



Scottish Information
Commissioner
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Decision Notice 119/2025

Planning email

Applicant: The Applicant
Authority: Scottish Ministers
Case Ref: 202401187

Summary

The Applicant asked the Authority for information that had been redacted from an email relating to a planning application published on the Authority's website. The Authority responded under the EIRs and disclosed the information requested. The Applicant did not believe that the information disclosed was the information that had originally been redacted. The Commissioner investigated and found that the Authority had considered the request under the wrong legislation. The requested information was not environmental information, and the Authority should have considered the request under FOISA. However, the Commissioner was satisfied that the Authority had disclosed the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 47(1) and (2) (Application for decision by Commissioner)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of "the Act", "applicant" and "the Commissioner") (Interpretation); 5(1) (Duty to make environmental information available on request); 17(1), (2)(a),(b) and (f) (Enforcement and appeal provisions)

Background

1. On 11 December 2023, the Applicant made a request for information to the Authority. She referred to a [specific planning application](#)¹ and requested that, among other things, the Authority provide her with an unredacted version of a specific email.
2. The Authority responded on 22 December 2023 in terms of the EIRs. It disclosed “the information requested with the relevant element you refer to unredacted” but explained that some information in this document remained redacted under the exception in regulation 11(2) of the EIRs, on the basis it was third party personal data.
3. On 13 February 2024, the Applicant wrote to the Authority requesting a review of its decision. She was dissatisfied with the Authority’s decision because she did not believe what was disclosed was a “true and exact representation of the redacted element” and explained why.
4. The Applicant wrote to the Authority on 25 March 2024 indicating that she had not received a response to her requirement for review within the timescale permitted by regulation 16(4) of the EIRs.
5. The Authority notified the Applicant of the outcome of its review on 26 March 2024, with an apology for the delay in responding. It informed the Applicant that it was longer relying on the exception in regulation 11(2) of the EIRs to withhold information and it disclosed that information to her.
6. On 3 September 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated that she was dissatisfied with the outcome of the Authority’s review because she did not accept that the information disclosed was the information redacted from the published email.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 12 November 2024, the Commissioner gave the Authority notice in writing of the application. The Authority was also asked to send the Commissioner the information withheld from the Applicant. The Authority responded that no information was withheld from the Applicant.
9. The case was subsequently allocated to an investigating officer.
10. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on the application and to answer specific questions, relating to its handling of the request and to the Applicant’s belief that it had not disclosed to her the information it had originally redacted from the email in question.

Commissioner’s analysis and findings

¹ <https://www.dpea.scotland.gov.uk/CaseDetails.aspx?ID=123135>

11. The Commissioner has considered all the submissions made to him by the Applicant and the Authority.

FOISA or the EIRs?

12. The Authority handled the Applicant's request under the EIRs. Environmental information is defined in regulation 2(1) of the EIRs. Where information falls within the scope of this definition, a person has a right to access the information under the EIRs, subject to various restrictions and exceptions contained in the EIRs.
13. The Applicant has not disputed the Authority's decision to handle the request under the EIRs and the Commissioner can see no detriment to the Applicant by considering her request under the EIRs rather than FOISA.
14. The Authority explained that the request related to information on a planning appeal and planning matters. It considered the information requested fell within the definition of environmental information in regulation 2(1) of the EIRs (in particular paragraph (c)).
15. While the Commissioner accepts that requests for information on planning appeals and planning matters are likely to generally constitute requests for environmental information, he must consider the specific information being requested.
16. The information requested by the Applicant relates to a specific email uploaded in relation to a specific planning application. The email in question stated, "Apologies for delay forwarding this - ...", with the next sentence redacted. The Applicant requested the redacted sentence.
17. In this case, the redacted sentence comprises a passing remark made by the author of the email in question relating to her health. In the circumstances, the Commissioner considers the connection between this specific information and the environment to be too remote to bring it within the terms of the definition in regulation 2(1) of the EIRs.
18. The Commissioner therefore finds that the Authority was wrong in this instance to respond to the request in terms of the EIRs. However, as the Commissioner cannot, as stated above, see any detriment to the Applicant by considering her request under the EIRs rather than FOISA, he does not require the Authority to take any action in response to this failure.
19. Given his conclusion that the information requested cannot be regarded as environmental information, the Commissioner will consider the handling of the request in what follows solely in terms of FOISA.

Section 1(1) of FOISA – General entitlement

20. Section 1(1) of FOISA provides that a person who requests information from a Scottish public authority which holds it is entitled to be given that information by the authority, subject to qualifications which, by virtue of section 1(6) of FOISA, allow Scottish public authorities to withhold information or charge a fee for it. The qualifications contained in 1(6) are not applicable in this case.
21. The information to be given is that held by the authority at the time the request is received, as defined by section 1(4) of FOISA.

The Applicant's submissions

22. The Applicant provided detailed arguments in her application to the Commissioner. These arguments are not repeated in full here, but the Commissioner has carefully considered them.
23. In summary, the Applicant believed that the information provided to her as the information redacted from the specific planning email on the Authority's website did not, in fact, represent the redacted information.
24. The reasoning for the Applicant's belief has two main parts:
 - (i) there were many discrepancies between the redacted and unredacted emails provided to the Applicant. She identified 14 examples of such discrepancies and did consider they could be explained by the use of different Adobe file tools or by conversion of the emails.
 - (ii) the information originally redacted from the published email (and subsequently disclosed to her) was innocuous.

The Authority's submissions

25. The Authority confirmed it disclosed an unredacted version of the email in question to the Applicant as part of its review outcome dated 7 March 2024. As such, no information remained withheld from the Applicant.
26. The Authority recognised that the Applicant considered versions of the document in question might appear different and it noted the differences she had highlighted.
27. To publish to the Planning and Environmental Appeals Division (DPEA) website, the Authority explained that a document must be converted to pdf format – it cannot publish documents in any other format. For accessibility, it also uses pdf Optical Character Recognition (OCR) when processing for publication. Both the pdf and OCR facilities allow parties viewing the document to scan and search text. OCR also allows for users who are blind and visually impaired.
28. Most commonly, documents not already in pdf are converted either by means of "save as pdf" or "print to Adobe (pdf)". Either version may be used, depending on the original format. Different options may also only be available or usable dependent on those versions, e.g. case officers will use 'save as pdf' where working hyperlinks are held in the correspondence, to ensure that those links remain active for parties viewing. Where "print to pdf" is used, links are often disabled and therefore not appropriate. Similarly, where documents are very large the best method may be to use print to pdf and reduce size for publication.
29. The Authority submitted that use of these different Adobe tools might capture some slight differences and explained why these documents appeared different.
30. During the investigation, the Authority was asked whether it still had a copy the original email of 5 December 2023 that had been converted to pdf and published on the DPEA website.
31. The Authority responded that it did not hold an original copy of the email of 5 December 2023. However, it explained it had held the original of the acknowledgement of the email of 5 December 2023, which contained the email of 5 December 2023 within the email chain. It confirmed that both the pdf and email of 5 December 2023 contained within the email chain had been disclosed to the Applicant as part of the review outcome.

32. The Authority rejected in “the strongest possible terms” the suggestion that anyone involved in this case had altered documents to deceive parties viewing information on its website.

The Commissioner’s view

33. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities.
34. Having considered all the relevant submissions, the Commissioner accepts that the Authority has provided to the Applicant the information it holds that falls within the request. While the Applicant does not believe the Authority has provided her with the information that was originally redacted, the Commissioner is satisfied that this was not the case. He accepts as plausible the Authority’s explanation for the apparent discrepancies in the emails provided to the Applicant.
35. The Commissioner is satisfied, on the balance of probabilities, that the Applicant has received all the information held by the Authority that falls within the scope of her request. He therefore finds that the Authority complied with section 1(1) of FOISA in responding to her request.

Timescales

36. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. This is subject to qualifications which are not relevant in this case
37. The Authority’s review outcome is dated 7 March 2024, but the Applicant was not notified of the outcome until 26 March 2024.
38. It is a matter of fact that the Authority did not provide a response to the Applicant’s requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

In particular, the Authority failed to comply with Part 1 of FOISA by:

- incorrectly categorising the information requested as environmental and in not responding to the request under FOISA, thereby breaching section 1(1) of FOISA
- not providing a response to the Applicant’s requirement for review within 20 working days, thereby breaching section 21(1) of FOISA.

However, the Commissioner is satisfied that the Authority disclosed to the Applicant all the information it held falling within the scope of the request.

Given that the Commissioner can see no detriment to the Applicant in the Authority responding to her request under the EIRs instead of FOISA and that it has issued its review outcome to her, he does not require the Authority to take any action in respect of these failures, in response to the Applicant’s application.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Euan McCulloch
Head of Enforcement

20 May 2025