

Decision Notice



Decision 042/2013 Mr Martin Ackroyd and the University of St Andrews

Emails received by a University employee

Reference No: 201201586
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www.itspublicknowledge.info

Rosemary Agnew
Scottish Information Commissioner

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Summary

On 6 June 2012, Mr Ackroyd asked the University of St Andrews (the University) for copies of certain emails received by a University employee in relation to a specified blog. The University notified Mr Ackroyd that it did not hold the emails for the purposes of FOISA and that, in any case, the emails were exempt from disclosure under section 30(b)(ii) of the Freedom of Information (Scotland) Act 2002 (FOISA).

The Commissioner considered this case under both FOISA and the Environmental Information (Scotland) Regulations 2004 (the EIRs). She found that the University had failed to deal with the request in accordance with both FOISA and the EIRs. She required the University to disclose the emails to Mr Ackroyd.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (4) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 3(2)(a)(i) (Scottish public authorities); 30(b)(ii) (Prejudice to effective conduct of public affairs); 39(2) (Health, safety and the environment)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definitions (a) and (b) of “environmental information”) and (2) (Interpretation); 5(1) and (2)(b) (Duty to make environmental information available on request)

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 6 June 2012, Mr Ackroyd emailed the University in relation to an article posted on a specified blog by a named University employee (Employee A). Mr Ackroyd noted that Employee A had subsequently posted a comment on the blog alluding to “embarrassing” personal emails that had been sent direct to Employee A as a result of the article, which Employee A had decided not to publish. Mr Ackroyd requested a copy of all of the emails received by Employee A, that Employee A had considered were insulting or which would be embarrassing to other blog participants.



2. The University responded on 4 July 2012; it informed Mr Ackroyd that it held the emails on behalf of another person (i.e. Employee A) and that, consequently, it did not hold the emails for the purposes of FOISA. The University also informed Mr Ackroyd that, even if it did hold the emails for the purposes of FOISA, the emails would be exempt from disclosure under section 38(1)(b) (Personal data) and 36(2) (Confidentiality) of FOISA.
3. On 5 July 2012, Mr Ackroyd emailed the University requesting a review of its decision. He disputed the University's position that it did not hold the information for the purposes of FOISA. Additionally, Mr Ackroyd informed the University that he did not wish to receive the names and identifying information of the senders of the emails and disagreed with the University's position that the information was exempt from disclosure under FOISA.
4. The University notified Mr Ackroyd of the outcome of its review on 7 August 2012. The University confirmed its decision that it did not hold the emails for the purposes of FOISA. The University also informed Mr Ackroyd that, if it did hold the information for the purposes of FOISA, it now considered it would be exempt under section 30(b)(ii) of FOISA on the basis that its disclosure would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation.
5. On 17 August 2012, Mr Ackroyd wrote to the Commissioner, stating that he was dissatisfied with the outcome of the University'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 certain specified modifications.
6. The application was validated by establishing that Mr Ackroyd had made a request for information to a Scottish public authority and had applied to the Commissioner for a decision only after asking the authority to review its response to that request.

Investigation

7. On 10 September 2012, the University was notified in writing that an application had been received from Mr Ackroyd and was asked to provide the Commissioner with any information withheld from him. The University responded with the information requested and the case was then allocated to an investigating officer.
8. The investigating officer subsequently contacted the University, 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 University was asked to justify its reliance on any provisions of FOISA it considered applicable to the information requested.



9. Additionally, the investigating officer informed the University it was possible that the information might comprise environmental information as defined in regulation 2 of the EIRs. The University was asked whether it agreed that the information did comprise environmental information and, if so, whether it considered it had dealt with Mr Ackroyd's request in compliance with the EIRs. Additionally, the University was asked whether it wished to provide any submissions on any exception(s) in the EIRs it considered applied to the withheld information.
10. In response, the University provided submissions explaining why it considered it did not hold the emails for the purposes of FOISA. Additionally, the University provided submissions explaining why it considered the information would be exempt from disclosure under section 30(b)(ii) of FOISA in the event that the information was held by it. The University submitted that the emails did not comprise environmental information and that it had been correct to deal with the request under FOISA rather than the EIRs. The University did not provide any submissions on any exceptions it considered may have been applicable under the EIRs.
11. The relevant submissions received from both the University and Mr Ackroyd will be considered fully in the Commissioner's analysis and findings below.

Commissioner's analysis and findings

12. In coming to a decision on this matter, the Commissioner has considered all of the withheld information and the submissions made to her by both Mr Ackroyd and the University and is satisfied that no matter of relevance has been overlooked.

FOISA or EIRs?

13. Environmental information is defined in regulation 2(1) of the EIRs (parts (a) and (b) of the definition are reproduced in full in the Appendix to this decision). Where information falls within the scope of this definition, a person has a right to access it under the EIRs, subject to various restrictions and exceptions contained in the EIRs.
14. The Commissioner's views on the relationship between FOISA and the EIRs are set out in detail in *Decision 218/2007 Professor A D Hawkins and Transport Scotland*¹ and need not be repeated in full here. However, she will reiterate some of the key points which are relevant in this case:
 - a. The definition of what constitutes environmental information should not be viewed narrowly, but in line with the definition of environmental information in the EIRs.
 - b. There are two separate statutory frameworks for access to environmental information and an authority is required to consider any request for environmental information under both FOISA and the EIRs.

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600654.asp>



- c. Any request for environmental information therefore **must** be dealt with under the EIRs.
 - d. In responding to a request for environmental information under FOISA, an authority **may** claim the exemption in section 39(2).
15. *Decision 218/2007* means that the Commissioner must first determine whether any of the information withheld is environmental information. If it is, she must go on to consider the University's handling of the request in terms of both the EIRs and FOISA.
 16. As indicated above, the University did not accept that the withheld information comprised environmental information, arguing that the mere mention of a topic which can be considered to be environmental on its own is not sufficient to render that material as environmental information for the purposes of the EIRs. In this case, it argued that the mention of an environmental topic within the withheld information was such that there was no relevance or relationship established between that topic and the legislative definition of environmental information. Consequently, the University considered the information was not environmental information for the purposes of the EIRs, but was "information" for the purposes of FOISA.
 17. Having considered the nature and content of the withheld information, the Commissioner is satisfied that at least some of it comprises environmental information as defined within regulation 2(1) of the EIRs. As one of the emails includes comments on global warming and its causes, it concerns the state of the elements of the environment, such as air and atmosphere referred to in part (a) of the definition on environmental information and factors affecting, or likely to affect the elements of the environment (part (b) of the definition of environmental information).
 18. In reaching this conclusion, the Commissioner has considered the University's submissions. However, none of the points made by the University detract from her conclusion that some of the information is environmental and should have been considered in terms of the EIRs. As previously indicated, the definition of what constitutes environmental information should not be viewed narrowly, but in line with the definition of environmental information in the EIRs. The Commissioner regards a significant section of one of the emails under consideration as containing environmental information. She does not accept that this information becomes any less environmental in character by virtue of the circumstances in which it came to fall within the scope of Mr Ackroyd's request.
 19. Having drawn this conclusion, the Commissioner must conclude that, by failing to consider and respond to Mr Ackroyd's request in part in terms of the EIRs, the University failed to comply with regulation 5(1) and (2)(b) of the EIRs.
 20. The Commissioner also concludes that the exemption in section 39(2) of FOISA *could* have been applied to this information. If this exemption had been applied by the University, this conclusion would have prompted the Commissioner to consider whether the information had otherwise been properly withheld only in terms of the EIRs.



21. However, as noted in *Decision 218/2007*, there is no obligation on an authority to rely upon any exemption in FOISA. In the circumstances, the Commissioner has found it appropriate to consider the University's handling of Mr Ackroyd's request and to set out her conclusions in terms of both FOISA and the EIRs.

Information falling within the scope of the request

22. In order to ascertain whether all relevant information had been identified by the University, it was asked to provide an explanation of the searches that had been undertaken in order to locate and retrieve any emails falling within the scope of Mr Ackroyd's request.
23. The University explained that it had focused its searches on Employee A, as it was clear to the University that Employee A was the sole holder of the information by virtue of being the only person capable of determining what comments received by him were embarrassing. The University explained that the period over which relevant emails were received was quite limited.
24. The University explained that it had asked Employee A to forward all emails that he considered embarrassing; this resulted in the retrieval of the emails under consideration in this decision.
25. In the circumstances, the Commissioner is satisfied that the University has undertaken a reasonable and proportionate search and has identified all relevant information falling within the scope of Mr Ackroyd's request.

Is the information held on behalf of Employee A? – section 3(2)(a)(i) of FOISA

26. Section 1(1) of FOISA states that a person who requests information from a Scottish public authority which *holds* it is entitled to be given it by the authority. However, section 3(2)(a)(i) of FOISA makes it clear that if the authority holds the information on behalf of another person, then the information is not held by the authority for the purposes of FOISA.
27. In his application to the Commissioner, Mr Ackroyd argued that the information in question was held by the University in its own right and not on behalf of Employee A.
28. Mr Ackroyd informed the Commissioner that a seminar had been held at the University which had been chaired by Employee A in his capacity as a senior employee of the University. Shortly afterwards, an article had been posted on a named blog concerning this seminar, to which Employee A had added a comment, indicating that he was commenting in his capacity as the convenor of the seminar. In a further comment, Employee A had made reference to papers that he had written on the subject under discussion. In Mr Ackroyd's view, this confirmed that Employee A was posting in his role as convenor of the meeting and about his research at the University and, therefore, as an employee of the University rather than as a private individual.



29. Around five weeks later, Employee A posted a guest post on the same blog. The blog posting indicated that it sought to address some concerns and observations that had arisen during the seminar that had been held at the University.
30. In Mr Ackroyd's view, this showed that Employee A was continuing to act in his role as convenor of the seminar and as an employee of the University. Mr Ackroyd also submitted that the subject of the guest post was the very topic on which Employee A was an expert and which was central to his research at the University.
31. Additionally, Mr Ackroyd submitted that such guest postings and participation in web based media was clearly part of Employee A's job and part of his role at the University.
32. In its submissions to the Commissioner, the University provided a number of reasons why it considered it held the emails on behalf of Employee A and not on its own behalf as his employer. The University made comprehensive submissions to the Commissioner and she has considered all of these carefully. Although the Commissioner has taken full account of all of the University's submissions, only some of these are summarised below.
33. In the University's view, many aspects of an academic's life cut seamlessly across the divide between the contract of employment and that individual's private sphere. The University submitted that an academic's association with the University is often used to establish in part their authority and credentials when providing commentary on a subject or discipline, but that does not mean the academic is representing the University.
34. The University argued that the actions that triggered the creation of the emails under consideration in this case (Employee A's decision to make a guest blog post in his spare time) did not mean that the information was generated or received as part of the academic's employment. The University submitted that Employee A's decision to post a blog and the information subsequently generated was not a work activity to which the University would lay any claim.
35. The University also argued that the convention of academic freedom created a degree of independence between it and academics employed by it. The University stated that this independence often meant that the University would not move to exercise any control or claim over viewpoints exchanged during early academic discourse. The University also stated that it (and universities in general) extended to academic communities a relatively high degree of space, freedom and autonomy to engage with academic disciplines and pursuits and, as a result, information may be created which it would not move to claim or exert control over.
36. Furthermore, the University contended that, in this instance, an academic chose to experiment by using online blogs as a means of exploring, outside of professional circles, views with which they have an interest and the online discourse was such that the views subsequently received by Employee A were addressed to and received by Employee A and not the University.



37. The University stated that it would not claim or seek to control the information under consideration, noting that it had no requirement to intrude on or interfere with the information. The University also noted that, as academics have an expectation that their employer will not interfere unduly with their academic or wider pursuits, they will have no expectation that information gathered and/or received by them during informal discussions would be made a matter of public record without their choosing.
38. The University also referred to *Decision 050/2007 Mr Andrew Graham-Stewart and the Scottish Environment Protection Agency*² (*Decision 050/2007*) where the Commissioner had found that private emails sent by an employee of SEPA were not held by SEPA for the purposes of FOISA. The University stated that, in the present case, its acceptance of the conventions of academic freedom meant that it did not lay claim over, or seek to control, the information in question.

The Commissioner's view

39. The question for the Commissioner to consider here is whether the information is held by the University in terms of FOISA. The word "held" has a specific meaning in section 3(2) of FOISA that is not simply determined by the presence of information within the premises or information systems of a public authority. When information is present within a public authority's premises and systems only because it is held on behalf of another person, that information is not held by the public authority for the purposes of FOISA.
40. As part of her deliberations, the Commissioner considered relevant guidance published by the UK Information Commissioner for the higher education sector³ which includes guidance on whether information is held for the purposes of the Freedom of Information Act 2000. It states (at paragraph 13):
- "In most cases it will be clear that a HEI [higher education institution] holds information for the purposes of the legislation. However, there are circumstances specific to the higher education sector which can make it difficult to establish whether information is held. For instance, academics often work in several capacities as examiners, clinicians, researchers; as well being employed by the university, they may conduct privately financed research or peer review others' work. There is a possibility that university networks and servers will be used to store such non-work related information. All of this can create complications in determining whether information is held."
41. In this case, the Commissioner notes that the information under consideration (emails sent to Employee A) was generated as a consequence of Employee A having posted an article on an online blog.

² <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600788.asp>

³ http://www.ico.gov.uk/for_organisations/sector_guides/~/_media/documents/library/Freedom_of_Information/Detailed_speci alist_guides/foi_legislation_and_research_guidance_for_the_higher_education_sector.ashx



42. The Commissioner notes that the article in question concerned a topic on which Employee A is a specialist and which is included in his research at the University. The Commissioner also notes that the article which prompted the emails addressed issues that had arisen at a seminar chaired by Employee A around five weeks earlier. The subject of the seminar was the topic on which Employee A is a specialist, and, in his article, Employee A wrote that he was addressing some of the issues that had arisen in the seminar. The seminar in question had been hosted by a research group of staff within the University.
43. In this case, the Commissioner is satisfied that the seminar was attended and chaired by Employee A in his work capacity as an employee of the University. The Commissioner also considers that, by writing the article that followed on from the seminar chaired by him, Employee A effectively continued the discourse that had arisen as a result of the seminar. Additionally, the Commissioner notes that, in a comment posted by Employee A on an earlier article regarding the seminar (posted by a different attendee), Employee A had stated that he was commenting as the convenor of the seminar. Furthermore, the Commissioner notes that, within his comment, Employee A provided a link to articles that he had published on the subject and also stated that he looked forward to the continued discussion.
44. In the Commissioner's view, Employee A's ongoing involvement in the discussion arising from the seminar cannot be separated from his role at the University in the way that the University has suggested. It seems to the Commissioner that Employee A had actively sought to continue the dialogue and discussion on matters discussed at the seminar through his participation in the blog. The subject on which Employee A commented and blogged was a subject on which he conducted research in his role at the University.
45. The Commissioner considers the content of the emails to be an important factor in determining whether or not they are held by the University in terms of FOISA. As noted above, the University has argued strongly that the convention of academic freedom is a central factor to be considered in this case as it considers the information was created and received through an activity that Employee A undertook, independent of the University's control.
46. Having viewed the content of the emails under consideration, the Commissioner is not satisfied that the University has demonstrated that they relate to academic discourse. In the Commissioner's view, the content of the emails gives no indication that the author(s) sought to engage in an on-going academic discourse. Consequently, the Commissioner is unable to concur with the University's arguments that it does not hold the information for the purposes of FOISA, based on its submissions concerning academic freedom.
47. The context in which the emails were sent was Employee A's participation on a blog by posting an article and subsequently following (and participating in) comments made about it. As a result, the Commissioner is satisfied that any related materials would be held by the University for its own purposes and, consequently, would be held by it for the purposes of FOISA. Given that the emails were generated as a consequence of Employee A's participation in the blog, the Commissioner is satisfied that they are held by the University in its own right and not, as the University has argued, on behalf of Employee A.



48. As noted above, the University submitted that *Decision 050/2007* is relevant in this case. However, the position in that decision is not analogous to the current case. *Decision 050/2007* related to private emails sent to and from an employee in a private capacity that were entirely unrelated to the business of the public authority. As the Commissioner has explained above, in the present case, she considers the emails under consideration to be directly related to activities carried out by Employee A which were clearly linked to his role as an employee of the University.
49. Having carefully considered the representations made by both Mr Ackroyd and the University, the Commissioner has concluded, for the reasons stated above, that the information is held by the University in its own right and not on behalf of Employee A.
50. As a result, the Commissioner will now address the question of whether the information requested by Mr Ackroyd is exempt from disclosure under section 30(b)(ii) of FOISA.

Section 30(b)(ii) of FOISA

51. In order to rely on the exemption laid down in section 30(b)(ii), the University must show that disclosure of the information under FOISA would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation.
52. In applying this exemption, the chief consideration is not whether the information constitutes an exchange of views (although this may also be relevant) but whether the release of the information would, or would be likely to, inhibit substantially the free and frank exchange of views. The Commissioner looks for authorities to demonstrate a real risk or likelihood that actual harm will occur at some time in the near (certainly the foreseeable) future, not simply that harm is a remote possibility. Also, the harm in question should take the form of substantial inhibition from expressing views in as free and frank a manner as would be the case if disclosure could not be expected to follow. The word "substantial" is important here: the degree to which a person will be, or is likely to be, inhibited in expressing themselves has to be of some real and demonstrable significance.
53. In his application to the Commissioner, Mr Ackroyd argued that the University had provided only vague reasons why it considered the exemption to apply, and had not been specific about any potentially harmful consequences.
54. The University argued that inhibition would arise from the expectation that the University would not ordinarily interfere with and/or intrude upon activities surrounding academic exploration as a result of the observance of the conventions of academic freedom. The University submitted that this would affect members of the academic community across and outwith the University as there is no reasonable expectation that discussions and exchange of viewpoints at an early stage of academic discovery and research will automatically become a matter of public record. In the University's view, the trigger for the inhibiting effect would be the erosion of, or the perception of the erosion of, the protections currently available to the academic community through academic freedom.



55. The University submitted that the inhibiting effect more likely than not would predominantly take the form of self-censorship, whereby academics would become more cautious and, by extension, more restrictive in the depth and form of exchanges of views, particularly where sensitive, controversial subjects and/or modes of enquiry were being considered. The University also stated that Employee A had signalled informally that he was not inclined to engage in future discourse via blogs, indicating that the release of the information would be an unnecessary intrusion.
56. The Commissioner has considered the withheld emails and the submissions made by both parties. Having done so, she is unable to accept the University's contention that the information is exempt under section 30(b)(ii). She can identify nothing in the content or context of this information which might reasonably be expected to have the inhibiting effect on the free and frank exchange of views suggested by the University in future, particularly since Mr Ackroyd has made it clear that he does not require any information which would identify the senders of the emails. Anonymising the emails makes the comments in them tantamount to comments made under Chatham House Rule (i.e. unattributable), an approach readily accepted as a legitimate way in which to air and discuss views.
57. The Commissioner considers the University's submissions are essentially hypothetical in nature and, in the circumstances, she is not persuaded that any specific inhibiting effect which the disclosure of this information would, or would be likely to, cause has been sufficiently demonstrated by the University. The Commissioner notes that some of the comments posted in response to Employee A's blog article (and publicly available to view on the website) are expressed in quite trenchant terms and demonstrate the strong feelings aroused by the subject under discussion. The Commissioner is aware that discourse of this nature is often conducted in public fora in this manner. The Commissioner does not consider that such public discourse does, or would, inhibit academics from continuing to engage in public discussion. Similarly, she is unable to accept that the disclosure of the content of the emails under consideration in this case would have the inhibiting effect envisaged by the University.
58. As the Commissioner is not satisfied that the exemption in section 30(b)(ii) of FOISA has been engaged, she is not required to go on to consider the public interest test in section 2(1)(b).

Consideration of the information withheld under the EIRs

59. The Commissioner will now go on to consider whether any of the information is held by the University for the purposes of the EIRs.

Is the information held on behalf of employee A? – regulation 2(2) of the EIRs

60. Regulation 2(2) of the EIRs provides that information is held by an authority for the purposes of the EIRs if it is (a) in its possession and it has been produced and received by that authority; or (b) held by another person on that authority's behalf.



61. This regulation differs from section 3(2)(a)(i) of FOISA which defines information as being held by a Scottish public authority if it is held by the authority otherwise than on behalf of another person. The absence of such a specific exclusion in the EIRs does not necessarily mean that the EIRs apply to any environmental information held by the authority on behalf of others, or simply to be found on its premises. The EIRs require that, for the information to be held by an authority, it must be “in its possession” having “been produced or received by that authority”. Information stored on the authority’s premises solely on behalf of another body, and of which the authority makes no use, may not be in its possession. Similarly, information which is found on the authority’s premises only in the personal belongings of staff (e.g. personal diaries; mobile phones) may not be said to be in its possession or received by it.
62. In this case, and for the same reasons which she has set out in relation to the consideration of whether the information is held for the purposes of FOISA, the Commissioner is satisfied that the withheld information which comprises environmental information is held by the University in its own right and not on behalf of Employee A.
63. As noted above, the University did not provide submissions on any exceptions that it considered may be applicable to the information should the information comprise environmental information. Accordingly, the Commissioner has concluded that the information is not excepted from disclosure under any of the exceptions in the EIRs. Accordingly, the University failed to comply with regulation 5(1) of the EIRs in failing to provide Mr Ackroyd with the environmental information covered by his request.

Conclusion

64. As the Commissioner is satisfied that the information under consideration is held by the University for the purposes of both FOISA and the EIRs and is not exempt from disclosure under section 30(b)(ii) of FOISA or any of the exceptions in the EIRs, she now requires the University to disclose the information to Mr Ackroyd.
65. Mr Ackroyd has indicated that he does not wish to receive the names and information identifying the senders of the emails. With this decision, the Commissioner will provide the University with a copy of the emails in question indicating the information that should be redacted.



DECISION

The Commissioner finds that the University of St Andrews (the University) failed to comply with both 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 Ackroyd.

The Commissioner finds that by failing to identify and respond to Mr Ackroyd's information request as one seeking environmental information as defined by regulation 2(1) of the EIRs, the University breached regulations 5(1) and (2)(b) of the EIRs.

The Commissioner finds that the University incorrectly stated that it did not hold the information.

The Commissioner also finds that the University incorrectly applied the exemption in section 30(b)(ii) of FOISA to the withheld information and, in doing so, failed to comply with Part 1 (and in particular section 1(1)). Similarly, the Commissioner finds that the University was not entitled to withhold the information under any of the exceptions in the EIRs and, in doing so, breached regulation 5(1) of the EIRs.

The Commissioner therefore requires the University to provide Mr Ackroyd with the withheld information (subject to the redaction of identifying information) by 30 April 2013.

Appeal

Should either Mr Ackroyd or the University of St Andrews wish to appeal against this decision, there is an 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 notice.

Rosemary Agnew
Scottish Information Commissioner
14 March 2013



Appendix

Relevant statutory provisions

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.
- ...

3 Scottish public authorities

- ...
- (2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held-
- (a) by the authority otherwise than-
- (i) on behalf of another person;
- ...



30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

(b) would, or would be likely to, inhibit substantially-

...

(ii) the free and frank exchange of views for the purposes of deliberation; or

...

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;

(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);



...

(2) For the purpose of these Regulations, environmental information is held by a Scottish public authority if it is-

- (a) in its possession and it has been produced or received by that authority; or
- (b) held by another person on that authority's behalf,

and, in either case, it has not been supplied by a Minister of the Crown or department of the Government of the United Kingdom and held in confidence.

...

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.