

Decision Notice

Decision 018/2017: Mr X and Argyll and Bute Council

Public right of way

Reference No: 201601274

Decision Date: 07 February 2017



Scottish Information
Commissioner

Summary

Argyll and Bute Council (the Council) was asked for information about its view on whether there was a right of way at Castle Toward. The Council withheld legal advice about the alleged right of way.

The Commissioner found that the request should have been handled under the EIRs. She accepted that the Council was entitled to withhold information which was contained within the legal advice and that the Council did not hold any other information covered by the request. She did not require the Council to take any action.

Relevant statutory provisions

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

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

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

Background

1. On 6 April 2016, Mr X made a nine part request to the Council about a claimed public right of way at Castle Toward. Only part 1 of the request is considered in this decision, in which Mr X asked the Council which of the tests of a right of way it considered inconclusive, and why.
2. The Council responded on 9 May 2016. It supplied some information, but withheld information on the grounds that it was exempt from disclosure under section 36(1) of FOISA (Confidentiality).
3. On 9 May 2016, Mr X wrote to the Council requesting a review of its decision. He said that it was “absurd” for the Council to refuse to state which of the “several simple tests” that define a public right of way were inadequately satisfied and for what reason.
4. The Council notified Mr X of the outcome of its review on 7 June 2016. It continued to withhold the legal advice under section 36(1) of FOISA, stating that the information Mr X had asked for was contained within legal advice obtained by the Council on a matter which might ultimately be the subject of legal proceedings. The Council believed that the public interest favoured withholding the legal advice.
5. On 1 July 2016, Mr X applied to the Commissioner for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. Mr X was dissatisfied with the outcome of the Council’s review because the Council had not

responded to his question about the right of way and had withheld information which he thought should have been provided.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr X made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to her for a decision.
7. On 5 August 2016, the Council was notified in writing that Mr X had made a valid application. The Council was asked to send the Commissioner the information withheld from Mr X. It provided the information and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of FOISA or the EIRs it considered applicable to the information requested.
9. The Council provided submissions to the Commissioner on 27 September, 8 and 30 November 2016, and 23 and 26 January 2017.
10. Mr X also supplied comments and information, including correspondence, to assist the Commissioner in her investigation.

Commissioner's analysis and findings

11. 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 Mr X and the Council. She is satisfied that no matter of relevance has been overlooked.

Requested information

12. The Council withheld information from two documents containing legal advice from the Council's legal advisers.
13. During the investigation, Mr X commented that he had not asked for the legal advice that the Council was given. He explained that, to be a right of way, a route must satisfy five tests and evidence relating to those tests had been submitted to the Council by members of the public regarding a route used at Castle Toward estate. Mr X explained that the Council's response was that the evidence was "inconclusive". The purpose of his request was to find out for which of the five tests the evidence was not conclusive. He had not asked the Council why it felt the tests were inconclusive (which, he acknowledged, "might at a stretch be considered legal advice"), but had "simply asked which tests were not conclusively passed". Mr X commented that ScotWays, who maintain the national Catalogue of Rights Of Way (CROW), advised that they would expect such information to be freely available.
14. The first question is whether the legal advice withheld by the Council falls within the scope of Mr X's request. Having considered the terms of Mr X's request, and the content of the advice, the Commissioner concludes that the legal advice obtained by the Council can reasonably be regarded as falling within the terms of the request. The request asked which of the tests of a right of way the Council considered inconclusive and why. The advice considers the right of way tests, and the Commissioner is therefore satisfied that the legal advice falls within the scope of Mr X's request.

15. The Commissioner also investigated whether the Council might hold any other information that could fall within the scope of Mr X's request. On 23 November 2016, the Council was asked what information or evidence it had sent to ScotWays about the alleged right of way, and whether this included the legal advice obtained by the Council, or a summary of that advice. The Council supplied the Commissioner with the emails it had exchanged with ScotWays. These emails show that the Council did not share legal advice with ScotWays, or tell ScotWays which tests it found inconclusive. Rather, the Council seems only to have supplied ScotWays with the evidence it had obtained from members of the public.
16. The Commissioner accepts that the legal advice was not shared with ScotWays, or otherwise disclosed (or summarised) outside the Council.
17. The investigating officer asked the Council if it held any information falling within the scope of Mr X's request other than the legal advice, for example information recording or publicising its decision on the right of way and justifying that decision by reference to the relevant tests. The Council responded on 8 November 2016. It confirmed that it had made no reference in any external correspondence to the criteria or tests which had not been met. The Council also confirmed that there was no requirement to report to Council or other any other Committee in order for it to confirm the decision on the existence of a right of way. As such, there was no information in the public domain on which of the criteria or tests it considered as not having been met.
18. The Council was also asked whether it held any internal emails that would contain discussions of whether the tests were conclusively met or not. The Council confirmed that, up to the point where it sought legal advice, it did not hold any information falling within the request "which of the tests of a right of way does the Council consider are inconclusive and why?"
19. The Council explained that it had reviewed internal emails sent subsequent to its receipt of the legal advice, which refer to the "right of way" and/or "Castle Toward" in the subject heading. It found that none of them fell within the terms of Mr X's request, as they did not contain any consideration by the Officers of which of the tests for a right of way were inconclusive and why. In summary, the Council confirmed that it did not hold any information recording a view on which of the tests were inconclusive. It explained that it had sought legal advice on this matter following receipt of the representations made by members of the public and accepted that advice. It stated that there had been no further discussion with within the Council, or externally, about which of the tests were considered to be inconclusive.
20. After investigation, the Commissioner accepts that the Council holds no internal information that records its decision on the conclusiveness of the right of way tests. She agrees that any internal information recorded before receipt of the legal advice would be unlikely to fall within the request, which is framed in terms of "the Council's view", which would usually be interpreted as the settled view of the Council rather than views expressed by individual officers. The request is also worded in a relatively narrow way, asking only for information which would show which of the tests were considered inconclusive, and the reasons. The Commissioner accepts that the Council has interpreted the request in a reasonable way.
21. The Commissioner has considered whether the Council should have considered providing Mr X with the information it sent to ScotWays, which consisted of questionnaire forms from members of the public and a summary table. However, this information does not fall within the scope of Mr X's request, as worded. The Commissioner is satisfied that the summary

table does not include information on which of the right of way tests were believed to be inconclusive, in the Council's view.

22. In respect of whether the information covered by Mr X's request is held in other documents, the Commissioner is satisfied that the Council has taken reasonable and proportionate steps to identify and locate the information it holds which is covered by the request. The Commissioner therefore accepts, on the balance of probabilities, that it was reasonable for the Council to conclude that it did not hold any other information falling within the scope of the request, besides the information in the legal advice.

FOISA or EIRs?

23. The Council withheld the information from Mr X under section 36(1) of FOISA. During the investigation, the Commissioner asked the Council to consider whether the information Mr X had asked for was, in fact, environmental information.
24. 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 public authority must make it available under the EIRs, subject to various restrictions and exceptions contained in the EIRs.
25. The Council acknowledged that the information could fall within the definition of environmental information, but submitted that, if it did, it was excepted from disclosure under regulation 10(5)(d) of the EIRs.
26. Mr X's request was for information about the existence of a right of way. The information therefore relates to measures or activities affecting, or be likely to affect, the elements of the environment, in particular land and landscape. Consequently, the information falls within the definition of environmental information set out in regulation 2(1) of the EIRs, in particular paragraph (c) of that definition.
27. A Scottish public authority must respond to a request for environmental information under the EIRs: in failing to do so, the Commissioner finds that the Council failed to comply with regulation 5(1) of the EIRs.
28. During the investigation, the Council confirmed that it wished to apply the exemption in section 39(2) to the information requested by Mr X. 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. As there is a separate statutory right of access to environmental information available to Mr X in this case, the Commissioner has concluded that the public interest in maintaining this exemption, and responding to the request in line with the EIRs, outweighs the public interest in disclosure under FOISA.
29. Given her conclusion that the withheld information is properly classified as environmental, the Commissioner therefore concludes that the Council is correct to apply section 39(2) of FOISA. The Commissioner will consider the information in what follows solely in terms of the EIRs.

Regulation 10(5)(d) - confidentiality provided for by law

30. Regulation 10(5)(d) of the EIRs states that a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially the confidentiality of the proceedings of any public authority where

such confidentiality is provided for by law. As with all exceptions under regulation 10, a Scottish public authority applying this exception must interpret it in a restrictive way and apply a presumption in favour of disclosure (regulation 10(2)). Even where the exception applies, the information must be made available unless, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception (regulation 10(1)(b)).

31. The EIRs are based on an EU Directive – Directive 2003/4/EC on Public Access to Environmental Information¹. The Directive, in turn, is based on a UNECE Convention, The Aarhus Convention.
32. *The Aarhus Convention: An Implementation Guide [Second Edition 2013]*² notes, at page 81, that "the Convention does not define 'proceedings of public authorities' but one interpretation is that these may be proceedings concerning the internal operations of a public authority and not substantive proceedings conducted by the public authority in its area of competence. The confidentiality must be provided for under national law."
33. The Council submitted that it has a duty placed on it by section 46 of the Countryside (Scotland) Act 1967 to assert, protect and keep open and free from obstruction or encroachment any public right of way which is wholly or partly within its area. The Council may, for these purposes, institute and defend legal proceedings and generally take such steps as the Council may deem expedient. This legislation is supplemented by the responsibility placed on the Council by the Land Reform (Scotland) Act 2003, to establish an Access Forum to provide advice to the Council and the public on access rights, core path planning and public rights of way.
34. The Council explained that it had been asked to recognise the existence of a public right of way over the grounds of Castle Toward. It is a statutory function of the Council to investigate such requests to ascertain whether there is sufficient evidence to show that the route meets the accepted conditions to assert that it is a right of way, and to secure acceptance of that position by all interested parties or through a court action. In the Council's view, obtaining legal advice in connection with the exercise of this statutory function can be accepted as falling within the "proceedings" for the purposes of regulation 10(5)(d) of the EIRs. It argued that if this is accepted, then the common law of confidence protects the confidentiality of the proceedings.
35. The Commissioner is satisfied that this is the case. "Proceedings" in the context of this regulation will cover a range of activities. For example, proceedings may include (but not be limited to) formal meetings to consider matters within the authority's jurisdiction, or instances where an authority is exercising its statutory decision making powers, or legal proceedings. In the instance here, as explained by the Council, it is assessing evidence for a right of way. The Council has duties and powers under the cited legislation and to assess the right of way has obtained legal advice. The Commissioner accepts that the Council's actions – broadly, deciding whether there is sufficient evidence for a purported right planning – falls within the intended meaning of proceedings.
36. The Commissioner has accepted in previous decisions that legal advice could fall within the terms of regulation 10(5)(d) of the EIRs (see paragraph 23 of *Decision 137/2010 Mrs Ann*

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF>

² http://www.unece.org/env/pp/implementation_guide.html

*Wilson and Aberdeenshire Council*³, and *Decision 199/2016 Mr Francis Mordaunt and Scottish Borders Council*⁴).

37. The Commissioner will now consider whether the legal advice withheld in this case is excepted from disclosure under regulation 10(5)(d) of the EIRs.
38. For information to be confidential under the common law, two main requirements must be met:
 - (i) the information must have the necessary quality of confidence about it and it must not be generally accessible to the public already; and
 - (ii) the information must have been communicated in circumstances importing an obligation of confidentiality.

Does the information have the necessary quality of confidence?

39. The Council told the Commissioner that no other party, other than its legal adviser or the Council itself, has seen or had access to the legal advice. As stated above, the Council supplied the Commissioner with the emails sent to ScotWays. These emails show that the Council did not share the legal advice with ScotWays, or tell ScotWays which tests it found to be inconclusive.
40. The Commissioner accepts the Council's submission that no other party, other than its legal adviser or the Council itself, has seen or had access to the legal advice. In the circumstances, she is content to accept that the information has the necessary quality of confidence.

Was the information communicated in circumstances importing an obligation of confidentiality?

41. The Council submitted that the information comprised communications between lawyers and client (the Council) in the course of which legal advice was sought or given. The following conditions were fulfilled:
 - (i) the information must relate to communications with a professional legal adviser, such as a solicitor or an advocate;
 - (ii) the legal adviser must be acting in their professional capacity; and
 - (iii) the information must be confidential.
42. The Commissioner is satisfied that the withheld information is legal advice provided by a legal adviser within the context of a professional relationship in circumstances in which legal professional privilege could apply. The legal adviser was clearly acting in their professional capacity by providing advice to the Council.
43. Having considered in full the submissions from the Council, the Commissioner takes the view that a claim to confidentiality of communications could be maintained in legal proceedings in respect of this information. The legal advice is clearly marked as "legal advice" and for the intended recipient only. The substance of the legal advice received has not been disclosed, and the Commissioner has received no evidence to suggest the advice has been disclosed: she therefore accepts that the confidentiality of the advice has been maintained.

³ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2010/200901753.aspx>

⁴ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2016/201600866.aspx>

Would disclosure prejudice substantially, or be likely to prejudice substantially, the confidentiality of proceedings?

44. The Commissioner must also consider whether disclosure would prejudice substantially, or be likely to prejudice substantially, the confidentiality of proceedings?
45. The Council submitted, albeit in the context of section 36(1) of FOISA, that such confidentiality was necessary to ensure that it obtained best advice. It was important that a legal adviser was able to provide free and frank legal advice that considered and discussed all issues and options, without fear that such advice might be disclosed and, as a result, potentially taken out of context. The Council also highlighted the need to obtain impartial and expert legal advice to ensure the legitimacy of the Council's actions, which might be subject to legal challenge. It was therefore essential to be able to obtain and consider that legal advice in private on such occasions.
46. The Commissioner is clear that the test of substantial prejudice is a high one, requiring a real risk of actual, significant harm. That said, given the content of the information and its inherently confidential nature, and having taken full account of the Council's arguments, the Commissioner accepts that making this information available would have caused, or would have been likely to cause, substantial prejudice to the confidentiality of the Council's proceedings.
47. In the circumstances, given the content of the information and its privileged nature, the Commissioner accepts that making it available would have caused, or would have been likely to cause, substantial prejudice to the confidentiality of the Council's proceedings. Consequently, the Commissioner accepts that the exception in regulation 10(5)(d) applied to that information.
48. The Commissioner must consider whether the public interest in making the information available is outweighed by the public interest in maintaining the exception (as required by regulation 10(1)(b) of the EIRs).

The public interest test

49. The Council submitted that the courts have long recognised the strong public interest in maintaining the right to confidentiality of communications between legal adviser and client. In a freedom of information context, the strong inherent public interest in maintaining legal professional privilege was emphasised by the High Court (of England and Wales) in the case of *Department for Business, Enterprise and Regulatory Reform v Information Commissioner and O'Brien* [2009] EWHC 164 (QB)⁵.
50. The Council acknowledged the public interest in transparency and accountability expected of all public authorities. It accepted that disclosure of the information would go some way to providing that transparency and accountability for Mr X, with regard to the position taken by the Council in relation to his assertion that a public right of way exists over the grounds of Castle Toward (a position upheld by ScotWays). The Council also recognised a more general public interest in enhancing scrutiny of its actions. However, it considered that confidentiality is necessary to ensure that best advice is obtained. It argued that it is important that lawyers can provide free and frank legal advice which considers and discusses all issues and options, without fear that such advice might be disclosed and, as a result, potentially taken out of context.

⁵ <http://www.bailii.org/ew/cases/EWHC/QB/2009/164.html>

51. The Council also submitted that there was a need to obtain impartial and expert legal advice to ensure the legitimacy of the Council's actions, which might be subject to legal challenge by groups holding conflicting views and the Council considered it essential to be able to obtain and consider that legal advice in private on such occasions, in order to ensure that it was not disadvantaged. It stated that the issue of the Castle Toward right of way may still be the subject of legal proceedings. (These arguments were put forward by the Council to suggest that the public interest favoured withholding the information, without further explanation.)
52. Mr X submitted that it was a matter of public interest to understand which tests of a right of way the Council believed to be inconclusive. This was important in terms of accountability, because the Council was the landowner and was processing planning consents at Castle Toward in which public access was a major issue. Mr X made clear his view that:
- “Argyll and Bute Council are the Owner and Seller of Castle Toward Estate. In the first instance they are responsible for evaluating Rights of Way applications in their area. They are also responsible for dealing with Planning Applications. It is quite clear that the Council are not impartial and are being highly obstructive about supplying any information with regard to their management of Castle Toward.”*
53. Mr X stated that:
- “The Council has a duty to process Right of Way applications. There is no reason whatsoever why they should not give the reasoning for their findings. The vast majority of recorded Public Right of Ways in Scotland is what is known as "Claimed" that is to say they are all open to the possibility of legal proceedings. Since the Council gave its opinion that the evidence of the Right of Way was "inconclusive" the Scottish Rights of Way and Access Society (ScotWays⁶) has evaluated the evidence the Council had... ScotWays have concluded that there is a Right of Way and that they have seen nothing to contradict that view. As a result ScotWays has objected to a recent Planning Application that has been lodged for the estate on the grounds that it would interfere with the Right of Way.”*
54. The Commissioner must consider any information which is the subject of legal professional privilege in the light of the established, inherent public interest in maintaining the confidentiality of communications between legal adviser and client. As noted above, the courts have long recognised the strong public interest in maintaining the right to confidentiality of communications between legal adviser and client on administration of justice grounds. Many of the arguments in favour of maintaining confidentiality of communications were discussed in a House of Lords case, *Three Rivers District Council and others v Governor and Company of the Bank of England* (2004) UKHL 48⁷ and in the *Department for Business, Enterprise and Regulatory Reform* case referred to in paragraph 49. The Commissioner will apply the same reasoning to communications attracting legal professional privilege generally. More generally, she considers there to be a strong public interest, also recognised by the courts, in the maintenance of confidences.
55. The Commissioner acknowledges that disclosure of this information would help fulfil a public interest in understanding the Council's consideration of its regulatory functions in relation to the claimed right of way, and provide clarity on how it discharged those regulatory functions. She acknowledges the public debate and local interest surrounding Castle Toward. There is a clear public interest in understanding how the Council addressed the question of the

⁶ <https://www.scotways.com/>

⁷ <http://www.bailii.org/uk/cases/UKHL/2004/48.html>

claimed public right of way, itself an important right. The Commissioner agrees with Mr X that it is in the public interest to ensure effective oversight of public action and that disclosure of the information withheld by the Council would, to some extent, enable such oversight.

56. On the other hand, the Commissioner recognises the strong public interest in ensuring that the Council can receive legal advice in confidence to facilitate it in discharging its functions as thoroughly and effectively as possible. This is particularly the case where the legal advice concerns an issue which may be subject to legal challenge (a point made by the Council in its review).
57. The Commissioner considers that the disclosure of such information could discourage a public authority from seeking legal advice, or would deter frankness and openness by parties involved when seeking advice if there was knowledge that the advice may be then disclosed. If, for this reason, the Council was unable to obtain impartial and objective legal advice in respect of its actions, this would not be in the public interest.
58. On balance, having examined the withheld information, the Commissioner is not satisfied that the public interest arguments in favour of disclosure presented by Mr X are so strong as to outweigh the public interest arguments in maintaining the exception. Consequently, she finds that the public interest in maintaining the exception outweighs the public interest in disclosure, and accepts that the information was properly withheld under regulation 10(5)(d) of the EIRs.

Other comments

59. Mr X queried why the Council did not simply answer his question, rather than refer to recorded information which it withheld. The Commissioner is not able to address that complaint in this decision. It may be that the Council could have decided to simply explain its position on the rights of way tests without reference to the legal advice it had received. However, FOISA and the EIRs give rights to receive recorded information only. The Commissioner has found that the only recorded information covered by the terms of his request was the legal advice which was correctly withheld.

Decision

The Commissioner finds that Argyll and Bute Council (the Council) partially complied with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mr X.

The Commissioner finds that by failing to identify the requested information as environmental information and respond to the request under the EIRs, the Council failed to comply with regulation 5(1) of the EIRs.

However, the Commissioner accepts that the Council was entitled to withhold information under regulation 10(5)(d) of the EIRs, and that it did not hold any other information covered by the terms of Mr X's request.

The Commissioner does not require the Council to take any action.

Appeal

Should either Mr X or the Council 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

07 February 2017

Freedom of Information (Scotland) Act 2002

1 General entitlement

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

...

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

2 Effect of exemptions

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

...

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

...

39 Health, safety and the environment

...

(2) Information is exempt information if a Scottish public authority-

(a) is obliged by regulations under section 62 to make it available to the public in accordance with the regulations; or

(b) would be so obliged but for any exemption contained in the regulations.

...

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

(1) In these Regulations –

...

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

- (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;

...

5 Duty to make available environmental information on request

(1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.

(2) The duty under paragraph (1)-

...

(b) is subject to regulations 6 to 12.

...

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.

...

- (5) A Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially-

...

- (d) the confidentiality of the proceedings of any public authority where such confidentiality is provided for by law;

...

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