

Was the Eastwood Park Leisure New Build Decision based on evidence ' in draft form, in the course of completion and on an unfinished document.' ?

Posted by RM64 - 19 Aug 2019 13:37

I know it was the decision ALL wanted, BUT.....

The Director of Environment stated in his response of Wednesday, 26 Jun, 2019 At 16:46 -

'However, in terms of paragraph 10 (4) (d) of the Environmental Information (Scotland) Regulations 2004 I consider this information is exempt because it is in draft form, in the course of completion and is an unfinished document.'

The Full Council Meeting was held on Wednesday, 26 Jun, 2019 At 07:00pm.

The Director of Environment was seeking recommendation for his report based on evidence that was -

'in draft form, in the course of completion and is an unfinished document.'

????

Unfortunately ERC still seek to hide the information !!!

----- Original Message -----

To:

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Cc:

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This e-mail address is being protected from spambots. You need JavaScript enabled to view it

Sent: Tuesday, 9 Jul, 2019 At 22:15

Subject: REQUEST FOR FREEDOM OF INFORMATION(FOI) REVIEW - Freedom Of Information
Request: 101001980106 Eastwood Park Leisure New Build

Chief Officer (Legal and Procurement)

Council Headquarters

Rouken Glen Road

Giffnock

G46 6UG

REQUEST FOR FREEDOM OF INFORMATION(FOI) REVIEW

As instructed by Andrew Cahill, ERC Director of Environment in their attached email dated 26 June 2019 (response to my FOI request dated 29 May 2019) and as Gerry Mahon, The Chief Officer Legal & Procurement, has previously stated that FOI is normally a 2 stage process -

'As you will be aware the Council's response to an FOI request does not merely revolve around the initial request but also the review process. It is hoped that any human error in relation to the 1st part of the process is properly remedied at the 2nd stage.'

I wish to request said FOI review.

I completely disagree with Mr Cahills reasons for withholding the requested documents/reports/information.

At the Full Council meeting on 26 June 2019(Agenda Item 11) a recommendation that the Council 'Approves Eastwood Park as the preferred site for a new Eastwood Leisure Centre and theatre;'

was approved.

It seems unbelievable that the Director of Environment would make such an important recommendation based on evidence

' in draft form, in the course of completion and is an unfinished document.'

It is imperative that East Renfrewshire Council Tax Payers have access to the evidence that the Director of Environment had when coming to their recommendation.

As the decision has been made there is now no reason to withhold any of the requested Information/Reports/Documentation.

It seems incredible that the Director of Environment can make a recommendation to Full Council but not publish the documentation/reports that their decision was based on.

As East Renfrewshire Council Tax Payers paid £49,000.00 for this work surely they should be able to read these reports to scrutinise the evidence that the Director has based their recommendation on.

It appears the information has been published to Councillors.

My Councillor Stewart Miller has replied -

'----- Original Message -----

From: "Miller, Stewart (Cllr)";

Sent: Thursday, 4 Jul, 2019 At 23:02

Subject: Re: Urgent - Eastwood Park Reports by Peter Brett Associates

I am sure you are well aware that Cllrs can ask to see any report they wish

Regards

Stewart'

to my question - 'Have Councillors seen/read had access to any of these reports?'

regarding Eastwood Park Reports by Peter Brett Associates.

The Director should publish all below Information/Reports/Documents from the Peter Brett Associates revised Project Plan -

28 January 2019 - Start

25 February 2019 - Visioning Report Draft

18 March 2019 - Visioning Report Final

1 April 2019 - Masterplan Draft

22 April 2019 - Masterplan Final

22 April 2019 - Action Plan / Road Map

The outputs for the project will include the following:

a. A Visioning report for the Campus – which outlines proof on concept – present & future uses,

landscaping (hard & soft) and building enhancement potential.

b. Masterplan layout options for the site & presentation

c. Action plans/implementation road map/phasing with cost implications

d. Access and Transport review (including junction modelling & case for 2nd access and improved connections)

e. Community Benefits - details of how the new buildings will derive benefits for the Council and the wider community.

To enable delivery of above, PBA will utilise their multi-disciplinary team to provide planning, transport and economic inputs to the study.

This will be supplemented by Stallan Brand architects who will bring their significant architectural experience to assist in the design and visualisation of the masterplan options and the preparation of the visioning report and 3D images.

Thanks

----- Original Message -----

From: "Cahill, Andrew"

Sent: Wednesday, 26 Jun, 2019 At 16:46

Subject: Freedom Of Information Request: 101001980106

I refer to your FOI request of 29th May 2019 in relation to Master Planning of Eastwood Park and the feasibility of a new build leisure centre within Eastwood Park.

The Council does hold further information received within the timescale stated in your request.

+++++++

However, in terms of paragraph 10 (4) (d) of the Environmental Information (Scotland) Regulations 2004 I consider this information is exempt because it is in draft form, in the course of completion and is an unfinished document.

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In terms of regulation 10 (1) (b) I am also satisfied that the public interest in making the information available is outweighed by the proposal to make the exemption.

East Renfrewshire Council offers the opportunity to apply for a review of how we have dealt with your enquiry. If you wish to proceed to review, please apply in writing within 40 working days to: Chief Solicitor, Council Headquarters, Rouken Glen Road, Giffnock, G46 6UG, marking your letter "Freedom of Information, request for review", and stating the exact nature of the matter you wish to be reviewed.

The review will be carried out within 20 working days of receipt. If you are dissatisfied with the outcome of the review, you have the right to then appeal to the Scottish Information Commissioner who has extensive powers to investigate such matters. His address is:

The Scottish Information Commissioner

Kilburn Castle

St Andrews

Fife

KY16 9DS

Yours sincerely

Andrew Cahill

Director of Environment

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Re: Was the Eastwood Park Leisure New Build Decision based on evidence 'in draft form, in the course of completion and on an unfinished document.' ?

Posted by RM64 - 08 Oct 2019 15:41

----- Original Message -----

From: "Cahill, Andrew";

Sent: Thursday, 3 Oct, 2019 At 17:06

Subject: Freedom Of Information Request: - 101002080925

I refer to your FOI request of 3rd September 2019 in relation to the Visioning & Masterplanning of Eastwood Park.

On 15th May I responded to your FOI request of 15th April 2019 with regard to Eastwood Park consultation work being carried out by Peter Brett Associates LLP with specific reference to particular documents.

I advised that there were no further documents in relation to your request.

You were offered a review as part of that process.

On 26th June 2019 I responded to your FOI request of 29th May 2019 in which you had asked for copies of all recorded information regarding this master planning for the period from 10th December 2018.

Again, you were offered a review as part of that process.

At that point you had been given all the information with the exception of the exemption referred to in my email of 26th June 2019.

On 3rd September 2019 you submitted a further FOI request regarding correspondence / emails / letters / contact / documents / reports / payment requests and payment invoices from 1st January 2019 concerning specific documents / reports.

In my view this is a repeat of your request for information which has already been provided.

I have therefore treated your recent request as relevant in terms of the period 29th May 2019 to 3rd September 2019.

The relevant information is attached.

The Council does hold further information received within the timescale of 29th May 2019 to 3rd September 2019. However, in terms of section 30 (b) (ii) and (c) of the Freedom of Information (Scotland) Act 2002 I consider this to be exempt information.

I am satisfied that the reason for exemption outweighs the public interest in making the information available.

This is because its disclosure under this act would, or would be likely to, inhibit substantially –

- the free and frank exchange of views for the purposes of deliberation; and
- would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

East Renfrewshire Council offers the opportunity to apply for a review of how we have dealt with your enquiry. If you wish to proceed to review, please apply in writing within 40 working days to: Chief Solicitor, Council Headquarters, Rouken Glen Road, Giffnock, G46 6UG, marking your letter "Freedom of Information, request for review", and stating the exact nature of the matter you wish to be reviewed.

The review will be carried out within 20 working days of receipt. If you are dissatisfied with the outcome of the review, you have the right to then appeal to the Scottish Information Commissioner who has extensive powers to investigate such matters. His address is:

The Scottish Information Commissioner

Kilburn Castle

St Andrews

Fife

KY16 9DS

Yours sincerely

Andrew Cahill

Director of Environment

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**Re: Was the Eastwood Park Leisure New Build Decision based on evidence
'in draft form, in the course of completion and on an unfinished document.' ?**

Posted by RM64 - 08 Oct 2019 18:54

----- Original Message -----

To:

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Cc:

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This e-mail address is being protected from spambots. You need JavaScript enabled to view it

Sent: Tuesday, 8 Oct, 2019 At 16:30

Subject: Freedom Of Information Request for Review - FOI Request 101002080925

Chief Officer (Legal and Procurement)

Council Headquarters

Rouken Glen Road

Giffnock

G46 6UG

REQUEST FOR FREEDOM OF INFORMATION(FOI) REVIEW

As instructed by Andrew Cahill, Director of Environment in their attached email dated 3 October 2019 (response to my FOI request dated 3 September 2019) and as Gerry Mahon, The Chief Officer Legal & Procurement, has previously stated that Fol is normally a 2 stage process -

'As you will be aware the Council's response to an FOI request does not merely revolve around the initial request but also the review process. It is hoped that any human error in relation to the 1st part of the process is properly remedied at the 2nd stage.'

I wish to request said FOI review.

My reasons for requesting FOI review are -

I completely disagree with the Director of Environment's reasons for withholding this information.

My understanding of the section 30(as per the Scottish Information Commissioner briefing paper) is that

(and (C) should not be used together for the same information.

In addition the public interest test must be laid out with pros and cons, and additional material arguments due to application of that exemption.

Although the exemption will often be applied to advice or to an exchange of views, it can apply to other types of information.

What is important is whether the disclosure would have an inhibiting effect on the provision of advice or on the exchange on views.

The Director of Environment has not provided any evidence that they have undertaken and/or applied a fair Public Interest Test.

This information should be published as East Renfrewshire Council has already made a decision based on this information.

The Director of Environment is denying East Renfrewshire Council Tax Payers the information to properly scrutinise the decision made by the Council.

It is my opinion any timescales for withholding have been exceeded including your own timescale of 6 to 8 weeks.

The Director of Environment says -

'The Council does hold further information received within the timescale of 29th May 2019 to 3rd September 2019.'

In order that the Director of Environment's decision can be properly scrutinised I would appreciate if the number and type of Information/Documents/reports etc referred to are provided.

I am of the opinion the Director of Environments interpretation is not correct.

I request that you review as -

Disclosure will not -

' inhibit substantially –

· the free and frank exchange of views for the purposes of deliberation; and

· would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs'.

Indeed, I would opinion that disclosure will enhance the free and frank exchange of views and enable scrutiny of the Council's decision.

Peter Brett Associates were given at least £49,000.00 of Council Tax Payers money and confirmed, to ERC, that for this £49,000.00 contract, they would produce Reports/Documents in regard to the Visioning & Masterplanning of Eastwood Park.

'28 January 2019 - Start

25 February 2019 - Visioning Report Draft

18 March 2019 - Visioning Report Final

1 April 2019 - Masterplan Draft

22 April 2019 - Masterplan Final

22 April 2019 - Action Plan / Road Map

The outputs for the project will include the following:

- a. A Visioning report for the Campus – which outlines proof of concept – present & future uses, landscaping (hard & soft) and building enhancement potential.
- b. Masterplan layout options for the site & presentation
- c. Action plans/implementation road map/phasing with cost implications
- d. Access and Transport review (including junction modelling & case for 2nd access and improved connections)
- e. Community Benefits - details of how the new buildings will derive benefits for the Council and the wider community.

To enable delivery of above, PBA will utilise their multi-disciplinary team to provide planning, transport and economic inputs to the study.

This will be supplemented by Stallan Brand architects who will bring their significant architectural experience to assist in the design and visualisation of the masterplan options and the preparation of the visioning report and 3D images.'

It is now over 10 months and the Director of Environment has refused to publish any Documents/reports.

This despite the Council making a decision based on these Documents/reports at their meeting on 26 June 2019.

It would now appear that the Director of Environment is deleting these documents/reports received from Peter Brett Associates -

Andrew Cahill, the Director of Environment has said in a reply to Cllr David MacDonald - 'They were not retained as documents.'

This means that this Council decision cannot be scrutinised properly.

I wish to register my great concern over the deletion of reports/documents and request that you

investigate the reasons for the deletion of these reports/documents.

Why should it not be concluded that the only reason Andrew Cahill, the Director of Environment is taking this course of action is to avoid Freedom of Information disclosure? -

- Receive reports/documents from company/consultants
- Claim a work in progress.
- The documents when finalized for the end report are then destroyed.
- The final report is never finished until the Director of Environment publishes it.

Yes a 'final report' can be produced, but the original documents that are used to compile this 'final report' are still valid and relevant and must be retained.

Please confirm that these reports/documents should be an asset and used in the future if required, to look at one specific subject(as they have not been copied in their entirety).

Please confirm that it is not convention to delete source documents - they are usually referenced in the final report.

Please confirm that destroying reports/documents has the effect of making the public suspicious as to the motive behind destruction - not in keeping with an open and transparent Council.

Is the Director of Environment not retaining/destroying these Reports/Documents because they don't like what is written in them?

If we cannot access them, how would we ever know?

These reports/documents should be retained.

There is no reason why these reports/documents should be destroyed.

It is now 08 October 2019 and it would appear not one document/report has been published.

As at the Full Council meeting on 26 June 2019 only 1 Document had been produced and the Director of Environment stated that this was 'in draft form, in the course of completion and is an unfinished document.'

As at 7 August 2019 Gerry Mahon, the Chief Officer, Legal & Procurement stated - ' the document is currently being sense checked and assessed for factual accuracy and consistency' and that it was still in draft form.

It is now over 10 months since the start of the project and nearly 7 months since the dates quoted by PBA for the completion of the documents.

The Director of Environment has published an email giving details of a further £2100.00 spend with Robinson Low Francis LLP - NQ71-ERC-02 Cost Information for Eastwood Park Masterplan

I would appreciate if you would give details of what documents/reports etc have been received for this spend and if they are also being withheld.

It is hard to believe that the Director of Environment has undertaken all this work on their own.

It is hard to believe they have had no contact with anyone else (except Hub West Scotland Ltd).

Again I would request that you review why this information has not been disclosed -

Correspondence/Emails/Letters/Contact/documents/reports etc between/to and from

East Renfrewshire Council (ERC)(Employees/Officers/Officials) and ERC(Employees/Officers/Officials)

ERC(Employees/Officers/Officials) and ERC Councillors

ERC(Employees/Officers/Officials) and Peter Brett Associates

ERC(Employees/Officers/Officials) and Others

Again, I would request that you review why no payment details and/or invoices have been provided.

I would request that the following is relevant and is considered and addressed in your review -

My understanding of the section 30(as per the Scottish Information Commissioner briefing paper) is that

☹️ and (C) should not be used together for the same information.

In addition the public interest test must be laid out with pros and cons, and additional material arguments due to application of that exemption.

Although the exemption will often be applied to advice or to an exchange of views, it can apply to other types of information.

What is important is whether the disclosure would have an inhibiting effect on the provision of advice or on the exchange on views.

“Likely”

20. The exemptions in section 30(b) can only be applied where disclosure would, or would be likely to, cause substantial inhibition.

There must be at least a significant probability that substantial inhibition would occur in order for the exemption to be appropriately applied. There must be a genuine link between disclosure and inhibition: it

cannot simply be a remote or hypothetical possibility.

“Substantial inhibition”

21. “Inhibit” is not defined in FOISA. This is the only exemption in FOISA where this terminology is used. In the context of section 30(b), it means to restrain, decrease or suppress the freedom with which opinions or options are expressed.

The inhibition caused by disclosing the information must be of real and demonstrable significance, rather than simply marginal, before the exemption can be applied.

Factors to consider

22. When assessing whether disclosure will cause substantial inhibition, an authority should consider the content of the information and the circumstances in which it was created.

I see no reason to believe that The Director of Environment has considered these facts.

Factors to consider may include:

(i) the identity or status of the author and/or the recipient. There may be an inherent sensitivity in the fact that advice or views were passed from one person to another, depending on the relationship between those parties. Where advice or views are communicated and received as part of an individual’s day-to-day professional functions, for example, then the risk of substantial inhibition may well be diminished.

(ii) the circumstances in which the advice or views were given. The context in which the communication took place might be relevant; for instance, views might be more sensitive during policy formulation or other discussions.

(iii) the sensitivity of the advice or views. The subject matter and content of the advice and opinions, as well as the way in which the advice or opinion is expressed, are likely to be relevant when determining

whether the exemption applies.

23. See Appendix 1: Resources for examples of the Commissioner's decisions on section 30(b).

A chilling effect?

24. Some public authorities have argued that disclosing any advice or views makes it inevitable that officials will conclude that other internal communications will probably have to be disclosed, thereby inhibiting the way in which advice or views are given in the future.

This is sometimes known as "the chilling effect".

25. The Commissioner does not accept that the disclosure of advice or views in one case will have a substantially inhibiting effect in all others.

The exemptions in section 30(b) must not be treated as "class exemptions". (Class exemptions – such as the exemptions in section 29 – allow information to be withheld if it falls into a particular category, e.g. Ministerial communications.)

With section 30(b), authorities must consider the content of the information before deciding whether disclosure would, or would be likely to, cause substantial inhibition.

26. The Commissioner believes officials are capable of understanding that some information of a particular type may be disclosed, while other information of the same type may be withheld, depending on the circumstances. Decisions are always taken on a case-by-case basis: disclosing advice or views in one case does not imply that information in another case will also have to be disclosed.

The Commissioner's decisions since FOISA came into force back this up.

27. The Commissioner recognises that the general right of access provided by FOISA must be balanced against the need to protect genuinely sensitive information.

However, this does not justify a blanket exemption on all internal communications for fear that officials will react negatively to the release of information.

Instead, public authorities should assess the effect Page 5 of disclosing the information in question before applying either of the exemptions in section 30(b).

28. The Court of Session agreed with this approach in the case of *Scottish Ministers v Scottish Information Commissioner* [2006] CSIH 8 (see Appendix 1: Resources).

In their appeal, the Ministers argued that the Commissioner had erred in law by not recognising the possibility that, although the section 30 exemptions were not class based exemptions, they might apply to a class of documents, irrespective of the actual content of the documents.

The Court disagreed, saying that individual documents had to be scrutinised to establish whether they contain information which, when read in the context of related information, would, or would be likely to, have the specified harmful effect.

Only after such scrutiny is it possible to say whether the information concerned would, or would be likely to, have such an effect.

The public interest test

29. If the exemption applies, the authority must go on to consider the public interest in relation to the information – see section 2(1)(b) of FOISA.

This means assessing whether, in all the circumstances of the case, the public interest is better served by disclosing the information or maintaining the exemption.

The authority must identify and set out the competing arguments as to why the public interest would be served not only by disclosing the information, but also by withholding it.

Having identified the public interest arguments on each side, the authority must then carry out an exercise to determine where, on balance, the public interest lies.

There is an in-built presumption in FOISA that it is in the public interest to disclose information unless a public authority can show why there is a greater public interest in withholding the information.

30. FOISA does not define the term “public interest”, but it has been described as “something which is of serious concern and benefit to the public.”

It has also been said that the public interest does not mean what is of interest to the public, but what is in the interest of the public.

The Commissioner has published guidance on the public interest test – see Appendix 1: Resources.

31. There is clearly a strong public interest in protecting the effective conduct of public affairs.

The Commissioner has generally found that this public interest outweighs the public interest in disclosure of information where the effective conduct of public affairs is, or is likely to be, substantially harmed.

However, there have been a few cases where a strong public interest in disclosure has swung the balance in favour of disclosure.

For an example of a decision where this happened, see Appendix 1: Resources. Section 30(c) – the effective conduct of public affairs

32. Information is exempt under section 30(c) of FOISA if disclosure would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

The use of “otherwise” makes it clear that the exemption can’t be used to withhold information where disclosure would harm the maintenance of collective responsibility or inhibit the free and frank exchange of advice or views.

In those cases, section 30(a)/(b) should be applied instead. (Of course, in some cases the exemptions may also apply but for different reasons.)

33. This makes it extra important, when applying the exemption, for authorities to demonstrate how and why disclosure would harm the effective conduct of public affairs.

Authorities should be able to explain which aspects of their business would be affected, and in what way, and be able to show why this outcome would result from disclosure of the information requested.

I understand that it is my right to have a response within 20 working days....a prompt response will be much appreciated.

I would appreciate if you would acknowledge receipt of this Request for Review.

Thanks

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