs.

DECISION

The Commissioner finds that Transport Scotland failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Ms Staveley. She finds that Transport Scotland failed to comply with regulation 5(1) of the EIRs by not identifying, locating and providing all of the information it held that fell within the scope of the request.

Given the circumstances, the Commissioner requires Transport Scotland to disclose to Ms Staveley the information which she has identified in this decision notice as being within scope (and described in Appendix 2 below).



Appeal

Should either Ms Staveley or Transport Scotland wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Margaret Keyse
Head of Enforcement
13 February 2014



Appendix 1

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;

...

(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

...



Appendix 2

Schedule of information considered in this case

Item	Reference	Description of what action is required by Transport Scotland
1	C2394717	Second last sentence in paragraph 9 to be disclosed. (see page 2)
2	C2427547	Additional phrase on page 1 to be disclosed and the question at the top of page 2, identifying who the question was from and to whom it was sent.
3	C2457240	Disclose the question, who it was from and to whom it was sent on page 2 – it is a duplication of the question noted above in item 2
4	C2478143	Release a sentence in paragraph 9 on page 2 as it is the same as the sentence to be released in document 1 above.
5	A2779673	Disclose the heading for paragraph 17.
6	C2513320	Additional sentence in Annex A in paragraph 3. In Annex B release the 3 rd bullet point on page 5. Release the first paragraph on page 8 in Annex C.
7	C2546732	Release paragraph 3 (including the heading)
8	C2569505	No further disclosure required.
9	A5843968	Release the heading and one sentence in Annex A
10	C2581657	Release a sentence (in paragraph 1, bullet point 3) together with its related paragraph heading. On page 4, release the marked sentence which is the 3 rd paragraph from the top of the page. (It is a duplicate of one of the sentences in item 9 above)
11	A2248276	No further action required
12	A4511088	No further action required
13	A4511060	No further action required
14	A4555457	No further action required
15	A4623224	Release the whole of paragraph 2 on page 15.
16	A4509955	No further action required



Item	Reference	Description of what action is required by Transport Scotland
17	A5844000	No further action required
18	A5844031	No further action required