



Scottish Information  
Commissioner  
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# Decision Notice 212/2025

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Reports and recommendations sent by the Scottish Fire and Rescue Service to NHS Lothian.

Authority: Scottish Fire and Rescue Service (SFRS)  
Case Ref: 202300419

## Summary

The Applicant asked the Authority for a copy of all reports and recommendations sent to NHS Lothian regarding potential fire safety issues at the Royal Infirmary of Edinburgh in the last two years. The Authority refused to provide the information claiming that to do so would be likely to inhibit substantially the free and frank provision of advice.

The Commissioner investigated and found that the Authority had considered the request under the wrong legislation. The requested information was environmental, and the Authority should have considered the request under the EIRs. The Commissioner required the Authority to respond to the request 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).

Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of “the Act”, “applicant”, “the Commissioner” and paragraphs (b), (c) and (f) of definition of “environmental information”) (Interpretation); 5(1) (Duty to make environmental information available on request); 16 (Review by Scottish public authority); 17(1) and (2)(a), (b) and (f) (Enforcement and appeal provisions).

## **Background**

1. On 6 December 2022, the Applicant made a request for information to the Authority. He asked for:
  - i) A copy of all reports and recommendations sent by the SFRS to NHS Lothian regarding potential fire safety issues at the Royal Infirmary of Edinburgh in the last two years.
  - ii) A copy of all reports and recommendations sent by the SFRS to Consort (the facility private consortium owner) in the last two years, if they differed from the ones sent to NHS Lothian.
2. The Authority did not respond to the Applicant's information request.
3. On 16 January 2023, the Applicant wrote to the Authority, requiring a review in respect of its failure to respond to his request.
4. The Authority notified the Applicant of the outcome of its review on 23 March 2023. It apologised for its late response and it explained that it was withholding the information under section 30(b)(i) of FOISA.
5. On 3 April 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 that he was dissatisfied with the outcome of the Authority's review because he believed the information should be disclosed.

## **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 3 April 2023, 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 the application and on any exemption(s) it was relying on to withhold information.

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

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

### ***FOISA or the EIRs?***

10. The relationship between FOISA and the EIRs was considered at length in Decision 218/2007. 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 of FOISA; 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.
11. Having considered the request and the information being withheld by the Authority, which relates to fire risk assessments carried out on the properties specified in the Applicant's request, the Commissioner is of the view that the information constitutes environmental information. The information relates to measures taken to protect against fire (a factor affecting, and indeed affected by, the elements of the environment) within specific buildings, with the aim of ensuring human health and safety.
  12. The Commissioner is therefore satisfied that the Applicant is seeking environmental information, as defined in regulation 2(1) of the EIRs (paragraphs (b), (c) and (f)) as it relates to fire safety measures in a built structure.
  13. Given that the information requested is properly considered to be environmental information, and as the Authority failed to recognise and respond to the request as a request for environmental information, the Commissioner must find that it failed, in this respect, to respond in accordance with regulation 5(1) of the EIRs.

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

14. 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)).
15. Although the Authority responded to the Applicant's requirement for review on 23 March 2023, as explained above, this was a result of the Authority considering the request solely in terms of FOISA and not under the EIRs.
16. It is apparent that the Authority failed to respond to the Applicant's request of 6 December 2022 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.

17. The Commissioner therefore requires the Authority to provide a review to the Applicant's requirement for review of 16 January 2023, in terms of regulation 16 of the EIRs.
18. The Commissioner's decision below states a compliance date of xxx, 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 regulations 5(1) and 16 of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the Applicant's information request and requirement for review.

The Commissioner requires the Authority to provide a response to the Applicant's requirement for review, in terms of regulation 16 of the EIRs, by **17 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.

**Euan McCulloch**  
**Head of Enforcement**

**2 September 2025**