

33752

I refer to the [above decision](#) by SIC which mandates you to publish the requested information by 17 August 2021 (or to explain why the information cannot be published). Unfortunately, I could not find the relevant documents on your [Freedom of information \(FOI\) disclosure log](#).

Please advise if you have complied within the timescale set by SIC. If you have not published the information, please send me a copy of your explanation.

The Commissioner decision you have referred to instructed the Council to undertake further searches for the information captured by a freedom of information request which had been appealed to them. Once completed, the Council was required to provide the applicant with a revised review response. I have copied an extract of the Commissioner's decision below for your reference:

'Decision

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

He finds that, in failing to take adequate steps to identify, locate and provide any information falling within the scope of the request, the Council failed to comply with regulation 5(1) of the EIRs.

The Commissioner therefore requires the Council to undertake full searches to determine whether any relevant information is held, and to reach a conclusion on whether any information held in the document already identified falls within the scope of the request.

He requires the Council to provide the Applicant with a revised review outcome, disclosing any information identified as falling within scope (either as a result of these searches and/or contained within the document already identified), or explaining why (in accordance with any relevant provision in the EIRs) the information cannot be disclosed, by 17 August 2021'.

The Council undertook the further searches required and has issued the applicant with a further review outcome. In this case the further searches conducted did not change the Council's response, as we were able to confirm to the applicant that no information is held which is captured by their request. Consequently, there was no requirement to change the entry on the Council's disclosure log.

We have attached a copy of the review response sent to the applicant. Please note that third-party personal information has been redacted from the document provided. The release of such data would be a breach of the Data Protection Act 2018 in terms of fair processing as it would not be fair, lawful or expected for information which could identify individuals to be released into the public domain. This information would therefore be exempt in terms of Section 38(1)(b) read in conjunction with Section 38(2)(a)(i) of the Freedom of Information (Scotland) Act 2002.

Please note that this letter constitutes a formal refusal notice under section 16 of the Freedom of Information (Scotland) Act 2002.

Date 17 August 2021

Your ref

Our ref EDIR 28145

Environmental Information (Scotland) Regulations 2004 – Request for Review

I write regarding your email dated 8 July 2020 in which you explained that you were dissatisfied with the response provided to your request for information, and your subsequent appeal to the Scottish Information Commissioner.

The Council provided you with a review response dated 6 August 2020 which upheld the original position that no information was held within scope of your request. You then sought an appeal from the Information Commissioner. The Commissioner examined the Council's handling of your request and, in his decision, found that the Council had not taken adequate steps to identify and locate the information you requested. The Commissioner required the Council to conduct new searches and provide you with a revised review outcome.

I have now carried out the review in accordance with the provisions of the Environmental Information (Scotland) Regulations 2004 (the 'EIRs'). As you will know, the purpose of this review is for the Council to consider again the response provided to a request for information it has received. In undertaking the review, I can decide to uphold the Council's original response to your request, either with or without variation, or I can substitute the response for a new one.

In your original request for information, you asked for:

"All documents, notes, notes of discussions, diary entries, minutes and email whether held electronically or otherwise in respect of any discussions between or among, Paul Lawrence [formerly also known as Paul Rubinstein] and any City of Edinburgh Council Councillors or officers, or any third parties, and without prejudice to that generality between Paul Lawrence and all or any of Cllr Cammy Day, Cllr Neil Gardiner, Andrew Kerr, David Cooper and David Givan, in March 2019 and immediately prior and thereafter up until May 31st 2020 in respect of City of Edinburgh Council proposing to purchase the Granton Harbour Estate, West Harbour Road, Edinburgh by means of a Compulsory Purchase Order. Failing principals, copies thereof."

I should firstly confirm that I am upholding the application of a section 39(2) exemption under the Freedom of Information (Scotland) Act 2002 to your request. This is because the request is for information that is categorised as environmental information and therefore the right of access under the EIRs applies.

In your request for review, you sought clarification that the Council's response included all categories listed in your request and asked that any review confirms that this is in fact correct. ■

Corporate Services, Information Governance Unit

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[REDACTED]

In order to fulfil the requirements set out by the Commissioner, I can confirm that your request has been re-examined and that the individuals named within your request have been asked to carry out a further full search for the information that you have requested. In addition to this, in order to capture all of the officers with responsibilities in this subject matter, other officers were asked to conduct searches, including the Programme Manager of the Edinburgh Waterfront team and the Council's Senior Investments Manager. Each of these officers were asked to evidence their searches within a template which has been developed following the Commissioner's feedback in this case. I can therefore confirm that full and comprehensive searches have been completed, including all of the categories laid out in your request.

Following this comprehensive search, I confirm that no information has been identified within scope of your request. I therefore uphold the exception under regulation 10(4)(a) of the Environmental Information (Scotland) Regulations 2004.

For your information, I recognise the Commissioner's decision specifically refers to a document that was identified at the review stage but was determined to be out with the scope of your request. The Commissioner's decision sought further clarity on whether this assessment was correct. Further investigation of this document and discussion with the Programme Manager of the Edinburgh Waterfront team has confirmed that it was not shared among any of the individuals named within your request and is therefore not within the scope of your original request.

That concludes my handling of the review. If you are unhappy with this review outcome or the way we handled your request and review, you have a right of appeal to the Scottish Information Commissioner. You must submit your complaint to the Commissioner within 6 months of receiving this review response. The Commissioner can be contacted at:

The Office of the Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS
Telephone: 01334 464610
Fax: 01334 464611
Website www.itspublicknowledge.info/Appeal
E-mail: enquiries@itspublicknowledge.info

Please note that, once the Commissioner provides you with a decision on any application made to him, you have the right to lodge an appeal against the decision on a point of law to the Court of Session.

Yours sincerely,

Victoria Robertson
Information Governance Unit