



Scottish Information
Commissioner
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Decision Notice 125/2026

Correspondence relating to the closure of Perth Harbour

Authority: Transport Scotland
Case Ref: 202600351

Summary

The Applicant asked the Authority for correspondence relating to the proposed closure and revision to the Harbour Order at Perth Harbour. The Authority considered the request under FOISA and withheld all of the information under an exemption.

The Commissioner investigated and found that the Authority had considered the request under the wrong legislation. The requested information was environmental information, and the Authority should have considered the request under the EIRs. The Commissioner required the Authority to respond to the request under the EIRs.

Relevant statutory provisions

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

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definitions of “the Act”, “applicant” and “the Commissioner” and paragraphs (a), (c) and (f) of definition of “environmental information”) (Interpretation); 5(1) (Duty to make environmental information available on request); 16 (Review by Scottish public authority); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 28 November 2025, the Applicant made a request for information to the Authority. He asked for all correspondence between the Authority and Perth & Kinross Council regarding the proposed closure and proposed Harbour Revision Order to the Harbour Order at Perth Harbour.
2. The Authority responded on 9 December 2025. It notified the Applicant that the cost of locating, retrieving, redacting and providing the information would exceed £600. Given this, the Authority refused to provide the information, applying section 12 (Excessive cost of compliance) of FOISA.
3. On 16 December 2025, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the Authority's decision because he considered that the Authority's cost estimation was unrealistic and excessive. He argued that even if the cost of responding to the request exceeded £600, the Authority was not prohibited from providing the information free of charge.
4. The Authority notified the Applicant of the outcome of its review on 19 January 2026. The Authority overturned its initial response but instead applied section 36(1) of FOISA to withhold all of the information captured by the request because it considered the information to be legally privileged.
5. On 24 February 2026, 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 consider that the exemption applied.

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 16 April 2026, 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. On 30 April 2026, the Authority informed the Commissioner that it had changed its position. It now considered that the information requested was environmental information and it should have handled the request under the EIRs.
9. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. On 18 May 2026, the Authority was invited to comment on this application.

Commissioner's analysis and findings

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

FOISA or EIRS?

1. The relationship between FOISA and the EIRs was considered at length in [Decision 218/2007](#)¹. Broadly, in light of this 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 the 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, as well as dealing with the request under the EIRS, deal with 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 of FOISA (or a combination of these).
 - (vi) The Commissioner is entitled (and indeed obliged), where he considers a request for environmental information has not been dealt with under the EIRs, to consider how it should have been dealt with under that regime.
2. "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.
3. The Authority stated that it had reconsidered the information requested and it now considered this to be environmental information. The Authority's view was that given the information requested was about the proposed closure and revision to the Harbour Order at Perth Harbour, this type of information was related to the built environment and, as such, would fall under the EIRs.
4. Accordingly, the Authority considered that section 39(2) of FOISA should have been applied and the request should now be considered under the EIRs.
5. The Commissioner has considered the terms of the Applicant's request, and he is satisfied that the request sought environmental information within the terms of the definition in regulation 2(1)(a), (c) and (f) of the EIRs
6. 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).

¹ <https://www.foi.scot/decision-2182007>

Section 39(2) of FOISA – environmental information

7. 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.
8. In this case, as stated above, the Authority responded to the Applicant's request solely under FOISA.
9. 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 was properly classified as environmental information.
10. 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 outweighs any public interest in disclosing the information under FOISA.

Regulation 16 of the EIRs

11. 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 (regulation 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)).
12. Although the Authority responded to the Applicant's requirement for review on 19 January 2026 this was only in terms of handling the request solely in terms of FOISA and not the EIRs.
13. It is apparent that the Authority failed to respond to the Applicant's request of 28 November 2025 in terms of the EIRs and therefore it 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.
14. The Commissioner therefore requires the Authority to provide a response to the Applicant's requirement for review of 16 December 2025, in terms of regulation 16 of the EIRs.
15. The Commissioner's decision below states a compliance date of 6 July 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 Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by the Applicant.

By failing to identify that the request asked for environmental information, the Authority failed to comply with regulation 5(1) of the EIRs.

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 **6 July 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.

Jennifer Ross
Deputy Head of Enforcement

21 May 2026