



Scottish Information
Commissioner
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Decision Notice 075/2026

Planning proposal for slaughterhouse at Ecclefechan

Authority: Dumfries and Galloway Council

Case Ref: 202500169

Summary

The Applicant asked the Authority for information relating to a planning proposal for a slaughterhouse at Ecclefechan. The Authority responded under the EIRs and disclosed some information while it applied exceptions in the EIRs to withhold other information. During the investigation, the Authority disclosed most of the withheld information but continued to withhold a small amount of information it considered to be third-party personal data. The Commissioner investigated and found that the Authority was entitled to withhold the third-party personal data but that it failed to comply with the EIRs by not disclosing to the Applicant by the review outcome (at the latest) the information it disclosed during the investigation.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 47(1) and (2) (Application for decision by Commissioner).

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of “the Act”, “applicant” and “the Commissioner”) (Interpretation); 5(1) (Duty to make environmental information available on request); 10(1) and (5)(e) (Exceptions from duty to make environmental information available); 11(2) (Personal information); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

United Kingdom General Data Protection Regulation (the UK GDPR) Articles 5(1)(a) (Principles relating to processing of personal data) and 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 25 July 2024, the Applicant made a request for information to the Authority. She asked for the following information relating to the proposal of a slaughterhouse at Ecclefechan:
 - (i) "... a copy of the policy that denotes the standard practices of planners to have behind closed doors conversations with proposer."
 - (ii) ... a detailed copy of all further emails relating to this proposal between planning, Councillors and the proposer."
2. The Authority responded on 20 August 2024 in terms of the EIRs:
 - for part (i), it disclosed the information requested
 - for part (ii), it withheld the information requested under the exception in regulation 10(5)(e) of the EIRs.
3. On 25 August 2024, the Applicant wrote to the Authority requesting a review of its decision. She stated that she was dissatisfied with the decision because she did not accept that the Authority was entitled to withhold the information requested in part (ii) of her request under the exception in regulation 10(5)(e) of the EIRs.
4. The Authority notified the Applicant of the outcome of its review on 19 September 2024. It continued to withhold the information requested in part (ii) of the request, but confirmed it wished to rely on the exception in regulation 10(5)(f) of the EIRs to do so rather than the exception in regulation 10(5)(e).
5. On 30 January 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 she was dissatisfied with the outcome of the Authority's review because she disagreed that it was entitled to withhold the information requested. She expressed concern with the Authority's change of position and considered that it was trying to "obfuscate from answering a reasonable question".

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 5 February 2025, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information, and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions regarding its decision to withhold the information requested in part (ii) of the request.

Commissioner's analysis and findings

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

Application of the EIRs

10. Having considered the withheld material and the terms of the request, the Commissioner accepts the decision of the Authority to deal with the request under the EIRs rather than under FOISA.
11. The Commissioner is satisfied that the information covered by the request is environmental information, as defined in regulation 2(1) of the EIRs. He would also note that he can see no detriment to the Applicant by considering the request under the EIRs rather than FOISA, nor has the Applicant disputed the Authority's decision to handle the request under the EIRs.

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

12. Regulation 5(1) of the EIRs (subject to the various qualifications contained in regulations 6 to 12) 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 the information held by an authority when it receives a request.
13. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 apply.

Information disclosed during the investigation

14. During the investigation, the Authority confirmed that – due to the passage of time and given that the relevant planning proposal was granted for the development on 11 December 2024 – it no longer wished to rely on the exceptions in regulation 10(5)(e) or 10(5)(f) of the EIRs to withhold the information requested. It disclosed most of the withheld information to the Applicant, subject to the redaction of a small amount of third-party personal data under the exception in regulation 11(2) of the EIRs.
15. However, the Authority maintained that it had correctly applied the exception in regulation 10(5)(e) of the EIRs in its initial response and review outcome.
16. The Authority's review outcome expressly removed reliance on the exception in regulation 10(5)(e) of the EIRs and instead relied on the exception in regulation 10(5)(f). However, given that the Authority has maintained that it was correct to have applied the exception in regulation 10(5)(e) of the EIRs at the date of the request and the review outcome, the Commissioner will go on to consider this exception.
17. If the Commissioner finds that the Authority was not entitled to rely on the exception in regulation 10(5)(e) of the EIRs at the review stage, he will go on to consider whether the Authority was entitled to withhold the information it has continued to withhold under the exception in regulation 11(2) of the EIRs from the information it disclosed to the Applicant during the investigation.

Regulation 10(5)(e) of the EIRs – confidentiality of commercial or industrial information

18. Regulation 10(5)(e) provides that a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest.

19. As with all exceptions under regulation 10 of the EIRs, a Scottish public authority applying this exception must interpret it in a restrictive way and apply a presumption in favour of disclosure (regulation 10(2)). Even where the exception applies, the information must be disclosed unless, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception (regulation 10(1)(b)).
20. [The Aarhus Convention: an Implementation Guide](#)¹, which offers guidance on the interpretation of convention from which the EIRs are derived, notes (at page 88) that the first test for considering this exception is whether national law protects the confidentiality of the withheld information. The law must explicitly protect that type of information as commercial or industrial secrets. Secondly, the confidentiality must protect a “legitimate economic interest”
21. Having taken this guidance into consideration, the Commissioner’s view is that, before regulation 10(5)(e) of the EIRs can be engaged, authorities must consider the following matters:
 - (i) Is the information commercial or industrial in nature?
 - (ii) Does a legally binding duty of confidence exist in relation to the information?
 - (iii) Is the information publicly available?
 - (iv) Would disclosure of the information cause, or be likely to cause, substantial harm to a legitimate economic interest?
22. Regulation 10(6) of the EIRs also states that a Scottish public authority is not entitled to refuse to make information available under a number of exceptions (including that in regulation 10(5)(e)) to the extent that it relates to information on emissions.

The Applicant’s submissions

23. The Applicant was dissatisfied that the Authority withheld the information requested. She considered that it was trying to “obfuscate” from answering a reasonable question and that the disclosure of the information requested was essential to ensure transparency.
24. The Applicant submitted that her request should be answered in full and that the Authority should not hide behind the statement that the information requested was “commercially sensitive”. As a constituent, she disagreed that she was not entitled to see information clearly created outwith public consultations and that it was important those who, like herself, would be impacted by the development had sight of the information requested.

The Authority’s submissions

25. In its initial response, the Authority said that it considered the exception in regulation 10(5)(e) of the EIRs applied to emails between the Authority and the proposer as 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.
26. During the investigation, the Authority explained that developers submitted pre-application advice requests with the reasonable expectation that they would remain confidential. It noted that there was no formal legal requirement for a developer to submit such a request.

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

Instead, they were provided voluntarily by developers in order to identify issues early in the planning process, so that they could be given consideration before deciding whether to submit a formal planning application.

27. As stated above, the Authority maintained that that it was correct to have applied the exception in regulation 10(5)(e) of the EIRs at the date of the request and the review outcome.
28. Given that the proposal related a planning proposal for a slaughterhouse, which involves the installation of an effluent treatment plant, the Commissioner asked the Authority whether it considered any of the withheld information related to emissions.
29. The Authority responded that it did not consider that the information sought related to emissions. It said that it dealt with the request “in accordance with how pre-planning discussions with planning authorities is normally treated”.

The Commissioner’s view

30. The Commissioner has considered carefully the withheld information and the circumstances at the date of the review, together with the submissions from both parties.
31. Having considered the information withheld at the date of the review outcome, the Commissioner is satisfied that some of it relates to information on emissions: it relates specifically to the erection of the abattoir and, by extension, the installation of effluent treatment plan. In the circumstances, the Commissioner cannot accept that specific information does not relate to emissions. Consequently, the exception in regulation 10(5)(e) of the EIRs cannot, by virtue of regulation 10(6), apply to that information.
32. The remaining information withheld at the date of the review outcome is more administrative, neutral and factual in nature. Having considered this information, the Commissioner is satisfied that it is sufficiently remote from information on emissions to the extent that it does not mean the exception in regulation 10(5)(e) of the EIRs cannot apply to it at all.
33. However, given the nature of the remaining information withheld at the date of the review outcome, the Commissioner is not satisfied that it meets the required tests for the exception in regulation 10(5)(e) of the EIRs to apply. In other words, he does not accept that specific information is commercial or industrial in nature, that a legally binding duty of confidence exists in relation to that information or that disclosure of that information would cause, or be likely to cause, substantial harm to a legitimate economic interest.
34. In all of the circumstances, taking account of the actual information withheld at the date of the review outcome and the submissions provided by the Authority, the Commissioner is unable to accept that the Authority has justified the application of the exception in regulation 10(5)(e) of the EIRs to the information withheld at the date of the review outcome.
35. Given that the Commissioner has found that the exception in regulation 10(5)(e) of the EIRs was incorrectly applied to the information withheld by the Authority, the Commissioner is not obliged to, and has not gone on to, consider the public interest test required by regulation 10(1)(b) of the EIRs.
36. As stated above, the Authority disclosed most of the withheld information to the Applicant during the investigation. The Commissioner therefore does not require the Authority to provide this information to the Applicant again.

37. As the Commissioner has found that the Authority was not entitled to apply the exception in regulation 10(5)(e) of the EIRs to the information withheld at the date of the review outcome, he will go on to consider whether it was entitled to apply the exception in regulation 11(2) of the EIRs to the small amount of information it has continued to withhold from the Applicant.

Regulation 11(2) of the EIRs – Personal information

38. Regulation 10(3) of the EIRs provides that a Scottish public authority can only make personal data in environmental information available in accordance with regulation 11.
39. Regulation 11(2) of the EIRs provides that personal data shall not be made available where the applicant is not the data subject and other specified conditions apply. These include that disclosure would contravene any of the data protection principles in the UK GDPR or DPA 2018 (regulation 11(3A)(a)).

Is the withheld information personal data?

40. Personal data" are defined in section 3(2) of the DPA 2018 as "any information relating to an identified or identifiable individual". Section 3(3) of the DPA 2018 defines "identifiable living individual" as a living individual who can be identified, directly or indirectly, in particular by reference to –
- (a) an identifier such as a name, an identification number, location data, or an online identifier, or
 - (b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
41. Information will "relate to" a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them, or has them as its main focus. An individual is "identified" or "identifiable" if it is possible to distinguish them from other individuals.
42. The remaining information being withheld under the exception in regulation 11(2) of the EIRs comprises the names and contact details of certain individuals external and internal to the Authority.
43. Having carefully considered the information withheld under regulation 11(2), the Commissioner is satisfied that it comprises personal data. He accepts that living individuals can be identified from the data and that, in the circumstances, the data relate to them. He is therefore satisfied that the withheld information is personal data as defined in section 3(2) of the DPA 2018.

Would disclosure contravene one of the data protection principles?

44. The Authority submitted that the withheld information constituted personal data, disclosure of which in response to this request would contravene the data protection principles in Article 5(1) of the UK GDPR.
45. While there are six data protection principles, the only principle likely to be of relevance when considering whether to disclose personal data in response to an EIRs request is the first principle. This principle requires personal data to be processed "lawfully, fairly and in a transparent manner in relation to the data subject" (Article 5(1)(a) of the UK GDPR).
46. The definition of "processing" is wide and includes (section 3(4)(d) of the DPA 2018) "disclosure by transmission, dissemination or otherwise making available". In the case of the

EIRs, personal data are processed when disclosed in response to a request. This means that personal data can only be made available if making the data available would be lawful (i.e. if it would meet one of the conditions of lawful processing listed in Article 6(1) of the UK GDPR) and fair.

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

47. The Commissioner will first consider if 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 personal data to be disclosed.
48. The Commissioner considers that, in the circumstances, the only condition in Article 6(1) which could apply is condition (f) of Article 6(1) of the UK GDPR.

Condition (f): legitimate interests

49. Condition (f) of Article 6(1) of the UK GDPR 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.
50. Although Article 6 of the UK GDPR 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 7 EIRs makes it clear that public authorities can rely on Article 6(1)(f) when responding to requests under the EIRs.
51. The tests which must be met before Article 6(1)(f) of the UK GDPR can be met are as follows:
 - Does the Applicant have a legitimate interest in obtaining the personal data?
 - If so, would the disclosure of the personal data be necessary to achieve that legitimate interest?
 - 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?

52. There is no definition within the DPA 2018 of what constitutes a “legitimate interest”, but the Commissioner takes the view that the term indicates that matters in which an individual properly has an interest should be distinguished from matters about which he or she is simply inquisitive.
53. The Authority did not consider that the Applicant had a legitimate interest in obtaining the withheld personal data. It explained that the named individuals (whose names had been withheld) were all acting on behalf of their respective organisations, which had been clearly identified (e.g. by not withholding their organisation). It said that withholding their personal details (e.g. their names and contact details) served to protect their individual privacy interests.
54. The Applicant explained that one of the individuals whom she had questioned had since resigned from the Authority before there was a vote of no confidence against them. She said that this had changed the landscape in terms of the information requested as it was now “very important that the withheld personal details were now made public”. As such, she considered that the withheld personal information should be “unrestricted and unredacted”.

55. Having considered the information that the Applicant provided as part of her application, the Commissioner accepts that she was seeking to understand the Authority's handling of the planning proposal for the slaughterhouse at Ecclefechan. He accepts that the Applicant (and the wider public more generally) have a legitimate interest in such matters.
56. However, the remaining withheld information in this case is the names and contact details of certain individuals external to and internal to the Authority. Having considered the information disclosed to the Applicant, the Commissioner agrees with the Authority that it is already apparent on whose behalf these individuals were acting.
57. In the circumstances, therefore, the Commissioner does not accept that disclosure of the remaining withheld information would assist the Applicant in understanding any better the actions taken by the Authority in its handling of the planning proposal. Whatever concerns the Applicant has with the Authority or its handling of the planning proposal can be addressed and taken forward without disclosure to the world at large (which is the effect of disclosure under the EIRs) of the remaining withheld information. He therefore does not consider the Applicant has a legitimate interest in receiving the remaining withheld information.
58. As the Commissioner has concluded that the Applicant does not have a legitimate interest in receiving the personal data that has been redacted in this case, he finds that condition (f) of Article 6(1) of the UK GDPR cannot be satisfied. Accordingly, he accepts that making the personal data available would be unlawful.
59. Given that the Commissioner has found that the processing would be unlawful, he is not required to go on to consider separately whether making the personal data available is necessary to fulfil any legitimate interest, or the data subjects' interests or fundamental rights and freedoms (or balance them against any legitimate interest in making the information available).
60. In all the circumstances of the case, in the absence of a condition in Article 6(1) of the UK GDPR being met, the Commissioner must conclude that making the personal data available would breach the data protection principle in Article 5(1)(a) of the UK GDPR. Consequently, he is satisfied that making the personal data available is not permitted by regulation 11(2) of the EIRs.

Information falling within the scope of the request

61. During the investigation, the Applicant raised some concerns that the Authority had failed to provide all the information falling within the scope of her request on the basis that it had failed to disclose as part of this request information it had disclosed in response to a previous request of hers.
62. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
63. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations as to what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).

64. The Commissioner notes that the Applicant's request in this case asked for a "copy of all further emails" relating to the proposal. In the circumstances, he accepts it was reasonable to interpret her request as seeking emails other than those already provided. He also accepts, that by the conclusion of his investigation, the Authority undertook adequate and proportionate searches in response to the request.
65. However, the Commissioner would take this opportunity to remind public authorities that where information has already been provided in response to a previous request and that same information falls within the scope of a subsequent request, the proper course of action is not to ignore that information but to consider all information that falls within the scope of the request in question. If information has been previously provided, the public authority may, for example, rely on the exception in regulation 6(1)(b) of the EIRs or the exemption in section 25(1) of FOISA to refuse to provide that information again, on the basis that it is otherwise accessible to the requester.

Decision

The Commissioner finds that the Authority partially failed to comply 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 was not entitled to withhold the information requested in part (ii) of the request under the exception in regulation 10(5)(e) of the EIRs. By not disclosing this information (with the exception of what it has continued to withhold under regulation 11(2)) by the date of the review outcome at the latest, the Authority failed to comply with regulation 5(1) of the EIRs.

However, the Commissioner finds that the Authority was entitled to withhold the information it has continued to withhold under the exception in regulation 11(2) of the EIRs.

Given that the only information now withheld from the Applicant is that he has found it was entitled to withhold under regulation 11(2) of the EIRs, the Commissioner does not require the Authority to take any action in respect of the failure identified above 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.

Euan McCulloch
Head of Enforcement

23 April 2026