



Scottish Information
Commissioner
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Decision Notice 286/2025

Breakdown of the costs for the weekly scaffolding hire

Authority: City of Edinburgh Council

Case Ref: 202500380

Summary

The Applicant asked the Authority for a breakdown of the costs for weekly scaffolding hire for a specific building. The Authority disclosed some information but withheld other information it considered to be commercially sensitive. The Commissioner investigated and found that the Authority had not been entitled to refuse to make the information available to the Applicant. He required the Authority to disclose the information.

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" and "the Commissioner") (Interpretation); 5(1) and 2(b) (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 28 August 2025, the Applicant made a request for information to the Authority. They asked for a breakdown of the costs for the weekly scaffolding hire (in relation to a specific building).
2. The Authority responded on 3 September 2025. It provided the Applicant with some information, but it withheld other information under section 33(1)(b) of FOISA.

3. On 7 October 2025, the Applicant wrote to the Authority requesting a review of its decision. Specifically, they asked it to release the information it had withheld.
4. The Authority notified the Applicant of the outcome of its review on 30 October 2025. It withdrew its previous reliance on section 33(1)(b) of FOISA and substituted it with regulation 10(5)(e) of the EIRs, as it now considered the information to be environmental.
5. On 12 December 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 he did not believe that regulation 10(5)(e) of the EIRs applied to the redacted information and he argued that disclosure of the information was in the public interest.

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 14 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 provided the 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 regarding its reasons for withholding information under regulation 10(5)(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.

Withheld information

10. In this case, the Authority is withholding a single column from the spreadsheet disclosed to the Applicant in its original response. This column contains the rates and quantities cited by the scaffolding company.

Handling in terms of the EIRs

11. In its revised review outcome, the Authority considered the Applicant's request under the EIRs, having concluded that the information requested was environmental as defined in regulation 2(1) of the EIRs, and applied the exception in Regulation 10(5) (e) of the EIRs.
12. Where information falls within the scope of this definition, 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.

13. 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) and (c) of that definition.
14. The Applicant did not challenge the Authority's decision to deal with the request as one for environmental information. In what follows, the Commissioner will consider this case solely in terms of the EIRs.

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

15. 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.
16. 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 provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
17. Under the EIRs, a 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 maintaining the exception or exceptions outweighs the public interest in making the information available.

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

18. 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.
19. As with all exceptions under regulation 10, 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)).
20. The Aarhus Convention: an Implementation Guide¹, which offers guidance on the interpretation of convention from which the EIRs are derived, notes (at page 88) that the first test for considering this exception is whether national law protects the confidentiality of the withheld information. The law must explicitly protect that type of information as commercial or industrial secrets. Secondly, the confidentiality must protect a “legitimate economic interest”.
21. Having taken this guidance into consideration, the Commissioner's view is that, before regulation 10(5)(e) of the EIRs can be engaged, authorities must consider the following matters:
 - (i) Is the information commercial or industrial in nature?
 - (ii) Does a legally binding duty of confidence exist in relation to the information?
 - (iii) Is the information publicly available?

¹ https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf

(iv) Would disclosure of the information cause, or be likely to cause, substantial harm to a legitimate economic interest?

Is the information publicly available?

22. The Authority stated that the withheld information was not publicly available.
23. The Commissioner has examined the withheld information and accepts that it is not (and was not, at the time of the request) in the public domain.

Is the information commercial or industrial in nature?

24. The Authority stated that the information was commercial. It explained that contractors were appointed to the Edinburgh Shared Repairs Service (ESRS) Framework by a competitive tendering exercise, following which a report was submitted to the Authority's Finance and Resources Committee, recommending the approval of the highest-scoring contractors.
25. The Authority explained that if ESRS was called to an emergency building defect and works were required, the attending officer would contact the highest-scoring contractor in the first instance. If a contractor was unavailable or was unable to attend to the defect, they would contact the next highest-scoring contractor, and so forth. In this instance, the third highest ranked contractor (Go-Wright Ltd) was appointed. The Authority explained that Go-Wright Ltd subsequently sub-contracted the scaffolding work to a third-party scaffolding company. The Authority explained that the rates and quantities of the sub-contractor's scaffolding work (the withheld information) formed part of Go-Wright Ltd's wider contractual rates.
26. Having considered the withheld information, along with the submissions from the Authority, the Commissioner is satisfied that the withheld information is commercial in nature for the purposes of regulation 10(5)(e) of the EIRs.

Does a legally binding duty of confidence exist?

27. In terms of regulation 10(5)(e) of the EIRs, confidentiality "provided by law" will include confidentiality imposed on any person under the common law of confidence, under a contractual obligation, or by statute.
28. In its submissions to the Commissioner the Authority stated that no legally binding duty of confidence existed in relation to the withheld information. It subsequently provided the Commissioner with an email from Go-Wright Ltd dated 16 October 2024 (after the request was submitted) to the Authority, in which Go-Wright Ltd claimed that the information was provided to the Authority in confidence. The Authority offered no comment on this email.
29. The Commissioner was not provided with copies of the contract or framework or any other evidence to support Go-Wright Ltd's view that the information was provided to the Authority in confidence (i.e. that an express duty of confidence existed at the time the information was requested). Neither has the Authority argued that the information was subject to an implied duty of confidence. In the circumstances, and taking into account the Authority's own statement on this point, the Commissioner is not satisfied that a legally binding duty of confidence exists in relation to the withheld information.

Would disclosure of the information cause, or be likely to cause, substantial harm to a legitimate economic interest?

30. The term "legitimate economic interest" is not defined in the EIRs. In the Commissioner's view, the interest in question should be financial, commercial, or otherwise economic in nature, and the harm must arise as a direct result of a breach of confidentiality.

31. The Authority submitted that the legitimate economic interest in this case was protecting the commercial interests of the framework contractor (Go Wright Ltd) by ensuring that competitors did not get access to commercial information. The Authority also argued that there was a legitimate economic interest in protecting the framework contractor's commercial bargaining position in future framework negotiations.
32. The Commissioner has considered the arguments put forward by the Authority and the Applicant, as well as the withheld information itself.
33. The Commissioner is not persuaded that the Authority has made a compelling enough argument that disclosure of the withheld information would be capable of causing the harm envisaged to Go Wright Ltd.
34. In its submissions, the Authority explained that the scaffolding erected in this case was specialist in nature, designed specifically for the building in question, with input from a structural engineer. It distinguished this from the two quotes provided by the Applicant in support of their position, which were for standard access scaffold only. The Authority also explained that the scaffolding erected in this case provided vertical and lateral support to the cracked and dislodged stonework of the four-storey bay window structure and the supporting stone corbel, along with providing access to the building façade around the bay window for structural assessment and monitoring.
35. Given the relative uniqueness of the scaffolding erected in this case, the Commissioner is not persuaded that disclosure of the rates and quantities would undermine Go Wright Ltd's ability to compete in future framework negotiations or commercially benefit its competitors. The quantities and rates do not relate to standard access scaffold, but rather they relate to scaffolding that was designed with input from a structural engineer for a specific building. The Commissioner does not consider that there will be many buildings which have the exact requirements in this case (and he has been provided with no evidence to the contrary) and therefore he does not accept that the rates and quantities have significant commercial value.
36. Taking account of the actual information withheld and the submissions provided by the Authority, including its acknowledgement that no legally binding duty of confidence applies to the information, the Commissioner is unable to accept that disclosure would cause the substantial prejudice required by regulation 10(5)(e). Consequently, he cannot accept that the Authority can justify the application of the exception in regulation 10(5)(e) to the withheld information.
37. Given that the Commissioner has found that the exception in regulation 10(5)(e) was incorrectly applied to the information withheld by the Authority, the Commissioner is not obliged to, and has not gone on to, consider the public interest test required by regulation 10(1)(b) of the EIRs.
38. The Commissioner finds that, by not making the information available, the Authority failed to comply with regulation 5(1) of the EIRs. He requires the Authority to disclose the information to the Applicant.

Decision

The Commissioner finds that the Authority failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs), specifically regulation 5(1), in responding to the information request made by the Applicant.

The Commissioner finds that the Authority was not entitled to refuse to make the information available under regulation 10(5)(e) of the EIRs.

The Commissioner requires The Authority to disclose the information to the Applicant by **22 January 2026**.

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

8 December 2025