



Scottish Information
Commissioner
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Decision Notice 097/2026

Land and Property Sales

Authority: Moray Council

Case Ref: 202500986

Summary

The Applicant asked the Authority for land and property sold over a five-year period. The Authority provided some information but withheld other information advising it was otherwise easily accessible from the Registers of Scotland. The Commissioner investigated and found that the nature of the information withheld was, in substance, Environmental and, as a result, the Commissioner required a new review to be conducted under the EIRs.

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” and paragraphs (a) and (c) of the definition of “environmental information”) (Interpretation); 5(1) (Duty to make environmental information available on request); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

Background

1. On 6 January 2025, the Applicant made a request for information to the Authority. He asked for the following:
 - i. A list of all land and property that your local authority sold between 1 January 2020 and 31 December 2024.

For each sold asset, please include:

- The address and coordinates of the land/property
- A description of the asset, including what your local authority used it for
- The size of the asset (e.g. hectares, sq km)
- The sale price
- The buyer (please state the name of any company, organisation, etc. or otherwise state whether it was a private individual)
- The date of sale

ii. Please provide a list of all the land and property currently owned by your local authority.

For each asset, please include:

- The address and coordinates of the land/property
- A description of the asset, including what your local authority uses it for
- The size of the asset (e.g. hectares, sq km)
- The date of purchase

2. The Authority responded on 4 February 2025 by providing a link to its [website](#)¹ where its response was published. There were two spreadsheets converted to pdf attached. The first, in answer to i., concerned land and property sold by the Authority and included coordinates, addresses, types of properties, and dates. This spreadsheet also included a column marked as "OPNAME" which contained only the phrase "Available from the Registers of Scotland". The column containing what appeared to be the value/price of the asset concerned was missing data in places. The second pdf (provided in response to part ii of the Applicant's request) contained information relating to land and property owned by the Authority, which appeared to fulfil part ii of the request.
3. On 3 March 2025, the Applicant wrote to the Authority, requesting that the buyer information for each sold asset be released. The Applicant stated that in 2019 the Authority had provided the buyer for each asset sold and supplied a [link](#)² to the previous request submitted via What Do They Know.
4. The Authority responded on 12 May 2025, advising that whilst it endeavoured to be consistent across FOI requests and how these are handled, the retention period for this request had expired and it could not see what was previously released. The Authority invited the Applicant to request a review.
5. On 12 May 2025 the Applicant wrote to the Authority, requesting a review of its decision on the grounds that the information had been previously provided and he again supplied a [link](#)³ to where this response could be accessed.
6. The Authority notified the Applicant of the outcome of its review on 10 June 2025. The Authority informed the Applicant that his request had been processed under the Freedom of

¹ http://www.moray.gov.uk/moray_standard/page_159144.html

² https://www.whatdotheyknow.com/request/sale_of_council_assets_21

³ https://www.whatdotheyknow.com/request/sale_of_council_assets_21

Information (Scotland) Act 2002 (FOISA). Whilst the Authority upheld its decision not to disclose the names of the buyers of the property assets to the Applicant, it recognised that it should have notified him of the relevant exemption it was applying in relation to this information. The Authority explained that it was relying on section 25 of FOISA as it considered the information to be otherwise accessible to the Applicant from the [Registers of Scotland](#)⁴. The Authority supplied a link to the Registers of Scotland website to facilitate the Applicant in accessing this information. In addition to informing the Applicant of its application of section 25 of FOISA, the Authority commented that had it not relied on section 25, it considered it likely that the exemption in section 38(1)(b) (personal data) would have been applicable to the buyer data. In response to the Applicant's comment around its previous disclosure of similar information, the Authority confirmed that because of the retention period applicable for the previous request, records of the 2019 request and response had been deleted. The Authority commented that following discussion it was considered likely that the same exemptions would have applied at that time, but it had been unable to verify this.

7. On 23 June 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he did not believe the names of all buyers and some sale prices were reasonably accessible to him via Registers of Scotland, given the costs involved. The Applicant considered that the Authority could simply and quickly list the names of buyers for him.

Investigation

8. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
9. On 16 July 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.
10. 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 why the Authority believed the information was otherwise accessible and constituted personal data.
11. During the investigation further submissions were sought and received from the Authority, following an invitation by the Commissioner that it reconsider its position in the light of [Decision Notice 308/2025](#)⁵ which covered a similar request for information from the same Applicant to another public authority.

⁴ <https://www.ros.gov.uk/>

⁵ <https://www.foi.scot/decision-3082025>

Commissioner's analysis and findings

12. The Commissioner has considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and the Authority. He is satisfied that no matter of relevance has been overlooked.

FOISA or the EIRs?

13. The relationship between FOISA and the EIRs was considered at length in [Decision 218/2007](#)⁶. Broadly, in the light of that Decision, the Commissioner 's general position is as follows:
- i. The definition of what constitutes environmental information should not be viewed narrowly.
 - ii. 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.
 - iii. Any request for environmental information therefore must be handled under the EIRs.
 - iv. In responding to a request for environmental information under FOISA, an authority may claim the exemption in section 39(2).
 - v. If the authority does not choose to claim the section 39(2) exemption, it must respond to the request fully under FOISA: by providing the information; withholding it under another exemption in Part 2; or claiming that it is not obliged to comply with the request by virtue of another provision in Part 1 (or a combination of these).
 - vi. Where the Commissioner considers a request for environmental information has not been handled under the EIRs, he is entitled (and indeed obliged) to consider how it should have been handled under that regime.
14. As mentioned above, during the investigation the Commissioner gave the Authority an opportunity to consider the outcome of [Decision 308/2025](#)⁷. The Authority responded, stating that it maintained its position, explaining that as the request focussed on asset management, including ownership, dates and prices, it was treated as an FOI request. The Authority also confirmed that it was seeking to maintain its reliance on the exemptions claimed, for the reasons detailed in its previous correspondence.
15. "Environmental information" is defined in regulation 2(1) of the EIRs. Where information falls within the scope of this definition, a person has a right to access it under the EIRs, subject to regulations 10 and 11 of the EIRs.
16. Having considered the subject matter of the request, which relates to a range of information held by the Authority about land and property sales, as well as the substance of the withheld information, the Commissioner is satisfied that this is "environmental" information. The Commissioner accepts that, in line with paragraph (c) of the definition of 'environmental information' in regulation 2(1) of the EIRs, this is information which relates to a measure affecting or likely to affect the elements and factors referred to in paragraph (a).

⁶ <https://www.foi.scot/decision-2182007>

⁷ <https://www.foi.scot/decision-3082025>

17. Given that the information requested is environmental information, the Authority had a duty to consider it in terms of regulation 5(1) of the EIRs. In failing to do so, it failed to comply with regulation 5(1).

Section 39(2) of FOISA – environmental information

18. 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.
19. The Authority did not agree that the request should be considered under the EIRs and responded under FOISA.
20. The Commissioner finds that the Authority would have been entitled to apply the exemption in section 39(2) of FOISA to the request, given his conclusion that the information requested is properly classified as environmental information.
21. As there is a separate statutory right of access to environmental information available to the Applicant, the Commissioner also accepts that, in this case, the public interest in maintaining this exemption and in handling the request in line with the requirements of the EIRs would outweigh any public interest in disclosing the information under FOISA.

Regulation 16 of the EIRs

22. Regulation 16 of the EIRs states that, on receipt of a requirement to conduct a review, the authority shall review the matter and decide whether it has complied with the EIRs, within 20 working days (regulations 16(3) and (4)). It also states that, where an authority has not complied with its duty under the EIRs, it shall immediately take steps to remedy the breach of duty (regulation 16(5)).
23. Although the Authority responded to the Applicant's requirement for review on 10 June 2025, this was entirely in terms of handling the request under FOISA, and not the EIRs.
24. It is apparent that the Authority failed to respond to the Applicant's request of 6 January 2025 in terms of the EIRs and therefore failed to comply with regulation 5(1) of the EIRs. It is also apparent that the Authority failed to carry out a review meeting the requirements of regulation 16 of the EIRs.
25. The Commissioner therefore requires the Authority to provide a response to the Applicant's requirement for review, in terms of regulation 16 of EIRs.
26. The Commissioner's decision below states a compliance date of **20 June 2026**, in line with the timescales he is required to follow. This is the latest day on which the Authority must issue a response: the deadline does not prevent the Authority from issuing one sooner.

Decision

The Commissioner finds that the Authority failed to comply with the requirements of regulation 5(1) of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the Applicant's information request and requirement for review.

The Commissioner requires the Authority to provide a response to the Applicant's requirement for review, in terms of the regulation 16 of the EIRs, by **20 June 2026**.

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.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Euan McCulloch
Head of Enforcement

6 May 2026