

Decision Notice

Decision 051/2018: Mr Z and Crown Estate Scotland (Interim Management)

Entitlement of Ballachulish Estate to foreshore

Reference No: 201702186

Decision Date: 9 April 2018



Scottish Information
Commissioner

Summary

Crown Estate Scotland was asked for records of the entitlement of Ballachulish Estate to part of the foreshore and from whom they claimed it. Crown Estate Scotland considered the request manifestly unreasonable and refused to comply with it.

The Commissioner agreed that the request was manifestly unreasonable, when considered in the context created by previous correspondence on related matters.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and 1(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) (parts (a) and (c) of the definition of "environmental information"); 5(1) and (2) (Duty to make available environmental information 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 Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 1 August 2017, Mr Z made the following request for information to Crown Estate Scotland (Interim Management) ("Crown Estate Scotland"):

"I still have not received any records of the entitlement of Ballachulish Estate when they claimed the foreshore in 1971, and who they claimed it from. Please would you supply me with this information."

Mr Z also asked for information about fishing rights, but that part of his request is not the subject of this decision.

2. Crown Estate Scotland responded on 10 August 2017. Crown Estate Scotland considered the request was manifestly unreasonable in terms of regulation 10(4)(b) of the EIRs. It stated that Mr Z had already asked for this information and received a response. The information had not changed since his last request, and its response to his previous request for the same information had been reviewed.
3. On 19 September 2017, Mr Z wrote to Crown Estate Scotland requesting a review of its decision on the basis that he did not think his request was unreasonable, let alone manifestly unreasonable. He explained that his claim to have a legal right to fish from the foreshore had been turned down and, as a member of the public and an interested party, he was seeking to understand why his rights "were denied against another".
4. Crown Estate Scotland notified Mr Z of the outcome of its review on 25 September 2017. It upheld its decision that the request was manifestly unreasonable, reiterating that Mr Z had already asked for the information and received a response. Crown Estate Scotland told Mr Z

that asking for the same information did not make efficient use of Crown Estate Scotland's staff and resources and caused "disruption and annoyance to the point of harassment."

5. On 24 October 2017, Mr Z 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 Z stated he was dissatisfied with the outcome of Crown Estate Scotland's review; he wanted the information he had requested so he could understand his legal rights.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr Z 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. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. Crown Estate Scotland was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of FOISA and the EIRs it considered applicable to the information requested.
8. Mr Z also gave his views to the Commissioner.

Commissioner's analysis and findings

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

Application of the EIRs

10. The request was for information about entitlement to a specific part of the foreshore. Crown Estate Scotland responded to Mr Z's request under the EIRs. In his application, Mr Z did not challenge Crown Estate Scotland's decision to consider his request under the EIRs, rather than FOISA.
11. Crown Estate Scotland said that its response was under EIRs because the request related to an area of foreshore and therefore to the elements of the environment. (In addition, Mr Z's request for information would include plans, activities and agreements relating to the specific piece of foreshore in Ballachulish.)
12. The Commissioner accepts this and is satisfied that the information covered by Mr Z's request falls under paragraphs (a) and (c) of the definition of environmental information in regulation 2(1) of the EIRs. Mr Z is seeking recorded information on the ownership of land (i.e. seeking proof that a certain named party has rights to the land and against whom that claim was made). The Commissioner accepts that Mr Z was seeking information about measures (such as activities) affecting or likely to affect the state of the elements of the environment (in this case, the landscape) as well as measures or activities designed to protect those elements.
13. Crown Estate Scotland submitted that the requested information was environmental information and, accordingly, they had applied the exemption in section 39(2) of FOISA. Section 39(2) provides, in effect, that environmental information is exempt from disclosure

under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs.

14. The exemption in section 39(2) is subject to the public interest test in section 2(1)(b) of FOISA. As there is a separate statutory right of access to environmental information available to Mr Z in this case, the Commissioner has concluded that the public interest in maintaining this exemption, and dealing with the request in line with the EIRs, outweighs the public interest in disclosure under FOISA. Therefore, the Commissioner will consider the information in what follows solely in terms of the EIRs.
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. This obligation relates to information that is held by the authority when it receives a request. On receipt of a request for environmental information, therefore, the authority must ascertain what information it holds falling within the scope of the request. Having done so, regulation 5(1) requires the authority to provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
16. Crown Estate Scotland relied on regulation 10(4)(b) of the EIRs in its response to Mr Z and its review response.

Regulation 10(4)(b) - manifestly unreasonable

17. Under the exception in regulation 10(4)(b) of the EIRs, a Scottish public authority may refuse to make environmental information available to the extent that the request for information is manifestly unreasonable. In considering whether the exception applies, the authority must interpret it in a restrictive way and apply a presumption in favour of disclosure. Even if it finds that the request is manifestly unreasonable, it is still required to make the information available unless, in all the circumstances, the public interest in doing so is outweighed by that in maintaining the exception.
18. The Commissioner's general approach¹ is that the following factors are relevant when considering whether a request is vexatious (under section 14 of FOISA) or manifestly unreasonable (under regulation 10(4)(b) of the EIRs). These are that the request:
 - (i) would impose a significant burden on the public body
 - (ii) does not have a serious purpose or value
 - (iii) is designed to cause disruption or annoyance to the public authority
 - (iv) has the effect of harassing the public authority
 - (v) would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.
19. This is not an exhaustive list. Depending on the circumstances, other factors may be relevant, provided the impact on the authority can be supported by evidence. The Commissioner recognises that each case must be considered on its merits, taking all the circumstances into account.

¹ http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Manifestly_unreasonable_requests.aspx

Crown Estate Scotland's submissions

20. Crown Estate Scotland referred to *Decision 157/2014 Banknock Haggs & Longcroft Community Council and Transport Scotland*², in which the Commissioner acknowledged that the applicant's identity, and the history of their dealings with a public authority, may be relevant in considering the nature and effect of a request and its surrounding circumstances. It may be reasonable, for example, for the authority to conclude that a request represents the continuation of a pattern of behaviour it has deemed manifestly unreasonable or vexatious in another context. Crown Estate Scotland believed it appropriate to take into account the history of the requests which Mr Z had made to it (and to its predecessor, The Crown Estate).
21. Crown Estate Scotland submitted that it and The Crown Estate had provided Mr Z with information on more than one occasion and in different formats. Crown Estate Scotland referred to communications with Mr Z from 27 August 2009, 8 October 2009 and 14 June 2011. It stated that Mr Z had confirmed receipt of the information. Crown Estate Scotland supplied the Commissioner with a spreadsheet summarising the history of its correspondence with Mr Z.
22. Crown Estate Scotland submitted that the information Mr Z had asked for was historic and would not have changed since the claim to foreshore ownership was successfully made in 1971.
23. Crown Estate Scotland noted that Mr Z had also asked from whom Ballachulish Estate had claimed the foreshore. Crown Estate Scotland submitted that this request was also manifestly unreasonable as it had been repeated (and addressed) several times in earlier correspondence. Crown Estate Scotland stated that it had advised Mr Z on many occasions that it and The Crown Estate presume ownership of foreshore unless a successful claim proving otherwise is made. In the case of a section of foreshore in Ballachulish, a successful claim was made by Ballachulish Estate in 1971. Both Crown Estate Scotland and The Crown Estate had advised Mr Z how he could lay claim to foreshore, if he felt he had entitlement.
24. Crown Estate Scotland noted that previous correspondence with Mr Z has been reviewed under the FOI review process as well as its internal complaints procedure.
25. Crown Estate Scotland therefore believed Mr Z's request:
 - (i) Would impose a significant burden. The entitlement file for the Ballachulish estate was 131 pages and would need to be redacted for personal data. This had been done in the past and sent to Mr Z on three occasions. (Crown Estate Scotland said it does not hold a copy of the redacted version, and would therefore have to do this work again.)
 - (ii) Did not have a serious purpose or value. Crown Estate Scotland acknowledged that the issue is important to Mr Z, but submitted that it has provided him with "all the information needed" relating to the foreshore in Ballachulish. Crown Estate Scotland felt that, even if it complied with his request, Mr Z's concern would not be satisfied, as it had not been resolved through previous correspondence.
 - (iii) Had a harassing effect: Crown Estate Scotland suggested that no matter what information it provided, and how much assistance and advice it gave to him, Mr Z

² <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2014/201302935.aspx>

would not be satisfied. It referred to Mr Z's previous contact with its office, which its staff had found difficult.

- (iv) Would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate. Viewing the history of Mr Z's requests relating to Ballachulish foreshore and mooring rights, Crown Estate Scotland suggested that any reasonable person could see that his requests are repetitive, that the information Crown Estate Scotland holds has already been provided and that there is no further response for Crown Estate Scotland to give.

Mr Z's submissions

26. Mr Z's first point was clear: he said that his earlier questions have not been answered adequately by Crown Estate Scotland or its predecessor. He had still not been given an adequate answer to his direct question about the entitlement of Ballachulish Estate to its claim (for the foreshore). He referred to being given different information on different occasions, including misleading and confusing information. He said that information given to his MP had recently revealed new information he should have received twenty years ago. He quoted:

"...it is thought that the Ballachulish Estate claimed the foreshore from the Board of Trade – though it is thought this was earlier in 1971."

27. Mr Z's request for review of 19 September 2017 stated that he was an interested party with respect to certain rights in regard to the foreshore. He was, therefore, in his view, more than a member of the public seeking the information: any entitlement of another was a counterclaim (to his). Mr Z submitted in his application to the Commissioner that he sought the information to allow him to confirm his claim to having a fishing right for the area in question, and he referred to this denial (of his claim) as having an effect on his trade.

The Commissioner's findings

28. There is no definition of "manifestly unreasonable" in the EIRs, or in Directive 2003/4/EC³ from which the EIRs are derived. The Commissioner's view is that "manifestly" implies that a request should be obviously or clearly unreasonable. He notes the opinion of the Information Tribunal in *Dr Kaye Little v Information Commissioner and Welsh Assembly Government (EA/2010/0072)*⁴, which considers the equivalent regulation of the (UK) Environmental Information Regulations 2004, and states:

"From the ordinary meaning of the words "manifestly unreasonable", it is clear that the expression means something more than just "unreasonable". The word "manifestly" imports a quality of obviousness. What is in issue, therefore, is a request that is plainly or clearly unreasonable. It is a more stringent test than simply "unreasonable".

29. This view was confirmed in the Appeal Court decision *Dransfield & Anor v The Information Commissioner & Anor* [2015] EWCA Civ 454⁵ (*Dransfield*) which comments:

"The word "manifestly"...means of course the unreasonableness must be clearly shown. This

³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0004:EN:HTML>

⁴

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i475/%5b2010%5dUKFTT_EA20100072_\(GRC\)_20101230.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i475/%5b2010%5dUKFTT_EA20100072_(GRC)_20101230.pdf)

⁵ <http://www.bailii.org/ew/cases/EWCA/Civ/2015/454.html>

saves the authority from having to make any detailed investigation into matters which it does not know or are not in the public domain."

30. Whether a request is manifestly unreasonable will depend on the facts of each case. It may apply where it can be demonstrated that a request is vexatious, or where compliance would incur unreasonable costs for the public authority or an unreasonable diversion of public resources. *Decision 024/2010 Mr N and the Scottish Ministers*⁶ established that the Commissioner was likely to take into account the same kinds of considerations in deciding whether a request was manifestly unreasonable under the EIRs as in reaching a decision as to whether a request was vexatious in terms of section 14(1) of FOISA. In *Dransfield*, Lady Justice Arden commented that while "manifestly unreasonable" differs on its face from "vexatious" (section 14(1) of FOISA), the difference between the two phrases is "vanishingly small".
31. Taken in isolation, Mr Z's request of 1 August 2017 might not appear to be manifestly unreasonable: it is politely worded, though it expresses his ongoing concern in respect of the entitlement to a specific piece of foreshore. The Commissioner is aware, however, that the unreasonable nature of a request may only emerge after considering it in the context created by previous or ongoing correspondence.
32. Crown Estate Scotland submitted that the history of its correspondence with Mr Z was relevant when deciding whether the request at issue was manifestly unreasonable. Mr Z too has referred to his other previous requests to evidence his dissatisfaction with Crown Estate Scotland.
33. The Commissioner accepts that the request under consideration has a clear link to Mr Z's previous requests: it relates to his concerns about the ownership of a specific area of the foreshore and it specifically refers to information previously requested. The Commissioner accepts that it is appropriate, in the circumstances, to consider this request in the context created by Mr Z's previous correspondence, and that it was reasonable for Crown Estate Scotland to take his previous correspondence into account when deciding whether this request should be treated as manifestly unreasonable. It is in the context created by Mr Z's previous correspondence that the Commissioner has considered the factors raised by Crown Estate Scotland to justify its reliance on regulation 10(4)(b) of the EIRs.
34. The correspondence under consideration includes Mr Z's correspondence with The Crown Estate. By virtue of the Crown Estate Scotland (Interim Management) Order 2017/36, Crown Estate Scotland came into being in February 2017, taking over from the Crown Estate Commissioners, who were subject to the (UK) Freedom of Information Act 2000, which is regulated by the (UK) Information Commissioner. The 2017 Order established an interim body to manage those Crown Estate assets in Scotland which will be transferred to the body as part of a Scheme made by the Treasury. The above Order also added Crown Estate Scotland to Schedule 1 of FOISA.
35. The Commissioner accepts it is appropriate to take into account previous correspondence between Mr Z and The Crown Estate. He can see no reason why such correspondence should not be potentially relevant solely because it was with the predecessor (UK) public authority, which in any case had similar obligations under the (UK) Environmental Information Regulations 2004.

⁶ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2010/200900461.asp>

36. Having viewed the list of requests made by Mr Z, it is clear to the Commissioner that he has previously asked Crown Estate Scotland for very similar information. Crown Estate Scotland (and The Crown Estate) has provided Mr Z with information on more than one occasion and Mr Z confirmed receipt of the information. Specifically, a response was sent to Mr Z on 27 August 2009 about “the correspondence relating to the adverse claim to foreshore by Ballachulish Estate in 1971”. The Commissioner has seen the information supplied to Mr Z in response to that request, and the information is relevant to that request and to his present request of August 2017.
37. The response to Mr Z of 8 October 2009 refers to photos and documents being enclosed. In relation to Mr Z’s request for a copy of the “Extract of Extract Decree The Ballachulish Estate Company Limited against Trustees under Deed Direction etc. and Others recorded in the Public Records of Scotland on 5 August 1927”, The Crown Estate stated that the extract had been returned to the solicitors for the Ballachulish Estate Company Limited, and advised Mr Z to request a copy of the Decree from Registers of Scotland. In its response of 8 October 2009, The Crown Estate also provided Mr Z with a letter from the Mercantile Marine Department of the Board of Trade to the solicitors involved (dated 28 October 1935).
38. The response to Mr Z of 14 June 2011 enclosed “all the information that has been sent to you previously and copy correspondence...”. The Commissioner notes that Mr Z disputes that this information falls within his request.
39. Crown Estate Scotland referred to three requests specifically as evidencing repetition (including the requests which elicited the responses described in the previous two paragraphs). However, the information which Crown Estate Scotland supplied to the Commissioner evidences other correspondence from 2006 till 2017 relating to the same issue – that is, the legal entitlement and law relating to foreshore, fishing rights, moorings, and associated concerns.
40. The Commissioner has no doubt that the subject matter of Mr Z’s request is personally important to him. Taken on its own, Mr Z’s request does not obviously lack serious purpose: he asks for information about entitlement to foreshore. He has a personal interest in understanding the entitlement as he wishes to advance his own claim. However, when considered in the light of his previous, related correspondence, the Commissioner agrees that Mr Z’s request can reasonably be regarded as lacking serious purpose. His reasons for reaching this conclusion are as follows.
41. First, the request is for information that is substantially similar to information covered by previous requests from Mr Z. The request is for information dating from before 1971 which is unlikely to have changed since Crown Estate Scotland (or The Crown Estate) responded to his previous requests. The Commissioner’s guidance⁷ recognises this as a relevant test:
- “The request may also be manifestly unreasonable if there is no additional information that can be provided because all relevant information has already been disclosed”.
42. The Commissioner’s guidance also says:
- “The request may also be manifestly unreasonable if it is unlikely that the additional information would shed light on, or alter, the requester’s situation (because the subject in

⁷ http://www.itspublicknowledge.info/Law/FOISA-EIRsGuidance/Manifestly_unreasonable_requests.aspx

question has already been thoroughly addressed through the relevant complaints or appeals procedure).”

43. To the Commissioner, the request appears to be an attempt to extend correspondence on a matter which has been fully considered. There is no suggestion that Crown Estate Scotland holds other relevant information which it has withheld from Mr Z when responding to his earlier requests. Taking account of the history of correspondence between the parties, it is the Commissioner's view that the current request was designed to further Mr Z's aim of taking forward his claim by forcing Crown Estate Scotland to reconsider a matter which had already been fully addressed.
44. The Commissioner notes that Mr Z feels that he has not had a direct answer to his question i.e. the entitlement of Ballachulish Estate to its claim to the foreshore. It is not within the Commissioner's remit to assess the adequacy of the information supplied to Mr Z by Crown Estate Scotland. That is, the Commissioner cannot decide whether Crown Estate Scotland (or The Crown Estate) have provided sufficient recorded information to address properly the legal entitlement question. The question for the Commissioner to decide is whether the authority (Crown Estate Scotland) has complied with the obligation to provide the recorded information to the requester (Mr Z), unless a qualification in regulations 6 to 12 applies. It may well be the case that the recorded information held by the public authority does not answer adequately the question of legal entitlement (a matter which the Commissioner has no remit to judge) - but that is a different issue from compliance with the EIRs.
45. In the light of that point, and as Mr Z's request relates to a matter which would appear to have been fully considered, the Commissioner agrees with Crown Estate Scotland that, in the circumstances, the request lacks serious purpose or value. It also appears unlikely that resolution of Mr Z's concerns would be brought any closer if Crown Estate Scotland were to comply with his current request, given the history of Mr Z's correspondence and dealings with Crown Estate Scotland. The Commissioner accepts that complying with his request would have the effect of prolonging correspondence on matters which seem to have been fully addressed.
46. Crown Estate Scotland also submitted that Mr Z's request imposed a significant burden on it, when viewed in the context of his previous correspondence. Crown Estate Scotland, and The Crown Estate, has responded to many requests from Mr Z in the period from July 2006 to August 2017 (all more or less on the subject of the foreshore and associated issues).
47. The request at issue would not seem to add significantly to the burden created by Mr Z's requests. The request is for information about legal entitlement to land and relates to a specific period of time. The Commissioner questions whether responding to the request would create a *significant* burden. The Commissioner acknowledges that to supply a 130 page file with redactions for personal data may be burdensome (and irksome, given that the information appears to have been provided on a previous occasion), but he has not been persuaded that this alone would be enough to make responding significantly burdensome.
48. However, taking into account the substantial correspondence relating to the issue of legal ownership of the foreshore the Commissioner accepts that the request forms part of a long-standing correspondence which has now become a significant burden to Crown Estate Scotland.
49. Crown Estate Scotland also suggested that the request was disproportionate and unreasonable. The Commissioner's Guidance recognises that this may be a relevant factor to consider. Proportionality underlies both section 14(1) of FOISA and regulation 10(4)(b) of

the EIRs, and there is an inevitable overlap between what is proportionate and reasonable and other relevant factors, such as the value and purpose of a request.

50. The Commissioner accepts that public authorities should be held accountable for their actions and decisions. Nonetheless, Crown Estate Scotland had already responded to requests for information on same issue. It appears to the Commissioner that the intention behind Mr Z's request was to require Crown Estate Scotland to revisit his concern. Seeking to reopen a complaint about an issue which is of genuine concern to a complainant is not necessarily an action designed to cause disruption and annoyance. However, taking into account all the circumstances of the case – i.e. that it relates to information that is substantially similar to that which Mr Z has requested before and in respect of complaints which have already been investigated – the Commissioner is satisfied that the request can reasonably be considered disproportionate.
51. In summary, having considered all the relevant circumstances, the Commissioner accepts Crown Estate Scotland's view that Mr Z's request was manifestly unreasonable, in terms of regulation 10(4)(b) of the EIRs.

Public interest test

52. In common with all the other exceptions in the EIRs, regulation 10(4)(b) is subject to the public interest test set out in regulation 10(1)(b). Consequently, information can be withheld under the exception only where, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
53. Crown Estate Scotland submitted that it was not in the public interest to spend more public resource on answering Mr Z's request, factoring in the resources already spent answering his previous requests and providing advice. Crown Estate Scotland believed it had previously provided Mr Z with the information and that the information, being historic, has not changed since he received it. Even if Crown Estate Scotland were to provide the information again, it believed that this would not resolve the issue for Mr Z. Crown Estate Scotland submitted that the information is only of interest to Mr Z and would not benefit the public.
54. Mr Z did not comment directly on the public interest test, but his reasons for requiring disclosure of the information are set out in this decision notice.
55. In the Commissioner's view, there is an inherent public interest in disclosure of information which would ensure transparency about the nature and extent of the information that a public authority holds, and which would permit adequate public scrutiny of its actions. In this case, there is a clear public interest in the disclosure of information which would permit scrutiny of the steps and decisions taken in respect of legal ownership of foreshore, which has the potential to affect a number of different parties.
56. On the other hand, there is also a strong public interest in a Scottish public authority being able to carry out its statutory functions without unreasonable disruption. Although complying with the request would not create a significant burden for the Crown Estate Scotland, the Commissioner accepts that Mr Z has already been provided with all relevant information held by Crown Estate Scotland. Similarly, Mr Z has been informed how to obtain information that is a matter of public record and how he may be able to enforce the entitlement or claim he believes he has. Although it is clear that Mr Z believes that he has not had adequate explanation or sufficient evidence to satisfy him of the legal ownership of the land, this does not detract from the fact that he has been supplied with the relevant information held by Crown Estate Scotland on a number of occasions.

57. The Commissioner considers there is a public interest in protecting the integrity of the EIRs and ensuring that they are used responsibly. While public authorities are encouraged to act in a transparent and accountable way, which benefits the public as a whole, it is not the intention of the legislation to require public authorities to devote excessive or disproportionate amounts of resource to one particular request.
58. On balance, the Commissioner accepts that, in all the circumstances of this case, the public interest in making the information available is outweighed by the public interest in preventing the disproportionate levels of disruption to Crown Estate Scotland's statutory functions that would result from complying with Mr Z's request. Given that Crown Estate Scotland would be likely to comply with the request by providing information which Mr Z has already seen and which does not satisfy him, it is likely that this would only serve to prolong the correspondence on this matter still further, increasing the burden and the harassing effect on Crown Estate Scotland.
59. The Commissioner therefore concludes Crown Estate Scotland was entitled to withhold the information requested in the request under the exception in regulation 10(4)(b) of the EIRs.

Decision

The Commissioner finds that Crown Estate Scotland (Interim Management) 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 Z.

Appeal

Should either Mr Z or Crown Estate Scotland 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

9 April 2018

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.

...

- (4) The information to be given by the authority is that held by it at the time the request is received, except that, subject to subsection (5), any amendment or deletion which would have been made, regardless of the receipt of the request, between that time and the time it gives the information may be made before the information is given.

...

- (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;

...

(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.

...

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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