



Scottish Information
Commissioner
www.foi.scot

Decision Notice 206/2025

Relocation of Lenzie Academy

Authority: East Dunbartonshire Council
Case Ref: 202500558

Summary

The Applicant asked the Authority for information about the relocation of Lenzie Academy. The Authority refused to respond to the request as it considered the request to be manifestly unreasonable. The Commissioner investigated and found that the Authority had provided inadequate submissions to evidence that the request was manifestly unreasonable. He therefore required the Authority to respond to the request.

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 the 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”, “the Commissioner” and “environmental information”) (Interpretation); 5(1) and (2)(b) (Duty to make environmental information available on request); 10(1), (2) and (4)(b) (Exceptions from duty to make environmental information available); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 23 January 2025, the Applicant made a request for information to the Authority. He asked for:

“... all information after 1/7/2024, recorded in whatever format, held sent or received by the council which is not publically available or has previously been provided to me relating to the relocation of Lenzie Academy to Whitgates Park Lenzie/Kirkintilloch.”

2. As part of his request, the Applicant also stated:

“If this request is too wide or unclear, I would be grateful if you could contact me as I understand that under the Act(s), you are required to advise and assist requesters.”
3. The Authority responded on 20 February 2025. It refused to comply with the Applicant’s request because it said it was manifestly unreasonable. It estimated that it would cost the Authority in excess of £1,000 and a total of 48 working hours to comply with the request.
4. On the same day, the Applicant wrote to the Authority requesting a review of its decision. He said that he was dissatisfied that the Authority had not offered him an opportunity to modify his request and he was concerned with the accuracy of the estimated cost, as it exceeded the cost estimate the Authority provided for a previous request that was much wider in scope.
5. On 24 February 2025, the Applicant wrote to the Authority again. He expressed further concerns about the Authority’s assessment of his request as manifestly unreasonable, the lack of advice and assistance it had provided to him and its general handling of his request.
6. The Authority notified the Applicant of the outcome of its review on 20 March 2025, which fully upheld its original decision and maintained that it had provided the Applicant with appropriate advice and assistance.
7. On 15 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 consider his request to be manifestly unreasonable
 - he did not agree that the Authority had provided him with appropriate advice and assistance
 - he did not consider the Authority had fully addressed the matters of dissatisfaction set out in his requirement for review.

Investigation

8. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
9. On 5 May 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.
10. 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 related to why it considered the request manifestly unreasonable and the advice and assistance it provided to the Applicant.

11. As part of his requirement for review and his application to the Commissioner, the Applicant expressed dissatisfaction with several elements of the Authority's handling of his request. The Commissioner will consider these concerns, to the extent that he can, in his decision notice. However, some of the Applicant's dissatisfaction relates to matters that fall outwith the Commissioner's remit. He will therefore not consider these matters further in his decision notice.

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).
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. It is clear that the information requested is properly considered to be environmental information, as defined in regulation 2(1) of the EIRs (particularly paragraphs (a) and (c) of this definition).

Section 39(2) of FOISA – Environmental information

16. 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.
17. 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.
18. 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 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.
19. The Commissioner therefore concludes that the Authority would have been entitled to apply section 39(2) of FOISA and consider the Applicant's information request under the EIRs.
20. The Applicant raised dissatisfaction with the Authority's decision not to respond to his request in terms of FOISA in addition to its response in terms of the EIRs.
21. Given that the Authority responded solely in terms of the EIRs, the Authority technically should have applied the exemption in section 39(2) of FOISA. The Commissioner does not require the Authority to take any action in response to this failure, as he is satisfied that the Authority would have been entitled to apply the exemption to the request.

22. The Commissioner has consistently found that, in the absence of a specific reason to consider disclosure of information under FOISA to be more likely, the public interest favours upholding this exemption instead of requiring a substantive response under both regimes. However, he would urge the Authority to ensure that it applies the exemption whenever it responds to a request for environmental information solely in terms of the EIRs.
23. In the circumstances, therefore, 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

24. 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.
25. 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 provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
26. 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)(b) of the EIRs – Manifestly unreasonable

27. Regulation 10(4)(b) of the EIRs provides that a Scottish public authority may refuse to make environmental information available to the extent that the request for information is manifestly unreasonable. In considering whether the exception applies, the authority must interpret it in a restrictive way and apply a presumption in favour of disclosure. Even if it finds that the request is manifestly unreasonable, it is still required to make the information available unless, in all the circumstances, the public interest in doing so is outweighed by that in maintaining the exception.
28. The Commissioner's general approach is that the following factors are relevant when considering whether a request is manifestly unreasonable. These are that the request:
 - (i) would impose a significant burden on the public body;
 - (ii) does not have a serious purpose or value;
 - (iii) is designed to cause disruption or annoyance to the public authority;
 - (iv) has the effect of harassing the public authority; or
 - (v) would otherwise, in the opinion of a reasonable person, be considered manifestly unreasonable or disproportionate.
29. This is not an exhaustive list. Depending on the circumstances, other factors may be relevant, provided the impact on the authority can be supported by evidence. The Commissioner recognises that each case must be considered on its merits, taking all the circumstances into account.

The Applicant's comments

30. The Applicant disagreed that his request was manifestly unreasonable.

31. The Applicant also noted that the cost estimate provided by the Authority for complying with the request in this case was inconsistent with an estimate the Authority had provided in relation to a previous request. Specifically, he noted that the Authority had estimated that 48 working hours to comply with his previous request equated to £720 but the same 48 hours required to respond to the request in this case equated to £1,000.
32. The Applicant also said he was dissatisfied with the Authority's cost estimate as it appeared it had included in the estimate work it was "not entitled to charge for" (e.g. the cost incurred in redacting information and in determining whether it actually held information that may fall within the scope of the request).

The Authority's comments

33. As stated above, the Authority advised the Applicant that it would take more than 48 working hours and cost over £1,000 to comply with his request.
34. The Authority identified five staff members who would need to contribute searches. It estimated that these staff members would each take six hours to conduct searches but confirmed that no sample searches had been undertaken to verify this estimate.
35. During the investigation, the Authority indicated that it would carry out sample searches and advise the Commissioner of the results. However, the Authority simply provided another copy of the aforementioned estimate that these staff members would take six hours each.
36. The Authority said that the hourly wages of these staff members ranged from £18 an hour to £51 an hour. It provided the Commissioner with a spreadsheet showing that total cost for all five staff members, carrying out searches for six hours each, would be £1,080.
37. The Authority submitted that this was a conservative estimate, and that it was likely that additional staff members would need to carry out searches.

The Commissioner's view

38. The Commissioner has carefully considered the submissions from the Applicant and the Authority.
39. In the [Commissioner's briefing on regulation 10\(4\)\(b\) of the EIRs](#)¹, he states that a request will impose a significant burden on a public authority where complying with it would require a disproportionate amount of time, and the diversion of an unreasonable proportion of its resources, including financial and human, away from other statutory functions.
40. There is no cost limit for determining what is deemed to be an excessive cost of compliance under the EIRs, as there is in FOISA. Under FOISA, public authorities do not have to comply with a request if the cost of compliance exceeds £600. Despite the EIRs themselves lacking a cost ceiling, the Commissioner recognises that there may be cases where the time and expense involved in complying with a request for environmental information means that any reasonable person would regard it as excessive.
41. As stated above, the Authority submitted that the cost of complying with the request would exceed £1,000 and take more than 48 working hours.
42. Had the Authority provided adequate evidence to explain how it had arrived at this estimate, then it is possible that the Commissioner would have agreed that complying with the request

¹ <https://www.foi.scot/sites/default/files/2023-07/BriefingRegulation104bManifestlyUnreasonableRequests.pdf>

would be manifestly unreasonable. However, he is not satisfied that the Authority has provided him with adequate evidence in this case.

43. As stated above, the Authority confirmed that it had not undertaken any sample searches but that it was now doing so and would provide the results of these as soon as possible.
44. However, as stated above, when invited to send evidence of sample searches, the Authority simply resent its previous estimates.
45. The Authority provided no detailed explanation of how it reached the six hour estimate in these figures. It also provided no indication that it had carried out any sample searches for information in scope, from which it could robustly estimate the time required for full searches, as opposed to simply speculating as to how long the full searches would take.
46. The Authority has not provided the Commissioner with any indication of how many documents fall within the scope of the request, how long identifying each document might take or any evidence of sample searches to quantify the time required. Ultimately, the Authority appears to have relied entirely on the local knowledge of its staff to predict the length of searches.
47. While the Commissioner encourages FOI specialists to consult with subject matter experts, this consultation should facilitate and support the gathering of specific evidence, not replace it.
48. In the absence of any more specific evidence of how the Authority arrived at the cost estimate provided, the Commissioner cannot be satisfied that the Authority has provided a robust evaluation of the costs involved.
49. The Commissioner would also note that he considers it unlikely that every staff member involved would take the same time to conduct searches. Although it may be appropriate to provide an average search time per staff member rather than attempting to precisely predict the time taken by individual staff members, the Commissioner would recommend that the Authority ensures that any cost estimate it provides clearly sets out whether it is based on average times and shows how it has calculated any averages it wishes to rely upon.
50. While it is feasible, therefore, that complying with the information request in question would impose a significant burden on the Authority, it falls to the Authority to satisfy the Commissioner that it has met the requirements of the legislation in each individual case.
51. In the circumstances, the Commissioner cannot conclude, on the basis of the submissions he has received, that the Authority was entitled to rely on the exception in regulation 10(4)(b) of the EIRs. As such, he is not required to go on to consider the application of the public interest test in regulation 10(1)(b) of the EIRs.

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.
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](#)²) states (in Part 2):
- “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.” (paragraph 5.1.1)
- “When refusing a request on cost grounds, it is good practice for the authority’s response to provide clear advice on how the applicant could submit a new, narrower request within the cost limit. In giving advice you may wish to take account of how much the cost limit has been exceeded.” (paragraph 9.4.3)
55. The Applicant considered that the Authority should have contacted him to provide advice and assistance on how he might make a narrowed request.
56. The Authority indicated that it could not make assumptions about what information the Applicant was seeking. It also said that it had previously sought to provide advice and assistance to the Applicant by offering to meet with him to discuss his requests. Although it had not specifically made an offer in this instance, the Authority submitted that the Applicant was aware that it was willing to meet with him.
57. The Commissioner notes that the Authority did not provide the Applicant with any advice and assistance on how to narrow the scope of his request in this case. This is despite the Authority applying the exception in regulation 10(4)(b) of the EIRs to the request and the Applicant specifically inviting (as set out in paragraph 2) the Authority to contact him if his request was “too wide or unclear”.
58. In the circumstances, the Commissioner considers that the Authority failed to comply with its duty under regulation 9(1) of the EIRs by failing to provide the Applicant with advice and assistance on how he could make a request that the Authority considered would impose less of a burden on it to comply with.
59. As the Commissioner has found that the Authority was not entitled to rely on the exception in regulation 10(4)(b) of the EIRs in response to the Applicant’s request, he does not require the Authority to provide the Applicant with advice and assistance on how he might narrow the request.
60. However, the Commissioner would urge the Authority to ensure that it does provide requesters with appropriate advice and assistance in response to requests. Such advice is particularly important where authorities refuse to comply with a request because to do so would exceed the upper cost limit under FOISA or engage, on the basis of the significant burden imposed, the vexatious or manifestly unreasonable provisions in FOISA or the EIRs.
61. The Commissioner notes that the Authority had suggested that it was willing to meet with the Applicant to discuss his requests. If it still considers such a meeting would be helpful, it is, of course, open to the Authority to extend this invitation to the Applicant. Should the Applicant decline, this will not relieve the Authority of its duty under regulation 9(1) of the EIRs to provide advice and assistance in response to future requests of his.

² <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf>

Decision

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

Specifically, the Commissioner finds that:

- the Authority was not entitled to rely on the exception in regulation 10(4)(b) of the EIRs for information which would fulfil the Applicant's request
- by failing to provide reasonable advice and assistance, the Authority failed to comply with regulation 9(1) of the EIRs.

The Commissioner therefore requires the Authority to respond to the Applicant's requirement for review in accordance with the requirements of the EIRs (other than in terms of regulation 10(4)(b)), by **13 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.

Euan McCulloch
Head of Enforcement

29 August 2025