



Scottish Information
Commissioner
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Decision Notice 200/2025

Installation of cabling near a specified address

Authority: East Dunbartonshire Council
Case Ref: 202500556

Summary

The Applicant asked the Authority for information relating to the installation of cabling near a specified address by City Fibre. The Authority provided the Applicant with some information that it thought would assist him, but the Applicant considered the Authority had failed to properly respond to his request. The Commissioner investigated and found that the Authority partially failed to comply with the EIRs in responding to the information request made by the Applicant. However, he was satisfied that it did not hold the information requested by the Applicant.

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 “environmental information”) (Interpretation); 5(1) and (2)(b) (Duty to make environmental information available on request); 10(1) and (4)(a) (Exceptions from duty to make environmental information available); 13(b) (Refusal to make information available); 16(4) (Review by Scottish public authority); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 13 July 2024, the Applicant made a request for information to the Authority. In relation to the installation of fibre optic cabling in a footpath fronting his house, he asked for:
 - a) “What obligations did [the Authority] place upon City Fibre, either Contractually, by Instruction, direction or intent, to fully inform and cooperate with the Customer, in this case myself, to evaluate the existing cabling and access point and to optimise an installation route avoiding obstructions?
 - b) What procedures were put in place to ensure compliance with the foregoing?
 - c) A copy of [the Authority’s] and City Fibre’s records of having done so, in respect of my property at [specified address].”
2. The Authority did not respond to the information request.
3. On 15 August 2024, the Applicant wrote to the Authority in respect of its failure to respond.
4. The Authority notified the Applicant of the outcome of its review on 16 September 2024 in the following terms:
 - in response to the first part of his request, it advised that it had met with City Fibre to understand locations for their infrastructure but that it held no associated notes or minutes of these meetings
 - in response to the second part of his request, it explained that it had responsibility under the New Roads & Street Works Act 1991 as owners of roads and pavements to inspect an agreed pre and post percentage of the public utility works on footways and carriageways to assure the work carried was of an acceptable standard in terms of quality. It said that these inspections were known as Cat A, B or C inspections
 - in response to the third part of his request, it disclosed information relating to a Cat A inspection of a property in the same area, but which did not specifically relate to the Applicant’s own address.
5. On 13 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 that he was dissatisfied with the outcome of the Authority’s review because he did not believe that the Authority had answered his request.

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 29 April 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently 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 relating to how it established whether it held any information falling within the scope of the Applicant’s request.

Commissioner's analysis and findings

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

Application of the EIRs

10. Where information falls within the scope of the definition of "environmental information" in regulation 2(1) of the EIRs, a person has a right to access it (and the public authority a corresponding obligation to respond) under the EIRs, subject to various restrictions and exceptions contained in the EIRs.
11. During the investigation, the Authority confirmed that it considered the information to be environmental information as it related to the installation of fibre infrastructure, which has a clear impact on the built environment.
12. Having considered the terms of the request, the Commissioner is satisfied that the information sought by the Applicant is properly considered to be environmental information, as defined in regulation 2(1) of the EIRs.
13. The Commissioner will therefore consider the information in what follows solely in terms of the EIRs.

Regulation 5(1) – Duty to make available environmental information on request

14. 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.
15. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 apply and, in all the circumstances of the case, the public interest in maintaining the exception or exceptions outweighs the public interest in making the information available.

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

16. Regulation 10(4)(a) of the EIRs provides that a Scottish public authority may refuse to make environmental information available to the extent that it does not hold that information when it received the request.
17. In considering whether a Scottish public authority holds the requested information 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.
18. The Commissioner will consider the scope, quality, thoroughness and results of those searches, applying the civil standard of proof (the balance of probabilities). Where appropriate, he will also consider any reasons offered by the public authority to explain why it does not, or could not reasonably be expected to, hold the information.

The Applicant's submissions

19. By way of background, the Applicant explained that the Authority had contracted with City Fibre to install a superfast broadband cable in the pavement fronting his house, with a view

to installing an optimum connection (avoiding obstructions) from the pavement to his house at some later date. He said that this was being done in accordance with, and financed by, the Scottish Government's "Reaching 100%" initiative and that the Authority had contractual and statutory obligations to safeguard his interests, which he considered it had failed to do.

20. The Applicant explained that he was unhappy with the response provided by the Authority as he did not consider that it had specifically addressed the questions he had asked in his request.
21. In relation to the first part of his request, the Applicant said that the Authority had failed to state what "contractual and procedural arrangements" it had in place with City Fibre to "safeguard the houseowner".
22. In relation to the second part of his request, the Applicant explained that he had requested this information to "demonstrate the efficacy of any arrangements between the Authority and City Fibre". In his view, the response provided by the Authority did not demonstrate this.
23. In relation to the third part of his request, the Applicant submitted that the Authority had failed to answer his question and that it had provided him with information that was irrelevant as it did not relate to his property.

The Authority's submissions

24. The Authority explained that City Fibre was the telecommunications network provider working to expand internet access across East Dunbartonshire. The Authority was responsible for the co-ordination of all works on the adopted roads and footways network and had powers to inspect the works and re-instatement of the works.
25. The Authority said that it understood the Applicant's request as seeking information on the demands made by the Authority on City Fibre regarding the most appropriate access points and location of fibre installation, taking into consideration their need to work with the public.
26. The Authority explained that it had no statutory powers in deciding where such installations took place and that there were therefore no contractual or procedural arrangements to influence the positioning of any associated infrastructure.
27. To determine whether it held any information relevant to the request, the Authority said that it consulted with several officers within the Roads and Neighbourhood Services who were responsible for dealing with City Fibre. It confirmed that several site visits took place during the City Fibre works but it said that no notes of these meetings had been created as it did not believe either the Roads Services or individual officers were required to retain a record of these discussions.
28. The Authority explained that the above officers were asked to undertake searches (using key terms, including "City Fibre" and the location specified in the request) of their emails and folders within the Roads Services structured file system. It confirmed that these searches returned no information falling within the scope of the Applicant's request.
29. The Authority noted that it had provided some information to the Applicant in response to his request. It said that this information did not strictly fall within the scope of his request but that it had provided it to him to be helpful.

The Commissioner's view about the exception

30. As stated above, the Authority confirmed that its position is that it holds no information falling within the scope of the Applicant's request. While it had provided some information to the Applicant, it said it had done so to be helpful and that this information did not fall within the scope of his request.
31. While the Commissioner welcomes public authorities providing information and advice and assistance to requesters, they must still ensure that they clearly respond to the specific terms of the request. In this case, the Authority's efforts to assist the Applicant had the effect of giving him the understandable impression that it had fundamentally failed to understand his request.
32. Having considered the terms of the request, the searches carried out and the explanations provided by the Authority as to why it did not hold the information requested, the Commissioner is satisfied that the Authority took adequate and proportionate steps (by the close of the investigation) to establish whether it held the information requested. He considers that the Authority's searches were reasonable in the sense of who it asked to carry out the searches and the locations searched – he finds that they would be capable of locating the information requested.
33. While the Applicant believed and expected the specified information to be held by the Authority, the Commissioner is satisfied, on balance, that this was not the case. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide.
34. If a public authority does not hold the information requested, it must issue a notice under regulation 10(4)(a) of the EIRs to that effect. Regulation 13(b) of the EIRs provides that if a request to make environmental information available is refused by a public authority in accordance with regulation 10, the authority must provide a notice in writing explaining which exceptions are being relied upon (subject to certain qualifications which are not relevant in this case).
35. In this case, the Authority failed to issue a notice to the Applicant, under regulation 10(4)(a) of the EIRs, to the effect that it did not hold the information requested. Had it done so, it is highly likely that the Applicant would have had a better sense of what the Authority's position was in respect of the specific information he had requested – and what its position was in relation to the information it had provided to him to be helpful. The Commissioner must therefore find that the Authority failed to comply with regulation 13(b) of the EIRs in this respect.
36. In all the circumstances, the Commissioner is satisfied, on the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold recorded information that would fulfil the specific terms of the Applicant's request.
37. The Commissioner therefore finds that the Authority was entitled to rely on the exception in regulation 10(4)(a) of the EIRs on the basis that it did not hold the information requested.

Public interest test

38. 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.
39. 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.
40. 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.
41. Consequently, the Commissioner 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.

Handling of the request

42. In his application, the Applicant also expressed dissatisfaction with the following aspects of the Authority's handling of his request:
 - the Authority's failure to comply with the timescales permitted by FOI law
 - the Authority's failure to advise him of his right of appeal to the Commissioner.

Timescales

43. 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.
44. 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.
45. Regulation 16(4) gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. Again, this is subject to qualifications which are not relevant in this case.
46. The Applicant sent his requirement for review dated 15 August 2024 to the Authority by recorded delivery. The Authority confirmed that this was received on 16 August 2024. The Authority should therefore have responded to the Applicant's requirement for review by 13 September 2024 at the latest – it responded on 16 September 2024.
47. It is matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with regulation 16(4) of the EIRs.

Rights of application/appeal

48. Section 21(10) of FOISA requires that in response to a requirement for review, the Authority must include particulars about the rights of the requestor to make an application to the Commissioner, as well as the right of appeal to the Court of Session conferred by sections 47(1) and 56 of FOISA.

49. While regulation 16(4) of the EIRs (which contains the requirement to notify the applicant of a review outcome) is couched in very general terms, the Commissioner cannot find that the more specific requirements on the content of notices contained in section 21 (including section 21(10)) of FOISA do not apply equally to responses made in line with regulation 16(4).
50. Section 21(10) of FOISA requires that in response to a requirement for review, the Authority must include particulars about the rights of the requester to make an application to the Commissioner, as well as the right of appeal to the Court of Session conferred by sections 47(1) and 56 of FOISA.
51. It is a matter of fact that this information was not included in the Authority's response to the Applicant's requirement for review. In fact, the Authority's review outcome wrongly advised the Applicant that he had a further right of review with the Authority. The Commissioner therefore finds the Authority failed to comply with section 21(10) of FOISA.

Summary

52. The Commissioner has already raised most of these failings with the Authority as part of a Level 1 intervention. However, he would again stress the importance of responding to requests within the prescribed timescales and of providing requesters with the correct information on their right to seek a review and their rights to make an application to the Commissioner. In this case, the Authority did not do this which, regrettably, led it taking several months before the Applicant understood his next step was to make an application to the Commissioner. This is plainly unsatisfactory.

Decision

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

The Commissioner is satisfied that the Authority was correct to apply the exception in regulation 10(4)(a) of the EIRs to the Applicant's request, given that he accepts it does not hold any information relevant to his request.

However, the Commissioner finds that the Authority breached the EIRs by failing to:

- inform the Applicant, by issuing a notice under regulation 10(4)(a), that it did not hold any information relevant to his request
- respond to the Applicant's request and requirement for review within the prescribed timescales
- to include particulars about the rights of the requester to make an application to the Commissioner, as well as the right of appeal to the Court of Session.

Given that the Commissioner is satisfied that the Authority does not hold the information requested by the Applicant, he does not require the Authority to take any action in response to these failures 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.

Cal Richardson
Deputy Head of Enforcement

26 August 2025