



Scottish Information
Commissioner
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Decision Notice 081/2026

Volume of sediment deposited in Lunan Bay

Applicant: The Applicant
Authority: Montrose Port Authority
Case Ref: 202501646

Summary

The Applicant asked the Authority for the total volume of sediment that had been deposited in Lunan Bay by the Authority or its predecessors since 1973.

The Authority confirmed it held the information and issued a Fees Notice to the Applicant, explaining that it considered the payment of a fee reasonable in order to comply with the request.

The Commissioner investigated and found that the Authority was entitled to issue a Fees Notice to the Applicant and that the fee proposed was reasonable.

Relevant statutory provisions

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of “the Act”, “applicant” and “the Commissioner”, paragraphs (a), (b) and (c) of definition of “environmental information”, and paragraph (c) of definition of “Scottish public authority) (Interpretation); 5(1) and 2(b) (Duty to make environmental information available on request); 8(1), (3), (4), (6) and (8) (Charging); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

Background

1. On 27 June 2025, the Applicant made a three-part request for information to the Authority regarding dredging of sediment. Only one part of the request is covered by this Decision Notice. He asked, at part one of his request, since 1973 what was the total volume of

sediment in cubic metres and wet tonnes deposited in Lunan Bay by the Authority or its predecessors.

2. The Authority responded on 21 July 2025 in terms of regulation 8(1) of the Environmental Information (Scotland) Regulations (EIRs), explaining that where a Scottish public authority is under a duty to make environmental information available, it may charge a fee for doing so. The Authority informed the Applicant that in this case it had elected to make such charges and referred to its published scheme of charges available within its "Port Tariff 2025" which was accessible on its website via this link <https://montroseport.co.uk/port-tariff/port-tariff-2025/>. The Authority calculated that it would take 4 hours to prepare a response to parts 1 and 3 of the Applicant's request and that the total cost would be £124.10 plus VAT.
3. On 19 August 2025, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he considered the estimate of costs was unreasonable, giving as an example that it included sheets of paper when the information requested would be provided electronically as a PDF or similar format requiring no paper. He informed the Authority of his intention to ask another authority for the information covered by part 3 of his request.
4. The Authority notified the Applicant of the outcome of its review on 11 September 2025. It recalculated the cost of providing the information in relation to part 1 of his request (having considered part 3 to have been withdrawn on the basis of the Applicant's intention to ask another authority for that information). The Authority calculated that it would take 1 hour of staff time to search for and collate the information covered by part 1 and that the cost would be £30 plus VAT (based on the published charges). It confirmed that the charges had been calculated appropriately in accordance with the published tariff.
5. On 12 September 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated he was dissatisfied with the outcome of the Authority's review because the information he requested was submitted to Marine Scotland annually and therefore there was no additional work for the Authority. In addition, he added that he had not found any other Scottish Trust Ports that routinely charged for environmental information and he requested that the charge be removed.

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 12 November 2025, the Authority was notified in writing that the Applicant had made a valid application 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 view that the information requested was environmental, its reasons for charging a fee and how that fee had been calculated.

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. The Authority is considered to be a Scottish public authority and subject to the EIRs because it falls within part (c) "any other Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998)" of the definition of a Scottish public authority in regulation 2(1) of the EIRs. The Commissioner considered whether another Trust Port was a Scottish public authority in terms of the EIRs in [Decision 051/2023](#)¹. While the same conclusions will not necessarily apply in relation to every Trust Port, the Commissioner is satisfied (having considered its constitution, including its functions and the area under its control) that the Authority's position is sufficiently analogous to that of the Cromarty Firth Port Authority for essentially the same reasoning to apply here as in that earlier decision. The Commissioner acknowledges that the Authority has dealt with the request throughout on the basis that it was covered by the definition.
11. Regulation 5(1) of the EIRs requires that a Scottish public authority that holds environmental information must make it available when requested to do so by any applicant.
12. The Authority noted that the request was for information regarding the sediment of the channel which is dredged and disposed of at Montrose Bay and Lunan Bay under its marine licence.
13. The Authority submitted that environmental information is defined in regulation 2(1) of the EIRs as any information on the "state of the elements, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements." Because the sediment of the channel is an element of the environment, the Authority submitted that the request was for environmental information.
14. The Applicant has not challenged the Authority's view that the information he requested is environmental in nature. In fact, it is clear from his application that he was aware that the information he was asking for from the Authority was environmental information subject to the EIRs.
15. The Commissioner is satisfied, in the circumstances, that the information requested by the Applicant falls within the definition of environmental information as set out in regulation 2(1). In particular he considers paragraphs (a) (elements of the environment), (b) (factors affecting the elements of the environment) and (c) (measures and activities) to be applicable. This is because the information relates to measures taken under a licence granted to the Trust Port to remove material contained in water within a coastal and marine area and dispose of it elsewhere. Such disposal could constitute a discharge or release affecting the environment.
16. The Commissioner will therefore go on to consider this case, in what follows, solely in terms of the EIRs.

Regulation 8 – Charging

17. The Authority issued a Fees Notice in terms of regulation 8 of the EIRs. This allows a Scottish public authority to charge a fee for making environmental information available under regulation 5(1) (regulation 8(1)). By virtue of regulation 8(4) and (6), the authority may require the payment of the fee in advance and (if it does) is not required to make the information available unless a fee is paid.
18. As the Commissioner has concluded that the Authority was correct to consider the Applicant's request under the EIRs, it follows that it is permissible for the Authority to charge a fee for making the information requested available, as provided for in regulation 8.
19. The Commissioner must now consider whether the Authority's Fees Notice complied with the requirements of the EIRs.

Did the Authority have a published schedule of fees?

20. Regulation 8(8) of the EIRs requires a Scottish public authority to publish and make available to applicants a schedule of its fees, and information on the circumstances in which a fee may be charged, waived or required to be paid in advance.
21. The Authority submitted that as of 1 January 2025, a fees notice is issued in response to all requests for environmental information. The Authority referred to its port tariffs, published on its website and subject to annual review by its board.
22. The Authority stated that the only case in which it would not charge a fee is if the information being requested was already published in the public domain as per the [Commissioner's guidance on charging for information under the EIRs](#)².
23. Within the response issued to the Applicant, the Authority provided a link to its "[Port tariff 2025](#)"³ where, on page 7, the Authority has set out the fees that it may charge for requests for environmental information. This same document makes it clear that this fee may be required to be paid in advance of commencing works.
24. The Commissioner is satisfied that the Authority was entitled to charge a fee for the request under consideration in this decision, under regulation 8(1) of the EIRs, and that it published a schedule of its fees, as required by regulation 8(8) of the EIRs.
25. While the schedule is generally acceptable for the purposes of regulation 8(8), the Commissioner would recommend that the Authority considers clarifying when a fee will not be charged, including consideration of specific circumstances in which a fee might be waived.

Was the fee reasonable?

26. Regulation 8(3) of the EIRs states that fees charged shall not exceed a reasonable amount and shall not exceed the costs to the authority of producing the information requested.
27. In considering what is reasonable, the Commissioner has taken account of the considerations set out in his guidance on "[Charging for environmental information](#)" under the heading "Is the charge reasonable or excessive?" (paragraph 14). These include:

² https://www.foi.scot/sites/default/files/2025-03/Charging_for_environmental_information.pdf

³ <https://montroseport.co.uk/port-tariff/port-tariff-2025/>

- Any costs charged must not be such that requesters are dissuaded from seeking to obtain environmental information or that the right to access is restricted;
- Public authorities should be able to demonstrate to the Commissioner that, in setting charges, they have undertaken a proper study of all of the relevant factors which should be taken into account; that they have given those factors proper consideration and that they have not taken into account any other, irrelevant, factors;
- Account should be taken of the actual costs to the authority of providing the information. For example, it is likely to be cheaper to provide a document by email than to send it out in hard copy, and this should be reflected in the charge.
- Fees charged by other, comparable bodies, will prove a useful benchmark in determining whether a fee is reasonable.

28. In seeking to establish whether the Authority's fee was reasonable, the Commissioner considered the amount of work required to locate, retrieve and provide the information covered by the Applicant's request.
29. In his application, the Applicant highlighted that the Authority was required to submit the information he had requested to Marine Scotland annually and therefore there was no additional work required.
30. The Authority explained that the annual dredge returns that are submitted to Marine Scotland are not published or required to be published in the public domain. Furthermore, these cannot be found free of charge by any member of the public. The Authority commented that these factors were considered when the decision to impose a charge for this information was reached.
31. The Authority explained that it uses a third-party company to complete the maintenance dredge campaigns. This company then submits daily spreadsheets during the dredge campaign to the Authority. These spreadsheets include the wet tonnage and cubic metres of sediment dredged that day. It added that dredging campaigns could be anywhere between two to five days long, meaning data could be held in two to five different spreadsheets. It stated that this information is then compiled by the Authority into a further spreadsheet, meaning that all available figures would then have to be compiled into a separate document with the total volumes calculated.
32. The Authority submitted that the information would need to be compiled from the data for the current year (of the request) from April to June 2025, from the daily campaign spreadsheets. Data would also have to be sought and compiled from the previous dredge figures dating back from 1973 to be able to answer this part of the Applicant's request. The Authority explained that the time to gather this information was also considered when charging for this information.
33. The Authority confirmed that the annual dredge returns are submitted to Marine Scotland on an annual basis. It stated that the annual returns are normally collated in March as the process continues throughout the calendar year. It submitted that fulfilling the request would require the selected staff member to complete the task before the return year end was finished. The Authority commented that the returns included a breakdown of the wet tonnes that were dredged and deposited in Montrose Bay and Lunan Bay, as well as the months in which the dredge and deposit occurred.

34. The Authority explained that the £30 plus VAT fee was calculated as it considered it would take one hour of staff time to complete its response and this was the hourly rate charged for EIRs as shown in its port tariff. The Authority outlined to the Commissioner what factors were taken into account in calculating this hourly rate.
35. The Authority considered that the actions required would be to:
- find the appropriate spreadsheets
 - ensure the document is up to date with the most recent dredge campaign
 - create a new document to extract the wet tonnes and cubic metre figures of sediment dredged and disposed from the spreadsheet
 - calculate the final numbers and double check calculations are correct
 - prepare the response to submit the information to the Applicant.

It noted that they were a small team, and that the delegated person's line manager (Harbour Master) would then need to review the work, as would the Chief Executive, for approval before the information was given to the Applicant.

36. The Authority stated that the staff member would need to re-complete the process that had been carried out in March to seek any updates to the data.
37. The Authority explained to the Commissioner why they had identified the staff member that they had as being the most appropriate to carry out the work to compile the information covered by part 1 of the request.
38. The Commissioner has considered the submissions from the Authority and the Applicant. He has noted the explanation of the work that would have to be carried out to locate, retrieve and provide the information, and the reasons for the selection of the particular staff member identified by the Authority.
39. The Authority provided the Commissioner with a sample of the spreadsheets submitted by the third-party contractor and those from which the information would need to be extracted. The Commissioner has taken cognisance of the need to locate and collate the figures from 1973 to 2024, which involves 51 years' worth of figures to be accessed, assuming the figures are held digitally. The Commissioner recognises that although this may not be technically difficult, it would still take some time.
40. Given the explanations of the work involved, together with the quantity of information, the Commissioner considers that the one hour that has been allowed and charged for to complete this task is reasonable.

Did the charging of a fee hinder access to environmental information?

41. The Applicant did not consider that a fee should be charged and he explained that he had not found any other Scottish Trust Port who routinely charged for EIR information.
42. The Authority submitted that it had originally calculated a blended rate of £50 plus VAT per hour but that it had taken account of the need to ensure that charges should not dissuade requesters from seeking environmental information or restrict access to information. It explained that it had considered £50 plus VAT to be too high for its published rate and had set the cost at the lower rate of £30 plus VAT per hour. The Authority highlighted that it had

done this following a comparison with the published rates of Angus Council and the Port of Cromarty Firth.

43. Having undertaken searches of the fees charged by other, similar authorities for environmental information during the investigation, the Commissioner noted at least two Scottish Trust Ports that published a tariff for accessing environmental information. In these cases, the published charges were £26.50 per hour plus VAT and £30 per hour plus VAT, which the Commissioner considers to be comparable to the rate charged by the Authority.
44. The Commissioner has considered the submissions from both the Applicant and the Authority. He recognises that the Authority has taken into consideration whether the level of fee it has set would deter access to environmental information and has set it on that basis. He has also noted the comparable rates set by similar organisations subject to the regulations. While each case should be considered individually, the Commissioner does not find, in this case, that the charge set in this case can reasonably be considered a deterrent to obtaining information under the EIRs.
45. As the Commissioner has accepted that:
 - The information covered by this request is environmental and the request was correctly processed under the EIRs
 - The Authority was entitled to issue a Fees Notice in this case and
 - The staff involved, actions to be taken and time allocated to these by the Authority were reasonable,

he must conclude that the fee levied by the Authority in the Fees Notice issued to the Applicant on 11 September 2025 (in its review outcome) was reasonable in all the circumstances and complied with regulation 8 of the EIRs.

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

27 April 2026