Scottish Information Commissioner
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Decision Notice 170/2025

Cost benefit analysis report for Peterculter flood protection scheme works

Applicant: The Applicant
Authority: Aberdeen City Council
Case Ref: 202401340

Summary

The Applicant asked the Authority for the flood study cost benefit analysis report for the Peterculter flood protection scheme works. The Authority informed the Applicant the information was not held. The Commissioner investigated and found that the Authority did hold information falling within the scope of the Applicant's request but as this had been provided in response to a new request, no further action was required.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 39(2) (Health, safety and environment); 47(1) and (2) (Application for decision by Commissioner).

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of "the Act", "applicant" and "the Commissioner" and paragraphs (a), (c), (e) and (f) of "environmental information") (Interpretation); 5(1) (Duty to make environmental information available on request); 10(1), (2) and (4)(a) (Exceptions from duty to make environmental information available); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

Background

1. On 19 July 2024, the Applicant made a request for information to the Authority. He stated:

"In 2019, in conjunction with a named firm of consultants, the Authority produced Culter Burn flood protection scheme hydraulic modelling and feasibility report (rev 3). This was in support of the Peterculter flood protection scheme works 6019010005. In this document the executive summary states that the calculated present value of benefits (PVb) provided by the works was £165 000.

In 2019 the Authority made an application for central funding in relation to the Peterculter flood protection scheme works 6019010005. This application also referenced the present value of benefits (PVb) as being calculated at £165 000 and referenced it as the flood reduction benefits of preferred options, total present value damages avoided."

The Applicant asked for a copy of the flood study cost benefit analysis report for the Peterculter flood protection scheme works. For the avoidance of all doubt, the Applicant stated he was looking for a copy of the complete cost benefit analysis report that was produced and resulted in the present value benefits (PVb) referenced above being identified.

The Applicant provided a copy of the Inchgarth Road flood study cost benefit analysis report for reference.

2. The Authority responded on 15 August 2024. The Authority notified the Applicant that it was relying on the exemption in section 39(2) of FOISA as his request was for environmental information as defined under regulation 2(1) of the EIRs. The Authority therefore responded to the request in line with the EIRs, and informed the Applicant that as it did not hold a cost benefit analysis report it was relying on the exception in regulation 10(4)(a) of the EIRs. It explained that a separate cost benefit analysis report was not provided in addition to the feasibility report and that all financial information was included in Section 8 – Economic Assessment of the Feasibility report mentioned by the Applicant in his request.

3. On 21 August 2024, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the response because the Authority directed him to the Section 8 of Hydraulic Modelling and Feasibility Report titled Economic Assessment. The Applicant noted that Section 8 provided only a summary of the cost benefit appraisal data rather than the appraisal itself, which Section 8 made reference to. The Applicant commented that Section 8 did however reference the fact that a high level economic appraisal of the flood damages and potential benefits was undertaken using the results of the hydraulic modelling, as per initial appraisal methodologies defined by Handbook of Economic Appraisal (Multi-Coloured Manual) (MCM), and it was "this appraisal, cost benefit analysis (or whatever you wish to call it)" that he was looking to receive a copy of. The Applicant stated that as mentioned the appraisal would have followed established and clearly defined methodologies that will have led to the economic assessment summary referenced in Section 8 of the report. In addition, it would be the data from which the executive summary concluded that the estimate present value of benefits (PVb) provided by the works would be £165k, the cost benefit ratio 0.05 and the estimated cost of the works £3.47m. If the Authority did not receipt on file a copy of this data in 2019, then with the named consultant currently on contract, the Applicant was of the view that it would be able to access the information and provide him with a copy as requested.

4. The Authority notified the Applicant of the outcome of its review on 17 September 2024. It upheld its initial position, confirming that no separate Cost Benefit Analysis report was produced and provided the Applicant with some additional advice and assistance. It informed the Applicant that the named consultant had identified that the figures in the report were extracted from the cost-benefit spreadsheets but that these contained sensitive address

information and were therefore not recommended for public disclosure. Additionally, it contended that the spreadsheet data could be taken out of context but was something that could be discussed at an upcoming public meeting with interested individuals.

5. On 4 October 2024, the Applicant wrote to the Commissioner, applying 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. The Applicant stated he was dissatisfied with the outcome of the Authority's review because the cost benefit spreadsheets and workbook mentioned by the Authority in its review response contain the information he had requested. The Applicant also did not agree with the reasons given for not releasing this and considered that it should be provided to him and the wider public.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

7. On 13 November 2024, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant.

8. The Authority informed the Commissioner that it did not hold the information and on 21 November 2024 provided him with its reasoning for this view.

9. The case was 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 Authority was invited to comment on this application and to answer specific questions. These related to its reasons for considering the information was not held.

Commissioner's analysis and findings

11. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

Application of the EIRs

12. The Authority processed and responded to the Applicant's request and requirement for review in accordance with the EIRs, having concluded that the information was environmental information as defined in regulation 2(1) of the EIRs.

13. Where information falls within the scope of the definition "environmental information" in regulation 2(1) of the EIRs, a person has a right of access to it (and the public authority a corresponding obligation to respond) under the EIRs, subject to various restrictions and exceptions contained within the EIRs.

14. The Applicant has not disputed the Authority's decision to handle their request under the EIRs.

15. The Commissioner is satisfied, in the circumstances, that the information requested by the Applicant falls within the definition of environmental information set out on regulation 2(1) (in particular paragraphs (a) (elements of the environment), (c) (Measures and activities), (e) (cost benefit and other economic analysis) and (f) (Human health and built structures)) as the request related to cost benefit analysis for a report on possible solutions to alleviate flooding issues that affect residential property.

Section 39(2) – Environmental information

16. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined in regulation 2(1) of the EIRs) is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs.

17. In this case, the Commissioner accepts that the Authority was entitled to apply this exemption to any information falling within the scope of the request under FOISA, given his conclusion that it is properly classified as environmental information.

18. As there is statutory right to access environmental information available to the Applicant in this case, the Commissioner accepts, in all the circumstances, that the public interest in maintaining this exemption (and responding to the request under the EIRs) outweighs any public interest in responding to the request under FOISA. Both regimes are intended to promote access to information and there would appear to be no reason why (in this particular case) disclosure of the information, were it to be held, should be more likely under FOISA than the EIRs.

19. The Commissioner therefore concludes that the Authority was correct to apply section 39(2) of FOISA and consider the Applicant's information request under the EIRs.

20. In the circumstances, the Commissioner will consider this case, in what follows, solely in terms of the EIRs.

Regulation 5(1) of the EIRs – Duty to make environmental information available

21. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. This obligation relates to information that is held by the authority when it receives a request.

22. On receipt of a request for environmental information, therefore, the authority must ascertain what information it holds falling within scope of the request. Having done so, regulation 5(1) requires the authority to make that information available, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).

23. Under the EIRs, a public authority may refuse to make environmental information available if one of the exceptions in regulation 10 apply and, in all the circumstances of the case, the public interest in maintaining the exception or exceptions outweighs the public interest in making the information available.

24. In this case, the Authority submitted that it was relying on the exception in regulation 10(4)(a) of the EIRs as it did not consider that it held recorded information falling within the scope of the Applicant's request.

Regulation 10(4)(a) – Information not held

25. Regulation 10(4)(a) of the EIRs states that a Scottish public authority may refuse to make environmental information available to the extent that it does not hold that information when the applicant's request is received.

26. The standard of proof to determine whether a Scottish public authority holds the information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.

27. The Commissioner also considers, where appropriate, any reasons offered by the Authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about the information the Authority should hold, ultimately the Commissioner's role is to determine what relevant information is (or was at the time of the request was received) actually held by the Authority.

The Authority's submissions

28. As mentioned above, after the Commissioner informed the Authority that a valid application had been received, and requested the withheld information, the Authority affirmed that it did not hold the information requested.

29. The Authority submitted that in determining the scope of the Applicant's request it noted that he had requested a Cost Benefit Analysis Report and had attached a document to a similar report that was created for another study (Inchgarth Road Flood Study – Cost Benefit Analysis) through the Authority.

30. The Authority explained that following receipt of the Applicant's request, its Roads Structure – Flooding and Coastal Service were asked to carry out searches to determine if information was held, as they were considered to be best placed to hold the information and have knowledge of this project. Discussions also took place with other relevant staff. The Authority noted that it transpired that no cost benefit analysis report was created for this study and therefore the information was not held.

31. The Authority re-iterated that no such report was created for the Peterculter Flood Protection scheme works and that the cost/benefit (PVb) figures were all available in the feasibility study.

32. The Authority explained that these figures were calculated from a licensed workbook from the MCM by its consultant. The Authority was of the view that to say it held a separate cost benefit analysis report for the study would be publishing misleading and inaccurate information.

33. During the course of the investigation the Authority contacted the Applicant and stated that it had identified that he may be requesting additional information within his appeal submission. In particular, the Authority was of the view that the Applicant had requested, an analysis that led to the figures produced within the feasibility study for mitigating costs and addendum, i.e. that he wanted to request the complete analysis that resulted in the £165 000 cost. The Authority commented that if this was correct it would categorise this as a new request for information which would need to be considered afresh.

34. The Authority invited the Applicant to inform it if this was the case and it would log this as a new request.

35. It further advised the Applicant that it considered his request for a cost benefit analysis report as information not held. This was, it stated, due to the use of the word 'report'. The Authority commented that to say that it held a separate cost benefit analysis report for this study would be publishing misleading and inaccurate information.

36. The Authority's position was that the cost benefit figures are all available in the feasibility study and that these figures were calculated from a licensed workbook from the MCM. It advised the Applicant it was unlikely to be able to provide the MCM workbook to members of the public.

37. It added that to meet a request for a full cost benefit analysis report, a report would have to be created/commissioned, to provide the considered elements in greater detail. The Authority noted that the feasibility report was the only document submitted for Scottish Government Prioritisation.

38. The Authority reiterated its view that this was a new request and clarified that the spreadsheet concerned was a licensed workbook and converting this to a shareable format would be creating new information for the purposes of the request.

39. In its submissions to the Commissioner, the Authority confirmed that the workbook and speadsheet referred to are the same document.

The Applicant's submissions

40. The Applicant disagreed with the Authority's position and considered that the cost benefit spreadsheets and workbook it had discussed contained the information he had requested and should be provided.

41. The Applicant's questioned whether the issue of whether the information was held in relation to his request or not was due to his use of the wrong terminology.

42. The Applicant reiterated his understanding that the only part of the cost benefit analysis in the feasibility report was the PVb, which was the output from the cost benefit analysis. He emphasised that the PVb was the result of the cost benefit analysis, rather than the cost benefit analysis figures that resulted in the PVb being calculated. The Applicant stated that it was the cost benefit analysis that was being requested in an effort to understand how a PVb of £165 000 was determined.

43. The Applicant highlighted that the named consultants had previously confirmed that the cost benefit analysis figures were in a spreadsheet, and his appeal to the Commissioner was on the basis of the reasons given for not making those figures available. Which were that the spreadsheet contained potentially sensitive information and a concern that the spreadsheet figures could be taken out of the intended economic context. He pointed out that those differed from the new concerns which he viewed as being related to the format in which the figures could be made available rather than making them available per se.

44. The Applicant advised the Authority that if a new FOI request was necessary to access the information, then to proceed on that basis.

45. He was subsequently provided with two excel workbooks for the cost benefit analysis for the 2019 feasibility report for Culter Burn Flood Study in response to his new request for information.

The Commissioner's view

46. The Commissioner has considered the submissions from both the Applicant and the Authority as well as the information from the workbooks, which he has now seen, and that included in the Inchgarth Road Flood Study, provided by the Applicant as an example of the type of information he was seeking.

47. The Commissioner considers that the Applicant had clearly expressed in his initial request and his requirement for review, the information he wanted to receive, which was the detailed analysis that led to the PVb figure in the report. The Applicant himself, in his review highlighted by using the phrase "or whatever you wish to call it", that he may not be using the correct terminology but was nevertheless explicit about what the information he was seeking comprised of. The Commissioner is in no doubt that he stated clearly what information he was requesting.

48. Having considered the searches carried out by the Authority, the Commissioner acknowledges that the staff approached would have had knowledge of the information being sought. The focus of this discussion appears to have been on a separate cost benefit analysis report. Although he notes that within its review response, the Authority acknowledged the existence of the workbooks from which the figures in the feasibility study report were extracted.

49. As the Commissioner has commented in previous Decision Notices, it is unreasonable to expect a member of the public to have an intimate knowledge of the format in which particular information may be held within an authority or where it may be located. In any case, as has already been discussed, the Commissioner is satisfied that the Applicant, in this case, was perfectly clear in both his request and requirement for review what specific information he was looking for.

50. The Commissioner is satisfied that the information was identified by the Authority, the matter to be decided is whether or not this information fell within the scope of the Applicant's request.

51. The Authority's view was that as there had been no distinct cost benefit report created (as had been for the Inchgarth Road Flood Study) it did not hold the requested information. However, it mentioned the workbooks created from the MCM but indicated that these could not be provided for various reasons.

52. The Commissioner notes that there is a similarity in the information in the workbooks and the Inchgarth Road Flood Study.

53. He recognises that they are not the same, taking into account the Authority's explanation about the Feasibility Study that is the subject of this request being a high-level feasibility report without as much detailed information as the Inchgarth Road Flood Study Report.

54. Even so, the Commissioner is of the view that the information in the workbooks which was used to work out the PVb in the feasibility study report did clearly fall within the scope of the Applicant's request and were held by the Authority, or by the named consultant on the Authority's behalf at the time of the Applicant's request.

55. As the Commissioner has found that the information in these workbooks did fall within the scope of this request and were held by the Authority, he, therefore, finds that the Authority was not entitled to rely on regulation 10(4)(a) of the EIRs. In doing so, the Authority failed to comply with regulation 5(1) of the EIRs. As the Commissioner finds that the Authority was wrong to rely on regulation 10(4)(a) of the EIRs he is not required to go on to consider the application of the public interest test in regulation 10(1).

56. The Commissioner cannot understand why the Applicant was asked to make a new request for this information. If the Authority considered there were reasons why this information could not be disclosed under the EIRs and exceptions applied, then these exceptions could

have been applied to withhold that information, and the Applicant informed of its position. For example, mention was made of sensitive address information and a concern that the spreadsheet figures can be taken out of the intended economic context. Public authorities are also obliged by the legislation, where necessary, to provide reasonable advice and assistance, and the Commissioner notes that there is nothing in the legislation to prevent authorities from providing additional explanation or context with any information disclosed to an applicant to assist understanding.

57. As the Applicant did make a subsequent request to the Authority and the information in the workbooks were provided to him in response to that request, the Commissioner does not require the Authority to take any further action in respect of this breach.

Decision

The Commissioner finds that the Authority failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by the Applicant.

Specifically, the Commissioner finds that the Authority failed to comply with regulation 5(1) of the EIRs by relying on regulation 10(4)(a).

Given that the Authority has provided the Applicant with the information in response to a subsequent information request, the Commissioner does not require the Authority to take any action in response to this failure in response to the Applicant's application.

Appeal

Should either the Applicant or the Authority 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.

David Hamilton

Scottish Information Commissioner

07 July 2025