



Scottish Information
Commissioner
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Decision Notice 130/2026

Traffic survey data

Authority: City of Edinburgh Council
Case Ref: 202300143

Summary

The Applicant asked the Authority for traffic survey data for Greenbank Road and or Greenbank Lane from the last twenty years. The Authority supplied traffic counts for the previous two years from Greenbank Lane and informed the Applicant that no recorded information was held for the remaining time period. The Commissioner investigated and found that the Authority failed to provide a review outcome in time; failed to adequately advise and assist the Applicant about the information it did not hold and was not entitled to issue an “information not held” refusal.

Relevant statutory provisions

[Freedom of Information \(Scotland\) Act 2002 \(FOISA\)](#)¹ sections 1(1), (2) and (6) (General entitlement); 47(1) and (2) (Application for decision by Commissioner).

[The Environmental Information \(Scotland\) Regulations 2004 \(the EIRs\)](#)² regulations 2(1) (definition of “the Act”, “applicant” and “the Commissioner”) (paragraphs (a), (b), (c) and (f) of definition of “environmental information”), (Interpretation); 5(1) and (2)(a) (Duty to make environmental information available on request); (9) (Duty to provide advice and assistance); 10(4)(a) (exceptions from duty to make environmental information available); 16(2) (Review by a Scottish public authority); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

¹ <https://www.legislation.gov.uk/asp/2002/13/contents>

² <https://www.legislation.gov.uk/ssi/2004/520/contents/made>

Background

1. On 9 May 2022, the Applicant made a request for information to the Authority, by post. He asked for the following:

“Please provide a copy of all information relating to the speed, volume and direction (along with any information on timing of survey) of traffic using Greenbank Road and/ or Greenbank Lane during the period 1 January 2000 to 31 March 2022.”
2. The Authority responded on 6 June 2022. The Authority responded in terms of the [Environmental Information \(Scotland\) Regulations 2004 \(EIRs\)](#)³, supplying several spreadsheets of traffic count data for Greenbank Lane from 2021 and 2022.
3. On 16 June 2022, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because the data provided only covered the last two years of his request, but he had asked for the last twenty years from January 2000 to end of March 2022.
4. The Authority notified the Applicant of the outcome of its review on 27 July 2022. The Authority advised the Applicant that only the last two years of data was held and the other data requested was not held. The Authority provided some advice about how its Road Safety Team conduct surveys and cited some committee papers relating to traffic calming measures for speed reduction purposes. The Authority applied section 17 (Notice that information is not held) of FOISA to the rest of the data requested. The Authority wrote to the Applicant again on 29 July 2022, advising that it should have applied Regulation 10(4)(a) of the EIRs instead of section 17 of FOISA.
5. On 31 January 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 it did not respond within the statutory timescales and he did not believe there was no further information held.

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 13 February 2023, the Authority was notified in writing that the Applicant had made a valid application.
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, which it did.
9. Following receipt of the Authority’s comments the case was allocated to an investigating officer, who invited the Authority to answer specific questions. These related to the searches undertaken by the Authority to establish what recorded information was and was not held, together with any relevant records retention schedules which were applicable to the

³ <https://www.legislation.gov.uk/ssi/2004/520/contents/made>

requested information and further explanation around the way the Authority handled the request.

Commissioner's analysis and findings

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

Application of the EIRs

11. The authority responded to the initial request advising the Applicant that it was handling the request in terms of the EIRs.
12. Where information falls within the scope of the definition "environmental information" in regulation 2(1) of the EIRs, a person has a right of access to it (and the public authority a corresponding obligation to respond) under the EIRs, subject to various restrictions and exceptions contained within the EIRs.
13. The Applicant has not disputed the Authority's decision to handle the request under the EIRs.
14. The Commissioner is satisfied, in the circumstances, that the information requested by the Applicant falls within the definition of environmental information set out in regulation 2(1). In particular he would consider the request to fall within paragraphs (a) (Elements of the environment), (b) (Factors affecting or likely to affect the elements), (c) (Measures and activities) and (f) (Human health and safety) as the request relates to information associated with the road traffic survey data, incorporating measuring vehicle speed, volume of traffic and flow of traffic on a particular road/roads for the purposes of monitoring the impact of road users.
15. In the circumstances, the Commissioner will consider the case, in what follows, solely in terms of the EIRs.

Regulation 5(1) – Duty to make available environmental information on request

16. 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.
17. 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 make that information available, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
18. Under the EIRs, a public authority may refuse to make environmental information available if one of the exceptions in regulation 10 apply and, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
19. In this case, the Authority submitted that it was relying on the exception in regulation 10(4)(a) of the EIRs as it did not consider it held recorded information prior to 2021.

Regulation 10(4)(a) – Information not held

20. Regulation 10(4)(a) of the EIRs states that a Scottish public authority may refuse to make environmental information available to the extent that it does not hold that information when the applicant's request is received.

21. The standard of proof to determine whether a Scottish public authority holds the information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.

The Authority's submissions

22. The Authority advised that the request had been forwarded to colleagues from its Active Travel, Road Safety and Localities team and all speed survey data was asked for. The Road localities team advised that no surveys were undertaken at that location, but that information had been supplied by the Active Travel team (traffic count summary), along with all traffic surveys carried out by the Road Safety Team in the time frame.
23. The Authority advised that the records for all road traffic surveys undertaken by the Road Safety Team are stored in a master spreadsheet that can easily be searched by location. A screenshot for this was provided as evidence, along with the procedure for searching. This procedure constituted the same screenshot showing that a member of staff from the Authority had used the "find and replace" functionality to search the spreadsheet by location, using the keywords "Greenbank Road". The Authority advised that its searches went back to 1 January 2000 and up to 31 March 2022, all data found was supplied in response to the initial request and nothing prior to 2021 was found.
24. The Authority explained that relevant digital drives were searched for information. The Authority advised that prior to 2018 traffic surveys were completed by the Locality team, but no surveys were carried out from 1 January 2000 until the duty was transferred to the centralised team in 2018. The Authority also commented that no surveys were carried out between 2018 and 2021. This process had since been centralised and digitised (2019) and, had any paper records for those locations been held, there would have been appropriate disposal logs to evidence this.
25. The Authority submit that its retention schedule showed that information on road traffic surveys would only be held for five years and then destroyed. It supplied a copy of its retention schedule as evidence. The Authority advised that it did not believe any data was destroyed or deleted.
26. During the investigation the Commissioner sought further submissions from the Authority after the discovery of committee papers from 2004/2005 related to the streets in question. The committee papers were as follows:

- [Traffic in Greenbank dated 3 November 2004](#)⁴ – recommendations:

"That a further survey be undertaken on completion of the work to introduce a priority traffic system in Greenbank Lane, to record traffic volumes.

That additional traffic speed surveys be undertaken in the Greenbank Area."

- [Traffic in Greenbank Report](#)⁵ dated 16 March 2005 – recommendations:

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https://democracy.edinburgh.gov.uk/Data/Pentlands%20Local%20Development%20Committee/20041103/Agenda/traffic_in_greenbank.pdf

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https://democracy.edinburgh.gov.uk/Data/Pentlands%20Local%20Development%20Committee/20050316/Agenda/traffic_in_greenbank_-_progress_of_works.pdf

“That extensive traffic survey work be undertaken in Greenbank Lane and Road, and in surrounding streets, to gauge the effect of the closure on traffic volume and patterns after a period of three months

That a further report be presented to Pentlands LDC at the earliest opportunity following the consultation exercise.

That at that time a decision is taken either to abandon the closure, or to promote a full Traffic Regulation Order.”

27. The Authority confirmed that searches would have covered all recorded information but also advised that it could not confirm whether the surveys were ever completed in line with the recommendations, because its records did not go back that far. The Authority explained that no destruction logs were held and that retention was only required for five years according to the Collision Investigation Protocol.
28. The Authority advised that the move to digital records occurred in 2019 and that the Road Safety Team were not aware of any paper records being held; however, it explained that the team in post only dated back to 2017. The projects cited above predated the current staff knowledge.

The Applicant's submissions

29. The Applicant explained that he believed the Authority did hold traffic survey data because as a local resident he had observed consultations and other road works being carried out.
30. The Applicant has argued that the Authority made an initial error in response to his request, limiting the scope to two years instead of the twenty years requested. The Applicant wanted the Authority to demonstrate why it did not hold this information and, if the data were destroyed, he would like to see evidence of this destruction.
31. The Applicant also referenced the error made in the review outcome relating to timescales and the misapplication of section 17, rather than regulation 10(4)(a).

The Commissioner's view

32. The Commissioner has taken account of the submissions provided by both parties.
33. The Commissioner notes that local authorities' have a statutory obligation to maintain and improve roads, as per the [Roads \(Scotland\) Act 1984](https://www.legislation.gov.uk/ukpga/1984/54/section/1)⁶, which includes traffic calming measures at the Authority's discretion. The Commissioner understands that there is no statutory obligation to undertake road surveys for the purposes of a Traffic Regulation Order, only that a consultation process is required.
34. The Commissioner can see why the Applicant would consider it likely that the Authority might hold such information, given the consultations and recommendations, but recognises that there appears to be no legal obligation for it to do so. The Commissioner also appreciates that the errors in timescales and applying the incorrect legislation has exacerbated any mistrust.
35. The Commissioner notes that the initial submissions provided by the Authority suggested that information was destroyed in line with its retention schedule. However, it was not clear

⁶ <https://www.legislation.gov.uk/ukpga/1984/54/section/1>

about whether the information was ever actually held. The circumstances, in relation to whether the surveys recommended in 2004/2005 were undertaken, remain unclear.

36. The Commissioner viewed the information disclosed in the initial response, which is available on the Authority's [disclosure log](#)⁷. This contains records from 2019, despite the Authority's assertion that no data was held prior to 2020. It was also observed that data from 2021 and 2022, described by the Authority as summary count information and that was intended for disclosure, appears to be missing. The response covering letter lists only a few of the disclosed documents, none of which are labelled in a way that would allow a reasonable person to ascertain at a glance that everything in the timeframe claimed to be disclosed was disclosed. This adds to the lack of clarity in this case.
37. Having considered all relevant submissions and the terms of the request, the Commissioner is not satisfied that the Authority carried out adequate and proportionate searches in the circumstances to establish whether it held any recorded information falling within scope of the Applicant's request.
38. On the face of it, the Commissioner acknowledges that the Authority's searches were reasonable, in the sense of those consulted, the search terms used and the locations searched; he finds that they should have been capable of locating the information requested if it had been held. However, the inconsistency in the information described in the Authority's response cover letter, and the data actually disclosed, suggest that there may still be other information held that was intended for disclosure – and should have been disclosed – but was never included.
39. In the circumstances, the Commissioner is therefore not satisfied, on the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold further recorded information falling within the scope of the Applicant's request.
40. The Commissioner therefore concludes that the Authority was not correct to give the Applicant notice, in terms of regulation 10(4)(a) of the EIRs, that it did not hold all of the information requested.
41. As the Commissioner is not satisfied that the Authority was correct to rely on the exception in regulation 10(4)(a) in respect of information which would fulfil the Applicant's request he is not required to go on to consider the application of the public interest test.

Timescale for responding to the requirement for review

42. Regulation 5(2)(a) of the EIRs gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information.
43. Regulation 16(4) of the EIRs gives Scottish public authorities a maximum of 20 working days, following receipt of the requirement for review, to comply with that requirement.
44. In his application to the Commissioner, the Applicant was dissatisfied with the Authority's failure to respond to his original request, in that they did not address the scope correctly, and also its failure to respond to his requirement for review in time.

⁷ <https://www.edinburgh.gov.uk/homepage/10467/freedom-of-information-foi-disclosure-log?month=&year=2022&keywords=37127&action=Search>

45. While the Authority advised that the data held was only for two years and that was what was provided, they offered no reasonable explanation for not providing a response that addressed the full scope of the request in the first instance to the Applicant.
46. The Authority did acknowledge that the review was late and this had occurred as an oversight. The Authority advised that it had more robust processes for handling reviews in place now.
47. The review was late and appeared to focus on one aspect of the Applicants request. When asked about the process for review undertaken at the time, the Authority advised that no record was retained detailing the consultation described in the issued review response.
48. The Applicant was dissatisfied with the initial response because he did not believe the Authority adequately addressed the scope of the request.
49. It is a matter of fact that the Authority did not respond to the Applicant's requirement for review within 20 working days. As such, he finds that the Authority failed to comply with regulation 16(4) of the EIRs. He also notes that the review outcome, when it was provided, failed to address the full scope of the applicant's request.

Regulation 9 – duty to advise and assist

50. Regulation 9(1) of the EIRs provides that a Scottish public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants.
51. The Applicant believed the review response focused on only one aspect of the requested information (speed of traffic), largely ignoring the rest (volume and direction). The Applicant also submitted that the review outcome failed to acknowledge the long-standing problems with traffic and community consultations.
52. The Authority asserted that the review response provided adequate advice and assistance to the Applicant because it provided context regarding the management of traffic surveys.
53. The Commissioner agrees with the Applicant. The review outcome is limited to one aspect of the request and does not address the other aspects of volume of traffic and direction. The review also does not clearly advise the applicant how information is held, what the Authority's statutory obligations are and why any further information is not held.
54. The Commissioner considers it frustrating that to establish what may or may not have been held and clearly understand the Authority's position in this regard, two sets of submissions were required. It is the Commissioners view that had the Authority been clearer about how the information was held, the retention schedule, the change in staff and that no relevant destruction logs were held, the Applicant would have had no need to seek a review and may not have required an appeal.
55. The Commissioner therefore finds that, by failing to explain fully how the information was held and why it was likely no longer held, the Authority failed to comply with the duty to provide advice and assistance set out in regulation 9(1) of the EIRs.

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 Commissioner finds that the Authority was not entitled to rely on the exception in regulation 10(4)(a) of the EIRs in respect of information relating to traffic survey data for Greenbank Lane/Greenbank Road and, therefore, it did not comply with regulation 5(1) of the EIRs.

The Commissioner also finds that the Authority failed to comply with the EIRs by failing to comply with the timescale in regulation 16(4) of the EIRs for responding to the Applicant's requirement for review.

He further finds that the Authority failed to comply with regulation 9(1), by failing to advise the Applicant as to why some of the information was not held.

As the Commissioner is not satisfied that the information requested for the rest of the timeframe is not held (given what the Authority was able to disclose in response to the initial request), he requires the Authority to:

- carry out a further search (and retain evidence of this) to determine whether it holds any other relevant, recorded information is held by it falling within the full timeframe covered by the request
- issue a revised review outcome to the Applicant, following these further searches, and
- provide the Applicant with the information it intended to in response to his request, but which was missing from what was disclosed

by **16 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

1 June 2026