



Scottish Information
Commissioner
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Decision Notice 129/2026

Emergency repairs at a specified address

Authority: City of Edinburgh Council

Case Ref: 202301386

Summary

The Applicant asked the Authority for information related to an emergency repair carried out at a specified address. The Authority disclosed some information to the Applicant and withheld other information on the grounds that it was either commercially sensitive or was the personal data of third parties. The Applicant was not satisfied that he had received a complete response.

The Commissioner investigated and found that the Authority had not provided a complete response to the Applicant and had, consequently, failed to comply with the EIRs in responding to the request.

The Commissioner required the Authority to carry out adequate searches and provide the Applicant with a properly considered review outcome.

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

Background

1. The Authority, using statutory powers under the [City of Edinburgh District Council Order Confirmation Act 1991](#)¹ (the Act), carried out emergency repairs to a property at a specified address.
2. On 12 May 2023, the Applicant made a request for information to the Authority. He asked for all the recorded information held by the Authority's Shared Repairs Service (ESRS) pertaining to that repair.
3. The Authority responded on 9 June 2023. The Authority disclosed some information but withheld other information under regulation 11(2) of the EIRs because it was the personal data of third parties.
4. On 10 June 2023, the Authority updated its response and notified the Applicant that it had also withheld information in relation to a contractor's costs under regulation 10(5)(e) of the EIRs, because its disclosure would harm the contractor's commercial interests and give other contractors an unfair advantage when bidding for other contracts offered by the Authority.
5. On 16 June 2023, the Applicant wrote to the Authority notifying it that he was in possession of a document that he believed was held by the Authority but which had not been disclosed by it. He asked the Authority why this document had not been included in its response to his request.
6. Later that same day, on 16 June 2023, the Authority disclosed a copy of the document and apologised for the oversight.
7. On 19 June 2023 the Applicant wrote to the Authority requesting a review of its response, as he was not satisfied that the Authority had identified all of the information captured by his request.
8. The Authority notified the Applicant of the outcome of its review on 18 July 2023. The Authority acknowledged the initial oversight that led to a single document being overlooked, and it explained that this was because the document was not carried over when the folder was compressed. However, the Authority maintained that it had since carried out appropriate searches of the relevant resources and that it had provided a full response.
9. On 7 November 2023, 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 he had reason to believe that he had still not been given a complete response to his request.

Investigation

10. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

¹ <https://www.legislation.gov.uk/ukla/1991/19/contents/enacted>

11. On 11 January 2024, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
12. The case was subsequently allocated to an investigating officer.

Commissioner's analysis and findings

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

Scope of the investigation

14. The Applicant did not challenge the withholding of information under the exceptions in regulations 10(5)(e) or 11(2) of the EIRs in his requirement for review. Therefore, the Commissioner's investigation is limited to the matters raised in the application; that is, whether all information captured by the request has been identified, considered and either disclosed or withheld under a relevant exception of the EIRs.

Handling in terms of the EIRs

15. The Authority considered and responded to the Applicant's request and requirement for review under the EIRs, having concluded that the information requested was environmental information as defined in regulation 2(1) of the EIRs.
16. 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.
17. The Commissioner has considered the subject matter of the request, together with the information falling within the scope of the request and he is satisfied that this is "environmental information" as defined in regulation 2(1) of the EIRs (particularly paragraphs (a), (c) and (f) of that definition). He is therefore satisfied that the Authority was correct to consider the Applicant's information request under the EIRs.
18. The Applicant has not disputed the Authority's decision to handle his request under the EIRs.
19. The Commissioner will consider this case, in what follows, solely in terms of the EIRs.

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

20. 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.
21. 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)).
22. In his request, the Applicant asked for all recorded information held by the Authority's ESRS which related to the specified repair.

Has the Authority identified all of the information it holds?

23. Following its review outcome, in further communications between the Authority and the Applicant, on 29 August 2023 and 1 September 2023, the Authority disclosed additional information to the Applicant that fell within the scope of his request.
24. As the Authority had not identified and disclosed this information by the time it carried out its review (at the latest) the Commissioner must find that the Authority failed to comply with the requirements of regulation 5(1) of the EIRs.
25. The Commissioner will now go on to consider whether the Authority holds any further information falling within scope of the Applicant's request.

Emergency repair procedures

26. Under the Act, the Authority is the sole arbiter of whether a building defect requires emergency repair. In the instance described in the subject of the request, the Authority explained that the emergency repairs were as a result of a defect which presented a risk to public health and safety.
27. The Authority explained the procedure that applies to works which are deemed to require emergency repair and it provided the Commissioner with a copy of the ESRS operational procedures in relation to emergency repairs and essential repairs.

Searches

28. The Authority provided the Commissioner with records of the searches that it carried out in relation to the request. Given that the request specifically sought information held by the ESRS, one member of staff within that service had carried out the searches.
29. The Authority explained that all emergency repairs were overseen by a single Property Officer and that any information relevant to a repair would generally be stored in the electronic project file and the case records management system. The Authority explained that when any request for information about an emergency repair was received, it would typically carry out a search of the areas outlined above and would additionally consult with any officers involved in the project, to retrieve correspondence that might be stored in their personal mailbox. The Authority noted that it was expected standard practice for ESRS officers to send and receive communications via the ESRS central mailbox and to store pertinent communications within the project file itself, so any correspondence in personal mailboxes would be minimal or limited.
30. The Authority's search records noted that the ESRS Sharepoint site, central mailbox and case management system were searched for information captured by the request and the search terms used were the Applicant's name (including variations thereof) and his email address, in addition to the specified property address (including all variations), the project reference number and the statutory notice reference number.
31. As evidence of the searches that had been carried out, the Authority submitted screenshots of the search results for the Commissioner's consideration.
32. The Authority also provided the Commissioner with a copy of the submission given to its FOI unit by the ESRS and it noted that there were some files which were not disclosed to the Applicant and, due to the passage of time since the request, it could not be certain of the reasons for withholding this information.

33. The Authority was asked why other officers within the ESRS, who were named in correspondence about the statutory repair, were not asked to carry out searches of their own mailboxes, personal drives and other digital storage or file sharing systems.

Officer A

The Authority explained that one officer (Officer A), had carried out a site visit in October 2022 which was unrelated to the emergency repair, but he had passed on information (photographs of that site visit) to a second officer (Officer B) for his reference.

The Authority submitted that these photographs had been disclosed to the Applicant in response to a separate request, as had other correspondence between Officer A and another property owner at the address in question.

Officer B

The Authority explained that it was Officer B who had instructed the emergency repair under the Authority's statutory procedures and that he had since left the employ of the Authority. The Authority submitted that Officer B's digital account had been closed as part of the leaving process and could no longer be accessed. The Authority noted that Officer B had confirmed with the former Emergency Repairs Team Leader that all relevant documentation had been uploaded to the associated project files.

34. The Authority was asked to explain why the earliest creation date in the spreadsheet of search results from Sharepoint was 18 January 2023, given that the date of the complaint which gave rise to the emergency repair was 2 December 2022. The Authority did not answer this point explicitly, instead it explained that any documentation held by the Officer B prior to the creation of the Sharepoint file would have been held in his personal drive but, as he was no longer employed by the Authority, it was not possible to carry out searches of this drive. The Authority re-stated its view that during the leaving process discussion it was confirmed that Officer B had uploaded all relevant documentation to the associated project files.
35. The Authority was also asked about specific documents listed in the search results from Sharepoint. The Authority acknowledged that some of these documents were, in fact, within scope of the Applicant's request but had been omitted from disclosure. The Authority was not clear why the documents had been omitted, but it suggested that it could have been related to the same file compression error that led to a single document being overlooked in its original response (as discussed in paragraph 8) but, due to the passage of time, it could not be certain about this.
36. The Authority was asked specific questions about the results of searches of the ESRS central mailbox and to provide the Commissioner with copies of specific emails that had been identified from the search returns.
37. The Authority was asked about the recording of information relating to the repair in the case management system and whether the entries made in the case management would fall within the scope of the Applicant's request. The Authority responded that it did not consider that screenshots of the case management system fell within scope of the request because these were only created as evidence for the Commissioner's consideration, and the information contained in those entries had already been disclosed in other documentation or comprised personal data which was exempt from disclosure.

The Applicant's comments

38. The Applicant explained the timeline of his contact with the Authority, in relation to the subject of his request and the extensive correspondence there had been between the parties.
39. Given that the Authority updated its initial response and disclosed additional information at review stage and subsequently after review stage, the Applicant raised detailed concerns about the conduct of the Authority in handling his request and submitted that his request proved very difficult for the Authority to fulfil. He had no confidence that all relevant information had been disclosed to him.

The Commissioner's view

40. It is a matter of fact that the Authority had not identified all relevant information at the time it carried out the review and, as a consequence of this, it failed to comply with the EIRs as discussed earlier in paragraphs 23 to 25.
41. In addition to the further disclosures made to the Applicant beyond the issuing of its review, the Authority has acknowledged, as stated in paragraph 35, that it still holds additional information that is within scope of the Applicant's request which has not been disclosed or withheld under a relevant exception under the EIRs.
42. The Commissioner notes the Authority's view on information held within the case management system. While he can, of course, accept that the screenshots provided to him during the investigation were created for the purpose of the investigation, these screenshots clearly evidence the information that is held by the Authority in its case management system. Information recorded in any case management system is information held for the purposes of FOISA/the EIRs and must be fully considered. The Commissioner is satisfied that there is information recorded in the project file that is within the scope of the request and which has not been previously disclosed. This includes information on the IVA tab of Service Request 22/04484 which details the type of action taken and the dates and times that those actions were taken.
43. The Commissioner has considered the Authority's evidence of searches carefully. The Commissioner can fully understand the frustration of the Applicant given the piecemeal disclosures and he shares the Applicant's lack of confidence in the Authority's ability to fulfil his request. He has significant concerns regarding the Authority's searches for information falling within scope of the request. Furthermore, the Commissioner notes that the Authority did not explain why the earliest date of information in the search results was 18 January 2023, when the initial complaint was made on 2 December 2022, it simply disregarded the question.
44. The Authority has repeatedly failed to locate and retrieve all of the information it held at the time of the request, meaning that the Commissioner cannot possibly conclude that all of the searches carried out by the Authority to date have identified all relevant information. He must find that the Authority has provided an incomplete response to the Applicant's request and, in doing so, it failed to comply with regulation 5(1) of the EIRs.
45. As the Commissioner lacks confidence in the adequacy and thoroughness of the searches carried out by the Authority, he requires the Authority to reconsider the Applicant's request and issue him with a revised review outcome.

46. The Authority should ensure, when providing this new review outcome, that it carries out thorough and proportionate searches for all of the information captured by the Applicant's request and that it properly considers the information returned in those searches, including the information identified during the investigation.

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.

The Authority failed to comply with regulation 5(1) of the EIRs by failing to identify, locate, retrieve and properly consider all of the information that fell within scope of the request.

The Commissioner therefore requires the Authority to

- carry out thorough and comprehensive searches for the information falling within scope of the Applicant's request and provide evidence that the searches have been carried out,
- reach a decision on the basis of those searches and notify the Applicant of the outcome (in terms of regulation 16 of the EIRs). This should include all information previously disclosed to the Applicant, such that he has one complete response and a schedule listing all the documents that have been disclosed and those where exceptions have been applied,

by **10 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.

Euan McCulloch
Head of Enforcement

26 May 2026