



Scottish Information
Commissioner
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Decision Notice 062/2026

Correspondence relating to the decision to stop operation of the Cairngorm Funicular

Authority: Highlands and Islands Enterprise
Case Ref: 202500404

Summary

The Applicant asked the Authority for all reports and associated correspondence concerning the decision to stop operation of the funicular in August 2023. The Authority disclosed some information but withheld other information as it considered it to be commercial or industrial confidential information or personal data, or where it considered disclosure would prejudice the effective conduct of public affairs.

The Commissioner investigated and found that the Authority had wrongly identified some information as environmental, and that this information had been wrongly withheld initially, although later disclosed. He determined that the Authority had correctly withheld the remaining information under the EIRs and FOISA.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1) (Effect of exemptions); 30(c) (Prejudice to effective conduct of public affairs); 33(1)(b) (Commercial interests and the economy); 39(2) environment information; 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” and paragraphs (a) and (c) of the definition of “environmental information”) (Interpretation); 5(1) (Duty to make environmental information

available on request); 10(1), (2), (5)(e) (Exceptions from duty to make environmental information available); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

United Kingdom General Data Protection Regulation (the UK GDPR) articles 4(1) (definition of “personal data”); 5(1)(a) (Principles relating to the processing of personal data); 6(1)(f) (Lawfulness of processing).

Data Protection Act 2018 (the DPA 2018) sections 3(2), (3), 4(d), (5), (10) and 14(a), (c) and (d) (Terms relating to the processing of personal data).

Background

1. On 5 December 2024, the Applicant made a request for information to the Authority. He asked for:
 - (i) All reports and associated correspondence concerning the decision to stop operation of the Cairngorm Funicular (the funicular) in August 2023.
 - (ii) All reports and associated correspondence concerning the design and build standard of the funicular repair work, in particular the repair work carried out since August 2023 and including work on the funicular structure, rail track, control gear and systems, carriages and bogies.
2. The Authority failed to respond to the request within the statutory timescale.
3. On 5 February 2025, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the Authority’s handling of his request as its response was overdue.
4. The Authority notified the Applicant of the outcome of its review on 4 March 2025, and it apologised for failing to respond to his request earlier. The Authority disclosed some of the information falling within the scope of his request but it withheld information falling within the scope of request (i) under regulations 10(5)(a) and (e) and 11(2) of the EIRs, and it applied regulation 10(4)(b) of the EIRs to request (ii).
5. On 16 March 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 with the outcome of the Authority’s review because there was an overwhelming public interest in disclosure of the information he had 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 4 April 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. These related to its reasons for withholding information from the Applicant.

Commissioner's analysis and findings

9. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.
10. He has endeavoured to give as full account of his reasoning as he can, but, as recognised by Court of Session in *Scottish Ministers v Scottish Information Commissioner* [2006] CSIH 8, at paragraph [18]:

"in giving reasons for his decision, [the Commissioner] is necessarily restrained by the need to avoid, deliberately or accidentally, disclosing information which ought not to be disclosed."
11. In this case, the Commissioner is unable to set out the Authority's (or his own) reasoning in full as doing so could itself lead to disclosing information which ought not to be disclosed.

Scope of the investigation

12. During the investigation, the Applicant confirmed that he would make a new, narrowed request for the information he had asked for in request (ii) and so this appeal will only consider the Authority's handling of request (i).

The Authority's change of position

13. During the investigation, the Authority notified the Commissioner that it had reconsidered its decision to withhold information from a Board minute (document 1) and had decided to disclose the information it had previously withheld, apart from one sentence which it wanted to withhold under section 30(c) and 33(1)(b) of FOISA.
14. The Authority subsequently amended the published Board minute to make this information publicly available, and it notified the Applicant that it had disclosed this information, apart from the single sentence at item 2.6, which it was withholding under section 30(c) and 33(1)(b) of FOISA
15. As the Authority disclosed information which it had originally withheld, the Commissioner must find that it failed to comply with section 1(1) of FOISA.
16. The Authority also withdrew its previous reliance on regulation 10(5)(a) of the EIRS and confirmed that it was withholding information under regulation 10(4)(d), 10(5)(b), (e) and (f) and regulation 11(2) of the EIRs.

Withheld information

17. The Authority provided the Commissioner with the following six documents that were being withheld wholly or in part under the EIRs or FOISA.
 - (i) Document 1 is a board minute. The Authority withheld one line in item 2.6 of this document under sections 30(c) and 33(1)(b) of FOISA.
 - (ii) Document 2 is a report wholly withheld under regulations 10(5)(e), 10(5)(b), 10(4)(d), and 11(2) of the EIRs.

- (iii) Document 3 is a report wholly withheld under regulations 10(5)(e) and 11(2) of the EIRs.
- (iv) Document 4 is a report wholly withheld under regulations 10(5)(e), 10(5)(b), 10(5)(f) and 11(2) of the EIRs.
- (v) Document 5 is a report wholly withheld under regulations 10(5)(e), 10(5)(b), 10(4)(d), and 11(2) of the EIRs.
- (vi) Document 6 is a chain of emails with some information withheld under regulations 10(5)(e) and 11(2) of the EIRs.

FOISA or the EIRs?

18. "Environmental information" is defined in regulation 2(1) of the EIRs (parts (a) and (c) of the definition are reproduced in full in the Appendix to this decision). Where information falls within the scope of this definition, a person has a right to access it under the EIRs, subject to various restrictions and exceptions contained in the EIRs.
19. The Commissioner's views on the relationship between FOISA and the EIRs are set out in detail in [Decision 218/2007 Professor A D Hawkins and Transport Scotland](#)¹ and need not be repeated here. However, he will reiterate some of the key points which are relevant in this case:
 - (i) 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.
 - (ii) Any request for environmental information, therefore, must be dealt with under the EIRs.
 - (iii) In responding to a request for environmental information under FOISA, an authority may claim the exemption in section 39(2).
20. The Authority considered the information in documents 2, 3, 4, 5, and 6 to be environmental information, as defined in regulation 2(1) of the EIRs, and it withheld these documents under a number of exceptions, outlined above (in paragraph 16).
21. 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.
22. Having considered the nature and content of the withheld information, the Commissioner is satisfied that the information requested by the Applicant and contained in documents 2, 3, 4, 5, and 6, 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.
23. He is satisfied that as the information is environmental information, the Authority was correct to consider it in terms of regulation 5(1) of the EIRs.

Section 39(2) of FOISA – environmental information

24. 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.

¹ <http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2007/200600654.aspx>

25. The Commissioner finds that the Authority would have been entitled to apply this exemption to the information contained in documents 2, 3, 4, 5, and 6, given his conclusion that this information was properly classified as environmental information.
26. As there is a separate 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 parts of the request under the EIRs) outweighs any public interest in disclosing the information under FOISA.
27. The Commissioner will therefore consider documents 2, 3, 4, 5 and 6 solely in terms of the EIRs.
28. As outlined above, the Authority also submitted that the information in document 1 was non-environmental information and it withheld this information under sections 30(c) and 33(1)(b) of FOISA. The Authority stated that it was not relying on section 39(2) for the relevant section of document 1.
29. The Commissioner has considered the information withheld under section 30(c) and 33(1)(b) of FOISA, and he is satisfied that this is not environmental information and that this information required to be handled under FOISA.
30. As the Authority, initially and on review, misidentified the information in document 1 as environmental information, the Commissioner must find that it failed to comply with section 1(1) of FOISA in that respect.

Section 30(c) – Prejudice to the effective conduct of public affairs

31. As noted above, the Authority is withholding one sentence in document 1, under section 30(c) and 33(1)(b) of FOISA.
32. Section 30(c) of FOISA provides that information is exempt information if its disclosure would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
33. The word "otherwise" distinguishes the harm required from that envisaged by the exemptions in section 30(a) and (b). This is a broad exemption, and the Commissioner expects any public authority applying it to show what specific harm would (or would be likely to) be caused to the conduct of public affairs by disclosure of the information, and how that harm would be expected to follow from disclosure.
34. There is no definition of "substantial prejudice" in FOISA, but the Commissioner considers the harm in question would require to be of real and demonstrable significance.
35. The authority must also be able to satisfy the Commissioner that the harm would or would be likely to occur. The authority therefore needs to establish a real risk or likelihood of actual harm occurring as a consequence of disclosure at some time in the near (certainly the foreseeable) future, not simply that the harm is a remote possibility.

The Authority's comments on section 30(c)

36. The Authority submitted that it had withheld the one line in item 2.6 of document 1 (Board Minute 29 August 2023) under section 30(c), as its legal advisers had warned that any disclosure of this information would have prejudiced the Authority's position regarding legal privilege.

37. The Authority asserted that it had been essential for it to maintain its legal privilege, given the ongoing situation regarding the funicular. It claimed that any loss of that position would not only have been significantly detrimental to its position but might also have compromised the position of the third parties involved. It provided the Commissioner with additional submissions explaining why this was the case, but these are not reproduced in this decision.

Commissioner's view on section 30(c)

38. The Commissioner has carefully considered the submissions from the Authority in relation to the exemption, together with the information that is being withheld.
39. Having considered the nature and content of the withheld information, the Commissioner accepts that its disclosure would be likely to prejudice the Authority's position regarding legal privilege. He also accepts that its disclosure could otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.
40. In all the circumstances, the Commissioner accepts that the Authority was entitled to apply the exemption in section 30(c) of FOISA to this information.
41. the exemption in section 30(c) of FOISA is subject to the public interest test in section 2(1)(b) of FOISA. The Commissioner must therefore go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption.

The public interest test on section 30(c)

42. As noted above the exemption in section 30(c) is subject to the public interest test required by section 2(1)(b) of FOISA.
43. The "public interest" is not defined in FOISA but has been described as "something which is of serious concern and benefit to the public", not merely something of individual interest.
44. The public interest does not mean "of interest to the public" but "in the interest of the public", i.e. disclosure must serve the interests of the public.

The Authority's comments on the public interest

45. The Authority recognised that there was a significant public interest in the successful operation of the funicular at Cairngorm Mountain. The Authority submitted that in order to meet this public interest, it regularly disclosed information about Cairngorm and its associated projects and investments, as it recognised that significant sums of public money that had been invested, as well as the clear public interest in a safely run operation.
46. The Authority explained that the work on the funicular had been challenging and unique since its inception, and that it was required to engage multiple specialist contractors that had complex and sometimes challenging relationships. It confirmed that its focus was ensuring best value for public money while being as transparent as possible with regards to the information that it published.
47. The Authority confirmed that while there had been a material change in circumstances, in that the funicular was now operational, the remediation works were not completed and processes to begin concluding the contract had not yet started.

48. The Authority clarified that while acknowledging the public interest in disclosure driven largely by the sums of money invested, the ongoing impact of the funicular on the local community, the visitor economy, and public safety, it needed to ensure that it remained in a position to reach the best possible settlement for the public purse. This included ensuring that any legal privilege was maintained.
49. The Authority stated that the balance of public interest lay in favour of withholding this information at this time. The Authority also provided the Commissioner with additional arguments in support of its view.

The Commissioner's view on the public interest

50. The Commissioner recognises the general public interest in transparency and accountability, particularly concerning the use of public funds. In this particular case, he acknowledges that significant amounts of public money have been expended on the funicular railway. He also acknowledges that the question of whether the Authority has achieved best value in this context is a matter of legitimate public interest.
51. The Commissioner understands that there is considerable public interest in understanding what went wrong with the structure and when, both by the local population and also by the wider public (including through the media). He considers that there is a significant public interest in understanding the nature of the remediation works carried out, in order that the public can have confidence that the completed repairs are safe and robust, and that the investigation into its initial failure was thorough.
52. On the other hand, the Commissioner acknowledges that the Authority regularly discloses information about the funicular in order to meet this public interest, to the extent that the only information that is being withheld under this exemption is one line in a meeting minute. He notes that the remainder of the minute has been made publicly available, bar this one line.
53. The Commissioner has already concluded that disclosure of this information would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. He accepts that while the funicular is now operational, the remediation works have not been completed, and the processes to finalise the contract have not yet begun. He also notes that the Authority's main argument for withholding this information is to prevent the loss of legal privilege.
54. The Commissioner considers that the Authority has, by and large, met the public interest by publishing the remainder of the minute, and other information relating to the funicular, and he accepts that the harm that could occur from disclosure of this information outweighs the public interest arguments for its release.
55. Taking all of the submissions into consideration (including those that are not reproduced in this decision notice) on balance, the Commissioner accepts that greater weight should be attached to the arguments which would favour withholding the information in the public interest. Having reached this conclusion, the Commissioner finds that the public interest in disclosing the remaining information is outweighed by that in maintaining the exemption in section 30(c) of FOISA. He therefore finds that the Authority was entitled to withhold the information in question under that exemption.
56. As the Commissioner has found that the Authority was entitled to withhold the information in document 1 under section 30(c) of FOISA, he will not go on to consider whether the Authority was also entitled to withhold that information under section 33(1)(b).

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

57. As noted above, the Commissioner has established that the information contained in documents 2 to 6 is environmental information.
58. 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.
59. 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)).
60. 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

61. The Authority has withheld all of the information in documents 2, 3, 4 and 5 and some of the information in document 6 under regulation 10(5)(e) of the EIRs.
62. 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.
63. 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)).
64. [The Aarhus Convention: an Implementation Guide](#)², 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”.
65. 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?

² 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?

The Applicant's comments on regulation 10(5)(e)

66. The Applicant did not accept that information relating to the decision to stop operation of the funicular railway required protection due to commercial interests. He commented that commercial damage clearly resulted from the decision to cease operating the funicular, but not from the facts and evidence behind that decision. He argued that if disclosure of the information would result in a breach of confidentiality to external parties, then the Authority needs to produce evidence of such confidentiality agreements, otherwise this was not a valid reason for not releasing the information.

Is the information publicly available?

67. The Authority stated that none of the withheld information was publicly available.
68. The Commissioner has examined all of the withheld information and he 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?

69. The Authority stated that the information was both commercial and industrial. It explained that the information in documents 2, 3, 4, and 5 and the correspondence in document 6, related to the reinstatement programme and subsequent remediation works taking place on the funicular railway at Cairngorm Mountain. It added that the documents were highly technical and comprised information that was both commercial (determining whether work had been delivered to the standard required by a contract) and industrial (providing highly specialised information about the working environment and the funicular structure).
70. 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?

71. 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.
72. The Authority provided the Commissioner with comments on each of the documents and explained why each document was subject to a legally binding duty of confidence. As outlined above, in paragraphs 9 to 11, the Commissioner is unable to replicate the full submissions provided by the Authority, given their sensitivity. However, having considered the content of each document, and the submissions provided by the Authority, he is persuaded 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?

73. 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. The prejudice to that interest must be substantial; in other words, it must be of real and demonstrable significance.

74. The Authority submitted that its own legitimate economic interests would be substantially harmed by disclosure of the information, as well as those of other named third parties. The Authority explained that the sum of money involved in the funicular project was considerable and it provided detailed arguments setting out the substantial harm that would be caused to these legitimate economic interests by disclosure of the withheld information.
75. Having considered the submissions, and the information itself, the Commissioner recognises the information was provided with an expectation of maintaining confidentiality, and its disclosure would, or would be likely to, prejudice substantially the confidentiality of commercial information where such confidentiality is provided for by law to protect a legitimate economic interest.
76. The Commissioner is therefore satisfied that the Authority was entitled to apply the exception in regulation 10(5)(e) to the information falling within the scope of the request.

The public interest test – regulation 10(5)(e)

77. Having accepted that the exception in regulation 10(5)(e) applies to the information, the Commissioner is now required to consider the public interest test in regulation 10(1)(b) of the EIRs. This states that a Scottish public authority may only withhold information to which an exception applies where, in all the circumstances, the public interest in making the information available is outweighed by the public interest in maintaining the exception.

The Applicant's comments on the public interest

78. In his application to the Commissioner, the Applicant argued that there was an overwhelming public interest in disclosure of all of the information he had requested.
79. The Applicant commented that, in his own estimation, more than £25 million of public money had been spent on repairs to the Cairngorm funicular viaduct structure, which formed an integral part of a service available for public use. Consequently, he submitted that there was considerable public interest in understanding what had gone wrong with the structure and in assessing the level of confidence the public could have that the completed repairs were safe and robust.

The Authority's comments on the public interest

80. The Authority commented that its public interest arguments for upholding regulation 10(5)(e) of the EIRs, mirrored its public interest arguments for withholding document 1 under section 30(c) of FOISA.
81. It recognised the significant public interest in the funicular at Cairngorm Mountain. It also acknowledged that the strengthening works and subsequent remediation programme were high profile, and that the successful operation of the funicular was important to support the local community, visitor economy and wider business growth in the region.
82. The Authority submitted that, in order to meet this strong public interest, it regularly disclosed information about Cairngorm and associated projects and investments, recognising the significant sums of public money that have been invested, as well as the clear public interest in a safely run operation.
83. The Authority provided the Commissioner with further, detailed submissions, setting out its public interest arguments, which the Commissioner cannot repeat, as per the restrictions set out in paragraphs 9 to 11 of the decision.

The Commissioner's view on the public interest

84. The Commissioner accepts that there is a general public interest in transparency and accountability, particularly where this involves the use of large amounts of public funds and the removal of a service that was of vital importance to the local community and economy.
85. He notes that the funicular service was closed for four years for repairs before it reopened in January 2023, only for it to be closed again for remediation works in August 2023. In the circumstances, the Commissioner considers there is a strong public interest in understanding the decision to close the funicular in August 2023.
86. However, the Commissioner also considers that there is a strong public interest in ensuring that the Authority can obtain best value and, where necessary, take steps to protect its legitimate economic interests. He has already found that the information is subject to a legal duty of confidentiality, and he has accepted that disclosure of the information would, or would be likely to, breach legal privilege and substantially prejudice the Authority's ability to maintain relationships with the parties involved.
87. In reaching a decision on the public interest, he must take into account the harm he has identified above, as well as his view that the information was provided in confidence. He recognises that there is a clear public interest in confidences not being breached.
88. Having carefully considered the public interest arguments put forward by both the Applicant and the Authority, the Commissioner has concluded that the public interest in making the information available is, on balance, outweighed by the public interest in maintaining the exception in regulation 10(5)(e) of the EIRs.
89. The Commissioner is therefore satisfied that the Authority was, and is, entitled to withhold the information under regulation 10(5)(e). As the Commissioner has found all of the information in documents 2, 3, 4 and 5, and parts of the information in document 6 to have been correctly withheld under regulation 10(5)(e) of the EIRs, he will not go on to consider any other exceptions that have been applied to this information.

Regulation 11(2) Personal data

90. Regulation 10(3) of the EIRs makes it clear that a Scottish public authority can only make personal data in environmental information available in accordance with regulation 11.
91. Regulation 11(2) provides that personal data shall not be made available where the applicant is not the data subject and another specified condition applies. These include where the disclosure would contravene any of the data protection principles in the UK GDPR or DPA 2018 (regulation 11(3A)(a)).
92. As noted above, the Authority submitted that some of the withheld information in documents 2, 3, 4, 5, and 6 constituted personal data, disclosure of which in response to this request would contravene the first and second data protection principles in Article 5(1) of the UK GDPR ("lawfulness, fairness and transparency" and "purpose limitation").

The Applicant's comments on 11(2)

93. The Applicant expressed his concern that the Authority may have improperly withheld certain information under Regulation 11(2) of the EIRs (personal data). He requested that all of the requested information, with the exception of any valid personal data, be disclosed.

Is the withheld information personal data?

94. The Authority affirmed that it had a policy on the redaction of personal data and all redactions complied with that policy. It explained that the only redactions made were names, email addresses and, in some cases, other identifiers or limited other personal information that was not related to the project.
95. The Authority explained that in some cases, personal data had been provided where the person was a member of its staff and is above a particular grade. It confirmed that all of the personal data redacted could clearly be used to identify those individuals to whom the data related.
96. Having considered the Authority's submissions and the withheld information, the Commissioner accepts that the withheld information is personal data as it relates to identified (or identifiable) individuals. He is therefore satisfied that information is personal data in terms of section 3(2) of the DPA 2018. Given the nature of the information, he is satisfied that it would not be practicable to anonymise it.

Would disclosure contravene one of the data protection principles?

97. The Authority asserted that the first data protection principle would be contravened by disclosure of the personal data.
98. Article 5(1)(a) of the UK GDPR requires personal data to be processed "lawfully, fairly and in a transparent manner in relation to the data subject".
99. "Processing" of personal data is defined in section 3(4) of the DPA 2018. It includes (section 3(4)(d)) disclosure by transmission, dissemination or otherwise making available personal data. The definition therefore covers disclosing information into the public domain, in response to a request made under the EIRs.
100. The Commissioner must consider whether disclosure of the personal data would be lawful. In considering lawfulness, he must consider whether any of the conditions in Article 6 of the UK GDPR would allow the data to be disclosed.
101. The Authority did not consider that any of the conditions in Article 6 to the UK GDPR would allow the personal data to be disclosed under the EIRs.
102. The Commissioner considers that condition (f) in Article 6(1) is the only condition which could potentially apply in the circumstances of this case.

Lawful processing: Article 6(1)(f) of the UK GDPR

103. Condition (f) states that processing will be lawful if it is necessary for the purposes of the legitimate interests pursued by the data controller or a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require the protection of the personal data.
104. Although Article 6 states that this condition cannot apply to processing carried out by a public authority in the performance of their tasks, regulation 11(7) of the EIRs makes it clear that public authorities can rely on Article 6(1)(f) when responding to requests under the EIRs.
105. The tests which must be met before Article 6(1)(f) can be met are as follows:
 - (i) Does the Applicant have a legitimate interest in obtaining the personal data?

- (ii) If so, would the disclosure of the personal data be necessary to achieve that legitimate interest?
- (iii) Even if the processing would be necessary to achieve the legitimate interest, would that be overridden by the interests or fundamental rights and freedoms of the data subjects?

Does the Applicant have a legitimate interest in obtaining the personal data?

- 106. The Authority noted that there was a degree of legitimate interest in some of the personal data, although this was limited. It considered that this limited legitimate interest had already been met by the personal data that had been disclosed.
- 107. The Authority confirmed that it had not asked the Applicant about his legitimate interests. It submitted that while it had repeatedly acknowledged the public interest in the project, it did not consider that this was met by publishing further details of the staff involved, particularly where they were third-party employees or more junior staff.
- 108. The Commissioner is satisfied that the Applicant (and the wider public) does have a legitimate interest in obtaining the personal data, in order to fully understand the decision-making processes that led to the closure of the funicular.

Is disclosure of the information necessary for the purposes of these legitimate interests?

- 109. Having accepted that the Applicant has a legitimate interest in the personal data, the Commissioner must consider whether disclosure of that personal data is necessary to meet that legitimate interest.
- 110. "Necessary" means "reasonably" rather than "absolutely" or "strictly" necessary. When considering whether disclosure would be necessary, public authorities should consider whether the disclosure is proportionate as a means and fairly balanced as to the aims to be achieved, or whether the Applicant's legitimate interests can be met by means which interfere less with the privacy of the data subject.
- 111. The Authority considered the Applicant's legitimate interest had already been met by the personal data that had been disclosed
- 112. The Authority argued that it was not the individuals themselves that were of public interest in this case, it was the role they held and in the decisions they have made in that role. It stated that in the vast majority of cases, roles had been disclosed so that the public interest in knowing that the right people were involved in decision making processes had been met. The Authority submitted that it publishes more information about senior staff as they have more accountability.
- 113. The Commissioner has considered the personal data being withheld, along with that which has been disclosed, and he is satisfied that the Applicant's legitimate interest (in understanding the full circumstances surrounding the closure of the funicular in 2023) has been met by disclosing the roles of staff and the names of senior level staff.
- 114. He does not consider that disclosing the names or email addresses of junior staff or individuals who work for third party contractors to be necessary to meet the Applicant's legitimate interests, and therefore he finds that any such disclosure of the personal data would be unlawful.

115. In the absence of a condition in Article 6 of the UK GDPR which would allow disclosure of the personal data of junior staff and third party contractors, disclosure would breach Article 5 of the UK GDPR and this information is, therefore, exempt from disclosure under regulation 11(2) 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 finds that the Authority complied with the EIRs by correctly withholding information under regulation 10(5)(e) and 11(2) of the EIRs.

However, he finds that the Authority wrongly identified the information in document 1 as being environmental information, and that it wrongly withheld this information under regulation 10(5)(e) of the EIRs and, in doing so, it breached section 1(1) of FOISA.

As the Authority has since disclosed the information in document 1 that was wrongly withheld, the Commissioner does not require the Authority to take any action in relation to this breach.

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

9 April 2026