



Scottish Information
Commissioner
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Decision Notice 126/2026

Fees Notice for environmental information

Applicant: The Applicant
Authority: Aberdeenshire Council
Case Ref: 202501972

Summary

The Applicant asked the Authority for information relating to discussions between it and named parties regarding the Compensatory Planting Scheme for Clashindarroch II Wind Farm. The Authority issued a Fees Notice to the Applicant, explaining that it considered the payment of a fee reasonable in order to comply with her request. The Commissioner investigated and found that, while the Authority was entitled to issue a Fees Notice to the Applicant, it had failed to demonstrate that the charge to be applied was reasonable. The Commissioner required the Authority to issue a revised Fees Notice to the Applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 39(2) (Health, safety and the environment); 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”, “the Commissioner” and the definition of “environmental information”) (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),(b) and (f) (Enforcement and appeal provisions).

Background

1. On 4 September 2025, the Applicant made a request for information to the Authority. For the period between 1 January 2025 to the date of her request, she asked for copies of all correspondence, meeting notes, reports and internal communication held relating to discussions with Vattenfall Wind Power Ltd and/or EJD Forestry regarding the Compensatory Planting Scheme for Clashindarroch II Wind farm (planning reference APP/20025/0078).
2. The Authority responded on 25 September 2025 in terms of the EIRs, informing the Applicant that it considered payment of a fee was reasonable in order for it to comply with the request. It issued the Applicant with a Fees Notice for £322.81.
3. On 26 September 2026, the Applicant wrote to the Authority requesting a review of its decision. She stated that she was dissatisfied with the decision because she considered that:
 - the Authority's decision to levy this charge was at odds with the EIRs
 - the Fees Notice was inconsistent with the Commissioner's guidance on regulation 8 of the EIRs
 - the Fees Notice was manifestly prohibitive for a member of the public and undermined the principle of wide public access to environmental information.
4. The Authority notified the Applicant of the outcome of its review on 27 October 2025, which upheld its decision to issue the Fees Notice and the level of that fee.
5. On 28 October 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 did not consider that the Fees Notice was reasonable and because the review outcome was issued late.

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 20 January 2026, the Authority was notified in writing that the Applicant had made a valid application. 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 related to its decision to charge for the provision of the information requested (including the basis of the charge).

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. Where information falls within the scope of regulation 2(1) of the EIRs, 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.
11. Having considered the terms of the request and the nature of the information requested, the Commissioner accepts the decision of the Authority to deal with the request under the EIRs rather than under FOISA.
12. The Commissioner will therefore go on to consider this case, in what follows, solely in terms of the EIRs.

Regulation 8 – Charging

13. The Authority issued a Fees Notice in terms of regulation 8 of the EIRs. Under regulation 8(1), a Scottish public authority may charge a fee for making environmental information available under regulation 5(1).

Did the Authority have a published schedule of fees?

14. 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.
15. The Authority confirmed that it had published a schedule of fees (available on its [website](#)¹), which included information on the circumstances which may warrant the charging of a fee or where a fee may be waived or paid in advance. It stated that a copy of the schedule of fees was sent to the Applicant as part of the Fees Notice in its initial response, which outlined the scope of the works that it anticipated undertaking in order to produce the information requested.
16. In her requirement for review, the Applicant stated that the Authority had not provided her with a published charging schedule demonstrating how the quoted rates per hour in the Fees Notice were set. Without this, she considered that the Fees Notice lacked the necessary transparency.
17. Having reviewed the Authority's initial response, the Commissioner notes that it includes a generic link to the Authority's [webpage](#)² on responding to requests under FOI law. He acknowledges that this page includes a link to the Authority's published schedule of fees for charging under regulation 8 of the EIRs.
18. The Commissioner also notes that the Authority's webpage otherwise sets out under a heading entitled "Basis of costs" that the costs to be charged will be based on the actual costs to the Authority of, among other things, locating, retrieving and assembling the information and that the labour cost element will be based on the estimated time taken charged at the officer's hourly rate plus appropriate on-costs.
19. The Commissioner is satisfied that the Authority was entitled to charge a fee for the request under consideration in this decision, under regulation 8 of the EIRs, and that it has published a schedule of fees, as required by regulation 8(8) of the EIRs.

¹ <https://www.aberdeenshire.gov.uk/media/3q111kpc/eirfees.pdf>

² <https://www.aberdeenshire.gov.uk/data/foi>

20. Going forward, the Commissioner would recommend that the Authority make explicit reference to the schedule of fees when issuing a Fees Notice and that it signposts to this document more clearly to requesters.

Was the fee reasonable?

21. 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.
22. While regulation 8(1) of the EIRs allows a Scottish public authority to charge a fee for making environmental information available under regulation 5(1), the Commissioner's view is that charging for making environmental information available needs to be consistent with the fundamental purposes of the legislation, particularly allowing general access to environmental information and participation in environmental decision-making.
23. In determining what is reasonable, the Commissioner has taken account of the considerations set out in paragraph 14 of his guidance on "[Charging for environmental information](#)"³.

The Applicant's submissions

24. The Applicant considered that the fee of £322.81 was manifestly prohibitive for a member of the public and undermined the principle of wide public access to environmental information, particularly where the subject matter concerned environmental decision-making of significant local interest such as the Clashindarroch II compensatory planting scheme.
25. The Applicant also stated her belief that public authorities were not permitted to charge for searching and retrieving information under the EIRs and that doing so was contrary to the Commissioner's guidance.

The Authority's submissions

26. The Authority recognised the importance of the Aarhus Convention principles and the guiding objective of facilitating public access to environmental information, as well as the Commissioner's guidance that charging should not be used as a means of discouraging requests.
27. The Authority submitted that it had provided the Applicant with a detailed explanation of how the fee had been calculated and given her the opportunity to refine or narrow her request in order to reduce or avoid the charge altogether but that she took no such steps. As the charge to be applied was solely to recover reasonable and proportionate costs associated with staff having to locate, retrieve and collate the information requested, the Authority did not consider that charging a fee in this particular instance operated as a barrier to accessing environmental information.
28. The Authority explained that three officers in the appropriate team (two senior planners and one practitioner) undertook an initial assessment of the request, which took account of:
- The broad scope of the request
 - The specified five-month time period
 - The potential involvement of multiple officers across different service teams

³ https://www.foi.scot/sites/default/files/2025-03/Charging_for_environmental_information.pdf

- The fact that relevant information may be held in several separate email inboxes and electronic filing locations.
29. The Authority stated that it was not reasonably practicable for it to provide the information requested without issuing a Fees Notice as fulfilling the request required manual, targeted searches of three mailboxes and two folders, followed by the review of the results to identify information within scope, remove duplicated and irrelevant information and to prepare the information for disclosure. This work could not be undertaken without the involvement of the officers holding the records, nor could it be completed without the quoted commitment of staff time within the Fees Notice.
30. The Authority confirmed that it had carried out searches of the relevant email accounts and electronic systems associated with the matter. These searches used a combination of the following terms: the site name; the application reference; the applicant or company name; relevant date ranges corresponding to officer involvement; and the specific search terms “Compensatory Planting”, “Clash II”, “Clashindarroch”, “APP/2025/0078”.
31. The Authority explained that the retrieval work involved officers from different teams, holding different responsibilities in relation to the matter, and therefore holding relevant information within separate email inboxes which must each be searched. More specifically:
- Two Senior Planners (charged at their hourly rate of £34.36). One was directly involved in the discharge of the condition in question, while the other held a supervisory role in relation to the matter.
 - One Environment Planner (charged at their hourly rate of £31.30) who had a role in providing technical consultation advice relevant to the request.
32. Based on “knowledge of the matter and preliminary scoping”, the Authority estimated that the request covered the following information:
- Approximately 114 email items held by one officer directly involved in correspondence relating to the request, and approximately 20 emails held by the other
 - 128 documents held in the file for APP/2025/0078 (the relevant planning file).
33. Due to the nature of email correspondence and duplication across accounts, the Authority submitted that it was not possible to provide a precise document count prior to completion of retrieval. However, it explained that the estimated hours (contained in the Fees Notice) were derived from professional judgement informed by experience of similar EIR requests and knowledge of the volume and distribution of information held:
- The 2-hour estimate for the Environment Planner reflected the need to search their inbox, review approximately 20 emails against the terms of the request, and extract relevant correspondence, including checking for duplication.
 - The 7-hour estimate for the Senior Planner reflected more extensive retrieval activity, including searches across multiple folders and systems, collating material from different sources, and reviewing results to remove duplicates and ensure completeness.
34. The Authority stated that a formal time-sampling exercise was not undertaken, as it believed that this would itself have required carrying out a substantial proportion of the searches required to fulfil the request, thereby undermining the purpose of estimating costs in

advance. However, it considered the estimates provided were reasonable in respect of the scope of this particular request.

35. The Authority explained that in respect of redaction which can be included in fee calculations the administrative team conducted time recording in late 2023/early 2024 over a range of redacting tasks which provides a reliable baseline for redacting estimates.

The Commissioner's view

36. The Commissioner has considered the submissions from the Authority and the Applicant and all other matters of relevance.
37. As a starting point, the Commissioner would note that, contrary to the Applicant's belief, public authorities are entitled (as noted in his guidance) to charge within a Fees Notice issued under regulation 8 of the EIRs for the staff time taken in the location and/or retrieval of the information requested.
38. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that a fee charged under regulation 8 of the EIRs was reasonable. In this case, the Commissioner is not satisfied that the Authority has done so.
39. The Authority's Fees Notice estimated that nine hours, between two officers, would be required to locate, retrieve, review and assemble the information requested, at a cost of £303.12. The Fees Notice also included a further one hour for redaction, charged at £19.69, resulting in a total charge of £322.81.
40. The Authority provided some indication of the number of documents to be considered. However, the Commissioner does not consider that he can accept this without further supporting evidence as an accurate indication of the number of unique documents to be considered, particularly given that no form of sampling exercise or equivalent objective check was undertaken. He considers that it would be possible for the Authority to undertake a proportionate sampling exercise, or to provide some other objective basis for its estimate, without undermining the purpose of estimating costs in advance, as it claimed.
41. The Authority has not indicated how much time would be required in the way of a "review" (as described in the Fees Notice) of the information to identify that which fell within the scope of the request. However, given the wording of the request and the search terms used by the Authority, both of which are specific, it is not clear to the Commissioner why, without a clearer explanation of what that review involved, there would be much time required for this. It is also not apparent to him what the Authority means by "assemble for release", nor how long it considers this would take.
42. In light of the above, the Commissioner considers that, in the circumstances of this case, some form of sampling exercise or equivalent objective check of the information identified by the Authority's searches would be required to ensure the reasonableness of the charge to be applied in the Fees Notice. He cannot accept the reasonableness of a charge based on those searches but supported only by broad descriptions of activity and subsequent calculations based primarily on the "professional judgement" of employees informed by their past experience and knowledge.
43. In all of the circumstances, the Commissioner does not accept that the Fees Notice issued by the Authority to the Applicant in response to her request and requirement for review was

entirely reasonable. The Fees Notice did not, therefore, comply with the requirements in regulation 8 of the EIRs in all respects.

44. Consequently, the Commissioner requires the Authority to issue a revised Fees Notice to the Applicant, rectifying the failures to comply with regulation 8 of the EIRs identified in this decision.
45. In issuing the revised Fees Notice to the Applicant, the Commissioner requires the Authority to take account of the following considerations set out in his guidance on charging for environmental information:
 - 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
 - Whether the charge is reasonable overall, and not just whether it is appropriate to charge for individual elements or activities.

Handling of the request

46. The Applicant expressed dissatisfaction in her application to the Commissioner that the Authority's review outcome was late.
47. Regulation 16(4) of the EIRs gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. This is subject to qualifications which are not relevant in this case.
48. The Applicant's requirement for review was submitted on 26 September 2025, meaning that the review outcome was due by 24 October 2025. The Authority issued the review outcome on 27 October 2025.
49. It is therefore a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply regulation 16(4) of the EIRs.

Decision

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

While the Commissioner acknowledges that the Authority was entitled to issue a Fees Notice to the Applicant, he is not satisfied that the fee charged was reasonable, in line with regulation 8 of the EIRs.

The Commissioner also finds that the Authority failed to respond to the Applicant's requirement for review within the timescale laid down by regulation 16(4) of the EIRs. Given that the Authority has now responded to the Applicant's requirement for review, he does not require the Authority to take any action in response to this failure.

However, the Commissioner requires the Authority to issue a revised Fees Notice to the Applicant, rectifying any failure to comply with regulation 8 of the EIRs identified in this decision notice, by 10 **July 2026**. In doing so, he requires the Authority to have regard to the considerations set out in paragraph 45.

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.

Cal Richardson
Deputy Head of Enforcement

25 May 2026