

Uncovering the Environment: The Use of Public Access to Environmental Information

A summary report of an ESRC-funded project examining whether the policy of providing access to environmental information has successfully engaged the public and achieved the intended environmental benefits.



Prepared by:

Professor Colin Reid

Dr Jonathan Mendel

Dr Sean Whittaker



University
of Dundee

Summary

The right of access to environmental information was guaranteed in Scotland in order to meet the international obligations enshrined in the Aarhus Convention. Information can be sought by all members of the public, including professional users, who each hold different motives for seeking to access environmental information. Generally, users of the right seek out environmental information about their local area and are predominantly concerned about planning issues.

In seeking access to environmental information, almost all users will first look towards sources of proactively disclosed environmental information, such as public authority websites. Following this, users will then submit a request for environmental information under the Environmental Information (Scotland) Regulations 2004.

In responding to these requests, Scottish public authorities usually disclose most, if not all, of the environmental information requested. The authorities also generally adhere to the time limits imposed on them, and do not usually charge for environmental information. As a result, Scottish public authorities generally comply with their legal obligation to disclose environmental information and their procedural obligations under the Regulations.

However, despite this compliance many users are dissatisfied with how Scottish public authorities provide access to environmental information and how they enable participation in environmental decision-making procedures. In particular, there is a general perception that Scottish public authorities do not wish for users to influence environmental decision-making procedures in a meaningful way. This is reflective of a key mismatch between the authorities' procedural concerns and users' substantive concerns on the content and impact of environmental decisions. In order to remedy this mismatch, both users and public authorities need to better understand the underlying aims of guaranteeing the right in Scotland and incorporate it into their engagement with the right.

Introduction

The right to access information held by public authorities has been a major feature in changes to governance in recent decades. Parallel to this has been the establishment of a specific right to environmental information, which has priority over the general right to access information. Driven by the Aarhus Convention and the EU, the right has been implemented in Scotland by the Environmental Information (Scotland) Regulations 2004 (the Regulations). A key aim of the right is to promote public participation in environmental decision-making processes in order to improve the quality and implementation of environmental decisions.

However, it is unclear why users of the right seek out environmental information in practice. The right assumes that users want to participate in environmental decision-making procedures, but it discounts other ways that users can utilise disclosed environmental information. This is significant, as the assumptions underpin Scotland's environmental information regime yet may not actually reflect how users and Scottish public authorities engage with the right in practice.

It is here that the ESRC-funded project at the University of Dundee explored how users and public authorities engaged with the right to environmental information. Through surveys and interviews with users and Scottish public authorities, the project examined who seeks to access environmental information, how they seek out such information and how Scottish public authorities discharge their obligations under the Regulations. Further, the project also analysed how users of the right actually use the environmental information they access and whether Scottish public authorities provide opportunities to engage in environmental decision-making processes.

Users of the Right to Environmental Information

The basic idea underpinning the right to environmental information is that Scottish public authorities should not factor in the identity or the motive of the user when choosing to disclose environmental information. This idea is applied to avoid public authorities selectively disclosing or withholding environmental

information. Yet despite this approach the identity of the user is important, as it impacts on how effectively they can seek environmental information and engage with environmental decision-making procedures. Users can broadly be divided into two groups: “personal users”, who are individuals that seek to access environmental information that directly impacts on their lives and “professional users”, who seek to access environmental information as part of their job.

Personal Users of the Right to Environmental Information

In Scotland the majority of users seeking environmental information under the right are “personal users”. “Personal users” are usually members of the public who are seeking to alter a public authority’s course of action (or inaction) and are seeking environmental information in order to better oppose the authority.

As “personal users” are usually members of the public they do not tend to have expertise in the subject area or professional contacts within the public authority they are seeking information from. Consequently, in order to access environmental information, the public authority must either proactively disclose it or the “personal user” must submit a request to the authority under the Regulations. This ties users into using the formal methods of accessing environmental information, which is not the case for “professional users”.

Professional Users of the Right to Environmental Information

In contrast with “personal users” are “professional users”. While this group of users make up a smaller proportion of users who submit requests in Scotland they cover a wide range of professions, including journalists, lawyers, and parliamentary researchers. These users tend to not be driven by personal motivations, instead seeking to access environmental information in order to use it on behalf of others or to pass it on to interested individuals.

“Professional users” are further distinguished from “personal users” because they often have specialist expertise or professional contacts in the public authority they are seeking information from. This is significant because their expertise empowers “professional users” to better find and understand environmental information than “personal users. Further, “professional users”

may bypass the Regulations and directly ask for environmental information from their contacts. As a result, “professional users” are able to use the right more effectively than “personal users”.

What Environmental Information is Sought?

Generally, users of the right in Scotland seek environmental information that relates to a local area rather than environmental information at the national or global scale. This interest in local matters reflects the fact that the majority of users are seeking environmental information due to a decision or issue that affects them directly.

In terms of the subject matter of the environmental information being sought, the majority of requests were about buildings, infrastructure, and planning issues. Other common subjects that were requested were transportation, animals, financial budgets, and waste management. The frequency of planning matters arising as the subject of interest reflects the historical availability of information relating to planning proposals. This frequency may also reflect the greater cultural expectation for individuals to be able to participate in planning matters in comparison to other environmental issues.

Disclosure of Environmental Information in Scotland

Proactive Disclosure of Environmental Information

Proactively disclosed environmental information is information which is made available by Scottish public authorities without needing the information to be specifically requested. In Scotland, such environmental information constitutes the primary method by which users initially seek to access environmental information. Almost all users seek out proactively disclosed environmental information online, reflecting the increased role of technology in implementing the right in Scotland.

Many users seeking out proactively disclosed environmental information highlighted that they would follow up these efforts by submitting a request directly to relevant Scottish public authority. Users did this because they either could not find the information they were searching for or because they desired

additional information that had not been made available. This is important because it suggests that public authorities will not reduce the number of requests for environmental information through greater proactive disclosure efforts, in turn not reducing the pressure of having to respond to such requests. Despite this however, many Scottish public authorities are seeking to expand how much information they proactively disclose on the basis of being accountable to and transparent with the general public.

Responding to Requests for Environmental Information

A key component of the Regulations is the procedural obligations imposed on Scottish public authorities in responding to requests for environmental information. These obligations not only encapsulate the decision to disclose or withhold the requested environmental information, but also how such a decision is taken. As such, how public authorities respond to requests constitutes a core aspect of their interactions with users of the right.

Submitting Requests for Environmental Information

In terms of submitting requests under the Regulations, Scottish public authorities are receiving more requests than in previous years. One issue that was commonly identified by Scottish public authorities is that requests are generally phrased in vague or incorrect terms. One potential reason for this method of phrasing requests is because users distrust public authorities and believe that they will interpret the request unduly narrowly. While requesters felt that this was the best way to ensure they received an adequate response to their requests, authorities felt that they could not reasonably interpret these requests without further clarification. This, in turn, leads to further delays which aggravates both users and public authorities.

Disclosing environmental information under the Regulations

In terms of whether users get access to the environmental information that they requested, approximately 62% of requests result in the full disclosure of the requested information. Below this, approximately 28% of requests result in partial disclosure and 10% of requests result in no environmental

information being disclosed as a result of the authority applying on the exceptions to the duty to disclose and withholding the requested information. These statistics suggest that the majority of users will get either all or some of the environmental information that they are seeking.

It is important to highlight that withholding environmental information is (mostly) a legitimate method of protecting sensitive information, such as personal or commercial data, from being disclosed. As such, withholding environmental information from disclosure does not indicate that the authority has failed in its duty to guarantee the right.

Users whose requests led to full disclosure were generally satisfied with how the public authority processed their request for environmental information. However, users whose requests led to either partial or no disclosure were equally unsatisfied with the Scottish public authority. This is notable as it indicates that the partial disclosure of environmental information does not satisfy users of the right, despite the fact that it is viewed as a positive outcome by Scottish public authorities.

[Time Taken to Respond to Requests for Environmental Information](#)

Regardless of how much environmental information is disclosed, users are generally dissatisfied with the length of time taken by Scottish public authorities to process their requests for environmental information. Complaints were centred on the belief that authorities did not respond “as soon as possible”. Yet 88% of requests received by Scottish public authorities are responded within the 20-day timeframe imposed by the Regulations. Indeed, many authorities believed that the current 20-day timeframe struck the correct balance between the user’s need for timely disclosure and the authority’s need to ensure the information is suitable for disclosure and redact any sensitive information.

Such a conflict of views highlights the differing opinions of both users and public authorities and represents a broader overarching conflict between the two groups. Far from believing that Scottish public authorities act in the public interest, users of the right who were interviewed generally perceived

authorities as “obstructive” and “unhelpful”. This view contrasted with those of public authorities who believe that user was generally satisfied with how requests were processed because they receive few requests to conduct internal reviews. This suggests a significant disconnect between users and Scottish public authorities, which feeds into the negative views of the users and participation in environmental decision-making procedures.

Charges for environmental information

Under the Regulations, public authorities are allowed to charge for the disclosure of environmental information. In line with these powers, the majority of Scottish public authorities set out fee schedules enabling them to levy such charges. However, despite these schedules the majority of Scottish public authorities do not charge for disclosing environmental information.

While this lack of charging can be viewed as beneficial to users, the fact that most public authorities set out fees implies that they are willing to charge when appropriate. In turn, this can result in individuals being dissuaded from submitting requests as they are unaware of the general practice of not levying charges. Consequently, the use of fee schedules should be changed to truly reflect how Scottish public authorities levy charges in practice.

Reviewing decisions made by Scottish public authorities

In challenging how Scottish public authorities respond to requests for environmental information users can request that the authority conduct an internal review of the decision. While users have an above average chance of receiving further information after an internal review, many users interviewed did not utilise the internal review procedure.

This was because they viewed the review process as “overly lengthy” and, consequently, the environmental information would no longer be of interest to them. Yet public authorities believe that they are successful in guaranteeing the right because they do not receive requests for internal review. This is problematic for users, who feel they cannot effectively enforce their right to environmental information.

Following an internal review, users of the right are also able to appeal to the Scottish Information Commissioner. Users and Scottish public authorities are generally satisfied with how the Scottish Information Commissioner hears and adjudicates on appeals under the Regulations. The only notable exception to this was a desire from both groups for the Commissioner to be more proactive in enforcing compliance with the Regulations. This may be a reform worth considering in the future, with the post-legislative scrutiny of the Freedom of Information (Scotland) Act providing an opportunity to implement it.

How Disclosed Environmental Information is Used

As previously indicated, the right of access to environmental information was designed to promote public participation in environmental decision-making procedures. However, while this is the primary aim of the right users do not feel as though they can effectively participate in such procedures. Further, Scottish public authorities generally do not perceive public participation as the primary reason for guaranteeing the right.

Using environmental information disclosed under the right

Environmental information disclosed under the right is used for a variety of purposes. A minority of users will utilise the disclosed information to write about environmental subjects. A larger proportion of users will seek out environmental information to become more informed on a subject and to discuss it with others. The most common use of the disclosed information, however, is for users to engage with or oppose a decision taken by a Scottish public authority.

While this suggests that the right is meeting its participative aims, many users do not seek to engage with formal decision-making procedures in order to protect the environment. While some users do hold altruistic motives to protect the environment for everyone's benefit, the majority of users tend to hold personal or professional motives in seeking to access environmental information and participating in environmental decision-making processes.

This in turn raises a fundamental question: does the existence of non-environmental motives undermine the benefits derived from public participation in environmental decision-making procedures? It is argued that personal motives are inherently selfish, and do not improve the environment. Yet this discounts the possibility of users holding multiple motivations: users can hold personal and environmental motives.

Further, even purely personal, local motives can have a positive impact on the environment. As these users are scrutinising the information disclosed by public authorities, they can force authorities to ensure that they have followed the correct procedures and that they can justify their decisions. Consequently, such scrutiny can lead to environmental decisions being improved, which in turn further protects the environment.

Are users satisfied with the opportunities provided to them by Scottish public authorities?

Where users of the right seek to engage with public authorities on the basis of environmental information disclosed to them, they generally do so on an informal basis. Generally, users of the right believe that Scottish public authorities do not provide adequate opportunities for them to feed into formal decision-making processes. Further, even when such formal opportunities are provided users do not believe that their concerns or views will be reflected in the final decision made by the authority.

This raises two issues. First, the perception that Scottish public authorities do not promote public participation in environmental decisions undermines the core aim of the right. This disconnect between the participative aims of the right and the transparency concerns of the authority has the potential to create a mismatch of expectations between the two groups.

Second, there is an expectation from users that their participation will alter the decisions taken by Scottish public authorities. However, the right only states that there will be an increased correlation between the concerns of citizens and the decision taken: not that the decision will be fundamentally altered. This is often not satisfactory for users, who often expect public authorities to

change key elements of a decision to fit their views and interests and can create further conflict.

Concluding Remarks

There is a clear appetite from the general public to be able to access environmental information held by Scottish public authorities. This is the case even though awareness of the legal right of access is low and especially of the existence of a specific environmental right, distinct from the more general rules on freedom of information. Scottish public authorities also desire to disseminate environmental information to the public where appropriate and have generally met the legal obligations to disclose environmental information proactively and on request. Despite this however, many users are dissatisfied with how environmental information is disclosed and the opportunities to use this information in environmental decision-making procedures.

This dissatisfaction reflects the different views held by both users, who want a major say in environmental decisions, and Scottish public authorities, who appear to not fully consider the opinions of the public in environmental matters. Such a gap between the views of both groups is problematic, as the lack of direct impact may dissuade users to not seek environmental information or engage with environmental decision-making procedures.

Such a conflict is representative of a broader lack of clarity on the relationship between the right to environmental information and the right to participate in environmental decision-making procedures. While the procedural elements in guaranteeing both rights are clear, the extent of which users should expect to be able to participate in and influence environmental decisions is not. By clarifying the underlying aims of the right and identifying how users and public authorities depart to these aims, the project seeks to enhance how the right is guaranteed in Scotland.

To align expectations and perceptions of the right with the right's underlying aims, the project proposes that Scottish public authorities explicitly link information disclosure processes with participatory mechanisms. Such a link may act to meet users' expectations of being able to better influence

environmental decisions. Further, the project suggests that users and potential users should be realistic in the influence they wish to exert over environmental decisions and recognise that the right to access environmental information will not allow them to successfully influence every decision taken by a public authority. By clarifying the respective roles of users and public authorities, it is hoped that the role of the general public in protecting the environment is further solidified and improve how the right achieves its environmental protection goals.

For further information

- contact Professor Reid at c.t.reid@dundee.ac.uk
- contact Dr Mendel at j.m.mendel@dundee.ac.uk
- contact Dr Whittaker at s.x.whittaker@dundee.ac.uk
- or visit the project's website at <https://sites.dundee.ac.uk/envinfo/>

Fuller examination of many of the issues discussed here can be found in the following publications:

- S Whittaker, J Mendel and C Reid, "Back to Square One: Revisiting How We Analyse the Right of Access to Environmental Information" (2019) 31(3) *Journal of Environmental Law* 465
- S Whittaker, C Reid and J Mendel, "Uncovering the Environment: The Use of Public Access to Environmental Information" (2019) 193 *Scottish Planning and Environmental Law* 57
- S Whittaker, C Reid and J Mendel, "Charging for environmental information: does practice meet theory?" (2018) 30(4) *Environmental Law and Management* 91
-
- Whittaker, Mendel & Reid: Breathing Life Into the Right of Access to Environmental Information: Comparing Aims and Practice (2017) 25(6) *Environmental Liability* 229