

Decision Notice

Decision 140/2018: X and the University of Aberdeen

Information regarding a property in Old Aberdeen

Reference No: 201800686

Decision Date: 31 August 2018



Scottish Information
Commissioner

Summary

The University was asked for information about a property it owned at 15 High Street, Old Aberdeen.

The University provided information and stated that it did not hold any other information.

The Commissioner was asked to decide whether the University held more information. After investigation, he was satisfied that the University had carried out appropriate searches and did not hold any other relevant information.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (paragraphs (a), and (c) of definition of “environmental information”); (5)(1) (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. The Appendix forms part of this decision.

Background

1. On 27 September 2017, X made a request for information to the University of Aberdeen (the University), asking for all the information held by the University’s Estate Department in relation to 15 High Street, Old Aberdeen, from January 2012 to September 2017. (This request related to a planning application for the property.)
2. The University responded on 18 October 2017. It disclosed some information. It withheld information in two documents.
3. On 24 October 2017, X wrote to the University requesting a review of its decision. X did not challenge the decision to withhold information, but considered that the University was likely to hold more information than had been disclosed. Within the review request, X included a list of the information it believed to be missing.
4. The University notified X of the outcome of its review on 10 November 2017. It concluded that all relevant information held by the University had been assessed in the initial response. The University commented that a considerable amount of communication about the property had involved telephone and face-to-face conversation, and a written record was not retained.
5. On 18 April 2018, X 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. X considered that it was not credible that an important and controversial venture involving of a historic building should not have resulted in any written record at the University’s Estates Department.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that 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 him for a decision.
7. On 15 May 2018, the University was notified in writing that X had made a valid application.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The University was invited to comment on this application and answer specific questions. These questions focussed on the searches undertaken by the University and the information it held. The University responded on 18 June 2018.
9. Aspects of the University's submissions were clarified during the investigation. In particular, the University was asked about the extent of its searches for the requested information and whether it held the specific information identified in X's request for review.
10. During the investigation, X provided copies of three documents, one of which had been published on Aberdeen City Council's planning application website. X considered that these documents supported its view that the University held more information than it had disclosed. On the basis of the information contained within these documents, the University was asked whether it held further information falling within scope of the request.
11. The University's submissions are considered in detail below.

Commissioner's analysis and findings

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

Application of the EIRs

13. The Commissioner is satisfied that the information covered by this request is environmental information, as defined in regulation 2(1) of the EIRs. Any information held would relate to measures affecting or likely to affect the elements of the environment, and therefore falls within paragraphs (a) or (c) of the definition in regulation 2(1) of the EIRs.
14. X has not disputed the University's decision to handle the request under the EIRs and the Commissioner will consider the information in what follows solely in terms of the EIRs.

Was all relevant information identified, located and provided by the University?

15. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. It is important to bear in mind that this obligation relates to information actually held by an authority when it receives the request, as opposed to information an applicant believes the authority should hold (but which it does not in fact hold).
16. X has explained to the Commissioner the importance of the information it requested, and why it believes the University should hold further information.
17. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will

consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.

Searches

18. The University explained that its Estates department maintains a file for each of its properties in which key documents are stored, such as those described in X's request. This file was searched and the contents disclosed to X in response to its request.
19. The University stated that it had not searched other, closed property files for two reasons. First, the earliest documents pre-dated January 2012, indicating that the current file covered the full period specified in X's request. Second, the contents of the file represented all significant issues relating to the property during the specified period. It took the view that there was no reasonable prospect of other files in this series relating to the same property during the period in question.
20. The University provided details of the three members of staff who searched for the requested information: specifically, the Director and Deputy Director of Estates & Facilities, and the Drawing Office and Small Works Manager, Estates & Facilities. The University stated that the searches had been restricted to these staff because of the limited activities involving the named property in recent years (because of the condition of the building, there was no need to search for records relating to property rental, cleaning, security, fault-reporting or car-parking).
21. The University noted that it is represented by its employees on the Old Aberdeen Community Council, which has a standing item on University developments that may impact on the local community. It advised that the proposals for development of the named property may have been discussed at the Community Council meetings. The University was asked whether it held any information about the named property in the form of Community Council. It confirmed that searches had identified no such information and pointed out that minutes of the Community Council meetings are available online.
22. The University noted that it had responded to other requests from X about the property and it was satisfied that all relevant information had been disclosed either in response to this request or other requests.

Information identified in the request for review

23. The University explained why it considered that its searches would have retrieved the information listed in X's request for review, if the University held the information.
24. It explained that it did not hold any further information in relation to the perceived gaps in the email correspondence between the individual submitting the planning application (applicant) to Aberdeen City Council and the University's Director of Estates. The University stated that thorough searches of the Director of Estates' email account had been completed in the presence of an University employee based in a different department and no further information was retrieved during these witnessed searches.
25. The University explained that records of any discussions between the applicant and the Estates department would be found in the electronic records maintained by the Director of Estates or in the property file. Both sources had been searched without finding any other records. The University had concluded that there were no other records series or locations that might contain relevant information.

26. The University commented that the planning application was unusual in that it was proposed and progressed by a third party individual (the applicant), who was a University student. As a member of the University community, interactions between the applicant and the Estates Department were on a relatively informal basis and information about the content of face-to-face meetings and telephone conversations was not routinely recorded.
27. In its review request, X raised concerns about the lack of information about consultation on the change of use proposals with adjacent proprietors, local bodies and within the University. The University explained that no such consultations had been undertaken as the planning application was not submitted by the University and because no formal approach had been made to the University, as owner of the property, on the future of the building.

Searches for specific documents

28. As part of the investigation, the University was asked to clarify if it had searched for and located specific items of information, including:

- an email, referred to another email dated 20 September 2017 which had been disclosed to X; and
- a report on the timber elements of the named property.

The University confirmed that it had searched for these items when responding to the request, and also when asked to do so during the investigation, and had not identified any more information.

29. During the investigation, X provided the Commissioner with copies of three documents to support its view that the University had supported the planning application, and was likely to hold further recorded information.
30. The University provided comments on each of the three documents, but confirmed that it did not hold any more information than it had previously disclosed. In relation to three documents, the University explained that:
 - the individual who submitted the planning application was not required to submit a written proposal to the University. Management of the University properties lies with the Director of Estates and he was not required to present a written proposal for the approval at any of the University's management or governance meetings;
 - the University had not sponsored or put forward the planning proposal, but the Director of Estates supported the idea. The comments on the planning application had been submitted on Aberdeen City Council's online planning portal, rather than by email; so the University did not hold this recorded information; and
 - the University had given no formal assurances to the applicant that the building would be leased, and this was a matter that remained open for negotiation.

The Commissioner's conclusions

31. The Commissioner can only consider what information is actually held by the University, not what information it might be expected to hold.
32. Having considered all the relevant submissions and the information requested by X, the Commissioner is satisfied that the University took adequate, proportionate steps to establish whether it held any further information falling within the scope of the request.

33. X has provided evidence which, in its view, supports its assertion that further information is held by the University. The Commissioner's investigation has addressed these matters. The University has consistently confirmed, with supporting arguments and evidence of searches, that it does not hold any further information falling within scope of X's request. The Commissioner notes that the planning application was not submitted by the University, although it has acknowledged that its Director of Estates supported the application.
34. Taking all of the above into consideration, the Commissioner is satisfied, on the balance of probabilities, that the University does not hold any more information falling within the scope of X's request than it has already provided.

Decision

The Commissioner finds that the University of Aberdeen complied with the Environmental Information (Scotland) Regulations 2004 in responding to the information request made by X.

Appeal

Should either X or the University 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

31 August 2018

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

(1) In these Regulations –

“the Act” means the Freedom of Information (Scotland) Act 2002;

...

“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

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(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.

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