



Scottish Information
Commissioner
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Decision Notice 037/2026

Correspondence regarding Dumfries House

Authority: Historic Environment Scotland
Case Ref: 202501262

Summary

The Applicant asked the Authority for correspondence between the Duke of Rothesay and the Authority within a specified period regarding Dumfries House. The Authority informed the Applicant that it did not hold the information requested. The Commissioner investigated and found that the Authority had been entitled to inform the Applicant that it did not hold the information requested.

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 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” and “the Commissioner”) (Interpretation); 5(1) (Duty to make environmental information available on request); 10(1), (2) and (4)(a) (Exceptions from duty to make information available); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 13 May 2025, the Applicant made the following request for information to the Authority:
 - (i) “Between 1 January 2018 and 1 January 2019 did the Duke of Rothesay write to and or communicate with [the Authority]. Please note that I am only interested in that correspondence and or communication which mentions and or which in any way relates

to any of the topics listed below. If the answer is yes, can you please provide a copy of this correspondence and communication.

- (a) [The Authority's] previous financial support for 'Dumfries House and or the surrounding estate and or the Dumfries House Trust.
- (b) How [the Authority] might be able to provide additional financial support for Dumfries House and or the surrounding estate and or the Dumfries House Trust in the future.
- (c) The Duke's previous and or current and or future requests for financial support for Dumfries House and or the surrounding estate and or the Dumfries House Trust.
- (d) The Upkeep and or maintenance and or preservation and or restoration and or the expansion of Dumfries House and the surrounding estate."

(ii) "Between 1 January 2018 and 1 January 2019 did [the Authority] write to and or communicate with the Duke of Rothesay. Please note that I am only interested in that correspondence and or communication which mentions and or which in any way relates to any of the issues listed in question one. of the following. If the answer is yes, can you please provide a copy of this correspondence and communication."

2. For background, Duke of Rothesay is a title traditionally held by the heir to the throne and used by the heir to the throne when acting in Scotland. In 2007, a consortium led by the then Duke of Rothesay purchased Dumfries House, which now acts as the headquarters of the King's Foundation.
3. The Authority responded on 11 June 2025. It informed the Applicant that it held no information falling within the scope of his request and issued him with a notice to this effect in terms of regulation 10(4)(a) of the EIRs.
4. On 26 June 2025, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied because he considered it likely that the Authority held information relevant to his request considering the financial support given by the Authority to Dumfries House. In particular, he suggested that the Authority may not have considered correspondence from organisations representing the Duke of Rothesay.
5. The Authority notified the Applicant of the outcome of its review in July 2025, which fully upheld its original response. It also provided the Applicant with advice on how to make a request for correspondence from organisations established by the Duke of Rothesay, or which represented his interests.
6. On 28 July 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 was dissatisfied with the outcome of the Authority's review because he believed that the Authority held information relevant to his request.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 3 September 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
9. 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 question related to the searches it had carried out to identify information falling with scope of the request.

Commissioner's analysis and findings

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

Handling in terms of 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. Having considered the terms of the request and the nature of the information requested, the Commissioner accepts the decision of the Authority to deal with the request under the EIRs rather than under FOISA.

Section 39(2) – 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.
14. As noted above, the Commissioner accepts that the Authority was entitled to apply this exemption to the information requested, given his finding that it was entitled to classify it as environmental information.
15. 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 requests 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.
16. The Commissioner therefore concludes that the Authority would have been entitled to apply section 39(2) of FOISA and to consider the Applicant's information request under the EIRs. The Commissioner will consider the request in what follows solely in terms of the EIRs.

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

17. Regulation 5(1) of the EIRs requires a Scottish public authority which holds the 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.

18. 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) of the EIRs requires the authority to make the information available, unless a qualification in regulation 6 to 12 applies (regulation 5(2)(b)).

The Applicant's comments

19. The Applicant considered it highly likely that the Authority held information relevant to his request, not least because the Duke of Rothesay took an active interest in the development and preservation of Dumfries House and the surrounding estate.
20. During the investigation, the Commissioner invited the Applicant to provide further comments on why he considered that the Authority held the information requested.
21. The Applicant did not make any specific remarks about the period specified in his request. However, he commented that the Authority provided funding to Dumfries House between 2010 and 2015 and provided a document in support of this.

The Authority's comments

22. The Authority said that it had undertaken extensive and proportionate searches across all relevant business areas to confirm whether any correspondence within scope was held. These steps included:
 - consulting staff with historical knowledge of Dumfries House casework across its Finance and Corporate, Cultural Assets, External Relations and Partnerships (ER&P), Grants, and Heritage directorates;
 - searching relevant SharePoint libraries, document centres, and correspondence trackers were searched using appropriate keywords and the date range specified in the Applicant's request
 - searching key mailboxes of the Cultural Assets Directorate and Grants department;
 - searching the Authority's Heritage Management System by asset number for Dumfries House and reviewing associated files.
23. The Authority also considered whether any information could be held in Microsoft Teams but confirmed that its retention policies meant that no such information would have been retained.
24. The Authority confirmed that it used a range of search terms, both using the Duke of Rothesay's Scottish title and his more familiar title as the (then) Prince of Wales. Similarly, it explained that searches for Dumfries House used both its name and the Authority's unique reference number.
25. The Authority confirmed that it had no correspondence from the Duke of Rothesay's office or his secretary. It also said that it was unaware of any further correspondence from any organisation representing the Duke of Rothesay, but it noted that its search here was limited by the fact that it did not hold a list of organisations representing the Duke of Rothesay.

The Commissioner's view

26. The Commissioner has taken account of the submissions provided by both parties.
27. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority carried out adequate and proportionate searches in the

circumstances to establish whether it held any information falling within scope of the Applicant's request.

28. The Commissioner considers that the Authority's searches were reasonable, in the sense of those consulted, the search terms used and the locations searched; he finds that they would be capable of locating the information requested.
29. In the circumstances, the Commissioner is therefore satisfied, on the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold any information falling within the scope of the Applicant's request.
30. While the Applicant believed and expected the information requested to be held by the Authority at the time of his request, the Commissioner is satisfied that this was not the case. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide.
31. The Commissioner therefore concludes that the Authority was correct to give the Applicant notice, in terms of regulation 10(4)(a) of the EIRs, that it did not hold the information requested.

The public interest test

32. 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.
33. 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.
34. In this case, for the reasons set out above, the Commissioner is satisfied that the Authority does not hold any information covered by the request and did not do so on receipt of the request.
35. Consequently, the Commissioner 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.

Decision

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

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.

Cal Richardson
Deputy Head of Enforcement

5 March 2026