



Scottish Information
Commissioner
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Decision Notice 238/2025

Information relating to planning applications TP/ED/23/0278
and TP/ED/22/0641

Applicant: The Applicant

Authority: East Dunbartonshire Council

Case Ref: 202400770

Summary

The Applicant asked the Authority for information relating to two specified planning applications for the time period 19 December 2023 until the date of his request. The Authority provided some information and refused to make available other information it considered to be the Applicant's own personal data. The Commissioner investigated and found that the Authority had identified and provided all of the information falling within the scope of the Applicant's request that it held at the time of the request, and that it had correctly refused to make information available which constituted the Applicant's own personal data.

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", data subject", "personal data", "the UK GDPR" and paragraphs (a), and (c) of "environmental information") (Interpretation); 5(1) and 2(b) (Duty to make environmental information available on request); 11(1) (personal information); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

United Kingdom General Data Protection Regulation (the UK GDPR) articles 4(1) (definition of "personal data") (Definitions).

Data Protection Act 2018 (the DPA 2018) sections 3(2) and (3) (Terms relating to the processing of personal data)

Background

1. On 8 January 2024, the Applicant made a request for information to the Authority in which he referred to planning applications TP/ED/23/0278 and TP/ED/22/0641. In his information request he asked for all information sent, received and held by the Authority in relation to the aforementioned planning applications from 19 October 2023 that was not otherwise publicly available, including information about the required dropped kerb application(s).
2. The Applicant later refined his request for information to include the time period from 19 December 2023 until the date of his request on 8 January 2024. The Applicant did this as he realised he had received a response from the Authority to a previous request on 18 December 2023, and this had informed him that he had been provided with all the information he was entitled to in respect of the planning applications.
3. The Authority responded on 1 February 2024 and advised it was treating the request under the Environmental Information (Scotland) Regulations 2004 (the EIRs). It provided the Applicant with what it considered to be the information it held falling within the scope of his request which was not otherwise publicly available or related to the Applicant.
4. The Authority explained that it held some information that was the Applicant's own personal data and this was exempt under section 38(1)(a) of the Freedom of Information (Scotland) Act 2002 (FOISA). It advised him of how to access this via a subject access request under the Data Protection Act 2018. It also informed him, that in terms of section 17 of FOISA, the information related to the dropped kerb application was not held as the developer had not yet applied to the Authority for this work.
5. On 21 February 2024, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he did not consider the Authority had provided all the information it held or had sent or received in relation to his request. He disagreed with its decision to withhold certain information from him and believed it was refusing to disclose information to which he was entitled.
6. The Authority notified the Applicant of the outcome of its review on 21 May 2024. It advised that its initial response was broadly correct but noted some errors. The Authority advised that further searches had been carried out and the information provided in response to the Applicant's request was all that was held by it. It also considered it was correct to refuse to provide him with his own information in answer to his request, but that it should have applied regulation 11 of the EIRs rather than section 38(1)(a) of FOISA and that this had been an error. The Authority noted it had been correct to confirm no information was held in regard of the dropped kerb application but that a notice should have been provided under regulation 10(4)(a) of the EIRs. It explained that in the interests of providing advice and assistance it had sought confirmation as to whether any such application had been submitted since the Applicant's information request, and confirmed that no such application had been received as at 25 April 2024.
7. On 1 June 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 he was dissatisfied with the outcome of the Authority's review because he was not satisfied the Authority had identified all of the information it held which fell within scope of his request. He was also dissatisfied with its reliance on the exception in regulation 11 of the EIRs for refusing to make available some of the information falling within the scope of his request. The Applicant accepted the Authority's position with regard to the dropped kerb application(s).

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 22 August 2024, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently 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. These related to its interpretation of the request, how it had identified the recorded information falling within the scope of the Applicant's request and its reasons for relying on regulation 11. The Authority was also asked to provide the Commissioner with a copy of the information it was refusing to make available to the Applicant in line with regulation 11.
11. The Applicant was afforded the opportunity to provide the Commissioner with any further comments he had.

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 and responded to the Applicant's requirement for review in accordance with 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 the right to access it (and the public authority has a corresponding obligation to respond) under the EIRs, subject to various restrictions and exceptions contained in the EIRs.
15. The Applicant requested information about two planning applications related to the building of new houses on a specific plot of land, as well as information to do with dropped kerbs. The Commissioner has considered the subject matter of the request, together with the information falling within the scope of the request and is satisfied that this is "environmental information" as defined in regulation 2(1) of the EIRs.
16. The Commissioner accepts that the information covered by the request is information which relates to measures (including administrative measures as referred to in paragraph (c)) affecting or likely to affect the elements and factors referred to in paragraph (a) of that

definition. Consequently, he considers the information to comprise in its entirety environmental information, as defined in regulation 2(1) of the EIRs. The Commissioner is therefore satisfied that the Authority was correct to consider the Applicant's information request under the EIRs.

17. The Applicant has not disputed the Authority's decision to handle his request under the EIRs.

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

18. 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.
19. 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) requires the authority to make that information available, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
20. Under the EIRs, a Scottish public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 applies, but only if, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.

The information held by the Authority

21. In this request, the Applicant asked for all information sent, received and held by the Authority, in relation to planning applications TP/ED/23/0278 and TP/ED/22/0641 from 19 December 2023 not otherwise publicly available including information about the required dropped kerb application(s). As the Applicant has accepted the response from the Authority in relation to the matter of the dropped kerb application(s) the Commissioner will not consider that in this Decision Notice.
22. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority, which falls within the scope of the request under consideration.

The Authority's submissions

23. The Authority explained that it had interpreted the Applicant's request as being for information accrued between 19 December 2023 and the date of the request (8 January 2024).
24. It submitted that it was satisfied that all information held at the time of the request was identified. It explained that the Planning Applications in question were live at the time of the enquiry, meaning that additional information was being created and received. It commented that it may have appeared that information was partial or incomplete as a result of this active process.

25. The Authority outlined the searches it had carried out to identify information falling within the scope of the Applicant's request.
26. It explained that its Planning Service had its own dedicated document management system with each planning application having its own unique reference number. A function of this document management system is its ability to classify records, by marking them (amongst other things) as being for publication on the Planning Service public portal or as being non-public/sensitive information. This, the Authority submitted, meant the information was structured and easily found.
27. The Authority explained that the planning application reference numbers were used to identify the relevant planning files, and the specific planning officer responsible for the application was consulted. The Authority stated that it was not possible for files relating to planning applications to exist outwith the file structure and that the planning reference number was the only keyword required in any searches.
28. The Authority informed the Commissioner of the staff who were involved in processing the request and carrying out searches for any relevant information held.
29. It also considered that the planning process had its own built-in expectation of transparency to ensure that there is effective scrutiny on planning matters.
30. The Authority acknowledged that it can be difficult for the public to know what is in a planning file to request and that for this reason it had offered to meet the Applicant and discuss these applications and keep him aware of ongoing work. It added that it had invited the Applicant to its offices to access files and for it to explain what information is held, what is not held and how the planning process works (but that this offer had not been taken up).

The Applicant's submissions

31. The Applicant did not consider that the Authority had provided him with all of the information it held at the time of his request.
32. The Applicant explained that he had made later requests to the Authority relating to these same planning applications and it had provided him with other documents that predated 19 December 2023, which he considered should have been provided in response to this request.
33. The Applicant also noted that he had made several requests relating to these planning applications before this request, and in response to those requests was informed that he had been provided with all of the relevant information held.
34. The Applicant also expressed concern over information which was made publicly available on the Authority's planning portal, which stated a publication date which was 15 days earlier than when it was actually available.

The Commissioner's view

35. The Commissioner has considered all of the submissions from both the Applicant and the Authority, as well as the request itself and the Application.
36. In this case, the key issue involves the interpretation of the Applicant's request.
37. The Applicant has described a number of related information requests for different time periods linked to these planning applications and some of the responses he has received from the Authority.

38. As noted above, the Authority explained that it interpreted the Applicant's request as covering the information that was accumulated by it during the time period covered by this particular request (19 December 2023 to 8 January 2024).
39. The Commissioner is satisfied that this is a reasonable interpretation of this request and therefore any searches to be carried out for relevant recorded information held by the Authority need only cover any information accrued within the time period 19 December 2023 to 8 January 2024.
40. The Commissioner has noted the Applicant's concern about the date of publication of information on the Planning Portal compared to when it was actually available. The Commissioner also acknowledges the Authority's description of a live process with information being submitted, generated and accrued on an ongoing basis.
41. The Commissioner cannot comment on the responses the Applicant received from the Authority in relation to either earlier or later information requests, but only on what is covered by the application before him at this time.
42. Given the Commissioner's view on the interpretation of the Applicant's request, the Commissioner is satisfied that the searches carried out by the Authority would have identified relevant recorded information falling within the scope of the request.
43. As such, he is satisfied that the Authority has provided the Applicant with all relevant information it held falling within scope of his request and has complied with regulation 5(1) of the EIRs in this respect.

Regulation 11(1) – personal information

44. Regulation 10(3) of the EIRs makes it clear that a Scottish public authority can only make personal data in environmental information available in accordance with regulation 11.
45. The exception in Regulation 11(1) provides that, to the extent that environmental information requested includes personal data of which the Applicant is the data subject, then the duty to make it available under regulation 5(1) shall not apply to those personal data.
46. This exception exists in the EIRs as individuals have a separate right to make a request for their own personal data under the UK GDPR/DPA 2018. This route is more appropriate for individuals accessing their own personal data, as it ensures the data are disclosed only to that individual and not into the public domain.
47. Regulation 11(1) does not deny individuals a right to access information about themselves but ensures that the right is exercised under the correct legislation (the UK GDPR/DPA 2018) and not the EIRs.
48. Personal data is defined in section 3(2) of the DPA 2018 which read with section 3(3), incorporates the definition of personal data in Article 4(1) of the UK GDPR:

“...any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person”

49. The Authority refused to make some information available as it considered it to be the Applicant's own personal information, as it directly identified the Applicant, and relied on the exception in regulation 11. The Authority submitted that release of the information in response to this request would be a breach of the Applicant's data protection rights.. It advised the Applicant in its initial response how he could request this information through the Right of Access under the DPA 2018 and provided guidance on how to do this.
50. The Applicant did not consider the Authority's reliance on this exception to be appropriate. He stated that the Authority had not made it clear what information it was referring to and had made reference to his correspondence and his submissions in its response to him.
51. The Applicant's view was that the only personal data of his contained in the information he speculated it was referring to would be information that, if the information should be made publicly available, the Authority would have a responsibility to redact, should anyone request it. Consequently, he believed the Authority's grounds for refusing to release this information was unreasonable.
52. The Commissioner has considered the information the Authority is refusing to make available and is satisfied that this information would constitute the Applicant's own personal data; the Applicant can be identified from the information, and it contains views and opinions expressed by the Applicant which relate to him.
53. He notes that there is also third party personal data present, but in line with [the Commissioner's guidance](#)¹ on regulation 11, where there is a mixture of the Applicant's and a third parties personal data and it is difficult to separate it, the appropriate way forward is to consider the information under the provision in regulation 11(1) of the EIRs.
54. The Commissioner is therefore satisfied that all of the information is excepted from disclosure under regulation 11(1) of the EIRs.

Decision

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

¹ [EIRsGuidanceRegulation11Personaldata.pdf](#)

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

30 September 2025