



Scottish Information
Commissioner
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Decision Notice 153/2025

Planning enforcement at a specified address

Authority: East Renfrewshire Council
Case Ref: 202500233

Summary

The Applicant asked the Authority for information relating to planning enforcement at a specific address. The Authority responded under FOISA and disclosed some information to the Applicant. The Commissioner investigated and found that the Authority had responded to the request under the wrong legislation. The requested information was environmental, and the Authority should have considered the request under the EIRs. The Commissioner required the Authority to respond to the request under the EIRs and to carry out fresh searches and ensure that it fully addresses all parts of the Applicant's request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 39(2) (Health, safety and the environment); 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", "environmental information", and "the Commissioner") (Interpretation); 5(1) and 5(2) (Duty to make environmental information available on request); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 18 November 2024, the Applicant made a request for information to the Authority. She asked a number of questions relating to planning enforcement at a specified address. The

full text (with names and addresses removed) of the request can be found in Appendix 1, below.

2. On 16 December 2024, the Applicant wrote to the Authority noting that it had not responded to her information request. She requested that the Authority provide her with an immediate response and stated that it had failed to respond within 20 working days, as required.
3. The Authority did not respond to the Applicant's information request.
4. On 23 December 2024, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
5. The Authority notified the Applicant of the outcome of its review on 20 January 2025. It disclosed information in response to some parts of the Applicant's request, explained that some information could be found on its website and issued her with a notice, in terms of section 17 of FOISA, that it did not hold information for other parts of her request.
6. On 10 February 2025, 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 considered that it held more information than it had disclosed to her, its response to the request for review was late and it had failed respond to her initial request.

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 17 February 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
9. 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 related to the searches it had carried out, whether it had fully responded to each element of the request and whether it considered it should have handled the request under the EIRs.

Commissioner's analysis and findings

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

FOISA or EIRs?

11. The relationship between FOISA and the EIRs was considered at length in [Decision 218/2007](#)¹. Broadly, in the light of that decision, the Commissioner's general position is as follows:

¹ <https://www.foi.scot/decision-2182007>

- The definition of what constitutes environmental information should not be viewed narrowly.
 - 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.
 - Any request for environmental information therefore must be handled under the EIRs.
 - In responding to a request for environmental information under FOISA, an authority may claim the exemption in section 39(2).
 - 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; 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).
12. 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.
 13. Given the subject matter of the request, the Commissioner found it appropriate to consider whether the information requested by the Applicant should properly be regarded as environmental information and therefore subject to the EIRs.
 14. During the investigation, the Authority accepted that the Applicant's request was for environmental information and that it should have responded in terms of the EIRs.
 15. It is clear to the Commissioner that the information requested falls within the definition of environmental information in regulation 2 of the EIRs (particularly paragraphs (a), (c) and (d) of that definition).
 16. 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 Commissioner finds that the Authority failed to comply with regulation 5(1).

Section 39(2) of FOISA – environmental information

17. 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.
18. The Commissioner finds that the Authority would have been entitled to apply this exemption to the information requested, given his conclusion that this information was properly classified as environmental information.
19. As there is a separate 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 parts of the request under the EIRs) outweighs any public interest in disclosing the information under FOISA.
20. In what follows, the Commissioner will therefore consider this case solely in terms of the EIRs.

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

21. 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.
22. 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) of the EIRs requires the authority to provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).

Information falling within the scope of the request

23. 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 has carried out adequate, proportionate searches in the circumstances, taking account of the terms of the request and all other relevant circumstances.
24. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
25. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold the information (or holds no more information than it has identified and located in response to the request).
26. The Applicant submitted that the information disclosed by the Authority was sparse, disjointed and lacked continuity. She did not believe that the handful of emails disclosed was the extent of the information held, given the “ongoing incident” in her request spanned many months and the requirement for employees of the Authority to keep detailed notes of conversations, meetings and follow-up notes. She specifically noted that that a named employee had been delegated to oversee works at the specified address, but the information disclosed contained virtually nothing of his notes, emails, conversations, site visit reports or drawings.
27. The Applicant also stated that, despite the Authority being informed of the “extensive nature of the illegal works ongoing” at the specified property, it had disclosed no information on the decision-making process or why the Principal Planning Officer had advised her that planning permission was not required. She noted that no information had been disclosed in the way of notes, meetings, discussions or drawings upon which this assertion was based.
28. In its review outcome, the Authority said that it had interviewed relevant planning officers and conducted searches of their systems to identify any relevant documentation held.
29. During the investigation, the Authority submitted that it had disclosed all relevant information to the Applicant. It noted that the request centred on a development at a specified address and the planning consideration of that proposal, so searches were conducted of paper and electronic planning records using that address as a search term.
30. The Authority considered that these searches, although focused, were comprehensive as any communications from any source relative to the specified address would be identified. It also confirmed that it had consulted with the Chief Planning Officer to identify information falling within the scope of the request (and provided evidence of this).

31. The Commissioner accepts that a search of the Authority's planning records would be likely to identify most of the information falling within scope of the Applicant's request. While the Chief Planning Officer was also consulted in response to the request, it is not clear whether other staff members were asked to search their records.
32. Given the information disclosed to the Applicant clearly indicates the involvement of several staff members, the Commissioner considers that other staff members should have been consulted and asked to undertake searches of their own records to ensure all relevant information had been identified.
33. In all the circumstances of the case, the Commissioner cannot be satisfied, based on the submissions he has received, that the searches undertaken by the Authority were sufficient to identify all relevant information falling within the scope of the Applicant's request.
34. During the investigation, the Authority indicated that the Applicant "should be aware" that "any enforcement action of the Building Warrant process is distinct from any planning enforcement".
35. [The Scottish Ministers' Code of Practice on the Discharge of Functions under FOISA and the EIRs](#)², sets out that applicants "should not be expected to always have the technical knowledge or terminology to identify the information they seek".
36. It is not obvious to the Commissioner whether the Authority holds information related to any enforcement action of the Building Warrant process that it has not disclosed to the Applicant on the basis it considered it did not fall within the scope of her request. It is also not obvious to the Commissioner why the Authority considered that the Applicant would be sufficiently familiar with the distinction described by the Authority (at paragraph 34).
37. In the circumstances, the Commissioner considers that it would have been appropriate for the Authority have engaged with the Applicant to ascertain whether she intended her request to encompass this information, or to explain to her that it considered this information did not fall within the scope of her request to enable her to make a separate request for this information, if she wished.
38. The Authority's review outcome stated that it responded "with reference to the individual components" of her request. However, the Applicant's request contained 18 numbered points and the Authority's review outcome provided responses under 8 numbered points. It is therefore not evident that the Authority did fully respond to each part of the Applicant's request.
39. During the investigation, the Authority was asked questions to help the Commissioner understand whether it had responded fully to each of the 18 numbered points in the Applicant's request. The Authority did not provide a full response to these questions, but it maintained that all information falling within the scope of the request had been disclosed to the Applicant.
40. In the absence of a clear explanation from the Authority on whether it had responded fully to each of the 18 numbered points in the Applicant's request, the Commissioner cannot be

² <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf>.

satisfied, based on the submissions he has received, that the Authority has fully responded to each part of the Applicant's request.

41. The Commissioner therefore finds, based on the submissions he has received, that the Authority has failed to satisfy him that it has identified all relevant information falling within the scope of the Applicant's request. In doing so, the Authority failed to comply with regulation 5(1) of the EIRs.

Timescales

42. Regulation 5(2)(a) of the EIRs gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
43. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with regulation 5(2)(a) of the EIRs.
44. Regulation 16(4) of the EIRs provides that a Scottish public authority shall, as soon as possible, and no later than 20 working days after the date of receipt of representations, notify the applicant of its review decision
45. As stated above, the Applicant believed the Authority's response to her requirement for review was late as she considered it was provided more than 20 working days after receipt of her email on 16 December 2024.
46. For a requirement for review to be valid, it must be made no later than 40 working days after either the date that the applicant receives any decision or notification which they believe does not comply with the EIRs or the date by which such a decision or notification should have been made (i.e. within 20 working days following the date of receipt of the request).
47. In this case, due to the public holiday on 2 December 2024, the 20th working day to respond to the Applicant's request (dated 18 November 2024) was 17 December 2024. This meant that the Applicant's email of 16 December 2024 was too early to constitute a valid requirement for review.
48. The Applicant's subsequent email of 23 December 2024 did constitute a valid requirement for review, meaning the Authority was required to respond to it by 24 January 2025. The Authority issued its review response on 20 January 2025, within the statutory timescale of the EIRs.

Next steps

49. The Commissioner requires the Authority to provide a revised response to the Applicant's requirement for review of 23 December 2024 in terms of regulation 16 of the EIRs. In doing so, the Authority must:
 - engage with the Applicant, in terms of regulation 9 of the EIRs, with a view to reaching a clear, and mutually shared, understanding of the scope of the request
 - consider carefully the terms of the request and ensure that it fully – and clearly – addresses each element of the request
 - undertake adequate and proportionate searches to establish what information is held, using appropriate search terms, consulting all relevant staff members and searching all locations and mediums where relevant information may be held.

Decision

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

Specifically, the Commissioner finds that:

- in responding to the Applicant's information request and 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 Authority failed to satisfy him that it had identified all relevant information falling within the scope of the Applicant's request. In doing so, the Authority failed to comply with regulation 5(1).

The Commissioner therefore requires the Authority to undertake fresh, adequate and proportionate searches for the information requested and provide a revised response to the Applicant's requirement for review, in terms of regulation 16 of the EIRs, by **4 August 2025**. In doing so, he requires the Authority to have regard to the conditions set out in paragraph 49 above.

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.

Cal Richardson
Deputy Head of Enforcement

18 June 2025

Appendix 1: Information request

1. Copies of all internal documents, reports, assessments, and communications (including emails, meeting notes, and memos) that explain or justify the council's classification of the development as a "garage conversion".
2. Any records of inspections, site visits, or assessments carried out by council officers or representatives regarding the development, including:
 - a. Dates of visits, names of officers involved, and notes or reports created during or after these visits.
3. Details of any attempts to conduct a full assessment of the development and the reasons why any such attempts were not completed.
4. Copies of all documents and communications related to the assessment of the development's compliance with permitted development rights under the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended).
5. Documentation evidencing the council's evaluation of the size, height, footprint, and boundary proximity of the development and its compliance with PDR limits and conditions as specified in Class 1, Schedule 1 of the Order.
6. Copies of any Enforcement Notices, Stop Notices, or Breach of Condition Notices issued in connection with the development, or any records explaining why such actions were deemed unnecessary.
7. Copies of any Planning Contravention Notices (PCNs) issued or considered under Section 125 of the Town and Country Planning (Scotland) Act 1997 and any responses received from this neighbour.
8. Documentation or notes from internal discussions, meetings, or communications about potential or planned enforcement actions, including considerations about whether the development constitutes a breach of planning control.
9. Copies of any public complaints or concerns submitted to the council regarding the development, particularly regarding overlooking windows, privacy concerns, and boundary encroachment, including records of how these complaints were handled and resolved.
10. All records of communications between council officers and the neighbour regarding the potential impacts of the development on neighbouring properties, including the impact on [redacted].
11. Documentation or communications addressing any steps taken by the council to assess the impact of overlooking windows and the development's proximity on neighbouring properties, in accordance with Section 64 of the Town and Country Planning (Scotland) Act 1997.
12. Copies of any council guidance, policies, or decision-making frameworks referenced in assessing the privacy and amenity impacts of this development on neighbouring properties, particularly where overlooking windows are concerned.
13. Any records of reports or notes documenting aggressive or obstructive behaviour encountered by council officers while attempting to inspect the property, including details of incidents, dates, individuals involved, and responses taken by the council.

14. Information on any follow-up actions or contingency plans the council considered to ensure that a complete site inspection could be performed despite the obstruction, such as requests for police assistance or alternative approaches to inspecting the site.
15. Records of any legal advice or internal guidance sought or received by the council regarding its handling of this development, including advice on classifying the development, enforcement duties, and compliance with the Town and Country Planning (Scotland) Act 1997.
16. Copies of any internal policies, protocols, or decision-making guidelines used by council officers in determining how to classify and respond to the development, particularly where ambiguities or disputes about development classification arise.
17. A chronological summary of the planning history at [redacted], including any prior planning applications, approvals, or compliance reviews relevant to the current structure or any previous structures on the property.
18. Copies of any planning applications, consents, or approvals previously submitted or obtained by the neighbour or property owner, which may pertain to the ongoing development.