



Scottish Information
Commissioner
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Decision Notice 039/2026

Repair carried out at a specific address

Authority: Wheatley Housing Group Limited
Case Ref: 202501666

Summary

The Applicant asked the Authority and one of its subsidiaries (Lowther Homes Limited) for information on a repair carried out at a specific address on a specific date. The Authority, on behalf of Lowther Homes, advised the Applicant that neither FOISA nor the EIRs applied to Lowther Homes and it was therefore not obliged to comply with the request. The Commissioner investigated and found that Lowther Homes was not required to respond under the EIRs, but the Authority was required to respond under the EIRs in its own right.

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” and “environmental information”) (Interpretation); 5(1) and (2) (Duty to make environmental information available on request); 13(a) and (b) (Refusal to make information available); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

The Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the 2019 Order).

The Housing (Scotland) Act 2010 (the 2010 Act) sections 3(1) (The Regulator’s Functions);165 (Interpretation).

Background

1. On 16 July 2025, the Applicant made a request for information to the Authority and one of its subsidiaries, Lowther Homes Limited, for all information about a repair carried out at a specific address on a specific date.
2. The Authority responded on 8 August 2025. It explained that the Applicant's request related to one of its subsidiaries, Lowther Homes, which provided factoring services. It considered that neither FOISA nor the EIRs applied to Lowther Homes and it was therefore not obliged to comply with the request.
3. On 13 August 2025, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he did not understand why the Authority had not disclosed the information requested.
4. The Authority notified the Applicant of the outcome of its review on 10 September 2025, which fully upheld its original decision.
5. On 16 September 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 it had not substantively responded to his 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 21 November 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 subsequently 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 related to the Authority's handling of the Applicant's request.

Commissioner's analysis and findings

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

Is the information under consideration "environmental"?

10. 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 the various restrictions and exceptions contained in the EIRs.
11. Having considered the terms of the request, the Commissioner is satisfied that the information under consideration comprises environmental information as defined in

regulation 2(1) of the EIRs. (During the investigation, the Authority accepted that the information under consideration comprised environmental information.)

12. Having concluded that the information under consideration is environmental information for the purposes of the EIRs, the Commissioner will first consider whether the request was received by the Authority, Lowther Homes, or both, and whether the recipient(s) are Scottish public authorities for the purposes of the EIRs.

Who received the request?

13. The Authority is a registered social landlord. It has several subsidiaries, including Lowther Homes which provides factoring services and mid-market rented accommodation.
14. The Authority has a central FOI team that handles information requests for both the Authority itself and its subsidiaries. It explained that it considered the Applicant's request to have been received by Lowther Homes, and that all the correspondence sent was sent by it on behalf of Lowther Homes. However, it accepted that it had not been sufficiently clear on this. It indicated that it had updated its processes to be clearer on when it was acting in its own right and when it was acting on behalf of its subsidiaries. The Commissioner welcomes this change.
15. As the Applicant had written to the email address that is listed on the Lowther Homes website for information requests in relation to work carried out by Lowther Homes, the Commissioner accepts that the request was received by Lowther Homes.
16. While the Commissioner considers that the subject line (that names Lowther Homes and includes a Lowther Homes reference number) and topic (work carried out by Lowther Homes) suggests that Lowther Homes is the primary intended recipient, he does not agree that this means that Lowther Homes was the sole recipient. This is because the listed email address is also used by the Authority for freedom of information requests, and the Applicant's email did not include any form of words that clearly and specifically addressed the request to Lowther Homes alone.
17. The Commissioner considers it reasonable to anticipate that Lowther Homes would hold most of the information in scope of the request. However, he also considers it conceivable that the Authority would have been informed of the work and hold some of the information requested in its own right. Even if the Authority held no information (as it indicated was the case during the investigation), the Commissioner notes that (in terms of paragraph 5.3.1 of Part 2 of the Scottish Ministers' Code of Practice on the Discharge of Functions under FOISA and the EIRs ([the Section 60 Code](#)¹)) applicants cannot always be expected to understand how information is held by authorities.
18. In the absence of any clarification sought by the Authority or a clear statement from the Authority that it considered the request to have been solely received by Lowther Homes (which would have the effect of allowing the Applicant to make a new request specifically addressed to the Authority if he wished), the Commissioner does not agree that the Authority was entitled to treat the request as solely received by Lowther Homes.

¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf>

Is the Authority a Scottish public authority?

19. The request in this case is unusual in that it was simultaneously received by two organisations but only responded to by the Authority (which was acting on behalf of the other).
20. The Commissioner therefore considers it essential to consider the obligations of both organisations under the EIRs. To do this he must establish whether, and to what extent, these organisations are covered by the EIRs.
21. The definition of a Scottish public authority for the EIRs is set out in regulation 2(1) which provides that “Scottish public authority” means:
 - a) any body which, any person who, or the holder of any office which is –
 - (i) listed in schedule 1 to FOISA (but subject to any qualification in that schedule), or
 - (ii) designated by order under section 5(1) of FOISA;
 - b) a publicly-owned company as defined by section 6 of FOISA;
 - c) any other Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998); and
 - d) any other person who is neither a public body nor the holder of a public office and who is under the control of a person or body falling within paragraphs (a), (b) or (c) of this definition and –
 - (i) has public responsibilities relating to the environment;
 - (ii) exercises functions of a public nature relating to the environment; or
 - (iii) provides public services relating to the environment.

The Authority

22. The Commissioner found in [Decision 191/2021](#)² (at paragraph 7) that the Authority is a Scottish public authority in terms of the EIRs for the purposes of definition (d) of “Scottish public authority” in regulation 2(1) of the EIRs. He is aware of no reason, in the circumstances, to depart from that finding in this case.

Lowther Homes – definition (a)

23. Although subsidiaries of registered social landlords (such as Lowther Homes) are designated under FOISA by The Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 (the 2019 Order), they are only designated in relation to the functions specified in the schedule of the 2019 Order.
24. These functions are “housing services” and supplying information to the Scottish Housing Regulator in relation to the financial well-being and standards of governance of a registered social landlord or connected body. Housing services are defined by section 165 of the Housing (Scotland) Act 2010 as “providing housing accommodation and related services”.
25. However, the 2019 Order specifies that, for the purposes of designation, this definition does not include “the provision of services for owners and occupiers of houses” and that “management of housing accommodation” is only part of this definition insofar as it relates to

² <https://www.foi.scot/sites/default/files/Decision191-2021.pdf>

accommodation for people with Scottish secure tenancies and short Scottish secure tenancies.

26. The Authority advised the Applicant that factoring services, being services for owners and occupiers of houses, were not covered by this definition.
27. The Commissioner does not agree that factoring necessarily always falls outwith this definition. For example, factoring for certain properties may fall into the definition of “the provision and management of sites for gypsies and travellers, whatever their race or origin” which is separately described as an element of housing services in the Housing (Scotland) Act 2010. However, there is no indication that any such circumstances apply to the request in this case.
28. Based on the information provided to him, the Commissioner is satisfied that this request does not relate to the functions under the 2019 Order and Lowther Homes is therefore not a Scottish public authority for the purposes of definition (a) in regulation 2(1) of the EIRs.

Lowther Homes – definitions (b) and (c)

29. Neither the Authority or the Applicant suggested that Lowther Homes is a Scottish public authority for the purposes of definitions (b) or (c) in regulation 2(1) of the EIRs.
30. For completeness, the Commissioner has considered whether Lowther Homes could fall under either of these definitions. He is satisfied that it does not.

Lowther Homes – definition (d)

31. For Lowther Homes to be a Scottish public authority for the purposes of definition (d) in regulation 2(1) of the EIRs, it must:
 - a) not be covered by definitions (a) to (c)
 - b) be neither a public body nor the holder of a public office
 - c) be under the control of an organisation that falls into definitions (a) to (c) of the definition; and
 - d) have public responsibilities, exercise functions of a public nature or provide public services relating to the environment.
32. As described above, the Commissioner is satisfied that Lowther Homes is not a Scottish public authority for the purposes of definitions (a) to (c) in regulation 2(1) of the EIRs. He is aware of no suggestion that Lowther Homes is a public body or holds a public office.
33. The Commissioner notes, as he has found in previous decisions, that the Authority is under the control of the Scottish Housing Regulator. He also considers that Lowther Homes, as a subsidiary of the Authority, is under the control of the Authority.
34. The Authority considered that, as Lowther Homes’ activities were outwith the remit of the Scottish Housing Regulator, Lowther Homes did not fall under the control of the Scottish Housing Regulator. Additionally, it submitted that while Lowther Homes is controlled by the Authority, Lowther Homes is not controlled by the Authority in its capacity as a Scottish public authority on the basis that Lowther Homes’ work does not relate to the functions in the 2019 Order.
35. The Scottish Housing Regulator’s functions are set out in section 3(1) of the Housing (Scotland) Act 2010 (the 2010 Act). These are to:

- a) to keep a publicly available register of social landlords, and
 - b) to monitor, assess and report regularly on (and, where appropriate, to make regulatory interventions relating to) –
 - (i) social landlords' performance of housing activities, and
 - (ii) registered social landlords' financial well-being and standards of governance.
36. The Commissioner notes that Lowther Homes is not itself a registered social landlord. It is therefore outwith the direct remit of the Scottish Housing Regulator. While he recognises that the Scottish Housing Regulator's decisions regarding the Authority can have a substantial influence upon the Authority's subsidiaries (including Lowther Homes), he does not consider that the indirect influence that the Scottish Housing Regulator can have upon Lowther Homes constitutes control.
37. The Commissioner agrees that the Authority's control over Lowther Homes is substantially unrelated to its functions under the 2019 Order. Consequently, he is satisfied that the Authority does not control Lowther Homes in its capacity as Scottish public authority under definition (a) in regulation 2(1) of the EIRs.
38. In all of the circumstances, therefore, the Commissioner finds that Lowther Homes is not a Scottish public authority for the purposes of definition (d) in regulation 2(1) of the EIRs.

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

39. As stated above, the Commissioner has found that the request in this case was one for environmental information and that the request was received by both the Authority and Lowther Homes. However, in view of the specific circumstances of this case and the information requested, he is satisfied that only the Authority had obligations under the EIRs to respond to the request.
40. 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.
41. 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) of the EIRs requires the authority to provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
42. Regulation 13(b) of the EIRs provides that if a request to make environmental information available is refused by a public authority in accordance with regulation 10, the authority must provide a notice in writing explaining which exceptions are being relied upon (subject to certain qualifications which are not relevant in this case).
43. In this case, the Authority refused to comply with the request but did so on the basis that the information requested related to an activity not covered by section 165 of the 2010 Act. Given that the Commissioner has found that the request was received by the Authority and that it was a request for environmental information, the Authority must consider for disclosure under the EIRs any information relevant to the request that it holds in its own right.
44. By failing to either disclose the information requested to the Applicant or to provide him with a refusal notice which stated the exception(s) being relied upon, the Commissioner finds that the Authority failed to comply with regulations 5(1) and 13(b) of the EIRs.

45. The Commissioner therefore requires the Authority to provide the Applicant with a revised review that either provides the Applicant with the requested information or advises the Applicant of any exceptions in the EIRs it wishes to rely upon (including the exception in regulation 10(4)(a) of the EIRs, if no relevant information is held).
46. For the avoidance of any doubt, the Authority's review outcome must be based on the information (if any) that the Authority held at the time of the request, not information held by Lowther Homes.

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 by failing to either disclose the information requested or to provide him with a refusal notice which stated the exception(s) being relied upon, the Authority failed to comply with regulations 5(1) and 13(b) of the EIRs.

The Commissioner therefore requires the Authority to provide a revised review outcome (in terms of regulation 16 of the EIRs) that either discloses the requested information or gives notice of the exceptions relied upon, by **27 April 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

11 March 2026