

Decision Notice

Decision 124/2018: Company A and Moray Council

Elgin Transport Strategy

Reference No: 201701639

Decision Date: 15 August 2018



Scottish Information
Commissioner

Summary

The Council was asked for information relating to the Elgin Transport Strategy and an associated technical report. The Council withheld some information as commercially sensitive, provided a weblink to where other information could be found and stated that it held no further information. Following a review, the Council disclosed what it described as the “raw data behind the modelling results” and withheld other information on the basis that it was commercially confidential. During the Commissioner’s investigation, the Council disclosed further information.

The Commissioner found that the Council had partially failed to respond to the request in accordance with the EIRs. This was because the Council (i) failed to disclose some relevant information until after his investigation had begun and (ii) did not respond fully to parts 1 and 2 of the request. He required the Council to issue a revised review outcome in relation to these parts of the request.

The Commissioner also found that the Council had correctly withheld other information on the basis that it was commercially confidential.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (paragraphs (a) and (c) of definition of "environmental information"); 5(1) and (2)(b) (Duty to make available environmental information on request); 10(1), (2), and (5)(e) (Exceptions from duty to make environmental information available); 16(3) (Review by Scottish public authority)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendices form part of this decision.

Background

1. On 9 February 2017, Company A made a request for information to Moray Council (the Council). The request was for information relating to the Elgin Transport Strategy, including a Traffic Model used to generate data for the Strategy. The request is reproduced in Appendix 2.
2. The request was made on behalf of Company A by solicitors Burness Paull LLP, and the submissions referred to in this decision as being from Company A should be taken to include submissions from Burness Paull LLP on behalf of Company A.
3. The Council responded on 10 March 2017, providing weblinks to some information, withholding other information under section 33(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA) (Commercial interests and the economy) and stating that it did not hold other information.
4. On 27 March 2017, Company A wrote to the Council requesting a review of its decision. In relation to parts 1 and 2 of the request, Company A did not agree that the information should be considered commercially sensitive. In relation to parts 5 and 6, Company A was of the view that more information should be held. Company A also believed the information was environmental and so the request should have been dealt with under the EIRs.

5. The Council notified Company A of the outcome of its review on 21 April 2017, under both FOISA and the EIRs. In respect of parts 1 and 2 of the request, the Council disclosed what it termed “the raw data behind the modelling results”, applying section 33(1)(b) of FOISA and regulation 10(5)(e) of the EIRs to the Traffic Model and any other information falling within the scope of these parts. In respect of parts 5 and 6 of the request, the Council confirmed (with an explanation) that it held no further information.
6. In its review outcome, the Council also apologised for not applying the exemption in section 39(2)(a) of FOISA, on the basis that the information was environmental.
7. On 13 September 2017, Company A wrote to the Commissioner and applied 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. Company A stated it was dissatisfied with the outcome of the Council’s review as it believed any information being withheld in relation to parts 1 and 2 of the request should be disclosed, and also that further information should be held for parts 5 and 6 of the request.

Investigation

8. The application was accepted as valid. The Commissioner confirmed that Company A 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.
9. On 16 October 2017, the Council was notified in writing that Company A had made a valid application and the case was then allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Council was invited to comment on this application and answer specific questions, focusing on its application of regulation 10(5)(e) of the EIRs (including the public interest) and the steps taken to identify and locate any relevant information.
11. In the course of carrying out further searches for information, the Council located additional documents and disclosed these to Company A. The Council also stated that it wished to rely on regulation 10(5)(c) of the EIRs (which relates to intellectual property rights) in addition to regulation 10(5)(e).
12. Company A also provided the Commissioner with submissions on why it considered the withheld (the Traffic Model) should be in the public domain.
13. Additional submissions were sought from, and provided by, both the Council and Company A during the investigation.

Commissioner’s analysis and findings

14. 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 Company A and the Council. He is satisfied that no matter of relevance has been overlooked.

Application of the EIRs

15. It is clear from the Council's correspondence with both Company A and the Commissioner, and from the information itself, that the information sought by Company A and under consideration here is properly considered to be environmental information, as defined in regulation 2(1) of the EIRs. It relates to plans for the development and roll-out of a transport strategy, which would clearly impact upon the environment. The Commissioner is satisfied that it would fall within either paragraph (a) of the definition of environmental information contained in regulation 2(1) (information on the state of the elements of the environment, including land and landscape) or paragraph (c) of that definition (as information on measures affecting or likely to affect those elements). The Council and Company A are agreed that the information is environmental. The Commissioner will therefore consider the information in what follows solely in terms of the EIRs.

Does the Council hold any further information?

16. Company A believed further information should be held by the Council for parts 5 and 6 of the request.

Searches carried out by the Council

17. The Council was asked to provide information on the searches it had carried out to ascertain what information it held falling within the scope of parts 5 and 6 of Company A's request.

Initial searches

18. The Council explained that its Transportation Manager (responsible for managing the development of Elgin Transport Strategy, for which the Traffic Model had been built and was used) was the key contact for Jacobs Ltd., the consultants, who undertook much of the strategy development work. The Transportation Manager was therefore considered the best person to undertake the search for any documents falling within the scope of the request.
19. The Council went on to explain that the Transportation Manager had undertaken a manual search of the documents held by the relevant Council team in the Transportation Department. The Transportation Manager did not find any documents which, in their view, satisfied the request. The lack of information to satisfy the request was, the Council submitted, because the decision to discount the options outlined in parts 5 and 6 of the request did not involve the utilisation of any documents, notes, etc. The Council submitted that these decisions were made during discussions between qualified professionals utilising their knowledge and understanding of the modelled results, background knowledge of the area and the objectives to be achieved.
20. A manual search of the electronic files was considered the best option and so the electronic files had been searched manually, not electronically using search terms. The Council stated that because they had been undertaken manually there were no screenshots of the searches.

Supplementary searches

21. Following discussions with the investigating officer, the Council carried out wider-ranging searches than had previously been carried out. When these were carried out, further

information (in respect of part 5 of Company A's request) was found and provided to Company A. No further information was found which fell within the scope of part 6.

22. The additional searches carried out by the Council included electronic searches at the request of the investigating officer and provided screenshots of the results. The Council provided the investigating officer with details of the resources searched and the search terms used, noting that there was no restriction on the timeframe for the period searched.
23. Having considered all the relevant submissions and the terms of the request, the Commissioner is satisfied that, by the close of the investigation, the Council had taken adequate, proportionate steps to establish whether it held any further information falling within the scope of parts 5 and 6 of Company A's request. He accepts that any relevant information would have been identified using the searches described by the Council.
24. The Commissioner is satisfied on the balance of probabilities that the Council does not (and did not, on receiving the request) hold any additional information other than those documents now disclosed to Company A.

Information disclosed during the investigation

25. As noted above, during the investigation the Council carried out further searches, which resulted in further documents being identified and located. The Council subsequently provided these documents to Company A.
26. In failing to disclose this information at the time of the review response, the Commissioner finds that the Council failed to comply with regulation 5(1) of the EIRs.

Parts 1 and 2 of Company A's request – modelling results

27. Parts 1 and 2 of Company A's request are set out in Appendix 2. The Commissioner will firstly consider the question of the modelling results, before going on to consider the withholding of the Model itself.
28. In relation to the modelling results, it will be noted that Company A used two specific terms, referring to particular pages of Jacobs' technical report:
 - (i) The "initial modelling results" (part 1 of the request);
 - (ii) The "strategic modelling results" (part 2).
29. The Council's initial response makes no direct reference to either category of modelling results.
30. In its review outcome, the Council agreed to disclose "the raw data behind the modelling results" and also referred to "interpreted results" (published in Appendix 1A to Jacobs' report). It gave no indication to Company A as to how either term related to the (different) specific terms used in parts 1 and 2 of the request. For any other information held for these two parts, in addition to the Model itself, the Council simply referred to "further information" (which was withheld).
31. During the investigation, the Council told the investigating officer that – for parts 1 and 2 of the request – it was only withholding the Traffic Model itself. It had disclosed the modelling results to Company A. It referred to the review outcome and went on state that:

"Both the initial and strategic modelling results are generated in the same way, from the numerical output data."

32. From the Council's submissions, it was still not clear whether the information disclosed to Company A, or that referred to as available in Appendix 1A to the report, actually comprised either the "initial modelling results" or the "strategic modelling results".
33. Further submissions were sought and the Council submitted that it had disclosed all the modelling results it held. Any other modelling results were held by Jacobs. In relation to the two terms used by Company A, the Council obtained the following clarification from Jacobs:
- "The initial results are where a modeller runs data in the VISUM system, views the results on screen, and looks at the summary findings. In this instance, the findings were noted as all being similar. There was no data 'saved' or 'exported' from the programme, just advice on the findings. The strategic modelling results were the analysed outputs from a comprehensive model run. In their raw form they are as per the data output sheet provided, and in their interpreted form have been supplied to the council in the main technical report."*

The Commissioner's conclusions on the modelling results

34. Having considered all the relevant submissions received from the Council on this matter, the Commissioner is not satisfied that the Council addressed parts 1 and 2 of Company A's request adequately, in relation to the modelling results, when responding to Company A either initially or on review. Where specific terminology is used in a request, it is important that this is taken into account fully in interpreting the request. The public authority should identify and locate (and, where appropriate, provide) information falling within that description, or confirm that such information is not held. If it does not understand the terminology used by the applicant, it should seek clarification.
35. In this case, in relation to the modelling results specified in parts 1 and 2 of Company A's request, the Council appears to have done none of these things. The "raw data", by definition, does not appear to be either set of modelling results, while no attempt was made to explain whether the "interpreted results" fell within either category specified by Company A.
36. It now appears that the Council is not satisfied that it holds results falling within either category. However, it is not clear if it has considered whether any of the results held by Jacobs should be deemed to be held on the Council's behalf. Basically, until prompted by the investigating officer, it does not appear to have given any significant consideration to either term specified in the request. Given this lack of consideration, the Commissioner finds that the Council failed to deal with the request, insofar as it related to the "initial" or the "strategic" modelling results, in accordance with regulation 5(1) of the EIRs.
37. In the circumstances, the Commissioner now requires the Council to carry out a fresh review, in terms of regulation 16(3) of the EIRs, in relation to both parts 1 and 2 of Company A's request (insofar as relating to the "initial modelling results" and the "strategic modelling results"). This review should clearly address the points noted above in respect of the modelling results, in particular whether any relevant information is held by (including on behalf of) the Council and whether is any reason why that information should not be made available to Company A. It should address each of the specified categories of results separately.
38. The Commissioner will now go on to consider the Council's withholding of the Traffic Model itself.

Regulation 10(5)(e) of the EIRs

39. Regulation 10(5)(e) provides that a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest.
40. As with all of the exceptions contained within regulation 10, a Scottish public authority applying this exception must interpret the exception in a restrictive way (regulation 10(2)(a)) and apply a presumption in favour of disclosure (regulation 10(2)(b)). Even where the exception applies, the information must be disclosed unless, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception (regulation 10(1)(b)).
41. The Aarhus Convention: an Implementation Guide¹ (which offers guidance on the interpretation of the Aarhus Convention, from which the EIRs are derived) notes (page 88) that the first test for considering this exception is whether national law expressly protects the confidentiality of the withheld information. The law must explicitly protect the type of information in question as commercial or industrial secrets. Secondly, the confidentiality must protect a "legitimate economic interest": this term is not defined in the Aarhus Convention, but its meaning is considered further below.
42. Having taken this guidance into consideration, the Commissioner's view is that, before regulation 10(5)(e) can be engaged, authorities must consider the following matters:
- (i) Is the information commercial or industrial in nature?
 - (ii) Does a legally binding duty of confidence exist in relation to the information?
 - (iii) Is the information publicly available?
 - (iv) Would disclosure of the information cause, or be likely to cause, substantial harm to a legitimate economic interest?

Is the information commercial or industrial in nature?

43. The Council explained that the Traffic Model constituted an asset owned by Jacobs, with some rights granted to the Council, and was of significant commercial value to Jacobs. The Council submitted that it was a sophisticated modelling tool which required significant time and professional knowledge to build.

44. The Commissioner is satisfied that this information is commercial in nature.

Does a legally binding duty of confidence exist in relation to the information?

45. The Council stated that it was bound not to disclose the Traffic Model or any other commercially sensitive information which might prejudice the commercial interests of Jacobs. The Council submitted that this was included in the contract between Jacobs and the Council. The Council provided the Commissioner with a copy of the relevant contract clause.

46. The Council submitted that it could not disclose "details that would or would be likely to prejudice substantially the commercial interests of any person (including but not limited to the

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http://www.unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf

Contractor or the Council) or such details fall within such other exemption as may be applicable at the discretion of the Council under the terms of the Act". The Council also submitted that Jacobs had confirmed that it continued to hold the Model and the associated intellectual property rights and did not consider the Council to be at liberty to issue the Model externally.

47. The Council provided the Commissioner with an email sent to it from Jacobs, in which Jacobs stated that the Council was free to use the Model, and to commercially exploit the Model, during the term of the contract, but that the intellectual property rights were held by Jacobs. The email contained Jacobs' confirmation that the Council was not at liberty to issue the Model externally.
48. The Commissioner is satisfied that the Model is Jacobs' intellectual property, licensed to the Council for limited purposes. Given that the Model is the information withheld under this exception, the Commissioner is satisfied that the basis on which the Council is permitted to use it gives rise to an obligation of confidentiality.

Is the information publicly available?

49. The Council submitted that the information was not publicly available. The Commissioner, considering the type of information under consideration here, has no reason to believe the information would be in the public domain, and online searches for the information have not produced any evidence to the contrary.

Would disclosure of the information cause, or be likely to cause, substantial harm to a legitimate economic interest?

50. The Council reiterated that it considered the information to be commercial in nature, being an expensive and unique computer model, and an asset held by Jacobs over which the Council held some rights. The asset represented considerable commercial value in being owned by Jacobs. It cost a significant amount to research, create and maintain. It was extremely useful to developers and other organisations, which paid to use the Model rather than go to the time and expense of procuring their own.
51. The Council stated that it currently rented access to the Model, with third parties paying the costs associated with this usage. The Council stated that for budgetary reasons it wished to maintain these rights to the Model so that in future, when it chose to do so, it could charge a fee which included profit. Disclosure of the information would prejudice the rights of the Council to make money from its asset through rental (paid-for use by a third party). The demand for the use of the Model, despite their being a fee for its use, clearly demonstrated demand for the commercial value derived from both use of the Model and the information derived from the Model.
52. The Council provided evidence of payment for use of the Model. In the Council's view, this clearly showed the value of the Model as an asset. Disclosure of the asset into the public domain would undermine its ability to make money.
53. More importantly, the Council continued, Jacobs ultimately owned the copyright in the Model and disclosure of the Model into the public domain would be significantly prejudicial to Jacobs' commercial interests, undermining the value of the model as an asset to be sold. The Council highlighted the difficulty in detecting and pursuing exploitation if this information were made available, even if these rights remained technically enforceable.
54. In addition, the Council argued, the Traffic Model was a sophisticated computer model which required significant professional skill to build. The Council considered disclosure of the

model to the public would allow competitors to investigate and reverse engineer its workings. This would severely prejudice Jacobs' commercial interests as competitors could gain an understanding of how Jacobs and, as relevant, their subcontractors and consultants, built computer models.

55. Taking account of all the submissions received, including the supporting communications from Jacobs, the Commissioner is satisfied that the Model is of commercial value to Jacobs, and (subject to Jacobs' control) to the Council. This commercial value has been evidenced by its actual use, for a fee, and the Commissioner is satisfied that its commercial potential could readily be exploited by competitors in the event of disclosure. Intellectual property rights might subsist in the Model, but their enforcement would be challenging once the Model was generally available. The Commissioner must approach this on the basis that the Model would become generally available if made available under the EIRs – the legislation does not allow it to be made available to Company A alone, subject to conditions.

The Commissioner's finding on substantial harm

56. Having taken all relevant submissions into account, and having considered the withheld information, the Commissioner is satisfied that disclosure of the information would, or would be likely to, prejudice substantially the legitimate economic interests of the Council and of Jacobs.
57. Consequently, the Commissioner is satisfied that the Council was entitled to apply regulation 10(5)(e) of the EIRs to the withheld information.

The public interest test

58. Having accepted that the exception in regulation 10(5)(e) applies to the information, the Commissioner must consider the public interest test in regulation 10(1)(b) of the EIRs. This specifies that a Scottish public authority may only withhold information to which an exception applies where, in all the circumstances, the public interest in making the information available is outweighed by the public interest in maintaining the exception.

Submissions from the Council

59. The Council acknowledged a public interest in allowing scrutiny of decision-making processes, to improve accountability and participation. It also acknowledged that the Traffic Model was utilised in the development of Elgin Transport Strategy, which is a considerable project of public interest. There was, the Council accepted, legitimate public interest in wishing to scrutinise the validity and scope of the Traffic Model. Assessing the Model would help the public form a better informed opinion of the Model's outputs, enhancing transparency of the decision-making process as whole.
60. The Council also accepted that there is public interest in ensuring effective oversight of the expenditure of public funds. Releasing the Model would allow the public to assess the quality of the Traffic Model. This judgement would allow them to form a better informed opinion of the overall value for money achieved by the Council in their contract with Jacobs (taking into account of all services rendered and the total value of the contract). Given these points, the Model could be seen to contribute to debate on a matter of public interest, in this case Elgin Transport Strategy.
61. However, the Council also submitted that disclosure of the Model would result in substantial prejudice to the Council's (and Jacobs') legitimate economic interests, as considered above. Prejudice to the Council was a matter of public interest, given that the Council spent public money and needed to be able to recoup money, where possible and appropriate, from

investments and assets. There was also public interest in protection confidentially, when that confidentially protected the legitimate economic interests of a publicly funded authority such as the Council.

62. The Council considered that, on balance, the public interest in maintaining the exception outweighed that in making the information available.

Submissions from Company A

63. Company A submitted that there was a public interest in information being accessible, in order to ensure that decisions taken by public authorities could effectively be scrutinised and authorities held to account. Company A stated that in this case decisions had been taken by the Council regarding which transport interventions options to incorporate into the Strategy, on the basis of the Traffic Model.
64. The Council's refusal to release the requested information, Company A argued, meant that decisions made on the basis of that information were incapable of scrutiny, including the Council's decision to adopt the Elgin Transport Strategy. Company A submitted that it was in the public interest for information underpinning such decisions to be made available, noting that the Strategy would inform major development decisions.
65. Company A argued that it was essential that the information be disclosed, to ensure that the public were able to hold the Council to account the transport interventions provided value for money.
66. Company A was of the view that the Council's position that the information was commercially sensitive related to the fact that it cost the Council money to obtain the Model, rather than any commercial value of its content. Company A submitted that the fact that the information might be difficult to interpret did not provide justification for it to be withheld in the public interest: the Council could disclose the Model alongside a detailed explanation of its results and how they should be interpreted.

The Commissioner's conclusions

67. The Commissioner acknowledges that there is a degree of public interest in disclosure of the information, to inform public debate and allow effective scrutiny of expenditure from the public purse. He must question, however, whether the Model itself – as opposed to the results generated from its use for this particular exercise (the development of the Elgin Transport Strategy) – would be of significant value for this purpose.
68. Of more importance, in the Commissioner's view, is that the Model cannot be made available just for the purposes of allowing scrutiny of these particular decisions. Under the EIRs, it would become available to the world at large. It would remain subject to Jacobs' intellectual property rights, but the Commissioner must acknowledge that making it available would make the enforcement of those rights considerably more challenging. He has acknowledged the likely harm to the Council's legitimate economic interests if the Model were to be disclosed, which would not itself be in the public interest, and must also acknowledge the inherent public interest in maintaining confidences.
69. In all the circumstances, therefore, the Commissioner must conclude that the public interest in making the information available is outweighed by the public interest in maintaining the exception in regulation 10(5)(e) of the EIRs. He is therefore satisfied that the Council was entitled to withhold the information under regulation 10(5)(e).

70. As the Commissioner has upheld the Council's application of regulation 10(5)(e) in respect of the Traffic Model, he is not required to go on to consider the Council's application of regulation 10(5)(c) of the EIRs.

Decision

The Commissioner finds that Moray Council (the Council) partially complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Company A.

The Commissioner finds that by correctly applying the exception in regulation 10(5)(e) to some of the information, the Council complied with the EIRs.

However, by

- (i) failing to disclose some information (falling within the scope of the request) until after the Commissioner's investigation had begun and
- (ii) not responding fully to parts 1 and 2 of Company A's request,

the Council failed to comply with regulation 5(1) of the EIRs.

The Commissioner requires the Council to carry out a further review in relation to parts 1 and 2 of the request and issue a new review outcome, in line with regulation 16(3) of the EIRs. The new review response should be provided by 1 October 2018.

Appeal

Should either Company A or Moray Council wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Enforcement

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

Margaret Keyse
Head of Enforcement

15 August 2018

Appendix 1: Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004

2 Interpretation

(1) In these Regulations –

“the Act” means the Freedom of Information (Scotland) Act 2002;

...

"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)-

...

(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.

...

- (5) A Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially-

...

- (e) the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest;

...

16 Review by Scottish public authority

...

- (3) The Scottish public authority shall on receipt of such representations-
 - (a) consider them and any supporting evidence produced by the applicant; and
 - (b) review the matter and decide whether it has complied with these Regulations.

Appendix 2: Information request

With reference to the Council's Elgin Transport Strategy, and the technical report relating to that Strategy prepared by Jacobs on behalf of the Council and dated 4 October 2016, our client seeks the following information:

1. A copy of the "initial modelling results" referred to on page 59 of the Jacobs report, together with a copy of the model used to generate those results.
2. A copy of the strategic modelling results referred to on page 61 on the Jacobs report, together with a copy of the model used to generate those results.
3. A copy of all correspondence between the Council and Network Rail in relation to the Elgin Transport Strategy.
4. All documents relating to all alignments investigated for option 11B/C during preparation of the Jacobs report, including correspondence with any department, division or section of the Council as landowner.
5. The Jacobs report, at page 59, states that option 11E/F was discounted due to deliverability and feasibility issues. Please provide all documents relied on to discount option 11E/F and documents relating to the making of that decision.
6. The Jacobs report, at page 59, states that option 11H was not considered viable. Please provide all documents relied on to discount option 11H, and documents relating to the making of that decision.
7. Please provide a copy of all correspondence detailing the scope of instruction given to Jacobs from the Council for preparation of their technical report, including, but not limited to, all information relating to the Western Link Road Scheme.
8. Please confirm if the Western Link Road Scheme, or variations thereof, were considered by Jacobs.

If any of the information requested is in the course of completion, please provide all information which is not in the course of completion and the date by which the Council expects the remaining information to be completed. We note that precedents from the Scottish Information Commissioner and regulation 10(2) of the Regulations require that a restrictive approach be taken in determining whether information is "in the course of completion".

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