



Scottish Information
Commissioner
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Decision Notice 046/2026

Safety of playground equipment at a specified school

Authority: Aberdeenshire Council

Case Ref: 202501231

Summary

The Applicant asked the Authority for information relating to the installation, maintenance and safety of playground equipment at a specified school within the local authority area. The Authority failed to respond to the request initially, but later disclosed a single report and notified the Applicant that it did not hold other information that he had requested.

The Commissioner investigated and accepted that the Authority had identified and disclosed all of the information it held that fell within the scope of the request. He also found that the Authority should have responded to the request under the EIRs, rather than FOISA, but he did not require it to take any action.

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), (2) (Duty to make environmental information available on request); 13 (Refusal to make information available); 16 (Review by Scottish public authority); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

Background

1. On 23 May 2025, the Applicant made a request for information to the Authority. For the period covering August 2024 to 19 May 2025, he asked for
 - (i) Playground equipment
 - (a) A list of all playground equipment installed at [named school].
 - (b) Any documentation relating to the installation, specifications, or safety standards of the equipment.
 - (ii) Inspection and Maintenance Records
 - (a) All inspection reports, maintenance logs, and safety audits relating to the playground equipment during the specified period.
 - (b) Details of any repairs, replacements, or modifications made to the equipment.
 - (iii) Playground Surface – Safety Bark
 - (a) The type and specification of the surface material used in the playground (e.g., safety bark or equivalent).
 - (b) Documentation on the required and actual depth of the surface material during the specified period.
 - (c) Maintenance or replenishment schedules for the surface material.
 - (d) Any internal or third-party risk assessments, compliance checks, or safety evaluations related to the playground surfacing.
2. The Authority did not respond to the request.
3. On 27 June 2025, the Applicant wrote to the Authority requesting a review of its failure to respond.
4. The Authority wrote to the Applicant on 27 July 2025. It acknowledged that it had failed to respond to the original request within 20 working days. It also noted that the information requested by the Applicant, had not yet been located. The Authority advised the Applicant that it would reconsider his requirement for review, when the information was identified.
5. On 27 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 he was dissatisfied by the Authority's failure to respond to his request and its continuing failure to locate the information captured by his request.
6. On 26 August 2025, prior to the investigation commencing, the Authority provided the Applicant with an inspection report for the equipment at the named school, which it claimed fell within the scope of requests (i) and (ii).

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 9 September 2025, the Authority was notified in writing that the Applicant had made a valid application. The Authority case was 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 questions. These related to its handling of the request and whether it held any additional information falling within 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.

FOISA or EIRs?

11. "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 regulation 5(1) of the EIRs, subject to various restrictions and exceptions contained in the EIRs.
12. The Applicant asked for information related to playground equipment at a specified, named school. Although he did not express dissatisfaction that his request was dealt with by the Authority under FOISA, rather than in terms of EIRs, the Commissioner must consider whether the correct legislation (FOISA or the EIRs) was used. The first question, therefore, is whether the information requested is environmental information.
13. The Authority submitted that it had not considered whether the requested information was environmental information at any point during receipt and processing of the request. Having reconsidered this as a result of the Commissioner's investigation, the Authority concluded that it was not environmental information as it did not relate to the state of the elements of the environment, nor factors affecting the elements of the environment.
14. The Commissioner has carefully considered the Authority's view, the subject matter of each part of the Applicant's request, and the definition given in regulation 2(1) of the EIRs. The Commissioner notes that the request asks for information about built structures (a playground including playground equipment and surfacing) in an outdoor environment, open to the elements and to factors affecting the environment, and the measures that have been put in place to ensure the safety of those structures when being used by children.
15. Given this, he is satisfied that the information falls within the definition of environmental information in regulation 2(1) of the EIRs, specifically paragraphs (a), (b), (c) and (f) of that definition.
16. The Commissioner, therefore, finds that the Authority failed to identify environmental information, in terms of regulation 2(1) of the EIRs. In doing so, the Authority failed to comply with regulation 5(1) of the EIRs.

Information held by the Authority

17. Having found that FOISA was not the correct legislation for dealing with this request, the Commissioner will now decide whether the information requested by the Applicant was held by the Authority and should have been provided to him under the EIRs.
18. As noted earlier, on 26 August 2025, the Authority provided the Applicant with an inspection report for the equipment at the named school, in response to requests (i) and (ii).

19. The Authority wrote to the Applicant on 13 October 2025, and gave him notice, under section 17 of FOISA, that it held no information falling within scope of request (iii).

The Applicant's comments

20. The Applicant was dissatisfied with the Authority's position.
21. In relation to requests (i) and (ii), the Applicant raised his concern that it was not clear from the disclosed report that all playground equipment had been considered in the inspection. It was his view that the Authority should hold an equipment list and installation or manufacturer or authority specifications for safety, as required by the [Provision and Use of Work Equipment Regulations 1998 \(PUWER\)](#)¹.
22. The Applicant also raised his concern that no information had been identified in relation to any internal inspection activity carried out by the Authority itself, or any repair activities that had been carried out by the Authority; these activities also being requirements of PUWER.
23. In relation to request (iii), the Applicant considered it likely that the Authority would hold additional information falling within the scope of request (iii). Specifically, the Applicant considered that there would have been a purchase request with specifications noted during any procurement or installation process for the playground equipment, including a "data book" provided by the manufacturer of the equipment, which was likely to be held by the Authority.
24. He argued that in order to maintain equipment, it would be foreseeable that there would be a maintenance programme with requirements that would be documented and recorded. He submitted that as maintenance schedules would be foreseeable, they would also be planned and budgeted for by the Authority, and that these budgets would have to be recorded. The Applicant stated that he expected the Authority to hold risk assessments in accordance with PUWER requirements. He argued that the type of surface material could be easily identified and declared by an employee going outside to observe it and, therefore, this information should be held.

The Authority's comments

25. The Authority explained that the FOI coordinators for its Education and Children's Service (ECS) and Environmental and Infrastructure Service (EIS) were asked to arrange for the ECS and EIS to carry out searches in relation to all three requests. The Authority also explained the role of its corporate health, safety and wellbeing team, noting that this team do provide support to Services when they are carrying out their risk assessments. However, the Authority stated that it had not done so in this case and, therefore, this team did not hold information on behalf of the school.
26. The Authority noted that the EIS advised that it held no information related to the request because it had no responsibility for the installation, maintenance and inspection of the playground at the named school.
27. The Authority provided details of the searches that were conducted and of the staff that had carried out those searches on behalf of ECS. It explained that staff at the named school carried out searches of all hard and electronic folders and files held at the school and other relevant cluster colleagues were also asked to carry out searches. Additionally, searches of hard copy and electronic financial records were carried out, including procurement software.

¹ <https://www.legislation.gov.uk/ukSI/1998/2306/contents>

28. The Authority submitted that there was a legal expectation for it to hold a list of playground equipment installed at the school and to hold a record of the annual equipment inspection, and it observed that this information was available in the disclosed inspection report. The Authority commented that regular visual inspections were also carried out, but it had not recorded these. The Authority acknowledged that it would have been better practice to record these regular inspections.
29. The Authority submitted that there was no evidence to suggest that information relating to inventory, inspection and/or maintenance was held but then mislaid, or that it had been destroyed or deleted. It noted that there may have been documentation relating to the installation of play equipment but it was unclear if this was ever held by the Authority as the Parent Council delivered the play equipment installation.
30. In relation to PUWER, the Authority argued that the PUWER regulations were not applicable to playground equipment in this context as the equipment was not used for work activities by employees and was not provided for that purpose. The Authority observed that PUWER defines work equipment as any machinery, appliance, apparatus, tool or installation for use at work and that “use” in relation to work equipment meant any starting, stopping, programming, setting, transporting, repairing, modifying, maintaining, servicing and cleaning. The Authority argued that the provision of playground equipment for the sole purpose of children using the equipment for its intended use of play would not constitute the provision nor use of work equipment. It was the view of the Authority that the legal duties applicable in this circumstance would fall under the general duties of the Health and Safety at Work Act and the Management of Health and Safety Regulations.
31. During the investigation, the Authority provided the Applicant with a consolidated response for all requests, which apologised for its handling of his requests, and which provided the Applicant with details of the searches it had carried out. In the consolidated response, the Authority also outlined the steps it had taken to remind staff at all schools of the importance of record keeping.
32. The Applicant acknowledged receipt of the Authority’s email but confirmed that he wanted the Commissioner to reach a decision on his application.

The Commissioner’s view

33. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining this, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority. He will also consider, where appropriate, any reason offered by the public authority to explain why the information is not held.
34. The Commissioner acknowledges the Applicant’s view that additional information may have been held had the equipment in the school playground been subject to PUWER. Health and safety law is not within the remit of the Commissioner and he cannot comment on the applicability, or otherwise, of specific health and safety requirements. Nonetheless, he is persuaded by the Authority’s explanation that it would not be expected to hold the detailed information required by PUWER in relation to the playground equipment.
35. The Commissioner notes that the Applicant expected that the Authority would hold additional information falling within scope of his request. He has pressed the Authority for details of its searches in relation to financial records, corporate health and safety and in relation to information held in hard copy or in digital form, including on digital messaging platforms.

The Commissioner also asked the Authority to confirm if it had ever held other information and had mislaid, destroyed or deleted it.

36. The Commissioner has considered the Authority's response to his questioning and the details it provided in relation to the searches it had carried out. He accepts that the Authority's searches were reasonable and proportionate in relation to the information requested. The searches were carried out by appropriate employees who, in the circumstances, would have been able to identify all of the relevant information. The Commissioner is satisfied that the Authority holds only a single piece of information in relation to the Applicant's requests; the inspection report, which has been disclosed.
37. The Commissioner is satisfied that disclosure of the inspection report fulfils requests (i)(a) and (b), and (ii)(a), however it does not fulfil request (ii)(b). He also considers that the inspection report fulfils parts of request (iii), namely part of request (iii)(a) (type of surface material) and (iii)(d).
38. By failing to identify that it held information within scope of part of request (iii)(a) and request (iii)(d), the Authority failed to comply with regulation 5(1) of the EIRs.
39. The Commissioner is satisfied that, by the conclusion of the investigation, the Authority had identified all of the information it held which fell within the scope of the request, and he is satisfied that the Authority holds no further information beyond that which has been disclosed for parts (i)(a) and (b), (ii)(a), and part of (iii)(a) and (d).
40. The Commissioner is also satisfied that, on the balance of probabilities, the Authority holds no information falling within scope of parts (ii)(b), part of (iii)(a) (specification of surface material), (iii)(b) and (c) of the requests.
41. It is clear that the Authority did not give the Applicant notice that it did not hold any information falling within scope of request (ii)(b), whether under FOISA or the EIRs. Although the Authority did give notice that it did not hold any information falling within scope of requests (iii)(b) and (c), it did so under the wrong legislation. Accordingly, for requests (ii)(b), part of (iii)(a) (specification of surface material), (iii)(b) and (c), the Commissioner finds that by failing to notify the Applicant under regulation 13 of the EIRs that it did not hold this information, the Authority failed to comply with the EIRs.

Handling of the requirement for review

42. In his application to the Commissioner, the Applicant argued that the Authority had failed to comply with the requirement for review within 20 working days. He also noted that the Authority's Review Panel had acknowledged that it had not located the information he had requested by the time it had issued its review outcome.
43. The Commissioner has observed that the Authority's Review Panel issued what it termed a "decision" on 25 July 2025, in which it notified the Applicant that it had directed the service to continue searches and that it would reconsider his requirement for review when the information had been identified.
44. Regulation 16(3) of the EIRs, provides that when an authority receives "representations" from an Applicant in the form of a requirement for review, it must:
 - a) consider them and any supporting evidence produced by the applicant; and
 - b) review the matter and decide whether it has complied with these Regulations

45. It is clear to the Commissioner, that the “decision” or review outcome issued by the Authority on 25 July 2025, did not comply with the requirements of regulation 16(3) of the EIRS.
46. Furthermore, the Commissioner would like to draw the Authority’s attention to the requirements of regulation 16(5) of the EIRs, which states that:

“Where the Scottish public authority decides that it has not complied with its duty under these Regulations, it shall immediately take steps to remedy the breach of duty.”
47. The Commissioner notes that while the Authority did provide the Applicant with a response to requests (i) and (ii) on 26 August 2025, it did not respond to request (iii) until 13 October 2025. He therefore considers that the Authority did not fully “remedy” this breach of duty until 13 October 2025, several months after its original “decision” on the review outcome was issued.
48. The Commissioner finds that the Authority’s “decision” of 25 July 2025 was not a compliant review in terms of regulation 16(5) of the EIRs, because it did not immediately take steps to remedy the breach of duty and thereby respond to the Applicant’s request.

Timescales

49. In his application to the Commissioner, the Applicant raised his dissatisfaction that the Authority had failed to respond to his request and his requirement for review within the relevant timescales stated in the legislation.
50. The Authority submitted that it had difficulty locating information captured by the request because a relevant staff member had left the Authority’s employment.
51. The Authority provided the Commissioner with details of its handling of the Applicant’s requirement for review and the Commissioner has considered this in paragraphs 42 to 48.
52. It is a matter of fact that the Authority did not respond to the Applicant's request within the timescale allowed by the EIRs. For this reason, the Commissioner must find that the Authority failed to comply with regulation 5(2) of the EIRs.
53. As noted above, the Authority did respond to the Applicant’s requirement for review within the 20 working days set out in the EIRs, but the review outcome did not comply with the requirements of regulation 16(5).

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.

In particular, he finds that the Authority:

- failed to identify the requested information as environmental information, and in doing so it failed to comply with regulation 5(1) of the EIRs
- failed to notify the Applicant that it held information captured by part of request (iii)(a) (type of surface material) and request (iii)(d), and in doing so it failed to comply with regulation 5(1) of the EIRs
- failed to respond to the request within the timescales given, and in doing so it failed to comply with regulation 5(2) of the EIRs
- failed to give the Applicant notice that some of the information he had requested was not held, and in doing so it failed to comply with regulation 13 of the EIRs
- failed to issue a review outcome that complied with regulation 16(5) of the EIRs.

Given that the Authority has now issued a consolidated response to the Applicant, the Commissioner does not require the Authority to take any action in response to these failures, 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.

Jennifer Ross
Deputy Head of Enforcement

16 March 2026