

Decision Notice

Decision 008/2018: Mr Stephen Sloper and Falkirk Council

Planning issues and work carried out at a specified site

Reference No: 201701671

Decision Date: 16 January 2018



Scottish Information
Commissioner

Summary

The Council was asked for information concerning planning issues and work carried out at a specified site in the Falkirk Council area. The Council stated that it had provided all of the information it held, either by disclosing it or making it available to view at its premises.

The Commissioner found that the Council had carried out adequate searches in order to identify and locate all of the relevant information held. The Commissioner found also that the Council had provided adequate advice and assistance to Mr Sloper.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 5(1) (Duty to make available environmental information on request); 9(1) and (3) (Duty to provide advice and assistance)

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. Mr Sloper made a request for information in a letter to Falkirk Council (the Council) (wrongly) dated 13 September 2016. This was received by the Council on 14 October 2016. Mr Sloper requested a range of information concerning planning issues and work carried out at a specified location in the Falkirk Council area.
2. Following a previous application from Mr Sloper, the Commissioner issued *Decision 121/2017: Stephen Sloper and Falkirk Council*¹. This decision concluded that the Council had incorrectly interpreted the scope of Mr Sloper's request. It required the Council to issue a revised review response to him.
3. The Council notified Mr Sloper of the outcome of its further review on 15 September 2017. The Council stated that it had provided all of the information it held and which fell within the scope of Mr Sloper's request, either by disclosing it in correspondence or by making it available to view on its premises.
4. On 22 September 2017, Mr Sloper wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. Mr Sloper stated he was dissatisfied with the outcome of the Council's review as he did not consider that the Council had disclosed all of the information it held and which fell within the scope of his request. Additionally, he did not consider that the Council had provided him with adequate advice and assistance.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2017/201700260.aspx>

Investigation

5. The application was accepted as valid. The Commissioner confirmed that Mr Sloper made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
6. On 24 October 2017, the Council was notified in writing that Mr Sloper had made a valid application. The case was allocated to an investigating officer.
7. 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. In particular, the Council was asked to explain the searches it had undertaken in order to locate and retrieve any information falling within the scope of Mr Sloper's request.
8. The Council responded on 28 November 2017 and provided additional submissions on 8 December 2017.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the relevant submissions, or parts of submissions, made to him by both Mr Sloper and the Council. He is satisfied that no matter of relevance has been overlooked.

Has all relevant information been identified?

10. In his application to the Commissioner, Mr Sloper stated that the Council had not disclosed certain information he believed it ought to hold. Mr Sloper provided examples of the type of information that, in his view, had still not been disclosed.
11. The Council explained that a number of methods were used to try to identify and retrieve any relevant information. The Council stated that colleagues in Development Services and Legal Services had been contacted and discussions for this purpose had taken place over a lengthy period.
12. The Council provided the Commissioner with a copy of an email exchange with colleagues in Legal Services, which included requests to those colleagues for information and for searches for information, along with the responses from those colleagues. The Council also provided a copy of a request to its Admin team, asking for old planning files to be searched, with confirmation this had been sent to relevant staff. The Council stated that its Records Management team had also been consulted, and also the Falkirk Community Trust Archives team, for which copy correspondence was also provided.
13. The Council stated that considerable efforts had been made to find relevant information and, when it came to light, it had been disclosed. The Council submitted that, given the nature of the searches undertaken, it considered it likely that all available information covered by the request would have been identified. The Council also stated that records for the site dated back to 1990, but electronic records were only introduced in 2008/09 and the historic information relating to this case would therefore be in paper form only. The Council pointed out that most of the records for this case were not available electronically. The Council also explained that a case of this kind, insofar as it related to whether something amounted to permitted development, was unlikely to generate a large amount of documentation.

The Commissioner's conclusion

14. The Commissioner has considered the Council's explanation of the searches and enquiries undertaken and why those searches and enquiries would have been considered likely to identify and locate any information still held which fell within the scope of Mr Sloper's request.
15. The Commissioner accepts that the Council undertook reasonable, proportionate searches and enquiries in the circumstances (particularly given the age of some of the information), with a view to locating and retrieving any information falling within the scope of Mr Sloper's request. In the circumstances, he is satisfied that any relevant information would have been identified using the searches and enquiries described by the Council.
16. The Commissioner is therefore satisfied that the Council identified, located and provided all of the relevant information it held when responding to Mr Sloper's request.
17. As stated in many previous decisions, the Commissioner's remit extends only to consideration of whether a Scottish public authority actually holds the requested information and whether it has complied with regulation 5(1) of the EIRs. The Commissioner cannot comment on whether the Council ought to hold more information, in particular the additional information Mr Sloper expected it to hold.

Regulation 9(1) – Duty to provide advice and assistance

18. Regulation 9 of the EIRs requires a Scottish public authority, so far as it reasonable to expect it to do so, to provide advice and assistance to a person who proposes to make, or has made, a request for information to it. The Scottish Ministers' Code of Practice on the discharge of functions by Scottish Public Authorities under FOISA and the EIRs² ("the Section 60 Code") gives guidance to authorities on providing such advice and assistance.
19. The Section 60 Code states, at paragraph 5.1.1 in Part 2:

"Authorities have a duty to provide advice and assistance at all stages of a request. It can be given either before a request is made, or to clarify what information an applicant wants after a request has been made, whilst the authority is handling the request, or after it has responded."

Paragraph 5.3.3 states:

"If an authority is unclear about what information the applicant wants, it should obtain clarification by performing its duty to provide reasonable advice and assistance to the applicant. Where a request is not reasonably clear, advice and assistance could include:

- *providing an outline of the different kinds of information which might meet the terms of the request;*
- *providing access to detailed catalogues and indexes, where available, to help the applicant ascertain the nature and extent of the information held by the authority;*
- *providing a general response to the request setting out options for further information which could be provided on request;*
- *contacting the applicant to discuss what information the applicant wants."*

² <http://www.gov.scot/Resource/0051/00510851.pdf>

Paragraph 5.3.4 states:

“The aim of providing advice and assistance is to give the applicant an opportunity to discuss their application with the authority, with the aim of helping the applicant describe the information being sought reasonably clearly, so that the authority is able to identify and locate it. Applicants should not be given the impression that they are obliged to disclose the intent behind their request or that they will be treated differently if they do so.”

20. In his application to the Commissioner, Mr Sloper stated that he had not been provided with adequate advice and assistance.
21. The Council submitted that it had offered advice and assistance to Mr Sloper and had held meetings with him, enabling him to advise it of any further information he might seek. In its revised review response of 15 September 2017, the Council noted that it had offered to meet with Mr Sloper again in order to provide advice and assistance and to discuss matters further. The Council reiterated that its offer to meet was still available.
22. In this case, and taking into account the Council’s offers to meet with Mr Sloper, the Commissioner does not accept that the Council failed to comply with regulation 9(1) of the EIRs in responding to Mr Sloper’s request.

Decision

The Commissioner finds that Falkirk Council complied with the Environmental Information (Scotland) Regulations 2004 in responding to the information request made by Mr Sloper.

Appeal

Should either Mr Sloper or Falkirk 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

16 January 2018

The Environmental Information (Scotland) Regulations 2004

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.

...

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.

...

- (3) To the extent that a Scottish public authority conforms to a code of practice under regulation 18 in relation to the provision of advice and assistance in a particular case, it shall be taken to have complied with the duty imposed by paragraph (1) in relation to that case.

...

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