



Scottish Information
Commissioner
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Decision Notice 159/2025

Goathill Quarry, Cowdenbeath – Breaches of PPC Permit

Applicant: The Applicant

Authority: Scottish Environment Protection Agency

Case Ref: 202400658

Summary

The Applicant asked the Authority for information related to Goathill Quarry and the related Pollution Prevention and Control Permit, PCC/A/1197753. The Authority provided information to the Applicant, including some information it identified during the investigation. The Commissioner investigated and found that some further information identified by the Authority might fall within the scope of the Applicant's request and required the Authority to reconsider this and to provide a revised review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 39(2) (health, safety and 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" and "the Commissioner") (Interpretation), (definition of "The Act", "applicant" and "the Commissioner" and paragraphs (a), (b) and (c) of definition of "environmental information"); 5(1) (Duty to make environmental information available on request); 9(1) and (3) (Duty to provide advice and assistance); 17(1), (2)(a) and (b) (Enforcement and appeal provisions)

Background

1. On 6 October 2023, the Applicant made a request for information to the Authority. He asked, in relation to [Pollution Prevention and Control \(PPC\) Permit PPC/A/1197753](#)¹ for Goathill Quarry, Cowdenbeath, for:
 - (i) All information held by the Authority relating to alleged breaches of the above permit;
 - (ii) All correspondence between the Authority and the Quarry operator (or any agents acting for the operator) relating to alleged breaches of the permit;
 - (iii) Confirmation whether the Authority accepted that there had been a breach of the permit;
 - (iv) If the Authority accepted that there had been a breach of the permit, identification of the provisions of the permit which had been breached;
 - (v) A dated list of all enforcement action which was taken by the Authority to remedy any breaches of the permit;
 - (vi) Confirmation as to whether any further enforcement action was intended by the Authority to address breaches of the permit.

This information was requested in the light of the Applicant's understanding that breaches of the permit relating to dust and leachate/run-off arising from the Quarry had been reported to the Authority by members of the public, that the Authority accepted there had been breaches of the permit, but it was not clear what steps the Authority had taken to resolve the matter.

2. On the same date, the Authority sought clarification from the Applicant of the date range of interest to him. The Applicant confirmed the date range for his request was from 1 January 2022 (to the date of his request).
3. The Authority wrote to the Applicant on 6 November 2023, apologising that it had not issued a response to him by the statutory deadline and advising him that it was working on the request and would respond as soon as possible. The Authority informed the Applicant of his right to request a review as it had not responded to his request on time.
4. On 7 November 2023, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was treating its failure to respond to his request as a refusal and wished the Authority to review its refusal as it had not provided him with any lawful justification as to why the information requested should not be disclosed.
5. The Authority notified the Applicant of the outcome of its review on 8 February 2024. It responded to his request in line with the EIRs, provided him with information it considered fell within the scope of parts 1, 2, 3 and 4 of his request and informed him that, for parts 5 and 6, no enforcement action had been taken or was currently required. It relied on regulation 11(2) of the EIRs to withhold some information it considered to be personal information.
6. On 8 May 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

¹ [To "File" Menu then Properties" and Type in Applicant / Site in Title space](#)

modifications. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he did not consider the Authority had provided all of the necessary information in order to fully address the request and the review 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 21 May 2024, 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 to determine what information it held falling within scope of the Applicant's request. Comments were also invited from the Authority on views expressed by the Applicant as to why he considered other recorded information might be held.
10. During the course of the investigation the Authority identified some further information, comprising an email and associated attachment, falling within the scope of the Applicant's request. This was provided to him on 25 July 2024. The Authority withheld some information it regarded to be personal data under regulation 11(2) of EIRs.
11. The Applicant did not challenge the Authority's reliance on regulation 11(2) of the EIRs.

Commissioner's analysis and findings

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

Handling in terms of the EIRs

13. The Authority considered the Applicant's request under the EIRs, having concluded that the information requested was environmental information as defined in regulation 2(1) of the EIRs and applied section 39(2).
14. 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.
15. The Applicant has not disputed the Authority's decision to deal with the request under the EIRs.
16. The Commissioner accepts that the request related to elements (in particular air, soil and land) described in paragraph (a) and factors (in particular discharges and other releases into the environment) (in paragraph (b)), and any measures or activities (in paragraph (c)) affecting or likely to affect, or designed to protect, these. 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) and (c) of that definition.

Section 39(2) of FOISA – Environmental information

17. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined in 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. In this case, the Commissioner accepts that the Authority was entitled to apply the exemption in section 39(2) of FOISA, given his conclusion that the information requested is properly considered to be environmental information. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
19. As there is a separate statutory right of access to environmental information available to the Applicant in this case, the Commissioner accepts 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.
20. The Commissioner therefore concludes that the Authority was correct to apply section 39(2) of FOISA and to consider the Applicant's information request under the EIRs.
21. The Commissioner will, therefore, consider the handling of the Applicant's request in what follows solely in terms of the EIRs.

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

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

The Applicant's submissions

24. The Applicant explained that part 2 of his request had asked for all correspondence between the Authority and the quarry operator (or any agents acting for the operator) relating to alleged breaches of the PPC Permit PPC/A/1197753. He highlighted that an email in a chain, disclosed to him in response to his requirement for review, set a deadline for certain breaches of the PPC permit to be rectified and he considered it was reasonable to expect there would be more correspondence between the Authority and the contractors after the date of that email. As the Authority had not provided any further correspondence between the two parties, he considered that it had failed to disclose all of the information requested.
25. With regard to part 4 of his request, where he asked "If [the Authority] accepts that there has been a breach of the permit then to identify the provisions of the permit which have been breached", the Applicant highlighted that the Authority had identified one minor breach of the permit. However, he considered a letter it had provided to him (from the Authority to the permit holder dated February 2023) contained a table that outlined further non-compliance instances on the part of the operator. In his view this letter demonstrated that these non-compliances must be addressed.
26. The Applicant referred to further email correspondence that mentioned issues raised in the table discussed above that required attention. Additionally, he highlighted further

correspondence in which the Authority raised an issue that it stated would be regarded as a non-compliance with the site licence.

27. The Applicant's view was that this evidence seemed to demonstrate that the Authority's position that there had been one minor breach was not the case as he considered it had identified several breaches. He therefore considered the Authority had not provided him with the appropriate information in respect of the number of breaches of the PPC permit under which the quarry operates.
28. The Applicant noted that in relation to part 5 of his request, which had asked for "a dated list of all enforcement action taken by [the Authority] to remedy any breaches of the permit", the Authority had informed him that no enforcement action had been taken. In response to part 6, where he asked the Authority to "confirm whether any further enforcement action is intended by it to address breaches of the permit", the Applicant commented that its response had been that no enforcement action was currently required.
29. He pointed out that the responses to these two points confirm that enforcement action had not been and would not be undertaken in respect of the breaches of the quarry's PPC permit. The Applicant therefore considered it reasonable to conclude that in the absence of enforcement actions, the breaches identified (in the documents mentioned above) had been addressed. He considered that the Authority had not provided any information to indicate that the breaches had been addressed. Had these been addressed, the Applicant was of the view that it was reasonable to expect there would be email correspondence and/or indication of a site visit which confirmed that the breaches were no longer occurring. Based on this, the Applicant believed that the Authority had not responded appropriately to his requirement for review.

The Authority's submissions

30. The Authority explained that in order to identify the information falling within the scope of the Applicant's request, it had established the relevant staff that held information relevant to the request, and those staff were approached for any information falling within scope. The Authority detailed to the Commissioner the staff who had been approached, and the records that had been searched.
31. The Authority explained that following the appeal to the Commissioner, further searches had been carried out and two more documents were located. One of these was a later dated email from the chain mentioned by the Applicant (in relation to Part 2 of his request), and an associated attachment. As noted above, these were subsequently disclosed to the Applicant during the investigation.
32. It submitted that no further information in relation to the request was held. The Authority also acknowledged that its response to the Applicant could have been clearer and could have provided advice and assistance to give context to the Applicant.
33. The Authority provided an explanation, in relation to part 2 of the Applicant's request, for the lack of correspondence between it and the operator (or any agents acting for the operator) after June 2023, citing staffing issues and the decision for the work to be managed via site visits and low level interventions as per its [Enforcement Policy](#)²
34. The Authority noted that a letter/formal written correspondence was not always required to resolve an issue but that a phone call may be appropriate. It stated that due to resource

² [Microsoft Word - Enforcement Policy_FINAL](#)

restraints at the time, file notes of telephone conversations were not recorded, so it held no recorded information from any phone calls.

35. Regarding the number of non-compliances advised in its response to the Applicant's requirement for review (covered by part 4 of the request), the Authority acknowledged that it could have been clearer. It explained that the minor breach advised was what had been recorded as new/outstanding at the time of the response and did not reflect non-compliances listed in the letter supplied to the Applicant. Its view was that the majority of those were either resolved or in the process of resolving at that time but concluded that this could have been made clearer and apologised for the error.
36. The Authority submitted that as the site was compliant/were working on any non-compliances and there was no evidence of environmental harm, it continued to regulate and monitor the site.
37. The Authority had informed the Applicant in response to part 5 of his request that no enforcement action had been taken to remedy the breaches of the permit. As has been established, these breaches were listed in the table in the letter provided to the Applicant.
38. The Authority provided further submissions to the Commissioner on the monitoring of the actions taken by the site operator to address the non-compliances raised in the letter of February 2023, mentioned by both the Applicant and Authority. It explained that the same list of actions had been provided to the Applicant in March 2024 as part of another process outwith FOI.
39. It also confirmed that it did hold recorded information which had been submitted to it as a result of this monitoring activity. The investigating officer asked for this additional recorded information to be provided to the Commissioner, which the Authority did.
40. The Authority stated that it did not consider this additional information to fall within scope of the Applicant's request, as it considered the information related to ongoing monitoring of the site, not alleged/confirmed breaches of the PPC permit PPC/A/1197753.
41. In answer to questions from the investigating officer on whether the monitoring activities that it had been established took place, in respect of the non-compliances cited in the letter mentioned above, constituted enforcement action, the Authority considered the letter of February 2023 was not a warning letter or an official enforcement notice. Rather it was routine correspondence in relation to issues found during an inspection. As evidence of this, it noted that the letter explained that any failure to address non-compliances found during the inspections could result in it taking action in accordance with its enforcement policy and guidance.
42. The Authority explained that its enforcement action was not a hierarchy or series of sequential steps, but that it would take the most appropriate action to secure compliance with regulatory requirements and achieve its outcomes, particularly to change behaviour. It added that ideally it would work with a responsible person and use advice and guidance to achieve its enforcement outcomes. For many non-compliances, it submitted that advice and guidance, to ensure that the responsible person was clear what steps they must take, might be the only action it took.

The Commissioner's view

43. The Commissioner has considered the submissions from both the Applicant and the Authority as well as the additional documentation provided during the investigation by the Authority.
44. Part 5 of the Applicant's request, which asked for a dated list of all enforcement action taken by the Authority to remedy any breaches of the permit, raised the question of what was considered by the Authority to constitute enforcement action. The Authority's view was that the letter (of February 2023), ongoing monitoring, and advice and guidance were not enforcement action.
45. The Commissioner has read the Authority's [Enforcement Policy](#) as well as its [guidance on the use of enforcement action](#)³
46. The Commissioner appreciates the Authority's position on the merits of changing behaviours and using advice and guidance when it can to achieve compliance. He also appreciates the Applicant's clear interest, expressed through his request, in understanding how it was being ensured that the site was complying with the terms of its PPC Permit.
47. The Commissioner notes that the letter advised that failure to fully address the non-compliances might result in further action in accordance with the Authority's enforcement policy and guidance, seeming to support the position that the letter itself, and subsequent monitoring, were not enforcement action.
48. After much consideration, the Commissioner accepts the Authority's position that the letter and subsequent activities were not enforcement action but routine monitoring correspondence. As such, the additional information identified and provided to the Commissioner would not fall within the scope of part 5 of the Applicant's request.
49. Part 2 of the Applicant's request asked for all correspondence between the Authority and the Quarry operator (or any agents acting for the operator) relating to alleged breaches of the permit. The Applicant's view was that he would have expected further correspondence related to the breaches documented in the letter of February 2023. The Authority considered this to be routine monitoring.
50. The Commissioner has considered the arguments from both the Applicant and the Authority in relation to the activity following the February 2023 letter and considers that correspondence related to ensuring that the actions required/taken by the site operator to correct the non-compliances listed in the letter of February 2023 would fall within part 2 of the Applicant's request (within the date period specified in the request).
51. As such, the Commissioner's view is that at least some of the information within the documents provided to him during the investigation, related to monitoring activities, may fall within part 2 of the Applicant's request and so he requires the Authority to reconsider this information and provide a revised review outcome in this respect.

Regulation 9 – Duty to provide advice and assistance

52. Regulation 9 of the EIRs requires a Scottish public authority to provide advice and assistance to applicants, so far as it would be reasonable to expect it to do so.

³ [SEPA guidance on the use of enforcement action](#)

53. Regulation 9(3) of the EIRs provides that a Scottish public authority shall be taken to have complied with this duty if it conforms with the relevant Code of Practice (in relation to the provision of advice and assistance).
54. The Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the EIRs ([the Section 60 Code](#)⁴) states (at paragraph 5.1. in Part 2):
- “Authorities should offer advice and assistance at all stages of a request
- Authorities have a duty to provide advice and assistance at all stages of a request. It can be given either before a request is made, or to clarify what information an Applicant wants after a request has been made, whilst the authority is handling the request, or after it has responded.”
55. The Authority provided the Commissioner with explanations as to why there was little correspondence later in the time period (after June 2023) covered by part 2 of the Applicant's request. The Commissioner notes that it would have been helpful to have provided this explanation to the Applicant with the Authority's response to his requirement for review, by way of advice and assistance.
56. In respect of part 4 of the Applicant's request:
- “If the Authority accepts that there has been a breach of the permit, please identify the provisions of the permit which have been breached”
- The Applicant had questioned the response that only one minor breach had occurred when the content of the table in a particular letter showed otherwise. The Authority has acknowledged in its submissions to the Commissioner that it could have been clearer about this.
57. The Commissioner notes the Authority's explanation that it had responded with the new/outstanding breaches as of its February 2024 response to the Applicant, but this was not what the Applicant had asked for. There was no suggestion in his request that it was new/outstanding breaches he was interested in, and indeed the period of time covered by his request was up until the date of his request in October 2023. The contradiction between the response provided and the content of the letter was misleading.
58. The Authority identified itself that it could have been clearer and provided advice and assistance in responding to this part of the Applicant's request as well, as required by regulation 9(1) of the EIRs. The Commissioner agrees with this.
59. Furthermore, whilst (as narrated above) the Commissioner accepts that no enforcement action was taken by the Authority in respect of the breaches mentioned in the letter of February 2023, he considers that it would have been helpful to provide a clear explanation to the Applicant as to what qualifies as enforcement action, so as to enable him to better understand the position and approach of the Authority in this case.
60. The Commissioner finds that by failing to provide reasonable advice and assistance to the Applicant, the Authority failed to comply with regulation 9(1) of the EIRs.

⁴ [Code of Practice under section 60 of FOISA](#)

As appropriate explanations were provided during the investigation, as recorded in this decision, the Commissioner does not require the Authority to take any further action in relation to this

Information disclosed during the investigation

61. As noted above, during the investigation, the Authority identified further information falling within the scope of the applicant's request that it provided to him on 25 June 2024.
62. The Commissioner therefore finds that the Authority failed to comply with the requirements of regulation 5(1) of the EIRs, as it did not make this information available to the Applicant in response to his information request.

Decision

The Commissioner finds that the Authority partially complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by the Applicant.

The Commissioner finds that by making available some information falling within the scope of the Applicant's request, the Authority complied with the EIRs.

However, the Commissioner also finds that by not making available other information held that fell within the scope of the request it failed to comply with regulation 5(1), and by failing to provide reasonable advice and assistance the Authority failed to comply with regulation 9(1) and (3) of the EIRs.

The Commissioner therefore requires the Authority to reconsider whether any of the information it identified as being related to ongoing monitoring (documents provided to the Commissioner within its submissions) falls within part 2 of the Applicant's request and provide him with a revised review outcome in response to this, by **11 August 2025**.

Given that the decision documents the Authority's further explanations, the Commissioner does not require the Authority to take any further action in respect of its failure to provide reasonable advice and assistance, 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.

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

26 June 2025