



Scottish Information
Commissioner
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Decision Notice 147/2025

Environmental issues with radioactivity at His Majesty's Naval Base (HMNB) Clyde

Authority: Scottish Environment Protection Agency
Case Ref: 202401139

Summary

The Applicant asked the Authority for information relating to any environmental issues with radioactivity at HMNB Clyde at Faslane and Coulport near Helensburgh. The Authority considered the request under the EIRs and disclosed some information with redactions. It withheld the remainder on the basis that disclosure could jeopardise site security, public safety and national security. The Commissioner investigated and found that, while the Authority had correctly withheld some of the information requested, it was not entitled to withhold the remainder which he required the Authority to make available to the Applicant.

Relevant statutory provisions

[Freedom of Information \(Scotland\) Act 2002](#)¹ (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).

[The Environmental Information \(Scotland\) Regulations 2004](#)² (the EIRs) regulations 2(1) (definition of “the Act”, “applicant” and “the Commissioner” and paragraphs (a), (b), (c) and (f) of “environmental information”) (Interpretation); 5(1) and (2)(b) (Duty to make environmental information available on request); 10(1), (2) and (5)(a) (Exceptions from duty to make environmental information available); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

¹ <https://www.legislation.gov.uk/asp/2002/13/contents>

² <https://www.legislation.gov.uk/ssi/2004/520/contents>

Background

1. On 1 May 2024, the Applicant made a request for information to the Authority. Referring to a response by the Authority received on 1 May 2024 to a request he had submitted on 10 October 2019, he asked the Authority to provide correspondence, emails, memos, reports and any other unpublished information relating to any environmental issues with radioactivity at His Majesty's Naval Base (HMNB) Clyde at Faslane and Coulport near Helensburgh since then. He stated he was not interested in personal information, duplicate information or purely administrative information.
2. On 2 May 2024, the Authority wrote to the Applicant asking him to confirm that the date range for the requested records was 10 October 2019 to 1 May 2024. The Applicant did so that same date.
3. The Authority responded to the Applicant's request on 2 July 2024 and apologised for the delay in responding. It applied section 39(2) of FOISA and considered the request under the EIRs. The Authority explained that, for the purposes of searches, it had defined environmental issues with radioactivity as "any event or activity involving radioactivity that might have caused an environment impact or that prompted concern or any kind of intervention by [the Authority]".
4. The Authority withheld the information requested under regulation 10(5)(a) (International relations, defence, national security or public safety) of the EIRs. Acknowledging both the presumption in favour of disclosure under regulation 10(2)(b) and the public interest in openness and transparency, it believed, on balance, that the public interest favoured maintaining the exception, as disclosure of the information could jeopardise site security, public safety and national defence security, or be used to identify possible targets for anyone intent on planning attack or disruption.
5. Under the duty in regulation 9 (Duty to provide advice and assistance) of the EIRs to advise and assist, the Authority suggested the Applicant may be interested in information available from the Office of Nuclear Regulation, the Defence Nuclear Safety Regulator and/or similar information requests published on the Authority's disclosure log. The Authority provided links to the relevant websites where this information was published.
6. On 3 July 2024, the Applicant wrote to the Authority requesting a review of its decision. Referring to similar previous requests which, he stated, had resulted in the disclosure of significant information without risking international relations, national security or public safety, he found it difficult to believe that all of the in-scope information posed the threat claimed by the Authority. He argued that the public interest lay in the communities in the surrounding areas, and the wider public, being fully aware of any environmental issues at these two bases.
7. The Authority notified the Applicant of the outcome of its review on 31 July 2024, upholding its original decision with modification. Having identified six documents falling within scope, the Authority disclosed two of these with some information redacted and fully withheld the remaining four documents. The Authority explained that the withheld information was excepted from disclosure under regulation 10(5)(a) for the reasons previously stated, or under regulation 11(2) (Personal data) on the basis that it comprised personal information of Authority staff and private individuals, disclosure of which would breach data protection principles.

8. On 21 August 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 he was dissatisfied with the outcome of the Authority's review because, without having seen the withheld information, it was difficult to judge whether the Authority's claims were true. He questioned whether the Authority's activities at Faslane and Coulport were now so sensitive that they required such secrecy, arguing that the public interest lay in the communities in the surrounding areas, and the wider public, being fully aware of any environmental issues at these two bases.

Investigation

9. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
10. On 24 September 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.
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 under regulation 10(5)(a) of the EIRs, including the public interest.
12. As the Applicant had confirmed that he was raising no dissatisfaction with any personal data withheld under regulation 11(2) of the EIRs, this has not been considered further in this Decision Notice.

Commissioner's analysis and findings

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

Handling in terms of the EIRs

14. The Authority considered the Applicant's request in accordance with the EIRs, on the basis that the information requested was environmental information as defined in regulation 2(1) of the EIRs.
15. Where information falls within the scope of this definition, a person has a right to access it (and the public authority has a corresponding obligation to respond) under the EIRs, subject to the various restrictions and exceptions contained in the EIRs.
16. The Authority submitted that, as an environmental agency, the bulk of information requests it received related to environmental information, and so it considered regulation 2(1)(b) applied. It further submitted that the information requested in this case concerned radiation and radioactive waste and, as it related to a site on the River Clyde, that had radioactive and national security implications. As such, the Authority also considered paragraphs (a), (c) and (f) of regulation 2(1) applied.

17. The Commissioner accepts that the request related to the factors (including radioactive waste) described in paragraph (b) likely to affect the state of the elements of the environment in paragraph (a) and any measures or activities in paragraph (c) likely to affect, or designed to protect, these. He also accepts that the information requested related to the state of human health and safety insofar as this may be affected by the elements in paragraph (a) or, through those, by any of the matters in paragraphs (b) and (c). As such, the Commissioner is satisfied that the information requested by the Applicant falls within the definition of environmental information set out in regulation 2(1) of the EIRs, in particular paragraphs (a), (b), (c) and (f) of that definition.

Section 39(2) of FOISA – Environmental information

18. The Authority confirmed that it wished to continue to rely upon section 39(2) of FOISA. The exemption in section 39(2) of FOISA provides, in effect, that 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. In this case, the Commissioner accepts that the Authority was entitled to apply this exemption to the information withheld under FOISA, given his conclusion that it is properly classified as environmental information.
19. The Authority submitted that, given the statutory right of access to environmental information, the public interest in maintaining the exemption in section 39(2) of FOISA outweighed that in considering the request under FOISA.
20. As there is a statutory right of access to environmental information available to the Applicant in this case, the Commissioner accepts, in all the circumstances, that the public interest in maintaining this exemption (and responding to the request under the EIRs) outweighs any public interest in disclosing the information under FOISA. Both regimes are intended to promote public access to information and there would appear to be no reason why (in this particular case) disclosure of the information should be more likely under FOISA than under the EIRs.
21. The Commissioner therefore concludes that the Authority was correct to apply section 39(2) of FOISA and consider the Applicant's information request under the EIRs.

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

22. 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.
23. 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)).
24. Under the EIRs, a Scottish public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 applies, but only if, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.

Regulation 10(5)(a) – Prejudice to international relations, defence, national security or public safety

25. Regulation 10(5)(a) of the EIRs provides that a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially international relations, defence, national security or public safety.
26. As with all of the exceptions under regulation 10, a Scottish public authority applying this exception must interpret it in a restrictive way and apply a presumption in favour of disclosure (regulation 10(2)). Even where the exception applies, the information must be disclosed unless, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception (regulation 10(1)(b)).
27. There is no definition of “substantial prejudice” in the EIRs. However, the standard to be met in applying the test is high. The word “substantial” is important here: the harm caused, or likely to be caused, by disclosure must be of real and demonstrable significance. The risk of harm must be real or very likely, not simply a remote or hypothetical possibility.

The Applicant's submissions

28. In his application to the Commissioner, the Applicant referred to the Authority’s claim, at review, where it argued that releasing the information “could jeopardise site security, public safety, nation[al] defence security or could be used to identify possible targets for anyone intent on planning an attack or disruption”. He believed this was a dramatic claim for which, he assumed, the Authority was relying, at least to some extent, on the Ministry of Defence (MoD). The Applicant argued that, without having seen the information, it was difficult for him to judge whether this was true and referred to a [previous disclosure by the Ministry of Defence](#)³ reported in the media.

The Authority's submissions

29. In its submissions to the Commissioner, the Authority stated that the exception in regulation 10(5)(a) applied to the withheld information as its disclosure would be likely to prejudice substantially defence, national security and public safety. The Authority noted that these factors were not defined in the EIRs; however:
 - Defence: The Authority referred to the Commissioner’s guidance on [regulation 10\(5\)\(a\)](#)⁴ which indicated that the exception may apply to information relating to nuclear weapons. The Authority also referred to the definition of “defence” in the [Official Secrets Act 1989](#)⁵ (OSA) which included “the weapons, stores or other equipment of those forces and the invention, development, production and operation of such equipment and research relating to it”, and the harm in section 2(2) of the OSA, which included actions that “damages the capability of the armed forces of the Crown to carry out their tasks”. The Authority acknowledged the fact that the information related to these matters was not sufficient, in itself, to apply the exception.
 - National security: The Authority referred to [Decision 080/2019](#)⁶ which considered the safety of the site in that case, and the risk of potentially endangering local residents and the wider environment. The Authority believed this was also relevant in this case.

³ <https://www.theguardian.com/environment/2009/apr/27/nuclear-mod-clyde-safety-breaches>

⁴ <https://www.foi.scot/sites/default/files/2022-04/EIRsGuidanceRegulation105aInternationalRelations.pdf>

⁵ <https://www.legislation.gov.uk/ukpga/1989/6/contents>

⁶ <https://www.foi.scot/decision-0802019>

- Public safety: The Authority referred to [Decision 108/2008](#)⁷ which considered the safety of staff, emergency services and the local community.

30. Recognising that, individually, these factors may not always be sufficient to apply the exception, the Authority considered that combined, these factors would all be impacted by disclosure and so the exception was appropriately applied.

The Commissioner's views

31. In determining whether the information would fall within the scope of this exception, the Commissioner has been mindful of the explanation given in [The Aarhus Convention: An Implementation Guide](#)⁸ where the principles behind the Convention provision on which the exception is based are set out in the following way (page 86):

“If release of the requested information would adversely affect international relations, national defence or public security, the public authority may consider whether to deny the request.”

The Guide goes on to explain that:

“The Convention does not define the terms “international relations”, “national defence” or “public security”, but it is implicit that the definition of such terms should be determined by the Parties in accordance with their generally accepted meaning in international law. Many national Governments already have similar exceptions in place and have interpreted them narrowly. Some countries have chosen to require information concerning the environment to be made publicly accessible, regardless of how it affects international relations, national defence or public security. ...”

32. The Commissioner notes that the Authority, in this case, is claiming that regulation 10(5)(a) applies to all of the withheld information, on the basis that its disclosure would, or would be likely to, prejudice substantially defence, national security or public safety.

33. In determining whether the exception in regulation 10(5)(a) applies, the Commissioner is required to consider the potential impact that disclosure of the information would likely have on these factors, and not solely the nature, content and/or sensitivity of the information being withheld under this exception.

34. Having considered the submissions made by both parties, along with the withheld information, the Commissioner does not accept that making the majority of the information available would, or would be likely to, lead to the kind of prejudice argued by the Authority.

35. The Commissioner is of this view as he considers this information is generally non-specific and procedural, and he is not convinced that disclosure of this information is a threat to anything other than reputations. The Commissioner notes that much of this information discloses issues which occurred as a result of poor maintenance, certain of which he considers to be generic in nature. Given the timing of when these issues occurred and the actions taken following these, the Commissioner is not convinced that making this information available would have posed an ongoing risk at the time of the Authority's review outcome, as the Authority has claimed. He can see no harm in its disclosure, either at that time or now.

⁷ <https://www.foi.scot/decision-1082008>

⁸ https://unece.org/fileadmin/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf

36. The Commissioner is not satisfied that the arguments advanced by the Authority, to evidence its assertion that making the majority of the information being withheld here available would lead to that information being used in an adverse way, by those intent on causing harm and disruption, are sufficient. As a consequence, and for the reasons already outlined above, in the Commissioner's view, making this information available would not, and would not be likely to, substantially prejudice defence, national security or public safety, as claimed by the Authority.
37. Notwithstanding the Authority's position on this information, the Commissioner does not accept that making available the majority of the information withheld under this exception commands the level of harm required to allow it to be excepted from disclosure under regulation 10(5)(a) of the EIRs.
38. As such, the Commissioner must find that the Authority was not entitled to withhold this information under regulation 10(5)(a) of the EIRs and he requires it to be made available to the Applicant (subject to the redaction of any personal data).
39. The Commissioner will now go on to consider whether the Authority was entitled to refuse to make the remainder of the withheld information available in line with regulation 10(5)(a).
40. The Commissioner notes that, in the main, the remaining withheld information relates to building names and specific locations, and timeframes for improvement works. For this remaining information, which the Commissioner has fully considered, he accepts that it could be useful to those intent on causing harm and/or disruption.
41. As such, the Commissioner is satisfied that the exception in regulation 10(5)(a) is engaged for the remaining withheld information, in that its disclosure would, or would be likely to, assist those intent on causing harm or disruption, by providing information on activities in specific buildings and locations at particular times. This, the Commissioner believes, would in turn pose a threat to defence security and increase the risk to public safety, particularly to those in the near vicinity of the sites in question.
42. As the Commissioner has found that the exception in regulation 10(5)(a) applies to the remaining withheld information, he is now required (for this remaining information) to go on to consider the public interest test in regulation 10(1)(b) of the EIRs

Public interest test

43. As noted above, the exception in regulation 10(5)(a) is subject to the public interest test required by regulation 10(1)(b) of the EIRs. The Commissioner is therefore required to consider whether, in all the circumstances, the public interest in making available the information, to which he has found the exception applicable, is outweighed by that in maintaining the exception.

The Applicant's submissions on the public interest

44. In his application to the Commissioner, the Applicant referred to the Authority's claim, at review, where it stated "In summary, we have withheld these documents because if the information was released it would put the safety of the public at risk and it is therefore not in the public interest ...". The Applicant questioned whether it was really the case that the Authority's regulatory activities at the two sites were now so sensitive that they required such secrecy. He argued that there was a powerful public interest in the communities around Faslane and Coulport, and the wider public, being fully aware of any environmental issues at these two bases.

The Authority's submissions on the public interest

45. The Authority recognised the public interest in disclosure of the information in relation to it being a taxpayer-funded public body with a duty to be open and transparent, in its ability to regulate Scotland's environment (and in understanding how it does this), and in safety relating to radioactivity, the environment and nuclear facilities.
46. The Authority also considered the following factors to be relevant in relation to maintaining the exception:
- The information gave an insight into the workings at the naval base, including ongoing maintenance, and highlighted weaknesses and vulnerabilities in site systems and locations, all of which could be useful to anyone intent on planning a targeted attack or disruption on the premises.
 - If disruption were planned or if a targeted attack were to take place, this would put members of the local area and possibly the wider public in danger, it would remove focus from other key duties at both locations, and would require large resource from the emergency services who would also be put in danger. Any targeted attacks or disruption would also require resource from the Authority as a category 1 responder.
 - There is Memorandum of Understanding between the Authority and the MoD on matters relating to radioactive substances. This provides for the Authority to consult with the MoD on any information request concerning the release of information originating or relating to the MoD. It also precludes the Authority from routinely disclosing, or placing on a publicly available register, any MoD material classified "Official-Sensitive" or above.
 - The current national threat level is "Substantial" (an attack is likely). Terrorists and activists are highly motivated and use seemingly innocuous information to identify weaknesses and targets.
 - There was no public interest in disclosing information that would jeopardise national security and public safety.
47. The Authority explained that, during the investigation, it had also sought third party views from the MoD on the public interest test and provided the Commissioner with a copy of the MoD's response. This recognised the public interest arguments in disclosure of the information, which included openness and transparency, a greater awareness of environmental information, the free exchange of views, and more effective public participation in decision-making leading to a better environment. The MoD also identified a public interest in the effective working of HMNB Clyde and the associated site of Coulport.
48. It also considered the factors in favour of maintaining the exception. These included the disclosure of seemingly innocuous information which could be used by adversaries to plan targeted attacks, the ability to freely discuss matters in a private setting without having to defend every issue and opinion, the impediment to the MoD's ability to engage transparently in the future, and the undue risk to the safety of members of HM Forces or operations essential to the defence of the realm.
49. Acknowledging the public interest arguments in favour of disclosure of the information, the MoD considered these were outweighed by the increased threat to current operational vessels and the Armed Forces associated with them, and in maintaining the MoD's ability to pursue the best capability available to them, all of which would be harmed by disclosure.

50. The Authority recognised that it retained responsibility for the final decision on disclosure. In conclusion, it believed the public interest in maintaining the exception outweighed that in making the information available. It considered that the current threat level added weight to the balance of non-disclosure at the current time.

The Commissioner's view on the public interest

51. The Commissioner recognises the strong public interest in transparency and accountability, with particular regard to members of the public in the vicinity of the two sites (and indeed the wider public) knowing about any safety risk, and the steps taken to ensure that any rectification works were carried out. However, in his view, this is catered for by making available the information which, as rehearsed above, he has found to have been wrongly withheld under the exception in regulation 10(5)(a) of the EIRs.
52. The Commissioner has also considered the public interest arguments for non-disclosure of the remaining withheld information. While he is less convinced by the Authority's (and the MoD's) arguments relating to defence and national security, some of which he considers to be somewhat of a stretch, he finds those relating to public safety to be compelling. The Commissioner concurs with the Authority's view that there is no public interest in disclosing detailed information which could be used by those with malicious intent to cause harm or disruption. The Commissioner recognises the heightened risk such a disclosure would pose to the nearby communities, particularly at this time when the current national threat level is "substantial". When pieced together with the information he has found to have been wrongly withheld, the Commissioner considers the level of detail this discloses to be valuable in the wrong hands.
53. The Commissioner is therefore satisfied that, for the remaining withheld information, the public interest in maintaining the exception outweighs that in making it available, and he finds that the Authority correctly withheld that information under the exception in regulation 10(5)(a) of the EIRs.
54. For the information which the Commissioner has found to have been wrongly withheld and which he requires the Authority to make available to the Applicant, this will be indicated on a marked-up copy of the withheld information, to be provided to the Authority along with this Decision Notice.

Decision

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

The Commissioner finds that, by relying on section 39(2) of FOISA and considering the Applicant's request under the EIRs, the Authority complied with Part 1 of FOISA.

He also finds that, by refusing to make available some of the information withheld under regulation 10(5)(a) of the EIRs, the Authority complied with the EIRs in that respect.

However, the Commissioner also finds that the Authority was not entitled to rely on regulation 10(5)(a) to refuse to make available the remainder of the information requested and, in that respect, it failed to comply with regulation 5(1) of the EIRs.

The Commissioner therefore requires the Authority to make available to the Applicant the information that he has found to have been wrongly withheld (as indicated on a marked-up copy of the withheld information, to be provided to the Authority along with this Decision Notice) by **28 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.

David Hamilton
Scottish Information Commissioner

12 June 2025