



Scottish Information
Commissioner
www.foi.scot

Decision Notice 232/2025

Whether request was manifestly unreasonable

Authority: City of Edinburgh Council
Case Ref: 202401615

Summary

The Applicant asked the Authority for information about damage and repairs to the track bed of a tram line in a specified location. The Authority advised the Applicant that his request was manifestly unreasonable. The Commissioner investigated and found that some parts of the request were manifestly unreasonable, but others were not. He required the Authority to issue a revised review outcome for the parts of the request that he found were not manifestly unreasonable.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 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) (Duty to make environmental information available on request); 10(4)(b) (Exceptions from duty to make environmental information available); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 29 July 2024, the Applicant made a request for information to the Authority. In relation to a tram line in a specified location, he asked:
 - 1) What is the expected lifespan of the track bed, and is this damage consistent with the expected lifespan and specifications?
 - 2) When was the concrete originally poured for this section?
 - 3) Were these repairs intended to be temporary?
 - 4) What is now required to repair the damage for the long term, what are the timelines, and who will cover these costs?
 - 5) Have the councillors for Leith, Leith Walk and/or the Transport and Environment Committee been made aware of the original damage and subsequent repairs?
2. The Authority responded on 4 September 2024. It provided answers to each part of the Applicant's request.
3. On 5 September 2024, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because the answers provided by the Authority were incomplete, insufficiently specific or irrelevant, and that they failed to fully address the questions posed.
4. The Authority notified the Applicant of the outcome of its review on 8 November 2024. It said that it considered it had answered the Applicant's questions "in the best way possible" without the cost of complying becoming manifestly unreasonable. It said that complying with the Applicant's questions in the level of detail he was seeking would be manifestly unreasonable and stated that it was applying the exception in regulation 10(4)(b) of the EIRs to each part of his request.
5. On 11 December 2024, 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 agree that his request was manifestly unreasonable.

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 10 January 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. These related to how the Authority had determined that the Applicant's request was manifestly unreasonable.

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. Where information falls within the scope of regulation 2(1) of the EIRs, 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.
11. The Applicant has not challenged the Authority's decision to handle his 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).

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 this exemption to the information requested, 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 requests 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.
15. The Commissioner therefore concludes that the Authority was correct to apply section 39(2) of FOISA and consider the Applicant's information requests under the EIRs.

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

16. 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.
17. 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 provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
18. 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

19. 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.

20. 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.
21. 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 submissions

22. In his application to the Commissioner, the Applicant said that he fundamentally believed that the Authority could have answered the questions in his request that it had refused to answer on the basis that doing so would be manifestly unreasonable.
23. The Applicant explained that he did not believe that an employee would be required to check through every diary entry to provide answers to his requests, but that they could instead review items such as "shared snagging lists and handover documents". He also noted that he had received detailed information from Edinburgh Trams Limited in response to a similar request.
24. During the investigation, the Applicant accepted that answering some of his questions may require the Authority to inspect diaries, which would be likely to be time consuming. However, he reiterated that he believed at least some of the information requested would not be contained in the diaries and would instead be contained either in handover documents or in a shared snagging list.

The Authority's submissions

25. To provide the Applicant with the information requested, the Authority said that it would be required to review and extract information from seven work diaries. It provided the following cost calculation (which it said was based on the average reading speed of an adult):

Diaries 1-5 = 548 entries x 5 = 2,740 entries

Diary 6 = 162 entries

Diary 7 = 405 entries

Total diary entries = 3,307 entries

Average length of diary entry = 10 pages

Estimated time to review an entry = 0.5 hours

0.5 hours x 3,307 entries = 1,653.5 hours

1,653.5 hours at £15 per hour = £24,802.50 in total to comply with the Applicant's request

26. The Authority said that a Senior Interface Manager would be tasked with this duty. It explained that this employee was "the only person employed on the Trams to Newhaven project with extensive knowledge of the project and systems used to coordinate a detailed response."
27. The Authority explained that it would not have applied the exception in regulation 10(4)(b) of the EIRs unless it was of the view that complying with the request would impose a significant burden on it, with the need to divert a disproportionate level of its resources away from other core operations, with a high likelihood of a significant negative impact on its ability to carry out its functions.
28. The Authority stated that site diaries are used, as per any construction works, to record all aspects of work being undertaken and to log each issue in detail. It explained that CEMAR (the contractual system used for all aspects of the contract) holds a record of each of these diaries, but it requires to be "manually read" to identify the information requested by the Applicant.
29. While the Authority held a central register of risks, it did not consider this log to contain sufficient detail by itself to address the questions asked by the Applicant. It submitted that a "manual trawl" of the register would still be required, which would need to be read alongside the diary entries to enable it to respond to the Applicant's questions.
30. During the investigation, the investigating officer asked the Authority questions relating to whether it could use alternative sources of information that could address the Applicant's questions.
31. In response to a question about whether any assessment of the damage compared to the expected lifespan of the track bed had been carried out, the Authority explained that it was standard practice that an assessment of any damage to the track slab would be conducted. It said that these assessments were carried out routinely and were documented and discussed extensively within site diaries and during in-person meetings.
32. In response to a question about whether documents other than the site diaries might hold dates of concrete pouring, the Authority reiterated that this information was held within the site diaries. However, it went on to explain that the volume of other documents that may specify pouring dates (e.g. Material Delivery Records, Quality Assurance/Quality Control (QA/QC) Reports and Inspection Reports) was extensive. It said that establishing an exact date for each concrete pour "may be challenging" due to the numerous records that needed to be reviewed.
33. The Authority was also asked whether any other documents would contain assessments of whether a repair was intended to be temporary. It confirmed that information on this would be stored in Daily Work Reports and Maintenance Logs.
34. In response to being asked whether any assessment or evaluation of this damage was conducted, the Authority explained that damage reporting was recorded in Condition Monitoring Reports or in Asset Management Systems, where tracking data on track slab performance and repairs was included. It said that it carried out an initial review that suggested that this information may not be comprehensive and could be limited to diary entries or informal notes.

35. The Authority was also asked why it considered that a search of diaries was an appropriate way to identify information sent to councillors and whether a search of briefings and correspondence sent to councillors would be a more appropriate method to identify this information. It explained that monthly meetings were held with elected members and updates provided to the Transport and Environment Committee. However, it said that these updates focused on high-level information and would not address each individual defect reported.

The Commissioner's view

36. The Commissioner has carefully considered the submissions from the Applicant and the Authority.
37. The Commissioner notes the Applicant's view that the information requested contained would be contained in a register of faults held by the Authority. Having viewed this register, the Commissioner is satisfied that it does not contain the information requested.
38. 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.
39. Given the information requested is in each of the Applicant's questions is distinct, and is stored in different ways within the Authority's system, the Commissioner considers that the extent of searches required to answer each question, and thus the burden that responding to them would impose, must first be evaluated individually before considering the collective burden of dealing with them together

Question 1

40. As stated above, this part of the Applicant's request asked:
- 1) What is the expected lifespan of the track bed, and is this damage consistent with the expected lifespan and specifications?
41. The Authority has already advised the Applicant that the expected lifespan of the track bed is 30 years. This Commissioner will therefore not consider this element of this part of the Applicant's request further in his decision notice.
42. In relation to the element of this part of the Applicant's request regarding whether the specific damage to the track bed concerned was consistent with the expected lifespan and specifications, the Commissioner accepts that recorded information would be most likely to be found in work diaries.
43. The Commissioner has considered whether it would be possible to effectively refine or focus searches of these work diaries. While it may be possible to review the defect log for the dates of reported defects and any remedial work undertaken, he is unaware of any mechanism by which the dates of any assessment of these defects (i.e. the information requested) can be specifically and accurately identified – if such assessments containing the level of detail requested are in fact held.
44. The Commissioner considers the Authority's estimate of the time involved in such a search to be unsatisfactory. Given the technical nature of the information contained in the work

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

diaries, the Commissioner considers it reasonable to anticipate that it would take the reader longer than the average reading speed to review the material. However, large sections of the work diaries will be irrelevant, and easily identified as such. Similarly, a substantial portion of the work diaries are comprised of photos.

45. The Authority failed to provide evidence of any sample searches having been carried out, which would have given a better idea of the extent of information covered by such a search, and the likely actual time such a search would take. The Commissioner would urge authorities to conduct sample searches to ensure robust and accurate cost estimates can be made.
46. During the investigation, the investigating officer asked the Authority to provide him with sample of diary entries so that they could be inspected. Having reviewed these sample entries, the Commissioner accepts that comprehensive searches of the work diaries would impose a significant burden on the Authority.
47. However, the Commissioner must take issue with the cost estimate provided by the Authority. Having reviewed the sample entries provided, he does not believe that it would take close to 30 minutes to review each entry – either to respond to this part of the Applicant's request alone or to respond to all parts of his request. He would urge authorities to ensure their estimates are accurate and robust.
48. In the circumstances, and despite his concerns over the accuracy of the Authority's estimated costs, the Commissioner is satisfied, on balance, that responding to this part of the Applicant's request would, given the searches that he accepts would be required, would impose a significant burden on the Authority, which would be manifestly unreasonable.

Question 2

49. As stated above, this part of the Applicant's request asked:
 - 2) When was the concrete originally poured for this section?
50. The investigating officer asked the Authority whether there were any means (e.g. using the expertise of their staff or other project documentation) to target searches more precisely instead of having to search entire work diaries.
51. The Authority did not expressly respond to this point. Instead, it maintained that work diaries would clearly record the details of concrete pouring as they are designed to capture such critical timeline events. However, it separately confirmed that other documents exist (e.g. Material Delivery Records and Quality Assurance/Quality Control Reports) that may specify pouring dates. It described the volume of these documents as "extensive" and said that establishing an exact date for each concrete pour "may be challenging" due to the numerous records that need to be reviewed.
52. The Commissioner's guidance is clear that the fact a request may be inconvenient, or may even stretch the resources of an authority, does not necessarily render the request manifestly unreasonable. In this case, based on the submissions provided by the Authority, the Commissioner is not satisfied that the searches required to address this part of the Applicant's request would be so challenging or burdensome as to render the request manifestly unreasonable.
53. In the circumstances, the Commissioner considers that more targeted searches, including of documents outwith work diaries, would be capable of identifying information that would address this part of the Applicant's request. He is not satisfied that carrying out such

searches, and complying with this part of the Applicant's request, would impose a significant burden on the Authority, which would, of itself, be manifestly unreasonable.

Question 3

54. As stated above, this part of the Applicant's request asked:

3) Were these repairs intended to be temporary?

55. The Authority advised the Commissioner that an assessment of the intention of the repairs would be included in "Daily Work Reports and Maintenance Logs."

56. As stated above, the Authority failed to provide evidence of any sample searches having been carried out, which would have given a better idea of the extent of information covered by such a search, and the likely actual time such a search would take. The Authority has therefore provided the Commissioner with no estimate of the time that would be required to inspect the work reports and maintenance logs.

57. In the absence of any such estimate, the Commissioner cannot be satisfied that searching these work reports and maintenance logs for relevant information, and complying with this part of the Applicant's request, would impose a significant burden on the Authority, which would, of itself, be manifestly unreasonable.

Question 4

58. As stated above, this part of the Applicant's request (which contained three elements) asked:

4) What is now required to repair the damage for the long term, what are the timelines, and who will cover these costs?

59. For the same reasons set out in his consideration of question 1 of the Applicant's request, the Commissioner accepts, on balance, that complying with the elements of this part the request relating to the requirements and timescales of repairs would be manifestly unreasonable.

60. However, the Commissioner does not agree that identifying the financial responsibility for these repairs would involve comparable searches. Having considered the nature of the work diaries and the content of the sample of diaries provided by the Authority, he does not consider that an inspection of this source of information would be the most appropriate way to identify information relating to the financial responsibility for these repairs.

61. Instead, the Commissioner considers that searches of alternative sources of information (e.g. contractual documents or records of correspondence or discussions between the relevant parties) would be a more appropriate means of identifying information relating to the financial responsibility for these repairs.

62. Consequently, the Commissioner does not accept that the Authority would be required to undertake comprehensive searches of work diaries to respond to this element of this part of the Applicant's request, or that complying with this element would, of itself, be manifestly unreasonable.

Question 5

63. As stated above, this part of the Applicant's request asked:

5) Have the councillors for Leith, Leith Walk and/or the Transport and Environment Committee been made aware of the original damage and subsequent repairs?"

64. The Authority indicated that councillors only received high level reports, not reports of specific defects.
65. Regardless of whether these reports are of specific defects or are high level reports, the Commissioner considers a search of reports made to councillors a more appropriate method of identifying information provided to councillors than a search of work diaries.
66. The Commissioner does not consider that a review of reports provided to councillors for information relating to the damage and subsequent repairs to the track bed for the tramline in the specified location would be manifestly unreasonable.

Cumulative burden

67. Having considered the burden of the requests individually, the Commissioner will go on to consider the collective burden of these requests.
68. As rehearsed above, the Commissioner has not received a robust calculation from the Authority of the scale or cost of responding to these requests individually. In the absence of a robust calculation, he cannot be satisfied that the aggregated burden would be collectively unreasonable.

Summary

69. Having considered the Authority's submissions, the Commissioner is satisfied that, when taken in isolation, complying with the following parts of the Applicant's request would both separately impose a burden which is manifestly unreasonable for the purposes of the exception in regulation 10(4)(b) of the EIRs:
 - question 1
 - the parts of question 4 relating to the requirements and timescales for repairs.
70. However, the Commissioner is not satisfied that the following parts of the Applicant's request would impose a burden which is manifestly unreasonable for the purposes of the exception in regulation 10(4)(b) of the EIRs, either when taken in isolation or when considered cumulatively with each other:
 - question 2
 - question 3
 - the part of question 4 relating to the financial responsibility for the cost of repairs
 - question 5.
71. As he has found the exception in regulation 10(4)(b) of the EIRs does not apply to these parts of the Applicant's request, the Commissioner is not required to consider the public interest test in regulation 10(1)(b). He requires the Authority to issue the Applicant with a revised review outcome (which must be in terms otherwise than regulation 10(4)(b) of the EIRs) in relation to these parts of his request.
72. The Commissioner accepts that the exception in regulation 10(4)(b) of the EIRs applies to the following parts of the Applicant's request:
 - question 1
 - the parts of question 4 relating to the requirements and timescales for repairs.

73. Having concluded that regulation 10(4)(b) of the EIRs would be engaged for question 1 and the parts of question 4 relating to the requirements and timescales for repairs, the Commissioner is required to consider the public interest test in regulation 10(1)(b).

EIRs: the public interest test

74. The exception in regulation 10(4)(b) is subject to the public interest test in regulation 10(1)(b) of the EIRs. This means that, although the Commissioner is satisfied that some of the Applicant's requests are manifestly unreasonable, he must still require the Authority to respond to that request if the public interest in making the information available outweighs that in maintaining the exception.
75. The Applicant explained that he was concerned with proposals to expand trams when issues with existing trams had not been addressed.
76. While the Authority noted the value of transparency in its handling of these matters, it was concerned that, in addition to the monetary costs of compliance, responding to this request would divert resources from other work. It also noted that it had not received other requests under the EIRs on this topic, and it considered it would be unreasonable to divert its resources in such a manner (which it said would likely have a detrimental impact on its services) in response to the concerns of a single individual.
77. The Commissioner considers there to be significant public interest in the transparency of maintenance and evaluation of major infrastructure projects such as the tramway in Edinburgh. Against this, he has considered the strong public interest in ensuring an authority can carry out its statutory functions without unreasonable or disproportionate disruption.
78. The Commissioner has already accepted that providing the information requested in this case for these parts of the Applicant's request would incur significant costs to the Authority in staff time and resources and would, to a certain extent, divert resources away from its other functions.
79. While public authorities are encouraged to act in a transparent and accountable way, which benefits the public as a whole, the Commissioner also recognises that responding to requests which require them to devote excessive or disproportionate amounts of time can only be at the expense of other areas of work. That said, there will be circumstances in which the public interest in making the information available is of sufficient substance to outweigh that burden.
80. In this case, on balance, the Commissioner accepts that, in all the circumstances, the public interest arguments in favour of making the information captured by this request available are outweighed by the public interest in maintaining the exception in regulation 10(4)(b) of the EIRs. He therefore finds that the Authority was entitled to rely on this exception for these parts of the Applicant's request.

Decision

The Commissioner finds that the Authority partially 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 apply the exception in regulation 10(4)(b) of the EIRs to question 1 of the Applicant's request and the parts of question 4 relating to the requirements and timescales for repairs. In this respect, the Authority complied with regulation 5(1) of the EIRs.

However, the Commissioner finds that the Authority was not entitled to apply the exception in regulation 10(4)(b) of the EIRs to all other parts of the Applicant's request. In this respect, the Authority failed to comply with regulation 5(1) of the EIRs.

For these parts of the Applicant's request, the Commissioner therefore requires the Authority to provide the Applicant with a revised review outcome, other than in terms of regulation 10(4)(b), by **13 November 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 September 2025