



Scottish Information
Commissioner
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Decision Notice 236/2025

Information relating to Todrig forestry scheme

Authority: Scottish Forestry
Case Ref: 202500934

Summary

The Applicant asked the Authority for information relating to the Todrig forestry scheme. The Authority refused to respond to the request because it considered the request was manifestly unreasonable. During the investigation, the Authority indicated that it no longer considered the request to be manifestly unreasonable. The Commissioner required the Authority to issue the Applicant with a new review outcome, setting out its revised position.

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

Background

1. On 17 March 2025, the Applicant made a request for information to the Authority. He asked for all information relating to the Todrig forestry grant scheme application since 1 January 2021. He requested all correspondence between:

1. Scottish Forestry and Pryor and Rickett Silviculture and any previous forestry agents
2. Scottish Forestry and Gresham House and any of their agents
3. Scottish Forestry and NatureScot
4. Scottish Forestry and Scottish Borders Council
5. Scottish Forestry and all other consultees and parties

Furthermore, he asked the Authority to provide:

6. All previous planting plans from that first proposed to the latest proposed
 7. All Scottish Forestry casework for this application
 8. A breakdown (with grand totals) of the provisional grant value of the project
 9. All ecology, habitat, bird surveys, vegetation surveys, landscape, archaeology and other reports
 10. Any other information not mentioned under points 1-9.
2. The Authority responded on 7 April 2025. It informed the Applicant that the searches carried out in relation to his request had returned circa 300 documents and that it would take considerable time to collect, convert to PDF, sift, document and redact the information. The Authority stated that it therefore needed to extend the timeframe for dealing with the request and that the new response date would be 12 May 2025. It also asked the Applicant whether he could narrow down his request to a specific area of interest.
 3. On 22 April 2025, the Applicant wrote to the Authority requesting a review of its decision. The Applicant argued that the time needed to collate the information was a situation of the Authority's own making, which resulted from its failure to publish the information on its website. He asked the Authority to demonstrate its commitment to transparency by providing all the requested information.
 4. The Authority notified the Applicant of the outcome of its review on 21 May 2025. It explained that because of the significant burden required to locate, retrieve and prepare the information, it was refusing the request under regulation 10(4)(b) of the EIRS, on the grounds that the request was manifestly unreasonable.
 5. On 14 June 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 he was dissatisfied with the outcome of the Authority's review because he did not agree that regulation 10(4)(b) applied to 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 5 August 2025 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 this application and to answer specific questions. These related to why the Authority considered the request to be 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. The Authority considered that as the Applicant's request was for environmental information, it was required to deal with it under the EIRs.
11. 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.
12. 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), in particular, paragraphs (a) and (c) of that definition.

Section 39(2) of FOISA – Environmental information

13. 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. 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.
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 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.
15. The Commissioner therefore concludes that the Authority was correct to apply section 39(2) of FOISA and to consider the Applicant's information request 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 an 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.

The Authority's change of position during the investigation

19. During the investigation the Authority notified the Commissioner that it was conceding its position and was no longer relying on the exception in regulation 10(4)(b) of the EIRs. It indicated that it expected to disclose some information to the Applicant and apply exceptions under the EIRs to other information.
20. As the Authority has withdrawn its reliance on 10(4)(b) of the EIRs, the Commissioner must find that the Authority was not entitled to apply this exception and that it failed to comply with the EIRs.
21. The Commissioner requires the Authority to respond to the Applicant's request in accordance with the requirements of the EIRs, otherwise than in terms of regulation 10(4)(b). In other words, the Commissioner requires the Authority to carry out a fresh review of its response to the Applicant's request in accordance with regulation 16 of the EIRs, and to communicate the outcome to the Applicant.

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.

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 and therefore failed to comply with regulation 5(1) of the EIRs in refusing to respond to the request.

The Commissioner therefore requires the Authority to respond to the Applicant's requirement for review in accordance with the requirements of the EIRs (otherwise than in terms of regulation 10(4)(b)), by **14 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

30 September 2025