



Scottish Information
Commissioner
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Decision Notice 250/2025

Information about application of environmental levy

Authority: Glasgow City Council
Case Ref: 202500330

Summary

The Applicant asked the Authority for information about the application of an environmental levy to a particular event. The Authority withheld the information because it was confidential commercial information. The Commissioner investigated and found that the Authority had failed to interpret the request correctly. He required the Authority to carry out a new review and provide the Applicant with a revised review outcome.

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), (b), (c), and (f) (Interpretation); 5(1) (Duty to make environmental information available on request); 16 (Review by Scottish public authority); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

Background

1. On 5 November 2024, the Applicant made a verbal request for environmental information to the Authority. The Authority wrote down the request and confirmed the wording with the Applicant. The agreed text read:

"[Applicant's name] is looking for information on charging for the environmental levy.

[Applicant's name] had requested an invoice 33091975 which was an invoice raised to Itison for the GlasGLOW event in the Botanic Gardens as part of the annual accounts inspection for 23/24. The query surrounds the application of the environmental levy for this event, and whether we have applied it correctly. The invoice calculates a 50p levy for a capacity of 1350 for 17 days. Per the Book of charges Events with capacity of 500-4,999 and ticket price under £15 notes a charge of 50p per ticket sold.

[Applicant's name] noted the levy should be applied per ticket not by capacity and queried if we were applying the levy correctly to correctly recover income."

2. The Authority did not respond to the information request.
3. On 3 February 2025, the Applicant wrote to the Authority requiring a review of its failure to respond.
4. The Authority notified the Applicant of the outcome of its review on 27 February 2025. It apologised to the Applicant for its failure to respond to her request within 20 working days, and it stated that it was withholding invoice 33091975 and related documents under regulation 10(5)(e) (Confidentiality of commercial information) of the EIRs.
5. On 3 March 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 she did not accept that the information was commercially sensitive and she did not agree with the Authority's interpretation of her request, which seemed to imply that she was seeking a copy of the invoice. Furthermore, the Applicant remained dissatisfied with the Authority's handling of her original information 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 11 March 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 responded, stating that there was no withheld information, 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 the Authority's understanding of and interpretation of the request and its application of the exception at regulation 10(4)(e) of the EIRs.

Commissioner's analysis and findings

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

Application of the EIRs

10. The Authority processed and responded to the Applicant's requirement for review in accordance with the EIRs, having concluded that the information was environmental information as defined in regulation 2(1) of the EIRs.
11. The Applicant has not disputed the Authority's decision to handle her request under the EIRs.
12. Where information falls within the scope of the definition "environmental information" in regulation 2(1) of the EIRs, a person has a right of access to it (and the public authority a corresponding obligation to respond) under the EIRs, subject to various restrictions and exceptions contained within the EIRs.
13. The Commissioner accepts that the request related to the measures described in paragraph (c) likely to affect the state of the elements of the environment in paragraph (a) of regulation 2(1) of the EIRs. He also accepts that the information requested (details of an environmental levy) related to the state of human health and safety insofar as this may be affected by the elements of the environment in paragraph (a) or, through those, by any of the matters in paragraphs (b) and (c). As such, the Commissioner is satisfied that the information requested by the Applicant falls within the definition of environmental information set out in regulation 2(1) of the EIRs, in particular paragraphs (a), (b), (c) and (f).

Section 39(2) – Environmental information

14. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined in 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.
15. As stated above, the Authority responded to the Applicant's request solely under the EIRs.
16. In this case, the Commissioner accepts that the Authority was entitled to apply this exemption to any information falling within the scope of the request under FOISA, given his conclusion that it is properly classified as environmental information.
17. As there is a statutory right to access 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 responding to the request under FOISA. Both regimes are intended to promote 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 the EIRs.
18. The Commissioner therefore concludes that the Authority was correct to apply section 39(2) of FOISA and consider the Applicant's information request under the EIRs.
19. In the circumstances, the Commissioner will consider this case, in what follows, solely in terms of the EIRs.

Timescale

20. In her application to the Commissioner, the Applicant expressed dissatisfaction that the Authority staff member who fielded her initial query had, apparently, not submitted the information request on her behalf (resulting in the Authority's failure to respond).

The Applicant stated that this issue was not addressed or explained in the Authority's review outcome and the Authority had not addressed the issue of what action it would take to stop this happening in future.

21. In its submissions to the Commissioner, the Authority explained that this failure to respond occurred when the request was incorrectly forwarded to the Neighbourhoods, Regeneration and Sustainability (NRS) department on 12 November 2024, rather than the Authority's Information and Data Protection Team (IDPT) which was the correct team to log and process the information request and collate the response.
22. When the Applicant contacted the Authority on 3 February 2025, to advise that she had not received a response to her information request, the NRS member of staff to whom the request had been incorrectly forwarded sent the request to the IDPT and explained that she had inadvertently overlooked the email due to the fact that she received a large volume of emails daily (including 53 on 12 November 2024, the day the email was forwarded to her, alone).
23. The Authority acknowledged that the mistake arose due to confusion around its processes and stated that it did not intentionally ignore the request and nor did it seek to intentionally frustrate the Applicant's information rights. It acknowledged that its failure to respond to the Applicant appropriately on this occasion meant she had been denied her statutory right to information, and it apologised for this.
24. The Authority submitted that this was a training issue and it explained that it was updating all of its internal guidance documents, online training courses and corporate-wide announcements regarding the correct processes to be followed in relation to information requests.
25. Regulation 5(2)(a) of the EIRs gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case.
26. It is a matter of fact that the Authority did not provide a response to the Applicant's request for information within 20 working days, so the Commissioner finds that it failed to comply with regulation 5(2)(a) of the EIRs.
27. The Authority responded to the Applicant on 27 February 2025, so the Commissioner does not require it to take any further action in relation to the failure to respond.

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

28. 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.
29. On receipt of a request for environmental information, therefore, the authority must ascertain what information it holds falling within 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)).

30. Under the EIRs, a public authority may refuse to make environmental information available if one of the exceptions in regulation 10 applies and, in all the circumstances of the case, the public interest in maintaining the exception or exceptions outweighs the public interest in making the information available.

Interpretation of the request and validity of the application

31. The Authority did not agree with the Applicant's interpretation of her information request, and it argued that her application to the Commissioner was not valid as it raised new matters not captured by the original request.

The Applicant's comments on the scope of her request

32. In her application to the Commissioner, the Applicant commented that the Authority's review outcome appeared to (incorrectly) imply that her request had been for a specific numbered invoice which had already been provided to her through the Annual Accounts Inspection Process. The Applicant stated that she was not seeking this invoice and confirmed that the Authority had already provided her with it (outwith FOI). During the investigation the Applicant reiterated that she was not seeking a copy of this invoice.
33. The Applicant argued that her information request related to the general processes and policy on how environmental levy fees were calculated across all events and stated that the reason for the request arose after reviewing the invoice, because the rates did not align with those published in [the Authority's Book of Charges](#)¹.

The Authority's comments on the scope of the request and validity of the application

34. The Authority stated that it did not consider that the Applicant's application to the Commissioner to be valid, because the Applicant had raised new matters in the application which were not raised in her original request. The Authority stated that the Applicant had changed from asking for specific information about the invoice and the related event to the wider application of the environmental levy fees. It commented that it was happy to comply with any new information request made under the regulations.
35. The Authority stated that:
- "In the event that the Commissioner is not minded to agree with the Council's interpretation, we would welcome the opportunity to provide further comments / submissions which address this and the points raised in the Investigating Officer's letter of 8th April 2025."
36. The Authority submitted that an email chain of 12 November 2024 (between the Authority and the Applicant) made clear that the Applicant was seeking information about the invoice and the specific event to which it related but had since changed the request to a more general one. It submitted that the Applicant had been verbally provided with information relating to the environmental levy on a number of occasions.
37. In relation to the specific terms of the information request, the Authority explained that a member of its staff had asked the Applicant to confirm that she was content with the wording of her request (because the original request had been made verbally and the staff member had written it down). It noted that the Applicant had confirmed in an email to the Authority on 12 November 2024 that the proposed wording had correctly captured what she was looking for, and it stated that this information related to the particular GlasGLOW event (held at the Botanic Gardens in Glasgow).

¹ <https://www.glasgow.gov.uk/article/9546/Guidance>

The Authority provided the Commissioner with excerpts of these emails.

38. By way of addressing the Applicant's concerns about the application of the environmental levy, the Authority stated that it had advised the Applicant that the application of the levy was based on the capacity of the event (i.e. the maximum number of people who could attend at any one time, not the number of tickets sold). It commented that this was universally accepted standard practice consistently applied across all events and subject to audit.
39. The Authority submitted that the wording on its website (stating that the levy should be applied to every ticket sold) was incorrect and the levy was applied on the basis of the capacity of the event. It noted that the Applicant had been advised (on more than one occasion) that the Authority's website could be clearer in its explanation of how the levy was applied, and that the wording on the Authority's website, which stated that the environmental levy was applied "per ticket sold", was incorrect, and the website was in the process of being updated. The Authority stressed that its calculation methodology remained unchanged.

Commissioner's view on the interpretation of the request

40. The Commissioner has carefully considered the wording of the request. While he acknowledges that the text was agreed by the Applicant and the Authority, he considers that despite this, part of the wording remained ambiguous. The agreed text stated that the Applicant "had requested an invoice" and the Commissioner considers that the Applicant accepted that wording because she had requested (and had been provided with) the invoice previously.
41. The Commissioner accepts that the Applicant considered the invoice to have formed the background to her request (rather than being the subject of the request itself) and that the Applicant had no reason to request the invoice because she already had a copy.
42. He also acknowledges that Authority staff who were unaware that the Applicant had a copy of the invoice understood the text (in particular the word requested) to mean the invoice was the subject of the request.
43. However, the Commissioner also notes that other parts of the request referenced:
 - (i) how "the query surrounds the application of the environmental levy for this event, and whether we have applied it correctly"
 - (ii) how the Applicant was "looking for information on charging for the environmental levy", and
 - (iii) the Book of Charges.
44. In the Commissioner's view, the level of detail within the text of the request about the contents of the invoice should have either made it clear that the Applicant already knew what was in the invoice or, at the very least, prompted further enquiries about the exact scope of the request.
45. The Commissioner also considers that examining whether particular rules have been correctly applied to a particular invoice will necessitate consideration of wider information than simply the invoice itself.

46. The Commissioner's view is that all these elements should have suggested to the Authority that the Applicant was not seeking a copy of the invoice itself, although the invoice was certainly relevant to the request.
47. The Commissioner notes that the Authority's submissions during the investigation concentrated on the single numbered invoice already referenced and the Authority's position was that no other information was held. However, he also notes that in its review outcome of 27 February 2025, the Authority informed the Applicant that it was withholding information because it believed that:
- “...disclosure of the documents held in relation to and including Invoice 33091975, would or would be likely to prejudice substantially the confidentiality of commercial information where such confidentiality is provided for by law to protect a legitimate economic interest”.
48. He considers that the Authority's reference to documents (plural) suggests that (at that time at least) its view appeared to be that the information which fell within scope of the Applicant's request encompassed more than just the invoice.
49. Given all of the above, the Commissioner is not persuaded that the Authority's interpretation of the request was reasonable, and subsequently, he is not satisfied that the Authority has identified all of the information falling within the scope of the request.

Commissioner's view on the validity of the application

50. The Commissioner rejects the Authority's arguments that the application is not valid on the grounds that the Applicant has expanded the scope of the original information request. For reasons set out above, he considers that the Authority's interpretation of the information request was too narrow and, in particular, he finds that it failed to give proper weight to the first and last lines of the request which state:
- “[the Applicant] is looking for information on charging for the environmental levy”
- “[the Applicant] noted the levy should be applied per ticket not by capacity and queried if we were applying the levy correctly to correctly recover income.”
51. He considers that these parts of the request make clear that the Applicant was seeking information on how the Authority applies the environmental levy to events. In any event, the wording of this particular request was drawn up by the Authority and agreed to by the Applicant. If it later transpired that the Authority was unclear about the scope of the request and considered that it was formulated in too general a manner, it should have sought clarification, under regulation 9(2)(a) of the EIRs. It did not do this.
52. In the circumstances, the Commissioner is satisfied that the scope of the Applicant's information request is wider than just the invoice, and he considers that she requested information on how the Authority calculates and applies the environmental levy.
53. He requires the Authority to reconsider the request and provide the Applicant with a revised review outcome.

The Commissioner's view on the Authority's request to make further submissions

54. As noted above, in its submissions to the Commissioner, the Authority argued that the Applicant's application was not valid because it considered that the original request was seeking information relating to a specific invoice, and that since the request was made, the Applicant had changed the scope of the request to one which was more general.
55. The Authority also commented that if the Commissioner did not agree with the Authority's view it would like the opportunity to provide further comments or submissions in response to the investigating officer's letter of 8 April 2025.
56. The Commissioner notes that in their letter of 8 April 2025, the investigating officer notified the Authority that:
- "This is your opportunity to provide any comments in support of your position and the Commissioner will issue a decision based on these. The decision may require the disclosure of any withheld information. Please prepare your comments with this in mind. Only in exceptional circumstances will you be given the opportunity to provide any further comments."
57. It was made quite clear to the Authority that, it would only be permitted to make further comments in exceptional circumstances and therefore, it should have ensured that its response to the investigating officer, contained all of the points it wanted to raise.
58. Furthermore, while section 49(3) of FOISA requires the Commissioner to notify an authority that an application has been received, and to invite comments from an authority, it does not require him to repeatedly revert to an authority who disagrees with his decision to accept an application as valid.
59. The Commissioner would remind all authorities that when he invites their comments on an application (as he is required to do by section 49(3) of FOISA) that they include all of the arguments they wish to make to support their case, as they may not be given any further opportunities to comment.

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 failed to comply with regulation 5(1) of the EIRs as it failed to accurately interpret the Applicant's information request, and in doing so it failed to ensure that it had identified all relevant information falling within the scope of the request.

The Commissioner therefore requires the Authority to reconsider the request and provide the Applicant with a revised review outcome by **24 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.

Jennifer Ross
Deputy Head of Enforcement

09 October 2025