



Finance and Corporate Resources
Executive Director **Paul Manning**
Administration and Legal Services
Head of Administration and Legal Services **Geraldine McCann**

Mr. J. Rainey
By email to: request-574782-4e16df5f@whatdotheyknow.com

Our ref: WAD/CDCREV-19050
Your ref:
If calling ask for: Bill Dunn
Phone: 01698 454564
Date: 5 July 2019

Dear Mr Rainey

Environmental Information (Scotland) Regulations 2004
Request for a review – Decision Notice – R2019/16

I refer to your email dated 5 June in which you asked for a review of the way that the Council has dealt with your requests for information. I can advise that a review has now been held. This is the formal notification of the decision of the Review Panel.

Background

On 7 May 2019, you requested the following information

- a) How many fly-tipping incidents in the county that your authority controls were reported to South Lanarkshire Council, Police Scotland (including then Strathclyde Police) and the Scottish Environmental Protection Agency between 2010 and 2018? (**Item 1**)
- b) How many fly-tipping cases were dropped between 2010 and 2018 because the evidence was found to be tampered with? Also, how many were dropped due to fears of reprisals from the reported offender(s)? How many were also dropped due to lack of evidence? (**Item 2**)
- c) Can the citizens of the South Lanarkshire area set up their own covert surveillance cameras to capture fly-tippers in the act themselves? If so, apart from Article 8 of the European Convention on Human Rights (especially regarding section 2 on privacy being exempt in the interest of preventing crime and disorder) what exact laws need to be taken into consideration which includes regards to the Information Commissioner's Office? If high-quality footage of an offence was successfully captured, can the footage be used in court? (**Item 3**)
- d) What is the Litter Control Strategy that South Lanarkshire Council has to abide by when investigating fly-tipping cases along with dog fouling and littering cases? (**Item 4**)

On 3 June 2019, Community and Enterprise Resources responded to you as follows (in their response they referred to "Answers" rather than response to "Items") in relation to

- **all requests**, they refused to comply with the request for information under FOISA as the information sought was environmental information and so exempt from disclosure in terms of the exemption set down in section 39(2) of FOISA, after application of the public interest test but continued to deal with the requests under the EI(S)Rs

Floor 11, Council Offices, Almada Street, Hamilton ML3 0AA
DX 579641 – Hamilton 3 Telephone: 01698 454564
Text Phone 01698 454039 E-mail: bill.dunn@southlanarkshire.gov.uk



- **Item 1**, they provided information but refused to comply with the remainder of the request as the information was not held by them in terms of the exception set down in Regulation 10(a) of the EI(S)Rs
- **Item 2**, appears to provide information
- **Item 3**, they refused to comply with the request on the basis that the requestor was seeking legal advice rather than information and so was not a valid request for information and
- **Item 4**, they refused this request in full on the basis of the exception set down in Regulation 10(4)(a) of the EI(S)Rs, information not held.

On 5 June 2019, you requested a review of the Council's handling of your requests for information. In particular, in relation to

- **Item 1**, you sought clarification as to what was meant by the information provided by Community and Enterprise Resources
- **Item 2**, you suggested that Community and Enterprise Resources had misunderstood this request and, in order to resolve matters, asked a new supplementary request for information and
- **Item 3**, you stated that, in your view, no information had been provided taking account of responses issued by other Scottish Councils and
- made a number of new supplementary requests for information

Summary of the decision of the Review Panel

The Review Panel

- a) is providing clarification regarding the information provided in relation to **Item 1** and
- b) confirms that **Item 3** does not amount to a valid request for information and so is outwith the remit of the Review Panel.

The Review Panel's considerations

The Review Panel is aware that it cannot respond to new requests for information made by a requestor. Its remit is to consider whether the response from Community and Enterprise Resources complied with the Council's obligations under the EI(S)Rs. Generally, this involves ensuring that the Resource responding to the request:

- a) has applied a reasonable interpretation to requests for information
- b) has undertaken appropriate searches for relevant information based upon that interpretation of the request and
- c) has either
 - (i) provided all or part of the requested information or
 - (ii) withheld all or part of the requested information in terms of a justifiable exception set down in the EI(S)Rs

From the matters raised by you, it appeared that you are seeking a review in relation to the handling of **Item 3**, after exclusion of the new requests for information. In addition, you are seeking clarification from the Council about the information provided in respect of **Item 1** but this does not amount to a request for review (this clarification will be provided next).

Clarification of the information provided in relation to Item 1

Your request related to the number of fly-tipping incidents reported to South Lanarkshire Council over a number of years. However, there is no restriction as to what was meant by an incident or if it was restricted to being reported to the Council for a particular purpose.

It is clear from the wording of your request that you expected the provision of a single figure for each of the years specified. However, this presupposes that there is a single database from which the figures could be extracted.

This is not the case for South Lanarkshire Council. Community and Enterprise Resources have advised that the fly-tipping service (in its widest sense) is split between two Services.

Each Service has a distinct and separate role and they therefore had to provide the information held by each Service separately.

The Grounds Service have responsibility for uplifting fly-tipping. Members of the public may inform the Service of fly-tipping and they will remove it. However they will also be passed requests from Environmental Services to uplift fly-tipping in the cases they have investigated.

Environmental Services deal with complaints about fly-tipping as opposed to requests to uplift it. Cases of fly-tipping (illegal dumping) are investigated by Environmental Services. They follow an approved Enforcement protocol for investigating. Such investigations could result in a referral to the Procurator Fiscal (PF) Service as fly-tipping is a criminal offence.

Item 3

Community and Enterprise Resources were of the view that this was not a valid request for information. On the other hand, you maintained that it was and had not been answered in comparison with other Councils.

The initial consideration of the Review Panel was whether this request was valid in terms of the EI(S)Rs.

In terms of Regulation 5(1) of the EI(S)Rs, the Council, if it holds environmental information, shall make it available when requested to do so by an applicant. The obligation is to provide access to information not to the providing of advice. For instance, a question such as "what is the Council policy on..." would relate to information but a question such as "Can people do..." would be about advice.

The Review Panel considered that your question fell into the category of whether it was possible for people to take a certain action rather than what the Council's policy was in the event of the occurrence. As a result, **Item 3** appeared to be a request for advice and not a valid request for information.

Therefore, the Review Panel confirmed Community and Enterprise Resources' decision.

Whilst not a matter for consideration by the Review Panel, as such, it is clear from the examples referred to by you that other Councils have provided advice of a generalised nature to you. However, there was no compulsion upon Community and Enterprise Resources to do so. Therefore, the Review Panel could not consider this matter further.

Appeal to the Scottish Information Commissioner

If you are unhappy with the outcome of our review, you have the right to appeal to the Scottish Information Commissioner. You have 6 months from receiving this notice to appeal.

The Commissioner will decide whether the Council has dealt with your request properly. The Commissioner's contact details are as follows:-

Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife KY16 9DS
Tel: 01334 464610
Fax: 01334 464611

E-mail: enquiries@itspublicknowledge.info

For further details, please see the Commissioner's website at <http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>. In addition the Commissioner has prepared a form that can be used to appeal to him. It can be found here -

<http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/ApplicationForm.aspx>

If you are unhappy about the final decision of the Commissioner, you are entitled to appeal to the Court of Session on a point of law.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Paul Manning', with a long horizontal flourish extending to the right.

Paul Manning
Reviewing Officer