



Scottish Information
Commissioner
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Decision Notice 123/2025

Fire risk assessment reports for specified hospitals

Authority: Greater Glasgow and Clyde Health Board

Case Ref: 202401549

Summary

The Applicant asked the Authority for the most up-to-date fire risk assessment reports for eight hospitals within its area. The Authority considered the request under FOISA and withheld the information requested on the basis of safeguarding the health, safety and welfare of persons at work. The Commissioner investigated and found that the Authority had considered the request under the wrong legislation. The requested information was environmental information and the Authority ought to have considered the request under the EIRs. The Commissioner required the Authority to respond to the request under the EIRs.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 39(2) (Health, safety and the environment); 47(1) and (2) (Application for decision by Commissioner).

Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of “the Act”, “applicant”, “the Commissioner” and paragraphs (b), (c) and (f) of definition of “environmental information”) (Interpretation); 5(1) (Duty to make environmental information available on request); 16 (Review by Scottish public authority); 17(1) and (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 25 September 2024, the Applicant made a request for information to the Authority. She asked for the most up-to-date and unredacted fire safety reports for the following hospitals within the Authority's area:
 - Queen Elizabeth University Hospital
 - Royal Hospital for Children
 - Inverclyde
 - Royal Alexandra Hospital
 - Glasgow Royal Infirmary
 - New Victoria Hospital
 - New Stobhill Hospital
 - Vale of Leven Hospital
2. The Authority wrote to the Applicant on 26 September 2024 seeking clarification of her request. It asked her to clarify whether, by reports, she was looking for fire risk assessment reports.
3. That same date, the Applicant clarified that she was seeking fire risk assessments.
4. The Authority responded on 9 October 2024. It considered the request under FOISA and refused to provide the information in terms of section 35(2)(i) of FOISA. The Authority stated that it considered the information to be exempt from disclosure in respect of safeguarding the health, safety and welfare of persons at work. The Authority explained that, as the information contained detailed information on floorplans, evacuation procedures, security systems and the location of hazardous substances, it believed that, if disclosed, criminals could use this information to infiltrate control measures which, in turn, would compromise arrangements designed to safeguard the security of staff, patients and visitors to the buildings. The Authority believed that the public interest in safeguarding specific information about its security arrangements from those seeking to harm staff or the public, outweighed that in providing assurance that its security was being managed robustly.
5. On 14 October 2024, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that she was dissatisfied with the decision because she believed it was in the public interest to know whether health boards were following the necessary fire demands put on them, and whether their hospital was at risk of fire. In her view, the strength of public interest outweighed the small possibility that disclosure of this information would be used for criminal activity. She further argued that similar documents had been disclosed by other public bodies.
6. The Authority notified the Applicant of the outcome of its review on 28 October 2024. The Authority fully upheld its original decision for the reasons previously stated. It further explained that the fire risk assessments detailed specific deficiencies that had been identified and the actions required for remediation. The Authority considered this to be information that could be used by criminals to harm staff, patients and visitors directly or indirectly via disruption to vital life and limb services. The Authority stated that the safety and well-being of its staff, patients and visitors was paramount and, as it had an obligation to protect health

and well-being, it was required to eliminate, not simply reduce, risks as they identified them. In terms of the duty to provide advice and assistance in section 15 of FOISA, the Authority provided a link to the [Scottish Health Technical Memorandum](#)¹ that provides comprehensive guidance to all Scottish NHS Boards on the implementation of robust fire risk assessments in their facilities.

7. On 26 November 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 believed the public interest lay in knowing whether health boards were following the necessary fire safety demands put on them and whether recommendations from risk assessors were being followed, and that this outweighed the small possibility that the information would be used for criminal activity. She also cited examples of other health boards that had disclosed the information.

Investigation

8. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
9. On 3 December 2024, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information and the case was subsequently allocated to an investigating officer.
10. On examination of the withheld information, it was clear to the Investigating Officer that the Authority had only provided this in respect of one hospital. The Authority was asked to provide the outstanding withheld information. The Authority explained that the information for the remaining hospitals had not been provided as the format/content of all such fire risk assessment documentation was identical and would, in its view, be subject to the same exemption. The Authority acknowledged that it should have been clearer on this point and subsequently provided the outstanding withheld information, apologising for this omission.
11. 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 this application and to answer specific questions. These focused on the Authority's justification for withholding the information and whether it considered the information requested was environmental information.

Commissioner's analysis and findings

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

¹ <https://www.nss.nhs.scot/media/4422/shtm-86-v6.pdf>

FOISA or the EIRs?

13. The relationship between FOISA and the EIRs was considered at length in [Decision 218/2007](#)². Broadly, in the light of that decision, the Commissioner's general position is as follows:
- (i) The definition of what constitutes environmental information should not be viewed narrowly.
 - (ii) There are two separate statutory frameworks for access to environmental information and an authority is required to consider any request for environmental information under both FOISA and the EIRs.
 - (iii) Any request for environmental information therefore must be handled under the EIRs.
 - (iv) In responding to a request for environmental information under FOISA, an authority may claim the exemption in section 39(2).
 - (v) If the authority does not choose to claim the section 39(2) exemption, it must respond to the request fully under FOISA: by providing the information; withholding it under another exemption in Part 2 of FOISA; or claiming that it is not obliged to comply with the request by virtue of another provision in Part 1 (or a combination of these).
 - (vi) Where the Commissioner considers a request for environmental information has not been handled under the EIRs, he is entitled (and indeed obliged) to consider how it should have been handled under that regime.
14. As rehearsed earlier, given the subject matter of the request, the Commissioner asked the Authority to consider whether the request properly fell to be handled as a request for environmental information and therefore be responded to under the EIRs.
15. The Authority did not agree that the request fell to be considered under the EIRs and responded solely under FOISA. It submitted that it wished to rely on arguments previously made in its initial response and review outcome. It acknowledged that some territorial Boards might have disclosed some information to the Applicant, but it was equally aware that other Boards shared its position and had relied on similar FOI exemptions, rather than EIRs exceptions. The Authority confirmed that it wished to rely on section 35(1)(g) of FOISA in conjunction with section 35(2)(i) to withhold the information requested.
16. Having considered the request and the information being withheld by the Authority, which relates to fire risk assessments carried out on the properties specified in the Applicant's request, the Commissioner is of the view that the information constitutes environmental information. The information relates to measures taken to protect against fire (a factor affecting, and indeed affected by, the elements of the environment, even if it is not specifically listed in the definition) within these buildings, with the aim of ensuring human health and safety. The Commissioner is therefore satisfied that the information falls within the definition of environmental information in paragraphs (b), (c) and (f) of the definition of environmental information in regulation 2(1) of the EIRs.
17. Given that the Commissioner considers that the information requested is properly considered to be environmental information, the Authority had a duty to consider it in terms of

² <https://www.foi.scot/decision-2182007>

regulation 5(1) of the EIRs. In failing to do so, the Authority failed to comply with regulation 5(1) of the EIRs.

Section 39(2) of FOISA - environmental information

18. The exemption in section 39(2) of FOISA provides that, in effect, environmental information (as defined by regulation 2(1) of the EIRs) is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs.
19. In this case, as rehearsed earlier, the Authority did not agree that the request fell to be considered under the EIRs and instead responded solely under FOISA.
20. The Commissioner finds that the Authority would have been entitled to apply the exemption in section 39(2) of FOISA to the request, given his conclusion that the information requested was properly classified as environmental information.
21. As there is a separate statutory right of access to environmental information available to the Applicant, the Commissioner also accepts that, in this case, the public interest in maintaining this exemption and handling the request in line with the requirements of the EIRs outweighs any public interest in disclosing the information under FOISA.

Regulation 16 of the EIRs

22. Regulation 16 of the EIRs states that, on receipt of a requirement to conduct a review, the authority shall review the matter and decide whether it has complied with the EIRs, within 20 working days (regulations 16(3) and (4)). It also states that, where an authority has not complied with its duty under the EIRs, it shall immediately take steps to remedy the breach of duty (regulation 16(5)).
23. Although the Authority responded to the Applicant's requirement for review on 28 October 2024, as explained above, this was a result of the Authority considering the request solely in terms of FOISA and not under the EIRs.
24. It is apparent that the Authority failed to respond to the Applicant's request of 25 September 2024 in terms of the EIRs, and therefore failed to comply with regulation 5(1) of the EIRs. It is also apparent that the Authority failed to carry out a review meeting the requirements of regulation 16 of the EIRs.
25. The Commissioner therefore requires the Authority to provide a response to the Applicant's requirement for review of 14 October 2024, in terms of regulation 16 of the EIRs.
26. The Commissioner's decision below states a compliance date of **4 July 2025** in line with the timescales he is required to follow. This is the latest day on which the Authority must issue its response; the deadline does not prevent the Authority from issuing one sooner.

Decision

The Commissioner finds that the Authority failed to comply with the requirements of regulations 5(1) and 16 of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the Applicant's information request and requirement for review.

The Commissioner requires the Authority to provide a response to the Applicant's requirement for review, in terms of regulation 16 of the EIRs, by **4 July 2025**.

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.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Euan McCulloch
Head of Enforcement

20 May 2025