



Scottish Information
Commissioner
www.foi.scot

Decision Notice 012/2026

Costs for a specified property

Applicant: The Applicant

Authority: Wheatley Homes Glasgow Limited

Case Ref: 202401579

Summary

The Applicant asked the Authority for information regarding the costs associated with the renovation, refurbishment, repair of a specific property. The Authority responded under the EIRs and disclosed some information while it applied exceptions in the EIRs to other information. During the investigation, the Authority disclosed to the Applicant some of the information it had previously withheld. The Commissioner investigated and was satisfied that the Authority was entitled to respond in terms of the EIRs. He also accepted, on balance, that the Authority had identified all information falling within the scope of the request.

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(1) (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(1) and (5)(e) (Exceptions from duty to make environmental information available); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 8 July 2024, the Applicant made a request for information to the Authority. He asked for information (between 1 April 2022 and 1 May 2024) regarding the costs associated with the renovation, refurbishment, repair and any other costs associated with a specific property. He asked that the Authority:

- (i) break down costs and list separately between the Authority and Glasgow Housing Association and any private company, contractor or supplier of goods/services;
- (ii) list approximate number of hours spent by the Authority and Glasgow Housing Association on site at the above mentioned flat as well as the reason for visit.

2. The Authority responded on 9 August 2024 under the EIRs in the following terms:

- it disclosed “repairs history report” for the property with repair total costs
- for part (i) of the request, it withheld the costs of each individual repair under the exceptions in regulations 10(5)(e) and 11(2) of the EIRs. It also said that it did not hold separate costs for repairs and applied the exception in regulation 10(4)(a) of the EIRs to that information.
- for part (ii) of the request, it said that it did not hold the number of hours spent on site by staff and applied the exception in regulation 10(4)(a) of the EIRs to that information. In terms of the reasons for visits, it withheld this information under the exception in regulation 11(2) of the EIRs.

3. On 22 August 2024, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he disagreed that his request should be handled under the EIRs and he considered all the withheld information should be disclosed as the public interest favoured it.

4. The Authority notified the Applicant of the outcome of its review on 20 September 2024, which fully upheld its original decision in terms of the EIRs.

5. On 2 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 considered it had not conducted a proper review, wrongly responded to his request in terms of the EIRs and that it had access to and was withholding the information requested.

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 15 January 2025, the Authority was notified in writing that the Applicant had made a valid application. The Authority was also asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information

8. On 30 January 2025, the Authority issued a revised review response to the Applicant under the EIRs. It disclosed the information it had previously withheld under the exception in regulation 10(5)(e) of the EIRs and a redacted copy of an extract from ASTRA, its customer service management system (subject to redactions under the exception in regulation 11(2) of the EIRs).

9. The case was subsequently allocated to an investigating officer.

10. In view of the revised review response, the Applicant was asked whether he still required a decision from the Commissioner and, if so, on what basis. The Applicant responded that the information disclosed by the Authority was incomplete and that he was aware of "many missing pieces of information". He asked for the Commissioner to issue a formal decision on this matter.
11. The Commissioner's decision notice will therefore focus on whether the Authority has identified all information falling within the scope of the Applicant's request. It will therefore not consider the remaining third-party information withheld under the exception in regulation 11(2) of the EIRs .

Commissioner's analysis and findings

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

FOISA or the EIRs

13. The Applicant questioned whether the Authority was correct to deal with his request in terms of the EIRs.
14. The relationship between FOISA and the EIRs was considered at length in [Decision 218/2007](#)¹. Broadly, in the light of that Decision, the Commissioner's general position is as follows:
 - The definition of what constitutes environmental information should not be viewed narrowly.
 - 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.
 - Any request for environmental information therefore must be handled under the EIRs.
 - In responding to a request for environmental information under FOISA, an authority may claim the exemption in section 39(2).
 - 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; 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).
 - 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.
15. "Environmental information" is defined in regulation 2(1) of the EIRs. Where information falls within the scope of this definition a person has a right to access it under the EIRs, subject to regulations 10 and 11 of the EIRs.
16. The Authority said that it considered the information requested was environmental information, as defined by regulation 2(1) of the EIRs (particularly paragraph (f)). It

¹ <https://www.foi.scot/decision-2182007>

explained that the information requested related to the state of the specific built structure and that many of the repairs related to gas servicing.

17. Given the subject matter of the request, and having considered the withheld information in detail, the Commissioner is satisfied that the information requested is environmental information, as defined by regulation 2(1) of the EIRs (particularly paragraphs (b), (c) and (f)).
18. Given that the Commissioner is satisfied that the information requested is environmental information, the Authority had a duty to consider it in terms of regulation 5(1) of the EIRs. The Authority therefore complied with regulation 5(1) in responding to the request under the EIRs.
19. While the Applicant has disputed the Authority's decision to handle his request under the EIRs, the Commissioner must note that he can identify no detriment to the Applicant in having done so. In other words, handling his request under FOISA would not have made disclosure of the information requested more likely – nor would it affect the extent of the information held by the Authority to be considered for disclosure.

Section 39(2) of FOISA – Environmental information

20. 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.
21. In this case, the Commissioner accepts that the Authority would have been entitled to apply the exemption to the information withheld under FOISA, given his conclusion that it is properly classified as environmental information.
22. 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 responding to the request under FOISA.
23. The Commissioner therefore finds that the Authority would have been entitled to apply the exemption in section 39(2) of FOISA to the request, given his conclusion that the information requested was properly classified as environmental information. He will consider this case, in what follows, solely in terms of the EIRs.

Regulation 5(1) and regulation 10(4)(a) of the EIRs – Duty to make available environmental information on request and information not held

24. The Authority disclosed some information in response to elements of the Applicant's request and applied the exception in regulation 10(4)(a) of the EIRs to other elements of his request, on the basis that it held no relevant information for these elements.
25. Specifically, the Authority applied the exception in regulation 10(4)(a) of the EIRs to separate costs for repairs (an element of part (i) of the request) and the number of hours spent on site by staff (an element of part (ii) of the request). It also said that it held no recorded information regarding furniture being delivered or replaced to the property in question.
26. Regulation 5(1) of the EIRs (subject to the various qualifications contained in regulations 6 to 12) 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 the information held by an authority when it receives a request.

27. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 apply 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.
28. Regulation 10(4)(a) of the EIRs states that a Scottish public authority may refuse to make information available to the extent that it does not hold the information when it received the request.
29. 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 lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
30. The Commissioner may also consider, 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 as to what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is held by the public authority (or was, at the time it received the request).

The Applicant's submissions

31. During the investigation, the Applicant was asked what information he expected the Authority to hold that it had not provided to him. He said that no information had been supplied by the Authority about the furnishing of the property, but he understood that the property was fully furnished and that beds and/or furniture had been delivered or installed. He therefore expected information of this nature to be held by the Authority.
32. The Applicant also suggested several specific dates when he believed that there had been deliveries to or work on the property. However, some of these dates appeared to fall outwith the date period specified in his request.

The Authority's submissions

33. The Authority was asked to explain how it had ensured that it had located all the information that fell within the request.
34. For part (i) of the request, the Authority explained that it had provided in its revised review response of 30 January 2025 all the information it held. By way of background, and as it had explained to the Applicant, the Authority said that City Building Glasgow carried out the work to the specified property on the Authority's behalf and that it had paid for the works which were carried out. It stated that it had now provided all costs held in respect of these works and that no additional costs were paid to any other contractors.
35. The Authority explained that searches were (separately) undertaken of its Customer Management, Customer Relationship Management and Asset Management systems by the Authority's Director of Investment, Repairs and Compliance and the My Repairs Performance and Improvement Manager. These searches were for repairs and compliance related work for the property between the dates specified in the Applicant's request and used keywords related to the property address and its unique property reference number.
36. The Authority confirmed that it held no further breakdown in respect of the costs of works at the property in addition to that already identified and provided to the Applicant. It said that there were no other systems it could search which would hold any additional information to that already provided to the Applicant.

37. For part (ii) of the request, the Authority confirmed that it did not hold the approximate number of hours spent on the property. It explained that it did not hold this information as it did not ask staff to time record for business purposes.
38. In respect of the reasons for visits, the Authority said that it had interpreted this to mean the reason to visit to carry out a repair or void work. It said that it had provided all of the information it held to the Applicant (subject to third party personal data redactions) as part of its revised review response of 30 January 2025.
39. In response to the Applicant's comment that he expected it to hold information regarding the delivery or replacement of furniture, the Authority said that it considered replacing furniture to be a "a maintenance or lifecycle replacement activity, not refurbishment or renovation of the property fabric". As such, this information (if it were held) fell outwith the scope of the Applicant's request.
40. However, to assist, the Authority explained that the property was most recently utilised by Glasgow City Council (the Council) as a Temporary Furnished Flat (TFF). A TFF in this context is a property leased by the Council or its commissioned providers, to meet their statutory duties under the Housing (Scotland) Act 1987 for households assessed as homeless. These flats are fully furnished by the Council and intended as short-term accommodation until permanent housing becomes available. The Council is the legal landlord for these placements, even if the property is sourced from Wheatley Homes Glasgow or another Registered Social Landlord (RSL).
41. The Authority explained that its role is typically limited to provide the property under a lease arrangement to the Council, not creating a tenancy with the individual household. It therefore said that the Council (not the Authority) would hold tenant information, including information relating to the delivery or replacement of furniture. It explained that it was usually "unaware of the identity to the service user living in the flat" and said that had the Applicant specifically requested this information in his request, it would have provided the above explanation and directed him to the Council to obtain the information requested.
42. In terms of the searches it carried out for the further information the Applicant suggested it held, the Authority explained that it had carried out checks on its main housing management systems and that it held no information regarding furniture being delivered/installed to the property. It also carried out checks with the Locality Housing Director and the Housing Officer in the area, who both confirmed that they held no recorded information regarding furniture being delivered/installed to this property.
43. In summary, the Authority suggested that the Council may hold information regarding furniture being delivered to/installed in the specified property. It confirmed that it held no further information for the date period specified in the Applicant's request, but noted that it was open to him to make a new request covering a different date period.

The Commissioner's view

44. The Commissioner has considered the submissions from both the Applicant and the Authority together with the terms of the request.
45. While the request specifically requests costs associated with "renovation, refurbishment and repair", the Commissioner notes that it also requests "any other costs". In the circumstances, he considers that it would have been appropriate for the Authority to have clarified what the Applicant meant by "any other costs", given it can either be interpreted narrowly (i.e. still

requiring some tangential relationship to renovation, refurbishment and repair) or broadly (i.e. any costs whatsoever associated with the property).

46. The Commissioner would like to stress the importance of ensuring that the terms of any information request received by a Scottish public authority are clear before proceeding to respond. He would urge the Authority, and indeed all Scottish public authorities, to take steps to clarify with applicants any matter which is open to interpretation, prior to proceeding with a request.
47. However, it appears that the Applicant was not interested in any costs whatsoever associated with the property but that he was interested in, for example, costs relating to furniture being delivered and installed at the property. As stated above, the Authority did not consider that this information fell within the scope of the request but nevertheless searched for this information and confirmed that it did not hold it.
48. In all of the circumstances, given the explanations and submissions provided, the Commissioner accepts that the Authority took adequate and proportionate steps in the circumstances to establish if it held any further information (in addition to that disclosed already) and if it held any relevant information for the elements of the request to which it applied the exception in regulation 10(4)(a) of the EIRs.
49. The Commissioner considers that the Authority's searches were reasonable in the sense of those tasked to carry them out and the locations searched. He finds that they would be capable of locating (if either type of information were held) further information or any relevant information for the elements of the request to which it applied the exception in regulation 10(4)(a) of the EIRs.
50. While the Applicant believed and expected further information to be held by the Authority, the Commissioner is satisfied that this was not the case. As stated in previous decisions, the Commissioner's remit extends only to the considering whether a Scottish public authority actually holds the relevant information requested and whether it complied with FOISA or the EIRs in responding to a request. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide, nor does he have any locus, in this context, to determine what information an authority ought to record.
51. In all the circumstances, therefore, the Commissioner is satisfied, on the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold any further information falling within the scope of the Applicant's request (in addition to that disclosed already).
52. The Commissioner is also satisfied, on the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold recorded information which would fulfil the elements of the Applicant's request to which it applied the exception in regulation 10(4)(a) of the EIRs. He therefore concludes that the Authority was entitled to rely on the exception in regulation 10(4)(a) of the EIRs in relation to this information on the basis that it did not hold it.

The public interest

53. The exception in regulation 10(4)(a) of the EIRs is subject to the public interest test in regulation 10(1)(b) and so can only apply if, in all the circumstances of the case, the public interest in maintaining the exception outweighs that in making the information available.

54. The question of whether a public authority holds information is a factual one, determined on the balance of probabilities. If a public authority does not hold the information, then there is no meaningful public interest test that can be undertaken.
55. In this case, for the reasons set out above, the Commissioner is satisfied that the Authority does not hold (and did not do so on receipt of the request) any information covered by the elements of the Applicant's request to which it applied the exception in regulation 10(4)(a) of the EIRs. Consequently, he accepts that there is no conceivable public interest in requiring the disclosure of such information and finds that the public interest in making information available is outweighed by that in maintaining the exception.

Regulation 10(5)(e) – Confidentiality of commercial or industrial information

56. As stated above, the Commissioner's decision notice is focused on whether the Authority identified all relevant information in response to the Applicant's request. However, in the circumstances, he will comment on the Authority's decision to withhold certain information (that it subsequently disclosed) under the exception in regulation 10(5)(e) of the EIRs.
57. Regulation 10(5)(e) of the EIRs provides that a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially the confidentiality of commercial or industrial information, where such confidentiality is provided for by law to protect a legitimate economic interest.
58. As with all exceptions under regulation 10 of the EIRs, a Scottish public authority applying this exception must interpret it in a restrictive way and apply a presumption in favour of disclosure (regulation 10(2)). Even where the exception applies, the information must be disclosed unless, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception (regulation 10(1)(b)).
59. The Commissioner accepts that the information that was withheld at review stage under the exception in regulation 10(5)(e) of the EIRs is commercial in nature. However, he is not persuaded that disclosure of this information at review stage would have caused, or would have been likely to cause, substantial harm to a legitimate economic interest of either the Authority or a third party.
60. The Commissioner welcomes the Authority's decision shortly after the review outcome to reconsider the application of the exception in regulation 10(5)(e) of the EIRs and its decision to instead disclose this information to the Applicant.
61. However, given how little time had passed between the review outcome and the subsequent disclosure of this information and the absence of any submissions from the Authority advising him of any material changes in circumstance over that period, the Commissioner considers that the Authority should have disclosed this information to the Applicant by the date of the review outcome (at the latest). In failing to do so, the Authority breached regulation 5(1) of the EIRs.

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 investigated and found that:

- the Authority was entitled to respond to the Applicant's request under the EIRs
- it held no further recorded information falling within the scope of the Applicant's request (in addition to that disclosed already)
- it was entitled to rely on the exception in regulation 10(4)(a) of the EIRs to the extent that it did not hold any relevant information for elements of the Applicant's request.

In these respects, the Authority complied with the EIRs in responding to the Applicant's information request.

However, the Commissioner finds that the Authority failed to comply with regulation 5(1) of the EIRs by failing to disclose by the review outcome (at the latest) the information it had withheld at that stage under the exception in regulation 10(5)(e) of the EIRs.

Given that the Authority has now disclosed this information to the Applicant, the Commissioner does not require the Authority to take any action in respect of this failure, in response to the Applicant's application.

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

26 January 2026