

Decision Notice 157/2019

Scotstoun Leisure Centre: planning permission and travel plan

Applicant: The Applicant

Public authority: Culture and Sport Glasgow

Case Ref: 201901193



Scottish Information
Commissioner

Summary

Glasgow Life was asked about compliance with planning permission granted in relation to Scotstoun Leisure Centre and about the related Travel Plan. Glasgow Life provided information in response.

An application was made to the Commissioner, questioning whether Glasgow Life held more information. Following an investigation, the Commissioner found that Glasgow Life had failed to respond to the requests within the time allowed, but was satisfied that Glasgow Life had carried out adequate searches and disclosed all the relevant information it held.

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) and (2) (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 21 February 2019, the Applicant made a request for information to Culture and Sport Glasgow (Glasgow Life). The information requested was:
 - a) *All Report(s) in compliance with the Planning Decision Notice dated 21 September 2017 – Full Planning Permission Granted subject to Condition(s) in respect of Application 17/00470/DC: Erection of Spectator Grandstands for a 2 year period at Scotstoun Leisure Centre – Condition 02: Scotstoun Travel Plan (Revision H) approved 5 December 2017, for six (6) monthly reporting to the Planning Applications Committee.*
 - b) *Scotstoun Travel Plan (Revision H) risk and performance measuring document(s) for activities set by Section 6: Travel Plan Objectives and Targets to support the Report(s) cited under (1) AND*
 - c) *Travel Plan Coordinator Record of Meetings held with Community Councils post 5th December 2017.*
2. Also on 21 February 2019, in relation to the above request, the Applicant made a further request for:
 - d) *Any records of meeting with roads departments and any other relevant bodies.*
3. On 31 March 2019, the Applicant wrote to Glasgow Life, requesting a review of its decision, on the basis that it had failed to respond to his requests.
4. Glasgow Life notified the Applicant of the outcome of its review on 29 April 2019. Glasgow Life advised the Applicant that it had applied section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA), as the requests were for environmental information and fell to be considered under the EIRs. It provided the Applicant with what it stated to be all the relevant information it held, subject to the redaction of personal data under regulation 11(2) of the EIRs.

5. On 15 July 2019, the Applicant wrote to the Commissioner. The Applicant 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. The Applicant stated he was dissatisfied with the outcome of Glasgow Life's review because he did not believe it had provided any of the information requested, commenting on his dissatisfaction with the information that had been provided.
6. The Applicant was also dissatisfied with Glasgow Life's failure to respond to his requests within the timescale allowed.

Investigation

7. The application was accepted as valid. The Commissioner confirmed that the Applicant made requests for information to a Scottish public authority and asked the authority to review its response to those requests before applying to him for a decision.
8. On 28 August 2019, Glasgow Life was notified in writing that the Applicant had made a valid application. The case was allocated to an investigating officer.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Glasgow Life was invited to comment on this application and to answer specific questions, focusing on the steps taken to identify and locate the information falling within the scope of the Applicant's requests.
10. Glasgow Life responded, providing submissions to the effect that the requests fell to be dealt with in terms of the EIRs and, as a result, confirming that it was applying the exemption in section 39(2) of FOISA. It acknowledged that it had failed to respond to the Applicant's requests within the time allowed by the EIRs.
11. Glasgow Life also provided submissions to support its position that, other than the information it had provided to the Applicant, it did not hold any information falling within the scope of his requests.

Commissioner's analysis and findings

12. 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 the Applicant and Glasgow Life. 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 the requests is environmental information, as defined in regulation 2(1) of the EIRs. The information relates substantially to a Planning Decision Notice which permitted construction at Scotstoun Stadium. In reaching this conclusion, the Commissioner has considered the information in question, along with paragraphs (a) and (c) of the definition of environmental information (reproduced in Appendix 1). The Applicant has not disputed Glasgow Life's decision to handle his requests 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 Glasgow Life?

14. 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).
15. The Commissioner notes the submissions provided by the Applicant as to the importance of the information requested and why he believes Glasgow Life should hold further information, other than that provided during of the investigation.
16. Glasgow Life provided submissions in response to the questions put by the investigating officer on this matter. Glasgow Life provided full submissions on the steps taken to identify and locate the information requested by the Applicant. It confirmed the searches and enquiries it carried out in identifying and locating the information requested, detailing the officers involved and the places searched (including relevant electronic records). It advised that the information located had been provided to the Applicant.
17. The standard proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
18. As mentioned above, the Commissioner can only consider whether information is actually held by the Council, not what information it should hold or what an applicant believes it should hold (although he will take account of any relevant submissions from the applicant in reaching his conclusions).
19. Having considered all relevant submissions and the terms of the requests, the Commissioner accepts that Glasgow Life interpreted the Applicant's requests reasonably and took adequate, proportionate steps to establish what information it held which fell within the scope of the requests. He accepts that the Applicant was provided with all of the information held by the Glasgow Life and falling within the scope of his requests. Consequently, in this respect, the Commissioner is satisfied that Glasgow Life dealt with the requests in accordance with regulation 5(1) of the EIRs.

Handling of the requests

20. The Commissioner notes that the Applicant raised dissatisfaction with Glasgow Life's failure to respond to his requests within the time allowed by the legislation.
21. Regulation 5(2)(a) of the EIRs gives Scottish public authorities a maximum of 20 working days after receipt of the request to comply with a request for information, subject to certain qualifications which are not relevant in this case.
22. In its submissions to the Commissioner, Glasgow Life apologised for the delay in responding to the Applicant, acknowledging that he should have received a response within the statutory timeframe. Glasgow Life stated that, while this was the result of the workload within the authority, it took its obligations under FOI seriously. With a view to improving its practices, including addressing this failure to respond on time and ensuring that FOI matters were properly resourced, it described the organisational, monitoring, reporting and training arrangements it was putting in place.

23. Given that Glasgow Life did not respond to that Applicant's requests for information of 21 February 2019 within the required 20 working days, it is apparent that Glasgow Life failed to comply with the requirements of regulation 5(2)(a) of the EIRs.

Decision

The Commissioner finds that Culture and Sports Glasgow (Glasgow Life) partially complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information requests made by the Applicant.

While being satisfied that Glasgow Life complied with regulation 5(1) of the EIRs, by providing the Applicant with the information it held, he also finds that, by failing to respond to the Applicant's requests within the timescales laid down by the EIRs, Glasgow Life failed to comply with regulation 5(2)(a) of the EIRs.

Appeal

Should either the Applicant or Culture and Sport Glasgow 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

29 October 2019

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

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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.

(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

(b) is subject to regulations 6 to 12.

...

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info