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Commissioner  
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# Decision Notice 197/2025

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## Gresham House Forestry Fund Investment

Authority: Scottish National Investment Bank  
Case Ref: 202401655

### Summary

The Applicant asked the Authority for a list of landholdings relating to the Gresham House Forestry Fund. The Authority relied on the exemption in section 33(1)(b) of FOISA for withholding the information and argued that disclosure would prejudice substantially commercial interests.

The Commissioner investigated and found that the nature of the information withheld was, in substance Environmental and, as such the Commissioner required a new review to be conducted under the EIRs.

### 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”, “the Commissioner” and paragraphs (a), (b) and (c) of the definition of “environmental information”) (Interpretation); 5(1) (Duty to make environmental information available on request); 16 (Review by Scottish public authority); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

## Background

1. On 26 April 2024, the Applicant made a multi-part request for information to the Authority, which included the following in respect of an investment made by the Authority in the Gresham House Forestry Fund:

“To substantiate the claims made by the SNIB, notably the forecast 1.2 million tonnes of carbon sequestered over 20 years and the allocation of 60% of the funds to Scotland, the SNIB should have been made aware of the specific landholdings that relate to this fund and the carbon credits available from these landholdings. Please could the SNIB provide a list of all the landholdings that relate to this 60% of the fund being directed into Scotland and the carbon credit calculations that are/will be available from these landholdings and forestry schemes. Carbon Credits are regulated by the Woodland Carbon Code, which places emphasis on transparency.”
2. The remaining parts of the request do not form part of the Applicant’s application to the Commissioner.
3. The Authority responded on 27 May 2024. The Authority provided a response in line with FOISA which disclosed some information to the Applicant, but withheld other information on the basis that providing a list of the individual landholdings would potentially cause commercial harm to the fund manager. and their management of the Fund’s assets. Therefore, it considered the exemption in section 33(1)(b) to apply to this information. Having considered the application of the public interest test, the Authority decided that ‘on balance the public interest is best served by not releasing the information sought’.
4. On 24 June 2024, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision to withhold the list of landholdings relating to the fund. The Applicant referred to the Authority’s claim that a full list of the individual landholdings would potentially cause harm to the manager and their management of the fund’s assets but commented that it did not give an explanation. The Applicant explained that there was no commercial sensitivity in people seeing what types of trees grow on publicly accessible sites in the UK. The Applicant also did not agree with the Authority’s view that the public interest is not best served by release of the landholding information. The Applicant stated that ‘£50 million of taxpayers’ money has been invested into this fund and it is clearly in the public interest to know how this fund is being spent’. The Applicant also observed that the Authority ‘has disclosed the names of some land holdings’..., ‘and appears to have used such land holdings to promote the benefits of forestry’. The Applicant argued that ‘it is unclear why [the Authority] has published some names and not others.’
5. The Authority notified the Applicant of the outcome of its review on 19 July 2024. The Authority focussed on the landholdings information, upholding its application of section 33(1)(b). The Authority argued that releasing this information would be harmful to Gresham Forestry’s investment strategy because they are still in the process of acquiring sites. It stated that this would in turn impact on the Authority’s investment return potential as well as being harmful to other Gresham Forestry investors (who may not be public bodies). The public interest test conducted by the Authority simply narrated that FOISA does not define the term public interest and quoted the Commissioners guidance, without actually commenting on this.

6. On 19 December 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review, because he believed that there is a significant public interest in the requested information being disclosed and he was of the view that the exemption in section 33(1)(b) of FOISA did not apply.

## **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 January 2025, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information, and the case was 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 whether the Authority had considered if the requested information could fall under EIRs and not FOISA, and also why the Authority believed the landholdings information was commercially sensitive. Questions were also asked around the Authority's application of the public interest test.
10. The Authority provided the Commission with its submissions.
11. Within these submissions the Authority stated that having considered the request further it did not believe that the information comes within the definition of "environmental information" in the EIRs. The Authority explained that in its view "the information sought by the Applicant is primarily commercial and geographical, in relation to the commercial matter of carbon credit calculations and the geographical and percentage allocation in relation thereto and should be dealt with under FOISA."
12. The Authority stated that as it did not believe that the information was "environmental information", it did not wish to rely on the exemption in section 39(2) of FOISA.
13. However, it did note that if the Commissioner were to disagree, the Authority would wish to rely on the exception in regulation 10(5)(e) of the EIRs.
14. The Authority reiterated its reliance on section 33(1)(b) for withholding the information covered by the request whilst additionally seeking to rely on the exemption in section 36(2) (Confidentiality) of FOISA.

## **Commissioner's analysis and findings**

15. The Commissioner has considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and the Authority. He is satisfied that no matter of relevance has been overlooked.

## **FOISA or the EIRs?**

16. The relationship between FOISA and the EIRs was considered at length in [Decision 218/2007](#)<sup>1</sup>. Broadly, in the light of that 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 therefore must 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 (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 handled under that regime.
17. The Authority offered substantive submissions around the application of the exemptions applied under FOISA. However, their explanation for why the information being withheld is not environmental seems short sighted. As detailed above they recognise that the information is geographical and related to carbon credits.
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.
19. Having considered the subject matter of the request, which relates to a list of landholdings relating to Gresham House Forestry Fund and carbon credits which are/will be available from these landholdings and forestry schemes, together with the withheld information, the Commissioner is satisfied that this is "environmental" information. The Commissioner recognises that the nature of the information itself is site locations and sizes which would fall within the definition in paragraph (a) of regulation 2(1) of the EIRs as relating to the state of the elements of the environment, such as air and atmosphere, water, soil, land landscape and natural sites including wetlands, [...] biological diversity and its components, [...] and the interaction among these elements. The information also relates to activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b), as well as measures or activities designed to protect those elements, as cited in paragraph(c), as the purposes of these sites is specifically for planting trees, as can be viewed on the Gresham House Forestry website [Forestry Investment | Gresham House Specialist Asset Management](#)<sup>2</sup>.

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<sup>1</sup> [Decision 218/2007 | Scottish Information Commissioner](#)

<sup>2</sup> [Forestry Investment | Gresham House Specialist Asset Management](#)

20. Given that the information requested is environmental information, the Authority had a duty to consider it in terms of regulation 5(1) of the EIRs. In failing to do so, it failed to comply with regulation 5(1).

### ***Section 39(2) of FOISA – environmental information***

21. 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.
22. In this case, as stated above, the Authority did not agree that the request should be considered under the EIRs and responded under FOISA.
23. The Commissioner finds that the Authority would have been entitled to apply the exemption in section 39(2) of FOISA to the request, given his conclusion that the information requested was properly classified as environmental information.
24. As there is a separate statutory right of access to environmental information available to the Applicant, the Commissioner also accepts that, in this case, the public interest in maintaining this exemption and in handling the request in line with the requirements of the EIRs would outweigh any public interest in disclosing the information under FOISA.

### ***Regulation 16 of the EIRs***

25. Regulation 16 of the EIRs states that, on receipt of a requirement to conduct a review, the authority shall review the matter and decide whether it has complied with the EIRs, within 20 working days (regulations 16(3) and (4)). It also states that, where an authority has not complied with its duty under the EIRs, it shall immediately take steps to remedy the breach of duty (regulation 16(5)).
26. Although the Authority responded to the Applicant's requirement for review on 19 July 2024, this was only in terms of handling the request entirely under FOISA and not the EIRs.
27. It is apparent that the Authority failed to respond to the Applicant's request of 24 June 2024 in terms of the EIRs and therefore failed to comply with regulation 5(1) of the EIRs. It is also apparent that the Authority failed to carry out a review meeting the requirements of regulation 16 of the EIRs.
28. The Commissioner therefore requires the Authority to provide a response to the Applicant's requirement for review of 19 July 2024, in terms of regulation 16 of EIRs.
29. The Commissioner's decision below states a compliance date of 2 October 2025, in line with the timescales he is required to follow. This is the latest day on which the Authority must issue a response: the deadline does not prevent the Authority from issuing one sooner.

## **Decision**

The Commissioner finds that the Authority failed to comply with the requirements of regulation 5(1) of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the Applicant's information request and request for review.

The Commissioner requires the Authority to provide a response to the Applicant's requirement for review, in terms of the regulation 16 of the EIRs, by **2 October 2025**.

## **Appeal**

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

## **Enforcement**

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

**David Hamilton**

**Scottish Information Commissioner**

**18 August 2025**