

From: [Foi Enquiries](#)
To: [REDACTED]
Subject: EIR-17-0983 - High Hedges
Date: 31 July 2017 14:44:49
Attachments: [Further Information - Right to Review & Appeal.pdf](#)
[EIR-17-0983 - CHI Bulletin High Hedge 2015Mar19_Redacted.pdf](#)
[EIR-17-0983 - High Hedge Act Guidance - legal opinion_Redacted.pdf](#)

Dear [REDACTED],

Thank you for your information request of 11 July 2017. Aberdeen City Council (ACC) has completed the necessary search for the information requested.

Please provide all correspondence between Aberdeen City Council and the Scottish Government that relate to High Hedge (Scotland) Act 2013.

This would include any correspondence with the Ministers that have presided over the Act since 2013.

Correspondence between Aberdeen City Council, the Scottish Government and ministers that have presided over the Act since 2013 already exists in the public domain. The relevant documents can be accessed via the Scottish Parliament website at the following links;

<http://www.gov.scot/Publications/2009/12/11111246/0> (Document Aberdeen City Council HH107 and HH515)

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103417.aspx>

There is no further correspondence held which falls within the criteria of your request.

As **all correspondence between Aberdeen City Council and the Scottish Government that relate to High Hedge (Scotland) Act 2013** is otherwise accessible at the links provide above, it is exempt from disclosure. In order to comply with its obligations under the terms of Regulation 13 of the EIRs, ACC hereby gives notice that we are refusing your request under the terms of Regulation 6(1)(b) - Information Already Publicly Available - of the EIRs.

Please provide any minutes of meetings that have been held in conjunction with the Scottish Government around the High Hedge Act

Presumably there would have been a roll out of the Act back in 2013 and there would have been some consultancy done between the Government and the Local Authorities to ensure that the Act could be reasonably have been implemented by the authorities

Minutes of meetings and consultation responses associated with the High Hedges (Scotland) Act held in conjunction with the Scottish Government and Aberdeen City Council already exist in the public domain. The relevant documents can be accessed via the Scottish Parliament website at the following links;

<http://www.gov.scot/Publications/2009/12/11111246/0> (Document Aberdeen City Council HH107 and HH515)

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103417.aspx>

As **minutes of meetings/consultancy that have been held in conjunction with the Scottish Government around the High Hedge Act** is otherwise accessible at the links provide above, it is exempt from disclosure. In order to comply with its obligations under the terms of Regulation 13 of the EIRs, ACC hereby gives notice that we are refusing your request under the terms of Regulation 6(1)(b) - Information Already Publicly Available - of the EIRs.

Please provide any minutes of meetings held between those council officials who preside over the Local Authorities jurisdiction of the High Hedge Act Scotland

Internal meetings with accompanying minutes are limited to a report to the Communities, Housing and Infrastructure Committee regarding the setting of High Hedge (Scotland) Act application fees. The report and committee minutes already exist in the public domain; the relevant documents can be accessed via the Aberdeen City Council website at the following link;

<https://committees.aberdeencity.gov.uk/ieListDocuments.aspx?CId=140&MIId=2899>

The minute of the above committee refer to the request that officers monitor the level of applications submitted, including the reasons for non-submission, and that a report be submitted in twelve months' time in this regard, which would also consider whether the level of fee was appropriate, taking into account data on the number of applicants who had been prevented from submitting an application due to the fee level. This report was submitted as a bulleting on 19th March 2015, a copy is attached. See document CH&I Bulletin High Hedge 2015Mar19.

As **minutes of meetings held between those council officials who preside over the Local Authorities jurisdiction of the High Hedge Act Scotland** is otherwise accessible at the links provide above, it is exempt from disclosure. In order to comply with its obligations under the terms of Regulation 13 of the EIRs, ACC hereby gives notice that we are refusing your request under the terms of Regulation 6(1)(b) - Information Already Publicly Available - of the EIRs.

e.g. meetings occurring between multiple councils where legislative matters around the enactment of the High Hedge Act have been discussed assuming that these have occurred as was anecdotally sited during the High Hedge scrutiny

Aberdeen City Council have attended a number of workshops where legislative matters around the enactment of the High Hedge Act have been discussed.

This included two workshops hosted by the National Improvement Service for Local Government in Scotland (Improvement Service); the initial meeting (March 2014) related to the implementation of the Act, the second meeting was held one year after the implementation of the Act (March 2015). Aberdeen City Council have no records to suggest minutes were taken during this event and are not aware of minutes being circulated post event.

In addition Aberdeen City Council has attended the Scottish Tree Officer Group (STOG). STOG is an informal gathering of local authority staff that deal with arboricultural related matters; no minutes are taken of these meetings.

I would like to see information on ACC's review of what they legally consider constitutes a 'hedge' that ACC's legal team conducted around October 2016 under Mr Kevin Wright's lead

The Environmental Information (Scotland) Regulations 2004, regulation 10 5(d) permits a local authority to refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially the confidentiality of the proceedings of any public authority where such confidentiality is provided for by law. The information requested comprises legal advice which embraces the rules applying to legal professional privilege. This advice has been given in context of legal advisor and client and is therefore subject to legal advice privilege.

It is our consideration that the above exemption applies in relation to the information requested. However; it is our further consideration that on this occasion we are willing to release the information.

An opinion was sought from Aberdeen City Council's legal team in relation to changes made to the High Hedges (Scotland) Act 2013 – Guidance to Local Authorities. Correspondence relating to the request for an opinion and our legal teams response is enclosed. See document High Hedge Act Guidance – legal opinion.

We hope this helps with your request.

Yours sincerely,

Grant Webster
Information Compliance Officer

INFORMATION ABOUT THE HANDLING OF YOUR REQUEST

As the information which you requested is environmental information, as defined under Regulation 2(1) of the Environmental Information (Scotland) Regulations 2004 (the EIRs), ACC considered that it was exempt from release through FOISA, and must therefore give you notice that we are refusing your request under Section 39(2) of FOISA (Freedom of Information (Scotland) Act 2002). However, you have a separate right to access the information which you have requested under Regulation 5 of the EIRs, under which ACC has handled your request. Please refer to the attached PDF for more information about your rights under the EIRs.

Information Compliance Team
Customer Service
Corporate Governance
Aberdeen City Council
3rd Floor North
Business Hub 17
Marischal College
Broad Street
ABERDEEN AB10 1AQ

foienquiries@aberdeencity.gov.uk

Tel 03000 200 292

*03000 numbers are free to call if you have 'free minutes' included in your mobile call plan.
Calls from BT landlines will be charged at the local call rate of 10.24p per minute (the same as 01224s).

www.aberdeencity.gov.uk

BULLETIN REPORT

Name of Committee: Communities, Housing and Infrastructure

Date of Meeting: 19th March 2015

Title of Report: High Hedge (Scotland) Act 2013

Lead Officer: [REDACTED]

Author of Report: [REDACTED]

Summary of Purpose of Report

The committee requested at their meeting held on 13th march 2014 that applications to Aberdeen City Council for the serving of High Hedge notices under the High Hedge (Scotland) Act 2013 be monitored. Officers were required to monitor the level of applications submitted, including the reasons for non submission, and submit a report in twelve months time.

Since the Act came into force in April 2014 we have received 2-3 informal enquiries per month.

Three formal applications for the serving of a High Hedge Notice have been submitted. One application was dismissed as the applicant had not complied with their duty to take reasonable steps to resolve the matter prior to applying for the serving of a notice. A further application was dismissed as the application was deemed to be frivolous as the row of trees in question were not considered to be a hedge. The third application is on-going.

Reasons identified for non-submission by enquirers include;

- Confirmation that the barrier in question does not constitute a hedge;
- An unwillingness to comply with section 3(1) of the Act. Section 3(1) relates to the pre-application requirements whereby the applicant must take reasonable steps to resolve the matter prior to making an application;
- Pre-application efforts have resulted in an amicable agreement between parties negating the need for a formal application
- The fee associated with making an application (Only one enquirer has clearly indicated that the fee associated with the application has acted as a barrier to making an application).

The level of applications and reasons for non-submission will continue to be monitored.

From:
To: [REDACTED]
Subject: RE: High Hedges
Date: 27 September 2016 10:28:03
Attachments:

Hi [REDACTED]

I have had a look through the guidance and the legislation. Although there is guidance available on this, it is important that the legislation is also considered in this.

The 2013 Act at section 1 defines what a high hedge is:

This Act applies in relation to a **hedge** (referred to in this Act as a "*high hedge*") which—

- (a) is formed wholly or mainly by a row of 2 or more trees or shrubs,
- (b) rises to a height of more than 2 metres above ground level, and
- (c) forms a barrier to light

On reading this, my interpretation is that for it to be a high hedge, the **hedge** has to be of certain characteristics. In addition, the new guidance does state at page 36 under the Right of Appeal section that there is no right to appeal where the application is not valid ie. Not a **hedge** as set out in the 2013 act.

I think this forms a good argument to support your position below. I am unsure of the ins and outs of the cases you are dealing with at the moment but if either of the parties were to submit a fresh applications, they would have to be considered again on their own merits and it could be that they now are classed as hedges for the purposes of the Act.

Hope that helps to answer your question – please let me know if you need anything further.

Kind regards,

| Solicitor (Planning and Environment) | Legal & Democratic Services |
Corporate Governance | Aberdeen City Council | Business Hub 6 | Level 1 South | Marischal
College | Broad Street | Aberdeen | AB10 1AB | Direct Dial: 01224 | Fax: 01224 |
Email: | Website: www.aberdeencity.gov.uk

From: [REDACTED]
Sent: 26 September 2016 16:26
To:
Subject: RE: High Hedges

Hi,

Happy to send images through if that is helpful. Could I just clarify though, we are not necessarily looking for an opinion on a particular case although we have two current cases which are relevant.

Apologies if I am just repeating what has passed on but I thought it may be useful to outline what we are seeking an opinion on.

To accompany the Act a document entitled guidance to local authorities was produced. The original guidance clearly stated 'For trees or shrubs to be considered as a high hedge they must first be a hedge' (Page 11 sub. section 'Hedges')

This guidance has now been revised and the above statement removed. The revised guidance merely describes what defines a high hedge (page 11)

Whilst the guidance has changed, my interpretation is that we still need to consider the trees and shrubs in question to form a hedge before we can consider them as a high hedge. The issue we are facing are claims that both a group of trees in one scenario and a line of trees in another scenario are high hedges as they meet the definition of a 'high hedge' whilst not, at least in our opinion, meeting the definition of a hedge.

If you still want images just let me know and I will send them through, equally if it's easier to catch up and discuss just let me know and we can arrange.

Thanks [REDACTED]

[REDACTED]
Environmental Planner

Planning and Sustainable Development
Communities, Housing and Infrastructure

Aberdeen City Council

Business Hub 4
Ground Floor North
Marischal College
Broad Street
Aberdeen
AB10 1AB

Email: [REDACTED]@aberdeencity.gov.uk