



Scottish Information
Commissioner
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Decision Notice 193/2025

Information relates to Noise Impact Assessment

Authority: South Lanarkshire Council

Case Ref: 202500494

Summary

The Applicant asked the Authority for a copy of the Noise Impact Assessment that would have been carried out when the green space was transferred over to the Kirktonholme Football Stadium for EKYM FC. The Authority stated that it did not hold the information requested. The Commissioner investigated and found that the Authority had been entitled to inform the Applicant that the information was not held.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 47(1) and (2) (Application for decision by Commissioner).

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of “the Act”, “applicant” and “the Commissioner”) (Interpretation); 5(1) (Duty to make environmental information available on request); 10(1) and (4)(a) (Exceptions from duty to make environmental information available); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

Background

1. On 2 February 2025, the Applicant made a request for information to the Authority. He asked for a copy of the Noise Impact Assessment (NIA) that would have been carried out when the green space was transferred over to the Kirktonholme Football Stadium for EKYM FC.

2. The Authority responded on 17 February 2025. The Authority notified the Applicant that it was relying on the exemption in section 39(2) of FOISA as his request was for environmental information and required to be handled under the EIRs. The Authority therefore responded to the request in line with the EIRs and explained that the transfer of the land did not require planning permission and so an NIA was not required. The Authority stated that it had searched its records for the information, but nothing had been located.
3. On 18 February 2025, the Applicant wrote to the Authority requesting a review of its decision. The Applicant did not accept that the information was not held. He commented that planning permission was not the only legal basis for requiring an NIA. The Applicant stated that under the Environmental Protection Act 1990 (EPA 1990) local authorities had a duty to investigate and prevent statutory nuisances, including noise pollution, regardless of planning status.
4. The Authority notified the Applicant of the outcome of its review on 18 March 2025. It confirmed that the information was not held, and it acknowledged that it should have stated (in its original response) that the information was excepted from disclosure under regulation 10(4)(a) of the EIRs.
5. On 1 April 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 he was dissatisfied with the outcome of the Authority's review because he considered that the Authority's response had focused on planning laws and had not considered other legislation that may have required an NIA.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 24 April 2025, the Authority was notified in writing that the Applicant had made a valid application, and the case was allocated to an investigating officer.
8. 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 about its reasons for concluding that it held no relevant information.

Commissioner's analysis and findings

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

Handling in terms of the EIRs

10. 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](#)¹.

¹ <https://www.legislation.gov.uk/ssi/2004/520/regulation/2/made>

11. The Applicant has not disputed the Authority's decision to deal with the request under the EIRs and the Commissioner is satisfied, in the circumstances, that the information requested by the Applicant falls within the definition of environmental information set out in regulation 2(1), in particular, paragraphs (a), (b) and (c) of that definition.

Section 39(2) – Environmental information

12. 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.
13. In this case, the Commissioner accepts that the Authority was entitled to apply the exemption to the information withheld under FOISA, given his conclusion that it is properly classified as environmental information.
14. 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 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.
15. 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.
16. In the circumstances, the Commissioner will consider this case, in what follows, solely in terms of the EIRs.

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

17. Regulation 5(1) of the EIRs (subject to the various qualifications contained in regulations 6 to 12) 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.
18. On receipt of a request for environmental information, 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 the information available, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
19. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 applies.

Regulation 10(4)(a) – Information not held

20. Regulation 10(4)(a) of the EIRs states that a Scottish public authority may refuse to make information available to the extent that it does not hold that information when it receives the request.
21. The standard of proof to determine whether a Scottish public authority holds the 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.

22. The Commissioner also considers, where appropriate, any reasons offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is (or was, at the time the request was received) held by the public authority.

The Applicant's comments on Regulation 10(4)(a)

23. The Applicant disputed the Authority's response that the NIA was not held and was not required because the transfer of the land from the Authority did not require planning permission. He explained that planning permission was not the only legal basis for requiring a noise assessment. He commented that EPA 1990 imposed a proactive duty to assess noise nuisances, and the Authority had not demonstrated compliance with this obligation.

The Authority's comments on Regulation 10(4)(a)

24. The Authority provided additional background information and context as to why an NIA was not required in cases where the transfer of land does not require planning permission. It explained that Kirktonholme Football Pavilion and playing fields were previously owned by the Authority. In terms of the Community Empowerment (Scotland) Act 2015, there was an application for a Community Asset Transfer from a community group which was approved and resulted in the transfer of the property from the Authority to the ownership of the community group in 2019.
25. The Authority explained that this statutory process did not require an NIA as it was simply a transfer of ownership. It stated that the land transfer did not involve a "change of use" as football was already being played at the grounds on grass, so there was no need for any planning consent. The Authority submitted that there was an upgrade which involved changing the grass pitch to an astro turf surface and improving access and facilities which has resulted in an increase in use. It stated that there was a planning application submitted by the owners for flood lights, to enable the facilities to be used in the evening, but this would not have required an NIA.
26. Notwithstanding the Authority's view that an NIA was not required for the land transfer and was therefore not carried out (and was not held) it explained that its Planning Service had searched their records, which included a search of the Uniform DMS (document management system).
27. The Authority provided the Commissioner with evidence of the searches it had conducted which confirmed that there was no NIA.
28. The Commissioner notes that searches for the land show three subsequent planning applications following the land transfer in 2019, these took place in 2021 and 2024 but none of them are on the subject matter of the Applicant's request, nor do they contain an NIA. The Authority also provided the Commissioner with evidence of the decision on the Community Asset Transfer and the accompanying documents, which again, showed, that there was no associated NIA.
29. The Authority confirmed that it had published the details of the Community Asset Transfer, and it noted that searches can be carried out by anyone on its publicly available Planning Portal. It noted that if there had been an NIA it would have been published online and would be publicly available.

30. The Authority commented that even if the Applicant was correct in his assertions that an NIA was required, this does not change the fact that the searches carried out by the Authority demonstrate that an NIA was not held.

The Commissioner's view on Regulation 10(4)(a)

31. The Commissioner has carefully considered the submissions from both parties. He would emphasise again that his role involves consideration of what, on the balance of probabilities, an authority actually holds at the time a request was received, as opposed to what an applicant may believe the authority should hold.
32. The Commissioner is satisfied with the Authority's explanation of why it does not hold the specific information requested and he considers that the searches carried out by the Authority were reasonable. He considers that if an NIA was held, the searches carried out by the Authority would have located it. The Commissioner accepts that the Authority took proportionate steps in the circumstances to establish if the information was held and he is satisfied that it does not (and did not, on receipt of the request) hold the information requested by the Applicant.
33. The Commissioner understands why the Applicant expected the specified information to be held by the Authority. However, for the reasons set out above, he is satisfied that this was not the case. He has no locus, in this context, to determine what information an authority ought to record, or how: he is concerned with what information the authority actually holds.
34. The Commissioner therefore concludes that the Authority was correct to give the Applicant notice, in terms of regulation 10(4)(a) of the EIRs, that it did not hold the information requested.

The public interest

35. The exception in regulation 10(4)(a) of the EIRs is subject to the public interest test in regulation 10(1)(b) and so can only apply if, in all the circumstances of the case, the public interest in maintaining the exception outweighs that in making the information available.
36. The question of whether or not a public authority holds information is a factual one, determined on the balance of probabilities. If a public authority does not hold the information, then there is no meaningful public interest test that can be undertaken.
37. In this case, for the reasons set out above, the Commissioner is satisfied that the Authority does not hold any information covered by the request, and did not do so, on receipt of the request. Consequently, he accepts that there is no conceivable public interest in requiring the disclosure of such information and finds that the public interest in making information available is outweighed by that in maintaining the exception.

Decision

The Commissioner finds that the Authority 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 was entitled to provide a response to the Applicant under regulation 10(4)(a) of the EIRs, stating that it did not hold any information which would fulfil the request.

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.

Jennifer Ross
Deputy Head of Enforcement

6 August 2025