

Decision Notice

Decision 096/2014 Ms Mary Wilson and the City of Edinburgh Council

Installation of cavity wall insulation

Reference No: 201400171

Decision Date: 2 May 2014



Scottish Information
Commissioner

Summary

On 20 October 2013, Ms Wilson asked the City of Edinburgh Council (the Council) for information relating to the proposed installation of cavity wall insulation at a specified address. The Council informed Ms Wilson that the request was manifestly unreasonable and the information was therefore excepted from disclosure in terms of regulation 10(4)(b) of the EIRs.

The Commissioner found that the Council had failed to deal with Ms Wilson's request for information in accordance with the EIRs, by incorrectly withholding information under the exception in regulation 10(4)(b) of the EIRs. She required the Council to respond to Ms Wilson's requirement for review otherwise than in terms of regulation 10(4)(b).

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 5(1) and (2)(b) (Duty to make environmental information available on request); 10(1), (2) and (4)(b) (Exceptions from duty to make environmental information available)

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

Background

1. On 20 October 2013, Ms Wilson wrote to the Council requesting information relating to the proposed installation of cavity wall insulation at a specified address.
2. The Council wrote to Ms Wilson on 4 November 2013, providing a general explanation of the Council's intentions regarding the proposed works. The Council's response did not address Ms Wilson's request and made no reference to the Freedom of Information (Scotland) Act 2002 (FOISA) or the EIRs.
3. On 9 December 2013, Ms Wilson emailed the Council asking it to review its response. Ms Wilson pointed out that the Council's response had made no mention of FOISA or the EIRs and had not addressed her information request.
4. The Council notified Ms Wilson of the outcome of its review on 13 January 2014. The Council informed Ms Wilson that it considered her request to be manifestly unreasonable and the information excepted from disclosure in terms of regulation 10(4)(b) of the EIRs. This was on the basis that the cost of complying with the request was estimated to be £3,065 and would require 204 hours of work by Council staff. The Council also stated that, in this respect, it was upholding its original decision.
5. On 14 January 2014, Ms Wilson wrote to the Council stating that she had not received the original decision to which the Council had referred.
6. The Council responded on 21 January 2014, explaining that it had issued a decision on 6 November 2013. The Council provided a copy of its original decision to Ms Wilson which she appeared not to have received previously. The original decision had informed her that the

requested information was excepted from disclosure in terms of regulation 10(4)(b) of the EIRs on the basis that the request was manifestly unreasonable.

7. On 24 January 2014, Ms Wilson wrote to the Commissioner, stating that she was dissatisfied with the outcome of the Council's review and applying 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.)
8. The application was validated by establishing that Ms Wilson 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. The case was then allocated to an investigating officer.

Investigation

9. The investigating officer contacted the Council on 19 February 2014, giving it an opportunity to provide comments on the application (as required by section 49(3)(a) of FOISA) and asking it to respond to specific questions. The Council was asked to explain in detail why it considered the request to be manifestly unreasonable. The Council was also asked to provide detailed calculations explaining the projected cost of responding to the request.
10. The Council subsequently contacted the investigating officer explaining that it had reconsidered its response to Ms Wilson's request. The Council was now considering disclosing some information to Ms Wilson, but found that it did not hold some of the information covered by her request.
11. The investigating officer subsequently discussed the case with the Council on several occasions. This was in order to ascertain when the Council intended to contact Ms Wilson to inform her that it did not hold some of the information that she had requested and to disclose (or otherwise) the remainder of the information.
12. To date, the Council has not contacted Ms Wilson and has not provided any submissions to the Commissioner explaining its handling of Ms Wilson's application.

Commissioner's analysis and findings

13. In coming to a decision on this matter, the Commissioner is satisfied that no matter of relevance has been overlooked.

FOISA or EIRs?

14. In this case, the Council handled Ms Wilson's request under the EIRs on the basis that the requested information comprises environmental information.
15. The Commissioner agrees with the Council that the information under consideration is environmental. She will therefore consider Ms Wilson's application in terms of the EIRs.

Regulation 10(4)(b) – manifestly unreasonable

16. Under regulation 10(4)(b) of the EIRs, a Scottish public authority may refuse to make environmental information available if the request is manifestly unreasonable.

17. In its response to Ms Wilson, the Council stated that the information was excepted from disclosure on this basis. The Council stated that this was due to the cost and staff time involved in providing the information.
18. The Council has provided no submissions to the Commissioner justifying its application of this exception. In the absence of any submissions, the Commissioner must conclude that the Council was not entitled to refuse to make the information available to Ms Wilson and that the exception is not engaged. By incorrectly withholding the information under the exception in regulation 10(4)(b), the Council breached regulation 5(1) of the EIRs.

Conclusion

19. The Commissioner is not satisfied that the Council has shown that Ms Wilson's request for information is manifestly unreasonable. Therefore, the exception in regulation 10(4)(b) of the EIRs is not engaged. She now requires the Council to respond to Ms Wilson's requirement for review otherwise than in terms of regulation 10(4)(b) of the EIRs.
20. The Commissioner is disappointed that, despite having asked the Council for submissions on 19 February 2014 (and having issued a number of reminders), none have been provided. During this period, the Council has failed to provide any update to Ms Wilson despite having indicated its willingness to do so.
21. The Commissioner stresses that it is the responsibility of a public authority to justify its decision. Where submissions are not received, she will issue a decision based on the information available to her. She would expect the Council to ensure that adequate submissions are provided to her in any future investigations.

Decision

The Commissioner finds that the City of Edinburgh Council (the Council) failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Ms Wilson. The Commissioner finds that the Council was not entitled to refuse to make the information available under the exception in regulation 10(4)(b) of the EIRs.

The Commissioner therefore requires the Council to respond to Ms Wilson's requirement for review otherwise than in terms of regulation 10(4)(b) of the EIRs by 16 June 2014.

Appeal

Should either Ms Wilson or the City of Edinburgh 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
02 May 2014

Appendix

Relevant statutory provisions

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.
- (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....
- (4) A Scottish public authority may refuse to make environmental information available to the extent that
...
 - (b) the request for information is manifestly unreasonable;...

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