



Scottish Information
Commissioner
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Decision Notice 131/2025

Comments on a planning application

Applicant: The Applicant

Authority: Scottish Fire and Rescue Service

Case Ref: 202401096

Summary

The Applicant asked the Authority various questions regarding comments on a specific planning application. The Authority responded to the request in terms of FOISA. During the investigation, the Authority disclosed an email chain to the Applicant but stated it considered it fell outwith the scope of the request. The Commissioner investigated and found that the Authority had considered the request under the wrong legislation. As the requested information was environmental information, the Authority should have considered the request under the EIRs. The Commissioner also found that the email chain the Authority disclosed to the Applicant fell within the scope of his request and should therefore have been disclosed to him earlier.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) 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” and paragraphs (a) and (c) of the definition of “environmental information”) (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 18 April 2024, the Applicant made a request for information to the Authority. He asked:

- (i) Whether it is correct that, as stated in Booklet A circulated to Highland Council Members for their routine meeting, on 14th March, [the Authority] provided no response in respect of ICTFC [Inverness Caledonian Thistle Football Club] planning application 23/00497/FUL.
 - (ii) Whether it is correct that, as stated by ICTFC [in <https://ictfc.com/bess-fairways-23-00497-ful-reasons-why-this-application-can-and-should-be-approved/>] SFRS advised ICTFC it had 'no issues' with the application.
 - (iii) Whether, as appears, it is correct that it was not via a Press Release.
 - (iv) If so, who made the [Authority's] statement to ICTFC and in what circumstances.
 - (v) When the statement was made.
 - (vi) Whether a copy was provided to the Council and, if so, when and to whom.
 - (vii) Whether publication by ICTFC was authorised.
2. By way of background, planning application 23/00497/FUL is available on the [planning website](#)¹ of Highland Council and is described as relating to a proposal for a "Battery energy storage facility comprising access track, compound of battery & electrical equipment, meter building, stores, fencing, security cameras, and associated landscaping".
 3. The Authority did not respond to the Applicant's information request.
 4. On 18 May 2024, the Applicant wrote to the Authority requiring a review in respect of its failure to respond to his request.
 5. The Applicant did not receive a response to his requirement for review.
 6. The Applicant wrote to the Commissioner on 20 June 2024, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. The enforcement provisions of FOISA apply to the enforcement of the EIRs, subject to specified modifications – see regulation 17.
 7. The Commissioner issued [Decision 167/2024](#)² on 14 August 2024, which found that the Authority failed to comply with Part 1 of FOISA and the EIRs by failing to respond to the Applicant's request for information and requirement for review within the timescales laid down by FOISA and the EIRS.
 8. The Authority notified the Applicant of the outcome of its review on 26 June 2024:
 - for part (i) of the request, it "had not responded direct to the planning application", but it "had dialogue with Highland Council with a supporting email sent to [named person of Highland Council] on 29 November from [a named] Station Commander giving further information". It explained that there was "no specific comment made about the proposals at that time other than a generic overview of the processes..."
 - for part (ii) of the request, it commented that this quotation referred to in the request likely related to a conversation between a named Area Commander and the Chair of ICTFC. It said there was no specific assessment of the proposal undertaken at that time, but the

¹ https://www.highland.gov.uk/info/180/planning_-_applications_warrants_and_certificates/143/planning_permission/4

² <https://www.foi.scot/decision-1672024>

named Area Commander noted to the Chair of ICTFC that the Authority was “not aware of any adverse comments” regarding the proposal.

- for parts (iii) to (vii) of the request, it stated that it held no recorded information and explained why.
9. On 30 July 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 was dissatisfied with the outcome of the Authority’s review because he believed information was withheld and because the Authority had not clarified matters properly.

Investigation

10. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
11. On 24 September 2024, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
12. 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.
13. During the investigation, the Authority issued a modified response to the Applicant (dated 7 November 2024):
- for part (i) of the request, it reiterated that it did not respond directly to the planning application and the information referred to within Booklet A was correct.
 - for parts (ii) to (vii) of the request, it confirmed that it held no relevant recorded information.
14. However, the Authority noted the Applicant has referred to an email from a named Area Commander to ICTFC that he considered the Authority had failed to disclose to him. The Authority disclosed a copy of an email chain to the Applicant (subject to some redactions of third-party personal data under the exemption in section 38(1)(b) of FOISA) but explained that it did not consider it fell within the scope of his request.

Commissioner’s analysis and findings

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

Scope of the investigation

16. The Applicant expressed dissatisfaction with the Authority’s handling of his request, particularly that he did not consider many of his questions had been answered adequately in the Authority’s review outcome dated 26 June 2024.
17. In his application to the Commissioner, the Applicant expressed his view that the Authority’s had withheld information as part of the review outcome. In this sense, he referred to the

Authority having denied issuing a press release “without dispelling the idea that something was actually said along the lines put into ICTFC’s own public statement”. He also referred to the missing email “needed to complement the answers” to parts (ii) and (iv) of his request.

18. On receiving the Authority’s modified response dated 7 November 2024, the Applicant indicated that he still wished the Commissioner to rule on whether the Authority had complied with FOI law in responding to his request – particularly in respect of the information disclosed during the investigation. He said it that it “would be helpful if there was a formal ruling that the disclosure should have been made at the outset”.
19. The Applicant did not express dissatisfaction with actual withholding by redaction of personal information, though he did comment on some of the specific redactions. The Commissioner will therefore not consider these redactions in his decision notice.

EIRs or FOISA?

20. As stated in [Decision 167/2024](#)³, which regarded the Authority’s failure to respond to the Applicant’s request for information and requirement for review, it is apparent from the terms of the request that at least some of the information caught by it will be environmental information as defined by regulation 2(1) of the EIRs.
21. In [Decision 218/2007](#), the Commissioner confirmed at paragraph 51 that where environmental information is concerned, there are two separate statutory frameworks for access to that information and, in terms of the legislation, an authority is required to consider the request under both FOISA and EIRs.
22. In this case, the Authority has seemingly responded solely in terms of FOISA – its review outcome states it is in terms of section 21 of FOISA, and its modified response refers to information being redacted under section 38(1)(b) of FOISA.
23. Having reconsidered the terms of the request, the Commissioner remains of the view that the information requested is environmental information, as defined by regulation 2(1) of the EIRs (in particular, paragraphs (a) and (c) of that definition).
24. Given that the information requested is properly considered to be environmental information, the Authority had a duty to consider it in terms of regulation 5(1) of the EIRs. In failing to do so, the Authority failed to comply with regulation 5(1).
25. The Commissioner will consider the handling of the request in what follows solely in terms of the EIRs.

Regulation 5(1) – Duty to make available environmental information

26. Regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any Applicant. This obligation relates to information that is held by the authority when it receives a request.
27. On receipt of a request for environmental information, therefore, the authority must ascertain what information it holds falling within the scope of the request. Having done so, regulation 5(1) requires the authority to make that information available, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
28. In considering whether a Scottish public authority has complied with the requirements of FOISA or the EIRs in any given case, the Commissioner must be satisfied that the authority

³ <https://www.foi.scot/decision-1672024>

has carried out adequate, proportionate searches in the circumstances, taking account of the terms of the request and all other relevant matters.

29. While it responded to the Applicant's request with explanations, the Authority stated that it held no recorded information falling within scope of the Applicant's request. It confirmed several times that it had not responded directly to the planning application, and therefore the information in Booklet A (referred to in the part (i) of the request) was correct. On that basis, it submitted that it would not hold relevant recorded information for much of the other parts of the Applicant's request.
30. As stated above, the Authority issued a modified response to the Applicant during the investigation. As part of this response, the Authority disclosed an email chain to the Applicant (subject to some third-party personal data redactions). However, it explained it considered the email chain fell outwith the scope of the Applicant's request as it was "not relevant to the original request, specifically with regards to the press release or Highland Council Planning Application".

The Commissioner's view

31. In interpreting information requests, the Commissioner considers that the words used in the request should generally be given their plain, ordinary meaning.
32. In this case, the Applicant's request related to a specific planning application and sought recorded information held by the Authority regarding that application. In particular, the Applicant wished to know whether the Authority had by communication expressed a view on this application. Part (i) of the request sought to verify whether there was a formal planning response; part (ii) of the request referred to public domain information that suggested that the Authority had communicated a view in some form about the specific application; the remaining parts of the request followed with questions about involvement and any press release or authorisation, etc.
33. Part (i) of the Applicant's request referred to "Booklet A". This booklet states, in response to consultations received regarding the planning application, that "no response" was received from the Authority. This accords with the information about the planning application on Highland Council's website.
34. The Commissioner accepts, in all the circumstances, that the Authority does not hold any recorded information for part (i) of the Applicant's request. He considers that it follows from the Authority not holding any recorded information for part (i) of the Applicant's request that the Authority also does not hold some of the other information requested.
35. During the investigation, the Authority (as stated above) disclosed to the Applicant an email chain (subject to some personal data redactions). However, the Authority explained that it did not consider this information fell within scope of the Applicant's request. In contrast, the Applicant believed that this information did fall within the terms of his request and that the Authority should have disclosed it to him earlier than it did.
36. Having considered the terms of the Applicant's request and the content of the email chain, the Commissioner agrees with the Applicant that some of the information within this email chain did fall within the terms of his request.
37. While the Authority is correct to say that the email chain contains information that is more related to a generic process, it also contains information that relates to the specific application and the quoted public domain information referenced in the Applicant's request.

This information does not relate to parts of the Applicant's request, but the Commissioner considers it does fall within scope of other parts of his request (e.g. part (ii) and, arguably, parts (iv) and (v)).

38. The Commissioner therefore finds that the email chain should have been identified as falling within scope of the Applicant's request, by the date of the Authority's review outcome (at the latest). In failing to identify and disclose this information until during the investigation, the Authority failed to comply with regulation 5(1) of the EIRs.
39. Having considered all the relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority has (by the close of the investigation) taken adequate and proportionate steps in the circumstances to establish what recorded information it held that fell within the scope of the Applicant's request. He accepts as reasonable the Authority's explanation for why it does not hold more recorded information.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by the Applicant.

The Commissioner finds that, in responding to the Applicant's requirement for review, the Authority failed to consider the request as a request for environmental information and thereby failed to comply with the requirements of regulation 5(1) of the EIRs.

The Commissioner further finds that, by failing to identify and locate all the relevant information it held in response to the Applicant's request, the Authority failed to comply with regulation 5(1) of the EIRs.

Given that the Authority identified and located all the relevant information it held by the close of the investigation (which it has disclosed, subject to some redactions for personal data, to the Applicant), the Commissioner does not require the Authority to take any action regarding this failure, 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

26 May 2025