



Scottish Information
Commissioner
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Decision Notice 079/2026

Whether request was manifestly unreasonable

Authority: Transport Scotland

Case Ref: 202501105

Summary

The Applicant asked the Authority for information relating to hedge trimming, visibility splays, and hedge and driveway access concerning a specific property. The Authority considered that responding to the request would be manifestly unreasonable. The Commissioner investigated and was satisfied that the request was manifestly unreasonable, and so the Authority was not obliged to respond.

Relevant statutory provisions

[Freedom of Information \(Scotland\) Act 2002](#)¹ (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 39(2) (Health, safety and the environment); 47(1) and (2) (Application for decision by Commissioner).

[The Environmental Information \(Scotland\) Regulations 2004](#)² (the EIRs) regulations 2(1) (definition of “the Act”, “applicant”, “the Commissioner” and paragraphs (a), (c) and (f) of “environmental information”) (Interpretation); 5(1) and 2(b) (Duty to make environmental information available on request); 10(1), (2) and (4)(b) (Exceptions from duty to make environmental information available); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

¹ <https://www.legislation.gov.uk/asp/2002/13/contents>

² <https://www.legislation.gov.uk/ssi/2004/520/contents>

Background

1. On 2 April 2025, the Applicant made a 3-part request for information to the Authority about hedge trimming, visibility splays, and hedge and driveway access relating to a specific property. Only the third part of the request, in which the Applicant asked for the following information, is the subject of this Decision Notice:

“Please provide all internal communications, details of any meetings and minutes of such meetings conducted by [the Authority] in relation to this ongoing matter in relation to the visibility splays and hedge and driveway access at [a specific property], including any communications with Perth Council, MØR Transport Development Place Ltd, Andrew Megginson Architecture and Aspire Homes Scotland Ltd since 1 June 2024. Please exclude any communications sent by myself, but please include any internal or external communications, discussions, emails, drawings, meetings and minutes forwarded, or otherwise relating to any of my communications.”
2. The Authority responded on 1 May 2025. It explained that it had considered the request under the EIRs, having applied the exemption in section 39(2) of FOISA as the public interest favoured doing so. The Authority refused the request on the basis that it was manifestly unreasonable to respond. It explained that initial keyword searches had identified more than 1,100 documents, each of which would need to be analysed to determine whether they fell within scope. In light of this, the Authority considered that responding would impose a significant burden on it and would divert an unreasonable proportion of time and resources from other functions. It believed that the public interest lay in ensuring the efficient and effective use of public resources. The Authority also suggested ways, which the Applicant might wish to consider, to reduce the scope of the request to make it more manageable.
3. On 7 May 2025, the Applicant wrote to the Authority requesting a review of its decision to rely on regulation 10(4)(b) of the EIRs, as he believed the Authority’s refusal was not justified and that there was a strong public interest in disclosure of the information requested. He contended that, as the scope of the request was reasonably specific and focused on a clearly defined issue and location, a more targeted search should be feasible (for example, searching on the planning reference number and/or property name). The Applicant further stated that he had asked the Authority to consider reducing the scope but had received no offer of assistance to refine or narrow the request before it was refused. He believed that the Authority had a duty to assist applicants under regulation 9 (Duty to provide advice and assistance) of the EIRs.
4. The Authority notified the Applicant of the outcome of its review on 5 June 2025, fully upholding its original decision. It explained that it had re-run the searches which had produced similar findings. It confirmed that further keyword searches, as alluded to in the Applicant’s request for review, were carried out to ensure they were as targeted as possible; however, a significant volume of information was still returned, and each document would need to be reviewed to ascertain whether it fell within scope and whether any information therein required to be redacted. The Authority confirmed that it could find no record of the Applicant having asked for searches to be narrowed and that it had carried out searches that were as focused and as targeted as possible. It again suggested ways in which the Applicant might wish to consider reducing the scope of the request to make it manageable.
5. On 10 July 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified

modifications. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because he did not believe that its response (i.e. that the query still returned too many results to be economically viable) was credible. In support of his position, he referred to a previous similar information request which, he stated, the Authority had fully responded to.

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 29 August 2025, the Authority was notified in writing that the Applicant had made a valid application 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. These focused on the Authority's justification for refusing the request under regulation 10(4)(b) and the searches carried out to establish the volume of information held.

Commissioner's analysis and findings

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

Handling in terms of the EIRs

10. The Authority considered the Applicant's request in accordance with the EIRs, on the basis that the information was environmental information as defined in regulation 2(1) of the EIRs.
11. 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.
12. It is clear from the Authority's correspondence with both the Applicant and the Commissioner that any information falling within the scope of the request would be environmental information, as defined in regulation 2(1) of the EIRs. This view is confirmed by consideration of the terms of the information request itself.
13. The Commissioner is satisfied that the information requested falls under the definition of environmental information in regulation 2(1), namely the state of the elements of the environment in paragraph (a) (in particular land and landscape) affected, or likely to be affected, by measures (activities) in paragraph (c), and the state of human health and safety in paragraph (f) affected by those elements and measures.

Section 39(2) of FOISA – Environmental information

14. As mentioned above, the Authority relied on section 39(2) of FOISA when responding to the Applicant's request and requirement for review. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined in 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. In this case, the Commissioner accepts that the

Authority was entitled to apply this exemption to the information withheld under FOISA, given his conclusion that it is properly classified as environmental information.

15. As there is a statutory right of access to environmental information available to the Applicant in this case, the Commissioner accepts, in all the circumstances, that the public interest in maintaining the exemption (and responding to the request under the EIRs) outweighs any public interest in disclosing the information under FOISA. Both regimes are intended to promote public access to information and there would appear to be no reason why (in this particular case) disclosure of the information would be more likely under FOISA than under the EIRs.
16. The Commissioner therefore concludes that the Authority was correct to apply section 39(2) of FOISA and consider the Applicant's information request under the EIRs.

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

17. 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.
18. 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)).
19. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 applies.

Regulation 10(4)(b) of the EIRs - Manifestly unreasonable

20. Regulation 10(4)(b) provides that a Scottish public authority may refuse to make environmental information available to the extent that the request for information is manifestly unreasonable. In considering whether the exception applies, the authority must interpret it in a restrictive way and apply a presumption in favour of disclosure. Even if it finds that the request is manifestly unreasonable, it is still required to make the information available unless, in all the circumstances, the public interest in doing so is outweighed by that in maintaining the exception.
21. The Commissioner's general approach is that the following factors are relevant when considering whether a request is manifestly unreasonable. These are that the request:
 - (i) would impose a significant burden on the public authority;
 - (ii) does not have a serious purpose or value;
 - (iii) is designed to cause disruption or annoyance to the public authority;
 - (iv) has the effect of harassing the public authority, or
 - (v) would otherwise, in the opinion of a reasonable person, be considered manifestly unreasonable or disproportionate.
22. This is not an exhaustive list. Depending on the circumstances, other factors may be relevant, provided the impact on the authority can be supported by evidence. The Commissioner recognises that each case must be considered on its merits, taking all the circumstances into account.

The Applicant's submissions on regulation 10(4)(b)

23. The Applicant explained that the information requested concerned meetings between the Authority and a developer/developer's agents, in relation to what he described as an unlawful planning application that had resulted in a planning condition being imposed upon his property, implementation of which would cause him significant financial loss.
24. Referring to the Authority's decision to reject his information request about this as containing too many documents, the Applicant believed that the Authority had not carried out the relevant searches with the parameters requested. In his view, the Authority appeared to have only searched its main database, but not any emails, diaries or paper-based files as requested.
25. The Applicant referred to an earlier request for communications which, he stated, the Authority had previously fulfilled. In light of this, he did not find its decision credible since he was requesting any similar information subsequent to that previous request.
26. On refining/clarifying the search parameters in his request for review, the Applicant stated that the Authority's review response confirmed that the query still returned too many results to be economically viable (which he did not accept in light of the previous disclosure).
27. In the Applicant's view, the Authority was in breach of the Civil Service Code, it had intentionally lied, and the matter was a serious one with potential legal repercussions. As such, he was seeking full disclosure of the information requested as he believed that it was in the interests of open government and trust in government to enforce full transparency.

The Authority's submissions on regulation 10(4)(b)

28. In its submissions to the Commissioner, the Authority confirmed that it wished to maintain reliance on regulation 10(4)(b).
29. The Authority explained that this request was the continuation of a large volume of correspondence relating to planning applications and, more recently, a road safety concern linked to a section of hedgerow on the Applicant's land. It confirmed, however, that in general it did not consider the Applicant's identity or history of dealings as a determining factor in applying the exception, and that each request was assessed on its own merits and based on the information requested.
30. Notwithstanding this, the Authority noted the volume and nature of its interactions with the Applicant to illustrate the cumulative resource impact where, over an 18-month period, it had received 10 pieces of correspondence, five FOI/EIRs requests and two requests for review, in addition to multiple telephone calls as well as a meeting on site. The Authority explained that, across these interactions, it had provided significant guidance on how to frame requests and had explained its processes for storing and searching information. Despite this, the Applicant's subsequent requests remained broad in scope, generating large volumes of material requiring review.
31. The Authority explained that it had been able to provide the information sought in a similar previous request as, in responding to that request, it had not fully appreciated the time and effort it would take to gather, check and redact the information. This issue was discussed upon receipt of subsequent requests, and it was agreed to complete calculations in consideration of each request being manifestly unreasonable. Based on the scale and complexity of the information involved, it was determined that fulfilling some elements would impose a disproportionate burden on resources.

32. In the Authority's view, responding to the request would divert technical staff resources from their core responsibilities. These included providing statutory responses to planning applications in which the Authority was a consultee in the planning process on behalf of the Scottish Ministers (the Ministers). The Authority explained that these statutory responses were subject to strict timescales, and diverting staff would significantly impact its ability to meet these obligations.
33. In addition, the Authority submitted, it had statutory responsibilities as a Roads Authority under the Roads (Scotland) Act and as a consultee in the planning process under the Planning (Scotland) Act. It stated that some of the information it had identified in the searches carried out related to planning applications it had reviewed on behalf of the Ministers. The Authority explained that, as part of the planning process, it was currently working with developers to discharge planning conditions attached to these consents and so that information had to be handled with particular care to ensure impartiality and avoid giving any party advantage in the planning process.
34. Due to the specific nature of the information identified through the searches carried out, the Authority explained that only Development Management Team staff had the specialist expertise to review the material and identify any necessary redactions. This, the Authority believed, added further complexity and resource demand, as those staff could not be easily substituted without compromising accuracy and compliance.
35. The Authority further submitted that responding to the request would impose a significant burden on resources as the review and redaction process could not be automated or delegated to non-specialist staff. Rather, it demanded the direct involvement of those staff with the specialist expertise, who were already committed to statutory duties with strict response deadlines. Diverting those staff would not only delay responding to planning responses but also risk non-compliance with legal obligations under the Roads (Scotland) Act and the Planning (Scotland) Act. This would have a knock-on effect on development projects and could undermine confidence in the planning process. In the Authority's view, the cumulative effect of those factors meant that complying with the request would require a disproportionate allocation of limited specialist resources, impacting on their core statutory functions.

Searches

36. The Authority described, and provided evidence of, the searches it had carried out to establish the volume of information held, together with details of the keywords used in these searches. These, it submitted, included searches of its electronic records and document management system (eRDM) and inboxes of colleagues, which covered all information saved to eRDM that had been deleted from inboxes, and recent information held in inboxes not yet saved to eRDM.
37. The Authority also provided the Commissioner with details of the Development Management Team staff members who had been consulted, due to them being part of the team involved in dealing with the Applicant's correspondence and related planning applications. Their involvement, the Authority submitted, ensured that all searches captured all relevant material connected to those matters.
38. The Authority explained that the searches had been recreated to incorporate all mailbox folders of the Development Management Team staff involved. It submitted that, previously, as only inbox folders had been searched, this demonstrated a significant increase in the

returns which would now require to be considered (which, the Authority acknowledged, would potentially include duplicate records).

Estimated time / costs in responding

39. The Authority submitted that it used its internal cost guidance to gauge the time and resource required to respond to the request. It confirmed that it did not charge for the provision of information.
40. The Authority provided the Commissioner with an estimate of the time and costs involved in responding to the request. It explained that searches by the case handler took 240 minutes, and searches of inboxes and corporate record storage by six officials took 180 minutes, totalling 420 minutes for searches.
41. These searches, the Authority submitted, identified 3,795 documents which, based on an average of one minute per document to review the information for relevance, would equate to 3,795 minutes.
42. The Authority estimated that 62.5% of the documents (2,372) would likely be in scope, 85% of which would likely require redaction (2,016). Based on an average of four minutes per document, redaction was estimated to take 8,064 minutes.
43. As such, the Authority estimated that the process of searching for, reviewing and redacting the relevant information would take a total of 12,279 minutes (approximately 205 hours). Based on an hourly rate of £15 per hour, responding to the request was estimated to cost £3.075.
44. The Authority stated that the £15 per hour rate did not reflect the significantly higher hourly rate of specialist staff in the Development Management Team who would be required to undertake the work in question. These staff were required as the tasks involved reviewing complex and technical documentation which demanded specialist knowledge and expertise to ensure accuracy and compliance.
45. The Authority confirmed that no additional costs were incorporated into the estimate other than staff time costs, but this did not reflect all the work required to respond to the request. In its view, the true burden in responding was significantly higher due to the specialist and technical resource required to comply with the request.
46. The Authority acknowledged that it had not provided a cost breakdown to the Applicant but stated that it had indicated to him the volume of information identified.

The Commissioner's views on regulation 10(4)(b)

47. There is no definition of "manifestly unreasonable" in the EIRs, or in [Directive 003/4/EC](#)³ from which they are derived. The Commissioner's view is that "manifestly" implies that a request should be obviously or clearly unreasonable and he notes the opinion of the First-Tier Tribunal in [Dr Kaye Little v Information Commissioner and Welsh Assembly Government \(EA/2010/0072\)](#)⁴, which considers the equivalent to regulation 10(4)(b) of the UK Environmental Information Regulations 2004 (the UK EIRs), and states (at paragraph 33):

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0004:EN:HTML>

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[https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i475/%5b2010%5dUKFTT_EA2010072_\(GRC\)_20101230.pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i475/%5b2010%5dUKFTT_EA2010072_(GRC)_20101230.pdf)

'From the ordinary meaning of the words "manifestly unreasonable", it is clear that the expression means something more than just "unreasonable". The word "manifestly" imports a quality of obviousness. What is in issue, therefore, is a request that is plainly or clearly unreasonable. It is a more stringent test than simply "unreasonable".'

48. Whether a request is manifestly unreasonable will depend on the facts of each case. It may apply where it can be demonstrated that a request is vexatious, or where compliance would incur unreasonable costs for the public authority or an unreasonable diversion of public resources.
49. [Decision 024/2010](#)⁵ established that the Commissioner was likely to take into account the same kinds of considerations in deciding whether a request was manifestly unreasonable under the EIRs as in reaching a decision as to whether a request was vexatious in terms of section 14(1) of FOISA
50. In this case, the Authority's submissions focused on the significant burden of compliance and the impact on its resources of doing so, including the cost of compliance in terms of staff time.
51. The Commissioner acknowledges that there may be circumstances where the burden of responding (in terms of its impact on the public authority's core functions) is sufficient justification for determining a request to be manifestly unreasonable.
52. There is no cost limit, under the EIRs, for determining what is deemed to be an excessive cost of compliance, as there is in FOISA. Under FOISA, public authorities do not have to comply with a request if the cost of compliance exceeds £600. Even so, the Commissioner recognises that there may be cases where the time and expense involved in complying with a request for environmental information means that any reasonable person would regard them as excessive. The Authority has argued that such a case can be made in relation to the Applicant's request here.
53. In this case, the Authority has argued that the burden of responding to the Applicant's request would not only directly involve a number of its specialist staff and incur significant costs and staff time, but would also have a resultant impact on its ability to meet other statutory obligations through the diversion of those staff, which the Authority considers unreasonable and disproportionate.
54. Responding to information requests is a statutory duty for the Authority, and one which must be properly resourced. The Commissioner acknowledges that, in common with all other Scottish public authorities, in addition to complying with requests for information under FOISA and the EIRs, the Authority has many other demands on its time and resources. Compliance with information requests should, however, be considered as an element of the authority's core business, being a statutory requirement. Therefore, the Commissioner will not accept lightly arguments that compliance with an information request, in any given case, represents an unreasonable diversion from compliance with other statutory responsibilities.
55. The Commissioner accepts, however, that the information captured by certain information requests (such as the one under consideration here) may be held in a number of locations and/or may be voluminous. He recognises that such cases may require numerous staff members to be involved in searching for relevant information, given their involvement in the subject matter, and the manner and locations in which the information is held. He also

⁵ <https://www.foi.scot/decision-0242010>

acknowledges that it may be the case that only certain staff will have the specialist knowledge or expertise to determine what information is relevant to the request and recognises that this in itself will impose a time factor, particularly where large volumes of information are identified through searches. In such situations, the burden of responding to the request must be assessed by considering the impact across the Authority as a whole.

56. While, on the face of it, the request appears to be quite focused, it is clear to the Commissioner, from the Authority's submissions and the estimated costing exercise provided to him during the investigation, that it is in fact more wide-ranging than the Applicant appears to believe, due not only to the nature and scope of the subject matter itself but also the way in which the information is held by the Authority. It is clear that the subject matter in question has generated a significant volume of documents, as identified by the Authority's searches.
57. The Commissioner notes that the estimated costing exercise provided during the investigation identified substantially more documents than were described in the Authority's initial response and review outcome. While it is unfortunate that the earlier costing exercises were not more robust, he cannot leave the more recent one out of account. He also recognises that further information may also be held, not captured by those keyword searches carried out by the Authority.
58. The Authority has explained what would be involved in responding to this request. The Commissioner accepts that this explanation is based on a reasonable assessment of the process, together with the volume of information held and the staff time involved. On the basis of the detailed submissions provided by the Authority, he accepts that each document in the information identified through the searches conducted would require to be examined to determine whether the information therein fell within the scope of the request. The Authority has provided a reasonable estimate of the time it believes it would take to complete the searches, review the information for relevance and prepare the relevant information for disclosure (including any necessary redaction), after carrying out an estimated costing exercise. On this evidence, the Commissioner accepts that the cost of complying with the request would be significant, incurring staff time costs well above the £600 limit at which a request considered under FOISA could be refused.
59. The Commissioner also accepts that complying with the request would involve certain specialist staff being diverted from their normal duties and considers the potential disruption caused by this diversion would be likely to have a significant impact on the Authority's ability to carry out its other statutory functions and meet corresponding statutory deadlines.
60. As it currently stands, the Commissioner cannot see any other way in which the Authority could satisfy the request and accepts that responding would be disproportionate and would impose a significant burden on both the Authority's financial and human resources.
61. In all of the circumstances, therefore, the Commissioner accepts that the Applicant's request was manifestly unreasonable. As such, he finds that the Authority correctly applied the exception in regulation 10(4)(b) in this case.

Public interest test – regulation 10(4)(b)

62. Having found that regulation 10(4)(b) is engaged, the Commissioner must now go on to consider the public interest in regulation 10(1)(b) of the EIRs. This specifies that a 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 submissions on the public interest – regulation 10(4)(b)

63. In his application to the Commissioner, the Applicant believed transparency was in the interests of open government and trust in government.

The Authority's submissions on the public interest – regulation 10(4)(b)

64. In its submissions to the Commissioner, the Authority stated that, when considering any information for release, it always adopted a presumption in favour of disclosure.
65. The Authority recognised that there was a public interest in understanding how decisions were made and the background to these. It stated that it had previously disclosed information in respect of the issue in question which, it hoped, would go some way to satisfying the public interest.
66. The Authority submitted that the public interest was in favour of maintaining the exception due to the resources involved in reviewing the documents identified for relevance to ascertain whether they fell within scope. It was mindful that responding to the request would impact its ability to carry out other statutory functions, given the unreasonable and disproportionate disruption generated in doing so.
67. Having considered the public interest in understanding how decisions are made in order to ensure transparency and accountability in its decision making, the Authority considered that this was outweighed by the public interest in ensuring the effective use of public resources by not incurring excessive costs through complying with information requests. It maintained that the significant burden responding to the request would place on its resources and its ability to carry out its core duties effectively, outweighed the limited public interest in disclosure of the requested information.

The Commissioner's views on the public interest – regulation 10(4)(b)

68. The Commissioner notes the Applicant's arguments in support of his view that disclosure of the information requested is in the public interest, in terms of transparency.
69. In the Commissioner's view, there is an inherent public interest in disclosure of information to ensure an authority is transparent and accountable, thereby enabling public scrutiny of the authority's decisions and actions in so doing.
70. Against this, the Commissioner has considered the strong public interest in ensuring an authority can carry out its statutory functions without unreasonable or disproportionate disruption.
71. As stated above, the Commissioner has already accepted that providing the information requested in this case would incur significant costs to the Authority in staff time and resources and, to a certain extent, divert resources away from other core functions.
72. The Commissioner considers there is a public interest in ensuring the EIRs are used responsibly. While public authorities are encouraged to act in a transparent and accountable way, which benefits the public as a whole, the Commissioner also recognises that responding to requests which require them to devote excessive or disproportionate amounts of time can only be at the expense of other areas of work. While the Commissioner acknowledges the Authority's duty to respond to this request, he notes it has a similar responsibility to carry out its other statutory functions, and that there is a public interest in ensuring resources, including specialist resources, are not diverted away from this disproportionately.

73. On balance, therefore, the Commissioner accepts that, in all the circumstances of this case, the public interest arguments in favour of making the information captured by this request available are outweighed by the public interest in maintaining the exception in regulation 10(4)(b) of the EIRs. The Commissioner finds that the Authority was entitled to refuse the Applicant's request under this exception.

Decision

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

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Euan McCulloch
Head of Enforcement

24 April 2026