



Scottish Information
Commissioner
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Decision Notice 176/2025

Planning application regarding land at a named location

Authority: Inverclyde Council
Case Ref: 202301504

Summary

The Applicant asked the Authority for communications relating to two specific Planning Applications before and after a decision made by the Local Review Body as well as the recording of the Local Review Body Committee where a specific appeal was rejected. The Authority provided the Applicant with most of the information held, but refused to make available the recording of the meeting on the basis that it would lead to disclosure of personal information. The Commissioner investigated and found that the Authority had partially complied with the EIRs in responding to the request. It correctly identified and provided most of the information falling within the scope of the Applicant's request but wrongly withheld other information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 39(2) (Health, safety and 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", "the data protection principles", "data subject", "personal data", "the UK GDPR" and paragraphs (a) and (c) of "environmental information") (Interpretation); 5(1) (Duty to make environmental information available on request); 11(2) (Personal data); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

United Kingdom General Data Protection Regulation (the UK GDPR) articles 5(1)(a) (principles relating to processing of personal data); 6(1) (lawfulness of processing).

Data Protection Act 2018 (the DPA 2018) sections 3(2), (3), 4(d), (5), (10) and (14)(a), (c) and (d) (Terms relating to the processing of personal data).

Background

1. On 13 September 2023, the Applicant made a request for information to the Authority. He asked for the following information in relation to the land adjacent to a named address and its associated Planning Applications (ref 22/0169/IC & 23/134/IC), Planning Board decision and Local Review Body (LRB) appeal:
 - (i) Communications (minutes, reports and/or emails) within the Authority including (but not limited to) the Regeneration & Planning Department, Councillors on the Planning Board and Councillors on the LRB in relation to the subject matter both before and after each decision for the applications for the same site.
 - (ii) Visibility requested of the email with the draft report supporting a planning decision shared within the Authority prior to formal publication of the eventual reports on the Authority Planning Online.
 - (iii) The video recording of the LRB Committee meeting where the appeal for 22/0169/IC was rejected.
2. The Authority responded on 11 October 2023. It disclosed copies of information requested by the Applicant, as well as providing a link to an appropriate part of its website to facilitate the Applicant in accessing information relevant to the Planning Board and LRB.
3. On 17 October 2023, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he considered the information was lacking. He considered that information had not been shared with him on the following:
 - How the appeal was distributed within the Authority to the LRB to Councillors in advance of the meeting as no email(s) were shared?
 - What was the internal communications where any comment on the subject matter was made between Council colleagues/Councillors (if any) and/or in advance of the LRB meeting or indeed after the meeting following rejection?
 - A video recording of the meeting as it was recorded. The minutes uploaded on the Authority website did not reflect the limited 2–3-minute discussion on the Applicant's appeal.
4. The Applicant wrote to the Authority again on 19 October 2023, asking that as part of his requirement for review, that the Authority share information within seven documents missing from a response he received to a Subject Access Request made to the Authority, as he did not consider that these should be withheld as part of his FOI request, as they contained key communications leading to an Authority decision.
5. The Authority notified the Applicant of the outcome of its review on 24 November 2023. The Authority informed the Applicant that the information he had requested was environmental information for the purposes of the EIRs. It advised that no further information was held in relation to part (i) of his request. The Authority did however provide an explanation to the Applicant as to how the appeal was distributed to the LRB to Councillors in advance of the

LRB meeting, and disclosed information in relation to this to the Applicant. The Authority commented that the Applicant had been provided with the information falling within part (ii) of his request. With reference to the video recording of the meeting (covered by part (iii) of the request), the Authority apologised that this had not been referred to in its initial response and informed the Applicant that it did hold a copy, but that the information was being withheld under regulation 11(2) of the EIRs. The Authority explained that there was a member of the public present in the public gallery and clearly visible throughout the duration of the meeting and that it was not possible to redact or pixelate the footage in such a way that the member of the public could not be identified.

6. On 28 November 2023, 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 he was dissatisfied with the outcome of the Authority's review because he believed there was still information missing and that he should be able to access the meeting recording. He also questioned the Authority's response under the EIRs.

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 26 January 2024, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
9. The Authority was also asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information.
10. The case was subsequently allocated to an investigating officer.
11. During the course of the investigation further submissions were sought from the Authority in relation to the recording of the meeting as well as how it had determined and identified what information it held falling within scope of the Applicant's request.
12. The Applicant was also invited to provide his comments in relation to the personal information that was being withheld from him and his belief that further information was held by the Authority, which he did. His view was that the Authority should be able to redact information related to others, so as to satisfy its obligation to communicate personal information held.
13. During the course of the investigation, the Authority provided the Applicant with a copy of the recording of the LRB meeting that did not include the personal information of the member of the public. The Applicant confirmed that he received this. .

Commissioner's analysis and findings

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

Background

15. This request related to a meeting of the LRB of the Authority and the preparation before it and correspondence after it relating to two specific planning applications. [The remit of the LRB](#)¹ within the Authority is to (i) review applications for planning permission or for consent, agreement or approval which have been refused, granted subject to conditions or have not been determined within the prescribed period by the appointed officer under the Scheme of Delegation prepared in terms of Section 43A of the Town and Country Planning (Scotland) Act 1997 and in terms of the Town and Country Planning (Scheme of Delegation and Local Review Procedures) (Scotland) Regulations 2008 and (ii) to carry out all other functions as described in the aforesaid legislation. Information from its website shows that seven Councillors sit on this body.

FOISA or EIRs?

16. The relationship between FOISA and the EIRs was considered at length in [Decision 218/2007](#)². Broadly in light of this decision, the Commissioner's general position is as follows:
- (i) The definition of what constitutes environmental information should not be viewed narrowly.
 - (ii) There are two separate statutory frameworks for access to environmental information and an authority is required to consider any request for environmental information under both FOISA and the EIRs.
 - (iii) Any request for environmental information must therefore be handled under the EIRs.
 - (iv) In responding to a request for environmental information under FOISA, an Authority may claim the exemption in section 39(2).
 - (v) If the authority does not choose to claim the section 39(2) exemption, it must respond to the request fully under FOISA; by providing the information; withholding it under another exemption in Part 2; or claiming that it is not obliged to comply with the request by virtue of another provision in Part 1 of FOISA (or a combination of these).
 - (vi) Where the Commissioner considers a request for environmental information has not been handled under the EIRs, he is entitled (and indeed obliged), to consider how it should have been dealt with under that regime.
17. Firstly, therefore the Commissioner must determine whether all or part of the information withheld from the Applicant is environmental information.
18. "Environmental information" is defined in regulation 2(1) of the EIRs. Where information falls within the scope of this definition a person has a right to access it under the EIRs, subject to regulations 10 and 11 of the EIRs.

¹ [Local Review Body - Inverclyde Council](#)

² [Decision 218/2007 | Scottish Information Commissioner](#)

19. The Commissioner has considered the subject matter of the request, together with the withheld information, which involves the consideration of planning applications and the process by which these planning decisions were made, and is satisfied that this is “environmental information”.
20. The Commissioner accepts that this is information which relates to a measure (including administrative measure) affecting or likely to affect the elements and factors referred to in paragraph (a) as well as measures or activities designed to protect those elements and therefore would fall within paragraph (c) of that definition. Consequently, he considers the information to comprise, in its entirety environmental information.

Section 39(2) of FOISA – environmental information

21. The Council confirmed that it was applying the exemption in section 39(2) of FOISA to the Applicant’s information request. Section 39(2) provides, in effect, that environmental information (as defined in section 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.
22. The Authority considered if the public interest in disclosing the information under FOISA outweighed the public interest in applying the exemption. It found that, on balance, the public interest lay in favour of upholding the exemption, because there was no public interest in dealing with the same request under two different regimes. It considered this a technical point that had no material effect on the outcome of the request.
23. The Commissioner notes the Applicant’s concerns about the Authority’s use of section 39(2) of FOISA.
24. However, as he is satisfied that all of the information falling within scope of the Applicant’s request would be deemed to be “environmental information” and 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.
25. 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 environmental information available

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)).

Information falling within the scope of the request

28. In its initial response, the Authority provided the Applicant with information it considered to fall within part (ii) of his request, along with a link to its website where it stated the information falling within part (i) of his request could be found. At that stage it omitted to comment on part (iii) of his request.
29. In its review response the Authority identified further information falling within part (i) of his request that was provided to him. It also explained how information was distributed to LRB members. It advised that LRB members were emailed a copy of the calling notice for the meeting together with a link to the papers available on the Authority's website. It provided the Applicant with a copy of the email sent to LRB members together with the calling notice.
30. The Authority confirmed that it did hold the recording he had requested in part (iii) of his request, but that it was relying on the exception in regulation 11(2) of the EIRs for refusing to make this available.
31. The Applicant, in his application to the Commissioner, considered that at least seven key items of correspondence and a meeting recording had been withheld from him by the Authority.
32. The Authority explained that it did not consider that these seven documents highlighted by the Applicant fell within the scope of his request. It stated that its interpretation of the Applicant's request was that he was seeking internal communications only and took the view that the information contained within these documents was not internal.
33. It submitted that although the emails themselves would not have been provided to the Planning Board or the LRB, information within the correspondence in which third parties make representations on the planning application as part of the LRB process were contained within the public papers that were provided to the LRB.
34. The Applicant considered that given how quickly his planning appeal was decided at the LRB meeting it suggested that advance discussion or debate on the topic had taken place.
35. He referred to another FOI request he had made subsequent to this one where information from the seven documents mentioned above had been provided to him with redactions. He considered that these should have fallen within the scope of the request that is the subject of this Application and was dissatisfied that information had been withheld.
36. The Commissioner has considered the information within these seven documents as well as the wording of the request itself. The Applicant's request does make reference to communications within the Authority, and those in the seven documents are from parties out with the Authority.
37. The Commissioner agrees with the Authority's position that this information did fall out with the scope of part (i) of the Applicant's request.

Searches

38. The Authority explained to the Commissioner the nature of the searches that had been carried out, as well as detailing which of its staff that had been asked to undertake the searches.

39. During the course of these searches further information was identified relating to the address subject to the planning application. However, this information was deemed to be out of scope of the request, as it was not related to the planning application, but rather the condition of the site itself.
40. The Commissioner has considered the submissions from both the Authority and the Applicant as well as the information that is already in the public domain. He accepts that, the Authority took adequate and proportionate steps in the circumstances to establish whether any further information, falling within the scope of the Applicant's request was held and he is satisfied that it does not (and did not, on receipt of the request) hold any further information falling within scope of the request which it had not made available to the Applicant.

Regulation 11(2) – personal information

41. As mentioned above, the Authority relied on the exception in regulation 11(2) of the EIRs for refusing to provide the information contained in the video recording of a meeting of the LRB on 12 January 2023.
42. Regulation 10(3) of the EIRs makes it clear that a Scottish public authority can only make personal data in environmental information available in accordance with regulation 11.
43. Regulation 11(2) provides that personal data shall not be made available where the applicant is not the data subject and another specified condition applies. These include where the disclosure would contravene any of the data protection principles in the UK GDPR or DPA 2018 (regulation 11(3A)(a)).
44. The Authority submitted that the withheld information constituted personal data, disclosure of which in response to this request would contravene the data protection principles in Article 5(1) of the UK GDPR ("lawfulness, fairness and transparency").
45. At the time the Authority provided the review response to the Applicant, its view was that, as a member of the public was present in the public gallery and could be clearly seen throughout the recording, the information should be withheld, relying on regulation 11(2). The Authority believed at that time that the video could not be manipulated to blur or pixelate image to obscure the member of the public.
46. During the course of the investigation, the Authority initially invited the Applicant to view the complete recording at its premises.
47. It was subsequently able to manipulate the recording to blur the identity of the member of the public and the recording was provided to the Applicant. The Authority informed the Applicant at that time that it was no longer relying on the exception at regulation 11(2) of the EIRs to withhold the whole recording.
48. The Commissioner must determine whether the Authority was correct to refuse to provide the recording at the time of the Applicant's request for review. Although the recording has now been provided to the Applicant, the Commissioner must consider the application of the exception at the time the Authority responded to the Applicant's requirement for review.

Is the withheld information personal data?

49. Personal data" are defined in section 3(2) of the DPA 2018 as "any information relating to an identified or identifiable individual". Section 3(3) of the DPA 2018 defines "identifiable living individual" as a living individual who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, or an

online identifier, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

50. Information will "relate to" a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them, or has them as its main focus. An individual is "identified" or "identifiable" if it is possible to distinguish them from other individuals.
51. The Applicant considered that the meeting which was recorded was a public meeting where individuals have knowingly attended, whilst others dialled in remotely, therefore he did not believe it should be subject to protection under the UK GDPR.
52. The Authority was satisfied that the recording of the meeting contained personal information, namely the image of a member of the public who had attended the LRB meeting and who was capable of being identified.
53. The Authority explained that it was not possible to redact or pixelate the footage in such a way that the member of the public could not be identified from it.
54. Having considered the Authority's submissions and the withheld information, the Commissioner accepts that the withheld information contained personal data as it relates to an identified or identifiable individual(s), in that it contained the image of a member of the public. He is therefore satisfied that the information is personal data in terms of section 3(2) of the DPA 2018

Would disclosure contravene one or more of the data protection principles?

55. Article 5(1)(a) of the UK GDPR requires personal data to be processed "lawfully, fairly and in a transparent manner in relation to the data subject".
56. In terms of section 3(4) of the DPA 2018, disclosure is a form of processing. In the case of the EIRs, personal data are processed when disclosed in response to a request. Personal data can only be made available if making the data available would be lawful (i.e. if it would meet one of the conditions of lawful processing listed in Article 6(1) of the UK GDPR) and fair.
57. The Authority considered that disclosure of such information would contravene Article 5(1) of the UK GDPR, that requires the Authority to process personal information in a way that is lawful, fair and transparent.
58. The Authority's view was that the individual data subject would have a reasonable expectation that the information would not be disclosed into the public domain, on the basis that this information is not routinely disclosed or published in the public domain.
59. It stated that members of the public are free to attend all public meetings of the Authority, including the LRB. It explained that meetings of quasi-judicial boards, such as the LRB, were not live-streamed or placed on its website, so are not placed in the public domain. It submitted that the meetings were recorded only to facilitate the taking of the minute of the meeting and they were usually deleted after the minute had been approved.
60. The Authority explained that members of the public who do attend such meetings in person were made aware that the meeting may be recorded or live streamed in terms of the statement in the calling notice, the Authority's privacy notice and that there was also a note on the door to the Committee Chambers advising that meetings may be recorded. The

Chair/Convenor of any meeting would usually read out a GDPR statement at the beginning of each meeting, but it was noted that this did not occur at this meeting.

61. Against this, the Commissioner notes the [Authority's Privacy Statement](#)³ is publicly available to members of the public, and states it, " may use and store images, sound recordings and information pertaining to you contained in them for live-streaming/webcasting or training purposes."
62. Regardless of what the Authority's position on broadcasting the LRB is, and having considered the calling notice, signage and privacy notice, the Commissioner considers that the individual member of the public would have no reasonable expectation that their attendance would not be broadcast publicly.

Lawful processing; Article 6(1)(f) of the UK GDPR

63. The Commissioner will now consider if disclosure of the personal data would be lawful. In considering lawfulness, he must consider whether any of the conditions in Article 6(1) of the UK GDPR would allow the personal data to be disclosed.
64. The Commissioner considers condition (f) in Article 6(1) of the UK GDPR to be the only one which could potentially apply in the circumstances of this case.

Condition (f) – legitimate interests

65. Condition (f) states that processing shall be lawful if it is necessary for the purposes of legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data.
66. Although Article 6 states that this condition cannot apply to processing carried out by public authorities in the performance of their tasks, regulation 11(7) of the EIRs makes it clear that public authorities can rely on Article 6(1)(f) when responding to requests made under the EIRs.
67. The tests which must be met before Article 6(1)(f) can apply are as follows:
 - (i) Does the Applicant have a legitimate interest in obtaining the personal data?
 - (ii) If so, would making the personal data available be necessary to achieve that legitimate interest?
 - (iii) Even if the processing would be necessary to achieve that legitimate interest, would that be overridden by the interests or fundamental rights and freedoms of the data subjects?

Does the Applicant have a legitimate interest in obtaining the information?

68. There is no definition within the DPA 2018 of what constitutes a "legitimate interest", but the Commissioner takes the view that the term indicates that matters in which an individual properly has an interest should be distinguished from matters about which he or she is simply inquisitive. The Commissioner's [guidance on regulation 11](#) states:

"In some cases, the legitimate interest might be personal to the applicant, e.g. he or she might want the information in order to bring legal proceedings. For most requests, however,

³ <https://www.inverclyde.gov.uk/assets/attach/14679/Council-and-Committee-Meetings-Privacy-Notice-April-2022.pdf>

there are likely to be wider legitimate interests, such as the scrutiny of the actions of public bodies or public safety."

69. The Authority submitted that any legitimate interest the Applicant had in the information had been met by allowing him to attend the meeting remotely on the day.
70. The Applicant considered that he has a legitimate interest in the recording being made available as he considered it highly odd that the planning appeal was refused in such a short time scale, and believed this may suggest that advance discussion or debate on the topic by Councillors had occurred, or that there was a failure to discharge responsibility to duly consider an appeal. The Applicant explained that this was why he had requested a copy of the recording as the publicly available minute suggests various points were covered which were not discussed at all.
71. The Commissioner accepts that the Applicant had a legitimate interest in obtaining the withheld personal data which was contained within the recording of the meeting.

Is disclosure necessary to achieve the legitimate interest?

72. Having accepted that the Applicant has a legitimate interest in the personal data, the Commissioner must consider whether disclosure of that personal data is necessary to meet that legitimate interest. In doing so, he must consider whether these interests might reasonably be met by any alternative means.
73. The Commissioner has considered this carefully in light of the decision of the Supreme Court in [South Lanarkshire Council v Scottish Information Commissioner \[2013\] UKSC 55\[4\]](#)⁴.
74. Here, "necessary" means "reasonably" rather than "absolutely" or "strictly" necessary. The Commissioner must, therefore, consider whether the disclosure is proportionate as a means and fairly balanced as to the aims to be achieved, or whether the Applicant's legitimate interests can be met by means which interfere less with the privacy of the data subject.
75. As mentioned above, the Applicant considered that disclosing the recording of the meeting was necessary as he did not believe the published minute of the meeting reflected what had been discussed.
76. The Authority considered that disclosure of the information was not necessary for any of the permitted purposes. It did not consider disclosure of the information was necessary in terms of the UK GDPR or DPA and it was satisfied that no consent had been obtained from the individuals affected. It therefore was of the view that the information could not be disclosed.
77. As stated above, the Authority considered that any legitimate interest that the Applicant had would have been met by his attendance (remotely) at the meeting on the day.
78. The Commissioner has considered the submissions from both the Applicant and the Authority. The Commissioner can appreciate the Authority's position that the Applicant's legitimate interest may have been satisfied by his attendance at the meeting on the day. However, he also accepts the Applicant's position, that post meeting, having received the decision in relation to his planning appeal and read the minute of the meeting, that it was reasonable to wish to see the meeting again to satisfy and remind himself of what had occurred.

⁴ [South Lanarkshire Council \(Appellant\) v The Scottish Information Commissioner \(Respondent\) \(Scotland\) - UK Supreme Court](#)

79. Given this, and having considered all the circumstances, the Commissioner has concluded that disclosure of the recording of the meeting was necessary to achieve the Applicant's legitimate interest. Consequently, he will go on to consider whether the legitimate interest in obtaining the personal data outweighs the rights and fundamental freedom of the data subject.

Interests and fundamental freedom of data subject?

80. The Commissioner must now balance the legitimate interests in disclosure against the data subjects' interests or fundamental rights and freedoms. Only if the legitimate interests of the Applicant outweigh those of the data subjects can the information be disclosed.
81. The Commissioner's [guidance on regulation 11](#)⁵ of the EIRs notes some of the factors that should be taken into account in considering the interests of the data subjects and carrying out the balancing exercise. He makes it clear that, in line with Recital (47) of the GDPR, much will depend on the reasonable expectations of the data subjects and that these are some of the factors public authorities should consider:
- (i) whether the information relates to the individual's public life (i.e. their work as a public official or employee) or their private life (e.g. their home, family, social life or finances);
 - (ii) the potential harm or distress that may be caused by the disclosure;
 - (iii) whether an individual objected to the disclosure.
82. As stated previously, the Authority's view was that this individual would have a reasonable expectation that the information would not be disclosed into the public domain on the basis that this information is not routinely disclosed or published there. Whilst the Applicant considered that the meeting which was recorded was a public meeting where individuals have knowingly attended whilst others dialled in remotely, therefore he did not believe it should be subject to protection under the UK GDPR.
83. The Commissioner has considered the views of both the Authority and the Applicant. Any member of the public can attend these meeting. The Authority has explained the measures in place around recording of meetings and communicating how these may be used. While LRB meetings are not customarily placed into the public domain, this is contradicted by the privacy notice on which a member of the public would rely.
84. As such, the Commissioner considers that, in the circumstances of this case, the interests and fundamental rights and freedoms of the data subject do not outweigh the legitimate interest of the Applicant. He therefore finds, in the circumstances of this particular case, that condition (f) in Article 6(1) of the UK GDPR can be met in relation to the withheld personal data.

⁵ [EIRs Guidance Regulation 11 Personal Data.pdf](#)

Fairness

85. The Commissioner must also consider whether disclosure would be fair. He finds, for the same reasons as he finds that condition (f) in Article 6(1) can be met, that disclosure of the withheld information would be fair.

Conclusion on the data protection principles

86. In the absence of any reason for finding disclosure to be unlawful other than a breach of Article 5(1)(a) and given that the Commissioner is satisfied that condition (f) can be met, he must find that disclosure would be lawful in this case. He therefore finds that disclosure of the withheld information would not breach the first data protection principle, and so the Authority was not entitled to withhold this information under the exception in regulation 11(2) of the EIRs.
87. Although having found that the whole recording could have been provided to the Applicant, the Commissioner notes, nevertheless that during the course of investigation the Authority was able to anonymise the personal data, thereby making it impossible for the data subject to be identified from the recording of the meeting. He also understands that the recording was made available to the Applicant, and he is of the view that disclosure of the information in this format was sufficient to fulfil the Applicant's legitimate interest. Even had this been necessary, the Commissioner is baffled as to why a technical solution to this issue could not have been determined earlier in the process. The Applicant is clearly interested in what occurred at the meeting. The Authority could have clarified with him whether the visual aspect of the meeting was important to him or whether, for example, an audio version could be provided

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 the Authority correctly identified the information falling within the scope of the Applicant's request and provided most of this to the Applicant.

However, he also finds that the Authority wrongly withheld information under regulation 11(2) of the EIRs.

As the Authority provided the Applicant with a copy of the recording during the investigation, albeit with the member of the public's identity protected, the Commissioner does not require the Authority to take any action in response to this failure in response to the application under consideration here.

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.

David Hamilton

Scottish Information Commissioner

8 July 2025