

Decision Notice

Decision 111/2018: Mrs Y and the Scottish Housing Regulator

Heating renewal projects

Reference No: 201800227

Decision Date: 17 July 2018



Scottish Information
Commissioner

Summary

The SHR was asked about two heating renewal projects in Glasgow.

The SHR disclosed some information, but withheld the personal data of third parties which it considered excepted from disclosure.

The Commissioner was satisfied that all information capable of addressing the request had been identified. However, he found that the SHR had incorrectly withheld some information under the exception it had relied on, and he also found that it failed to clearly communicate that it had redacted information that was not covered by the scope of the request. The SHR is required to disclose the information it wrongly withheld, along with a schedule that clearly indicates what information is outwith the scope of the request.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation) (paragraphs (a), (b), (c) and (f) of definition of "environmental information"); 5(1) and (2)(b) (Duty to make available environmental information on request); 11(2) and (3)(a)(i) (Personal data)

Data Protection Act 1998 (the DPA 1998) section 1(1) (definition of "personal data") (Basic interpretative provisions); Schedule 1 (The data protection principles, Part I: the principles) (the first data protection principle) and Schedule 2 (Conditions relevant for purposes of the first principle: processing of any personal data) (condition 6)

Data Protection Act 2018 (the DPA 2018) Schedule 20 (Transitional provision etc - paragraph 61)

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 2 July 2017, Mrs Y made a request for information to the Scottish Housing Regulator (the SHR). The information requested was:
 - (i) All information you have regarding the heating renewal projects at Mossheights Avenue, Glasgow and Berryknowes Road, Glasgow and all your contact with all bodies regarding the same.
 - (ii) All information you have regarding the improvement works at Berryknowes Road and all contact you have with all bodies regarding the same.
 - (iii) A list of all and any complaints or investigations regarding the same.
 - (iv) A copy of all investigations carried out by SHR or other bodies that SHR have a record of.
 - (v) A complete reference regarding each item above and a clear path to where and how they are stored.

2. The SHR failed to respond to this request.
3. On 31 July 2017, Mrs Y wrote to the SHR requesting a review of its decision to refuse to respond to her request for information.
4. The SHR wrote to Mrs Y the same day, explaining that it had been unable to locate her initial request for information and asking her to forward a copy.
5. On 31 July 2017, Mrs Y provided the SHR with a copy of the information request she had made on 2 July 2017.
6. The SHR wrote to Mrs Y on 18 August 2017 and asked for clarification of requests (iv) and (v). With respect to request (iv), the SHR asked Mrs Y to confirm whether she was only seeking information regarding the two addresses specified in request (i). With regard to request (v), the SHR asked Mrs Y if she was seeking a schedule of documents and it also asked her to explain what she meant by “a clear path to where and how they are stored”.
7. On 24 August 2017, Mrs Y wrote to the SHR and confirmed that request (iv) was limited to Mossheights Avenue and Berryknowes Road, and with regard to request (v) she was seeking “a list of the information held, the classification of this information and the form it is held in”.
8. The SHR notified Mrs Y of the outcome of its review on 28 August 2017. It provided Mrs Y with 17 documents which had been redacted to withhold personal data under regulation 11(2) of the EIRs.
9. On 1 February 2018, Mrs Y 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. Mrs Y was dissatisfied with the outcome of the SHR’s review because she considered that it had failed to provide her with all of the information falling within the scope of her request. Mrs Y later confirmed that she also wished to challenge the SHR’s decision to withhold personal data under regulation 11(2) of the EIRs.

Investigation

10. The application was accepted as valid. The Commissioner confirmed that Mrs Y 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.
11. On 27 February 2018, the SHR was notified in writing that Mrs Y had made a valid application. The SHR was asked to send the Commissioner the information withheld from Mrs Y. The SHR provided the information and the case was allocated to an investigating officer.
12. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The SHR was invited to comment on this application and answer specific questions including justifying its reliance on any provisions of the EIRs it considered applicable to the information requested.

Commissioner’s analysis and findings

13. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both Mrs Y and the SHR. He is satisfied that no matter of relevance has been overlooked.

Application of the EIRs

14. It is clear from the SHR's correspondence with Mrs Y and the Commissioner, and from the information itself, that the information sought by Mrs Y is properly considered to be environmental information, as defined in regulation 2(1) of the EIRs (reproduced in Appendix 1 to this decision). The information relates to heating renewal projects across various residential buildings, and engages paragraphs (a), (b), (c) and (f) of the definition of environmental information. Mrs Y asked the SHR to respond to her request under the EIRs and the Commissioner will consider the request in what follows solely in terms of the EIRs.

Regulation 5(1) of the EIRs

15. Regulation 5(1) of the EIRs (subject to the various qualifications contained in regulations 6 to 12) 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 is not in fact held.

Did the SHR identify all relevant information?

16. In her application to the Commissioner, Mrs Y indicated that she believed the SHR held additional information that fell within the scope of her request, but it had not provided her with this information, nor had it applied any exceptions to it.
17. In later submissions, Mrs Y referred to the information request considered in one of the Commissioner's previous decisions, *Decision 198/2017 Mr Joseph Y and the Scottish Housing Regulator*¹. She argued that the information referred to in the review outcome relating to that case would fall within the scope of her current request, but had not been provided to her by the SHR. She submitted that the request in the previous case was for "basically identical information" to that which she had asked for in this case. She noted that the SHR had not disclosed the information to her or indicated that it was withheld under any exemption or exception.
18. The SHR was asked to comment on Mrs Y's views and to consider whether there was any crossover between the information that she had requested and the information considered in *Decision 198/2017*. The SHR was asked whether it had identified all of the information falling within the scope of Mrs Y's request for information. It was asked to provide details of the searches it had carried out.
19. The SHR submitted that all of the information that was identified and disclosed to Mr Y (*Decision 198/2017*) was considered as part of Mrs Y's request for information. However, as these were different requests, there was information that was disclosed to or withheld from Mr Y that fell outside the scope of Mrs Y's request for information.
20. In response to further questions, the SHR confirmed that it did not hold any documentation or information that referred either to Scottish Power's involvement or public funding issues.

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2017/201701379.aspx>

21. The SHR stated that it held some information on procurement issues, but it fell outwith Mrs Y's request, as it did not refer to works at either Mossheights Avenue or Berryknowes Road. (The SHR later provided the Commissioner with a copy of this information for him to review, and the Commissioner is satisfied that the information is not covered by Mrs Y's request.)
22. The SHR was asked why there was no information dating from 2010, 2011, 2014, 2015 and 2017 in the information that was disclosed to Mrs Y. The SHR explained that as a regulator it does not routinely collect this type of information and commented that it is a "risk based and proportionate regulator". The SHR referred the Commissioner to its Regulatory Framework which explains how it uses its regulatory powers. The SHR explained that, once it has been contacted by an external party, it will consider the questions raised or the information provided and, where appropriate, it will look into the matters with the relevant organisation. However, it would not follow up on information at regular intervals unless it received further evidence or information that would warrant this.
23. The SHR was asked to explain how it established what information it held which was covered by Mrs Y's request, and to provide details of the searches it had carried out. The SHR submitted that it had searched the following locations:
 - A legacy document storage system ("G Drive");
 - A newer electronic documents management system (eDRM) which has been its electronic storage system for new corporate and regulatory records since 2012 until recently;
 - A newer and bespoke SharePoint-based electronic document management system ("Insight") which has been its storage system for new regulatory records since February 2016;
 - Individuals' "local" storage areas on their computers in the workplace; and
 - Scanned paper files – SHR explained that it carried out a large scanning exercise several years ago whereby a large volume of paper files was scanned to its system. The information in these scanned files would not necessarily be captured by the searches of electronic locations listed above.
24. The SHR explained that it also sent out an email to all staff asking for any information within the scope of the request, and it provided the Commissioner with a copy of this email and the responses it received.
25. The SHR provided the Commissioner with a list of the key terms it had used to conduct searches and additional detail on the searches it had carried out. In particular the SHR submitted that it had:
 - Carried out a manual review of its paper files for Southside Housing Association and Glasgow Housing Association;
 - Reviewed all files on Southside Housing Association which were held on its Insight system;
 - Carried out a manual search of the Glasgow Housing Association and Southside Housing Association folders in both eRDM and the G:Drive to double check whether there was any information that was not captured using a keyword search;

- Reviewed the information that formed part of the review response in *Decision 198/2017*.

Commissioner's conclusions

26. The Commissioner has compared the requests made by Mrs Y in this case with the requests considered in *Decision 198/2017* which are listed in Annex 2 of that Decision. While the Commissioner accepts that it is possible that some of Mrs Y's requests could capture some of the information falling within the scope those previous requests, the requests considered in *Decision 198/2017* are much broader and would cover significantly more information than the requests made by Mrs Y.
27. The Commissioner is satisfied that most of the information that falls within the scope of the requests in *Decision 198/2017* would not fall within the scope of Mrs Y's request for information. He considers that any crossover would be limited and the outcome of the review in *Decision 198/2017* has little relevance to the requests and information being considered in this case.
28. The Commissioner has considered the SHR's submission that it does not routinely collect the type of information requested by Mrs Y and that is why it does not hold information for the years 2010, 2011, 2014, 2015 and 2017. The Commissioner notes that the SHR describes itself as a proportionate regulator and has described its usual processes for dealing with contact from external parties.
29. The Commissioner cannot comment on how the SHR or any other Scottish public authority carries out its regulatory functions: this is not within his remit. Given the submissions provided by the SHR, including its account of the detailed searches it has carried out, he is satisfied that the SHR does not hold information for the years specified above.
30. Based on the evidence placed before him and the submissions received from both parties, the Commissioner is satisfied that the SHR has identified all of the relevant information it holds that falls within the scope of Mrs Y's request for information.

“Out of scope” information

31. During the investigation, the SHR acknowledged that it had redacted information that was outwith the scope of Mrs Y's request for information, as well as information that comprised the personal data of third parties, from the documents sent to her. The SHR acknowledged that it had not indicated to Mrs Y which of the redactions related to third party personal data (withheld information), and which concerned information that was not covered by her request. The SHR apologised for this oversight and admitted that its review outcome should have clearly differentiated between the two types of redacted information.
32. The SHR provided the Commissioner with a schedule which specified, for each document covered by the scope of the request, what information was being withheld under regulation 11(2) of the EIRs. This schedule also indicated where information had been redacted because it fell outwith the scope of Mrs Y's request.
33. The Commissioner has reviewed all of the redacted information that the SHR considered to be outwith the scope of Mrs Y's request. He is satisfied that the information is not relevant to Mrs Y's request and the SHR was not required to consider it when responding.
34. The SHR apologised for failing to advise Mrs Y that, while some of the information was redacted under regulation 11(2) of the EIRs, a large amount of information was redacted because it was not relevant to her request. If a Scottish public authority has made redactions

to a document disclosed under FOISA or the EIRs, the Commissioner expects it to take steps to ensure that the requester fully understands what information is being withheld and why, and this includes making clear where redacted information falls outwith the scope of the request.

35. The Commissioner requires the SHR to provide Mrs Y with a new set of documents along with a schedule that clearly indicates what information is being withheld under regulation 11(2) of the EIRs, and what information has been redacted because it falls outwith the scope of her request.
36. The Commissioner will now consider the information that the SHR is withholding under regulation 11(2) of the EIRs.

Data Protection Act 2018 (Transitional provisions)

37. On 25 May 2018, the DPA 1998 was repealed by the DPA 2018. Amongst many other things, the DPA 2018 amended regulation 11 of the EIRs. It also introduced a set of transitional provisions which set out what should happen where a public authority dealt with an information request before the EIRs were amended on 25 May 2018, but where the matter is being considered by the Commissioner after that date.
38. In line with paragraph 61 of Schedule 20 to the DPA 2018 (see Appendix 1), if an information request was dealt with before 25 May 2018 (as is the case here), the Commissioner must consider the law as it was before 25 May 2018 when determining whether the authority dealt with the request in accordance with the EIRs.
39. Paragraph 61 of Schedule 20 goes on to say that, if the Commissioner concludes that the request was not dealt with in accordance with the EIRs (as it stood before 25 May 2018), he cannot require the authority to take steps which it would not be required to take in order to comply with the EIRs on or after 25 May 2018.
40. The Commissioner will therefore consider whether the SHR was entitled to apply the exception in regulation 11(2) of the EIRs under the old law. If he finds that the SHR was not entitled to withhold the information under the old law, he will only order the SHR to disclose the information if disclosure would not now be contrary to the new law.

Regulation 11(2) of the EIRs

41. During the investigation, the SHR acknowledged that it had wrongly withheld some information under regulation 11(2) of the EIRs. Some of the information was not the personal data of a third party (such as the dates on which a meeting was held, or the name of a law firm). Some was personal data which could lawfully be disclosed. The SHR withdrew its reliance on regulation 11(2) of the EIRs for this information and confirmed that it was content for it to be disclosed.
42. In withholding this information under regulation 11(2) of the EIRs, the Commissioner finds that the SHR did not deal with Mrs Y's request in accordance with the EIRs. He requires the SHR to disclose this information to Mrs Y.
43. The SHR maintained that it was correct to apply regulation 11(2) of the EIRs to the remainder of the information withheld under this exception. The information comprised the personal data of third parties including names, addresses, contact details and other personal information. The SHR submitted that this information was the personal data of living individuals who could be identified from that data or from that data in conjunction with other

data that Mrs Y possessed, and it considered it to be excepted from disclosure under regulation 11(2) of the EIRs.

44. Regulation 10(3) of the EIRs provides that a Scottish public authority can only make personal data in environmental information available in accordance with regulation 11. Regulation 11(2) provides that personal data shall not be made available where the applicant is not the data subject and other specified conditions apply. These include where disclosure would contravene any of the data protection principles in Schedule 1 to the DPA 1998 (regulation 11(3)(a)(i)). The SHR argued that disclosure of certain information would breach the first data protection principle.

Is the information under consideration personal data?

45. The relevant definition of "personal data" is contained in section 1(1) of the DPA 1998 and is set out below in Appendix 1.
46. Having considered the submissions received, the Commissioner is satisfied that the information redacted relates to individuals who can be identified from the information. As such, it is their personal data.

The first data protection principle

47. The first data protection principle states that personal data shall be processed fairly and lawfully. The processing in this case would be making the information available in the public domain, in response to Mrs Y's request. The first principle also states that personal data shall not be processed unless at least one of the conditions in Schedule 2 to the DPA 1998 is met (the full text of the principle is set out in Appendix 1). A condition in Schedule 3 to the DPA 1998 will also require to be met if the data are sensitive personal data, as defined in section 2 of the DPA 1998: the Commissioner is satisfied that this is not the case here.
48. There are three separate aspects to the first data protection principle: (i) fairness, (ii) lawfulness and (iii) the conditions in the schedules. These three aspects are interlinked. For example, if there is a specific condition in Schedule 2 which permits the personal data to be disclosed, it is likely that the disclosure will also be fair and lawful.
49. The Commissioner will now consider whether there are any conditions in Schedule 2 to the DPA which would permit the withheld personal data to be made available. If any of these conditions can be met, he must then consider whether making the information available would be fair and lawful.

Can any of the conditions in Schedule 2 be met?

50. In the circumstances, it appears to the Commissioner that condition 6 in Schedule 2 is the only one which might permit making the information available to Mrs Y. Condition 6 allows personal data to be processed if the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject(s) (the individual(s) to whom the data relate).
51. There are, therefore, a number of different tests which must be satisfied before condition 6 can be met. These are:
 - (i) Is Mrs Y pursuing a legitimate interest or interests?

- (ii) If yes, is the processing involved necessary for the purposes of those interests? In other words, is the processing proportionate as a means and fairly balanced as to ends, or could these interests be achieved by means which interfere less with the privacy of the data subject(s)?
- (iii) Even if the processing is necessary for Mrs Y's legitimate interests, is that processing nevertheless unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject(s)?

52. There is no presumption in favour of making personal data available under the general obligation laid down by regulation 5(1) of the EIRs. Accordingly, the legitimate interests of Mrs Y must outweigh the rights and freedoms or legitimate interests of the data subject(s) before condition 6 will permit making the personal data available. If the two are evenly balanced, the Commissioner must find that the SHR was correct to refuse to disclose the information to Mrs Y.

Is Mrs Y pursuing a legitimate interest or interests?

53. There is no definition within the DPA of what constitutes a "legitimate interest", but the Commissioner takes the view that the term indicates that matters in which an individual properly has an interest should be distinguished from matters about which he or she is simply inquisitive. The Commissioner's published guidance on regulation 11(2) of the EIRs states:

"In some cases, the legitimate interest might be personal to the applicant - e.g. he or she might want the information in order to bring legal proceedings. With most requests, however, there are likely to be wider legitimate interests, such as the scrutiny of the actions of public bodies or public safety."

54. The SHR acknowledged that Mrs Y has a legitimate interest in seeking further information about projects and works taking place in her neighbourhood. However, it argued that disclosure of the withheld third party personal data is not necessary for the purposes of those legitimate interests. The SHR submitted that Mrs Y's legitimate interests can be met in a way which interferes less with the privacy rights of third parties, namely by redacting relevant personal data from information provided.
55. In her submissions, Mrs Y argued that it is in the public interest for the information she asked for to be disclosed. She provided extensive submissions which document the reasons why she made this request for information and why she is challenging the SHR's decision to withhold information.
56. Mrs Y has outlined her concerns about the heating renewal projects and she has alluded to misdeeds by a named housing association involved with these projects. As the SHR is the independent regulator of registered social landlords in Scotland, Mrs Y wants to know what information the SHR holds in relation to these projects, including any complaints or investigations about them.
57. Mrs Y asked the Commissioner to investigate whether the SHR correctly applied the exception contained in regulation 11(2) of the EIRs in this case. She expressed concern that the SHR had redacted more than just personal data from the documents that was disclosed to her. (The Commissioner has established (in paragraphs 31-35 above) that the SHR did redact information that was outwith the scope of Mrs Y's request for information as well as third party personal data.)

58. The Commissioner accepts that Mrs Y has a personal interest in obtaining information about the heating renewal projects, but he is not satisfied that this extends to having a legitimate interest in obtaining the personal data that has been withheld. While Mrs Y has made detailed arguments explaining her reasons for seeking information from the SHR, she has not provided any reasons why she requires information such as the names and/or contact details of tenants or employees, other than generic arguments about disclosure being in the public interest.
59. The Commissioner has examined all of the information withheld under regulation 11(2) of the EIRs, and all of the submissions received from Mrs Y and the SHR and he is not satisfied that any interest Mrs Y might have in obtaining the personal data in question could be considered to amount to a legitimate interest for the purposes of condition 6 in Schedule 2 to the DPA 1998.
60. Given this conclusion, the Commissioner finds that there is no condition in Schedule 2 which would permit the personal data to be made available. In the absence of such a condition, it would be unlawful to make the personal data available and disclosure would have breached the first data protection principle. Consequently, the Commissioner finds that the SHR was entitled to withhold the information under regulation 11(2) of the EIRs.

Transitional provisions

61. The SHR has confirmed that it wrongly withheld some information under regulation 11(2) of the EIRs and has agreed to disclose this information. As the SHR are no longer applying regulation 11(2) in relation to this information, the Commissioner is not required to go on to consider whether disclosure of this information would breach the EIRs as they currently stand. For the avoidance of doubt, the Commissioner is satisfied that, even if the SHR were relying on regulation 11(2) to withhold the information, disclosure would not breach the EIRs as amended by the DPA 2018.

Decision

The Commissioner finds that the Scottish Housing Regulator (SHR) partially complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Mrs Y. He is satisfied that the SHR identified all of the information falling within

the scope of her request and that it correctly withheld some information under regulation 11(2) of the EIRs.

However, the Commissioner also finds that the SHR failed to comply with the EIRs by wrongly withholding some information under regulation 11(2) of the EIRs.

The Commissioner therefore requires the SHR to provide Mrs Y with a new set of documents that contain the information that was wrongly withheld under regulation 11(2) of the EIRs, with a detailed schedule indicating where information has been withheld under regulation 11(2) of the EIRs, and where it has been redacted because it is outwith the scope of her request.

The Commissioner requires the SHR to take these actions by **31 August 2018**.

Appeal

Should either Mrs Y or the SHR 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.

Enforcement

If the SHR fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the SHR has failed to comply. The Court has the right to inquire into the matter and may deal with the SHR as if it had committed a contempt of court.

Margaret Keyse
Head of Enforcement

17 July 2018

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

(1) In these Regulations –

...

- (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;
- (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);
- (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;

...

- (f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c);

...

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.

11 Personal data

...

(2) To the extent that environmental information requested includes personal data of which the applicant is not the data subject and in relation to which either the first or second condition set out in paragraphs (3) and (4) is satisfied, a Scottish public authority shall not make the personal data available.

- (3) The first condition is-
- (a) in a case where the information falls within paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998^[6] that making the information available otherwise than under these Regulations would contravene-
 - (i) any of the data protection principles; or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and; in all the circumstances of the case, the public interest in making the information available is outweighed by that in not doing so; and

...

Data Protection Act 1998

1 Basic interpretative provisions

- (1) In this Act, unless the context otherwise requires –

...

“personal data” means data which relate to a living individual who can be identified –

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

...

Schedule 1 – The data protection principles

Part I – The principles

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
 - (a) at least one of the conditions in Schedule 2 is met, and

...

Schedule 2 – Conditions relevant for purposes of the first principle: processing of any personal data

...

6. (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

Data Protection Act 2018

Schedule 20 – Transitional provision etc

61 Environmental Information (Scotland) Regulations 2004

- (1) This paragraph applies where a request for information was made to a Scottish public authority under the Environmental Information (Scotland) Regulations 2004 (“the 2004 Regulations”) before the relevant time.
- (2) To the extent that the request is dealt with after the relevant time, the amendments of the 2004 Regulations in Schedule 19 to this Act have effect for the purposes of determining whether the authority deals with the request in accordance with those Regulations.
- (3) To the extent that the request was dealt with before the relevant time –
 - (a) the amendments of the 2004 Regulations in Schedule 19 to this Act do not have effect for the purposes of determining whether the authority dealt with the request in accordance with those Regulations, but
 - (b) the powers of the Scottish Information Commissioner and the Court of Session, on an application or appeal under the 2002 Act (as applied by the 2004 Regulations), do not include power to require the authority to take steps which it would not be required to take in order to comply with those Regulations as amended by Schedule 19 to this Act.
- (4) In this paragraph -

“Scottish public authority” has the same meaning as in the 2004 Regulations;

“the relevant time” means the time when the amendments of the 2004 Regulations in Schedule 19 to this Act come into force.

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