



Scottish Information
Commissioner
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Decision Notice 132/2026

Wildfowling on local nature reserves

Authority: East Lothian Council

Case Ref: 202500654

Summary

The Applicant asked the Authority for various information relating to wildfowling on John Muir Country Park and Aberlady Bay Nature Reserve. The Authority provided some information to the Applicant, advised that it did not hold other information and withheld some information on the basis it was third-party personal data. The Commissioner investigated and found that the Authority generally complied with the EIRs in responding to the Applicant's request. However, he required to the Authority to disclose certain information to the Applicant in the format he originally requested.

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") (Interpretation); 5(1) and (2)(b) (Duty to make environmental information available on request); 10(1), (3) and (4)(a); (Exceptions from duty to make environmental information available); 11(2)(a) and (3A)(a) and (7) (Personal data); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

General Data Protection Regulation (the GDPR) Articles 5(1)(a) (Principles relating to processing of personal data); 6(1)(f) (Lawfulness of processing).

Data Protection Act 2018 (the DPA 2018) sections 3(2), (3), (4)(d), (5), (10) and 14(a), (c) and (d) (Terms relating to the processing of personal data).

Background

1. On 26 November 2024, the Applicant made a request for information to the Authority. He asked 34 separate questions relating to wildfowling on John Muir Country Park and Aberlady Bay local nature reserves. The full details of the request are reproduced in Appendix 1.
2. The Authority responded on 19 December 2025. It disclosed information for some questions, advised that no information was held for others and withheld some information as third-party personal data.
3. On 19 February 2026, the Applicant wrote to the Authority requesting a review of its decision relating to questions 1, 5-7, 10, 13-17, 23-24 and 28-31. Broadly, he stated that he was dissatisfied with the decision in relation to these questions because he considered that the Authority had:
 - not provided full responses to in relation to some questions
 - not disclosed any information in relation to other questions
 - failed to provide some information in the format requested
 - wrongly withheld some information as third-party personal data.
4. The Authority notified the Applicant of the outcome of its review on 19 March 2025, which broadly upheld its original response. However, the Authority provided some further information to the Applicant in relation to question 29 of his request and otherwise provided some further explanation regarding its initial response to some of his other questions by way of advice and assistance.
5. On 29 April 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 he was dissatisfied with the outcome of the Authority's review for the reasons set out in his requirement for review.

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 12 June 2025, 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. These related to searches carried out for information requested, the format of some information provided, and which specific exceptions were being relied upon for withholding other information.
9. The Commissioner is only considering the following questions of the Applicant's request as these were the only questions challenged by the Applicant in both his requirement for review and his application to the Commissioner: 1, 5-7, 10, 13-17, 23-24, 28 and 31.

10. During the investigation, the Authority was asked to send the Commissioner the information withheld from the Applicant in relation to question 16 of his request. The Authority provided the information.

Commissioner's analysis and findings

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

Application of the EIRs

12. The information requested appears to fall clearly within the scope of the definition of environmental information contained in regulation 2(1) of the EIRs.
13. The Applicant made no comment on the Authority's application of the EIRs in this case, and the Commissioner will consider the request in what follows solely in terms of the EIRs.

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

14. Regulation 5(1) of the EIRs requires a Scottish public authority which holds the 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.
15. On receipt of a request for environmental information, the authority must ascertain what information it holds falling within the scope of the request. Having done so, regulation 5(1) of the EIRs requires the authority to make the information available, unless a qualification in regulation 6 to 12 applies (regulation 5(2)(b)).
16. Under the EIRs, a Scottish public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 applies.

Whether the Authority holds further information

17. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority.
18. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant recorded information is (or was, at the time the request was received) actually held by the public authority, which falls within the scope of the request under consideration.
19. The Applicant expressed dissatisfaction with the level of information provided in response to questions 1, 5, 7, 14, 23-24, 28 and 31.

Questions 1 – “Identify where copies of the Management Plans for the above sites are stored and available to the public for reading. Are these available online?”

Question 5 – “Where are the records kept of any amendments made to the [Authority’s] rules and regulations or operating procedures regarding wildfowling at the above sites? Where are these available for the public to read?”

The Applicant’s submissions

20. In relation to question 1, the Applicant explained that a Management Plan is a tool that is used to monitor and assess a site and it should be reviewed every five or ten years. He considered that Management Plans should be available to all stakeholders of the local nature reserve.
21. The Applicant said that he had sent a further email to the Authority on 5 February 2025 requesting a copy of the Management Plan. However, he had not received a response at the time of making his application to the Commissioner.
22. In relation to question 5, the Applicant disagreed that the Authority had answered his request by stating that it held the information internally. He noted that the second question in his request asked where the information was available for the public to read. He disagreed that he should be required to request this information again as it should have been disclosed in response to his initial request.

The Authority’s submissions

23. In relation to both questions, the Authority said that it had advised the Applicant that the information requested was published online but it was available on request from the Countryside Ranger Service. It provided him with a link to their details.
24. The Authority considered that it had fully answered the Applicant’s questions, both of which asked where the information in question was held and how it could be obtained. In other words, it did not request for the information to be disclosed in response to his EIRs request. It explained that it thought it appropriate to interpret information requests literally and to not make assumptions.

The Commissioner’s view

25. The Commissioner has carefully considered the wording of questions 1 and 5 of the Applicant’s request. Having done so, he accepts that it was legitimate for the Authority to have interpreted these questions in the – quite literal – way that it did. In other words, neither question specifically requested disclosure of the information referred to. Instead, they asked the Authority to identify the location of this information and whether the information was available for the public to read.
26. In the circumstances, therefore and on balance, the Commissioner accepts that the Authority complied with regulation 5(1) of the EIRs in responding to questions 1 and 5 of the Applicant’s request.
27. That said, the Commissioner considers it implicit in these questions, particularly given that the information referred to is not publicly available, that the Applicant was seeking disclosure of that information. While the wording of the Applicant’s questions could have been more explicit in this regard, he considers that the Authority could have, in line with its duty to provide advice and assistance under regulation 9 of the EIRs, sought clarification of these questions.

28. The Commissioner cannot stress enough the importance of ensuring that the terms of any information request received by a Scottish public authority are clear before proceeding to respond. He would urge the Authority, and indeed all Scottish public authorities, to take steps to clarify with applicants any matter which is open to interpretation, prior to proceeding with a request (as provided for by regulation 9 of the EIRs).

Question 7 – “Provide copies of the Ranger reports on wildfowling for the above sites over the last five years”

The Applicant’s submissions

29. The Applicant noted that a summary was provided but he considered the information was “incomplete”. Specifically, he was dissatisfied that there was no breakdown of people using the reserve for wildfowling on a daily basis.
30. The Applicant explained that the Authority had claimed that an excessive number of people had been wildfowling, hence there was a need to introduce a booking system. However, he considered that no evidence had been provided to justify this change and that the summary provided simply showed the numbers of permits issued, permits returned, permits not used and permits not returned. He said that this was no indication on use of the reserve by wildfowlers.

The Authority’s submissions

31. To avoid confusion, the Authority acknowledged that the reports should have been titled “Wildfowl Reports” rather than “summary reports”.
32. The Authority explained that only a summary report is provided to the advisory group members. It confirmed that the way in which the data was collected had changed and that it provided the data held, in the format it was held in, for the period requested.
33. The Authority said that the reports provided to the Applicant summarised raw data and that, if he required that raw data, he would be required to make a further request for that specific information.

The Commissioner’s view

34. Given the wording of question 7 of the Applicant’s request (which specifically sought “Ranger reports”), the Commissioner accepts that it was legitimate for the Authority to have interpreted it to have requested the reports it disclosed to him rather than the underlying raw data which informed these reports.
35. The Commissioner acknowledges that the Applicant was disappointed with the level of detail contained within the reports the Authority disclosed to him. However, the content of these reports is not a matter that the Commissioner has any locus to comment on.
36. In the circumstances, therefore, the Commissioner accepts that the Authority complied with regulation 5(1) of the EIRs in responding to questions 7 of the Applicant’s request.

Questions 14, 23-24, 28 and 31

The Commissioner’s view

37. The Commissioner has carefully considered the wording of each of these questions, the details of which are reproduced in Appendix 1. Having done so, he is satisfied that these were closed questions and that a “yes” or “no” response would be sufficient in terms of

regulation 5(1) of the EIRs. (Question 28 is an exception in that it contains a follow-up “if so” question, which was conditional on the response to the initial question being “yes”.)

38. These sorts of requests are valid under the EIRs, so long as it is clear what information is being asked for and provided the answer is clear from recorded information held by the public authority.
39. The Commissioner acknowledges that the Applicant was unhappy with the Authority’s responses to these questions. He notes that the Applicant’s requirement for review in relation to these questions took the form of asking for information not specifically requested as part of the original request.
40. While public authorities have a duty to provide applicants with advice and assistance, this does not extend to providing information which falls outside the scope of the information request. This is provided for in paragraph 9.12.2 of the Scottish Ministers’ Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the EIRs ([the Section 60 Code](#)¹).
41. In the circumstances, the Commissioner is satisfied that the Authority complied with regulation 5(1) of the EIRs in responding to the questions 14, 23-24, 28 and 31 of the Applicant’s request (including both questions within question 28).

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

42. 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 an applicant’s request is received.
43. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner will make the same considerations set out at paragraphs 17 and 18 above.
44. The Commissioner can only focus on what recorded information is actually held by the Authority (or was at the time of the request). Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide, nor does he have any locus, in this context, to determine what information an authority ought to record, or how: he is concerned with what information the authority actually holds.
45. The Applicant expressed dissatisfaction with the Authority’s response that it held no information in relation to questions 10, 13, 15 and 17 of his request.

Searches

46. The Authority provided submissions relating to searches it carried out for information falling within the scope of the Applicant’s request. It confirmed that no end date was given to either manual or electronic searches, therefore, the search encompassed all relevant information held.

¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2026/03/foi-eir-section-60-code-practice/documents/foi-eir-section-60-code-practice/foi-eir-section-60-code-practice/govscot%3Adocument/foi-eir-section-60-code-practice.pdf>

47. The Authority confirmed that it used key words (for electronic searches) relevant to the locations and topics specified in the Applicant's request. In total, it said that it undertook the following searches:

- Paper search of archive files held by Countryside
- Electronic network search of files held on shared and individual drives
- Full electronic search of current Ranger and past Ranger archive files on both shared drive and desktop
- Full electronic search of current Ranger emails both current and those held in archive and Enterprise Vault.

Question 10 – “Provide all communications within the [Authority] regarding the decision to limit the number of wildfowlers permitted to use John Muir Country Park (JMCP) being introduced in the 2025-26 season”

The Applicant's submissions

48. The Applicant was dissatisfied that the Authority only disclosed a single document in response to this question. He noted that this document discussed the introduction of further amendments, but no information had been disclosed to him on the reason why controls were needed. He said that this was not an issue in the past when wildfowling numbers using the reserve were much higher.
49. More specifically, the Applicant was dissatisfied that the background to the proposed introduction of a booking system had not been provided. He also noted that no information had been provided on which groups or organisations attended the meeting(s).

The Authority's submissions

50. During the investigation, the Authority confirmed that the single document it disclosed in response to this question was provided to be helpful and that, on reflection, it should have issued the Applicant with a notice, in terms of regulation 10(4)(a) of the EIRs, that it did not hold any relevant information.
51. The Authority noted that question 10 of the Applicant's request asked for all communications regarding “the decision to limit the number of wildfowlers permitted to use John Muir Country Park (JMPC) being introduced in the 2025-26 season”. However, it confirmed that no decision had been taken at the date of the review outcome to limit the number of wildfowlers.

The Commissioner's view

52. The Commissioner has carefully considered the terms of question 10 of the Applicant's request, together with the explanations and submissions provided by the Authority.
53. Having done so, the Commissioner accepts that the Authority took adequate and proportionate steps in the circumstances to establish if the information was held and he is satisfied, on balance, that it does not (and did not, on receipt of the request) hold the information requested by the Applicant as no decision had been taken at the date of the review outcome to limit the number of wildfowlers permitted to use John Muir Country Park in the 2025-26 season.
54. While the Applicant believed and expected the information requested to be held by the Authority, the Commissioner is satisfied, on balance, that this was not the case. He therefore concludes that the Authority was entitled to give the Applicant notice, in terms of regulation 10(4)(a) of the EIRs, that it did not hold the information requested.

55. If a Scottish public authority does not hold the information requested, it is required to give the applicant notice to that effect. The exception in regulation 10(4)(a) of the EIRs permits an authority to refuse to provide information if that information is not held.
56. Regulation 13(b) of the EIRs provides that if a request to make environmental information available is refused by a Scottish public authority in accordance with regulation 10 (including regulation 10(4)(a)), the authority must provide a notice in writing explaining the reasons for that refusal, including which exceptions are being relied upon (subject to certain qualifications which are not relevant in this case).
57. While there is no direct obligation to apply the exception in regulation 10(4)(a) of the EIRs, it is apparent from [Articles 4\(5\) of both the Aarhus Convention](#)² and [Directive 2003/4/EC](#)³ that notice to that effect should be given where the authority concludes that it does not hold the information and the Commissioner is satisfied that regulation 13(b) should be read to include that obligation.
58. In this case, the Authority failed to issue a notice to the Applicant to the effect that it did not hold the information requested. The Commissioner must therefore find that the Authority failed to comply with regulation 13(b) of the EIRs in this respect.

Question 13 – “How was the carrying capacity for wildfowling initially calculated at JMCP and AB?”

The Applicant's submissions

59. The Applicant considered that when John Muir Country Park was declared as a local nature reserve, a calculation must have been undertaken to identify how many people could participate in the sport of wildfowling – referred to as the carrying capacity – which would limit the number of permits issued.
60. The Applicant explained that the basis of his question was to ascertain why the Authority considered a booking system would be required to control the number of wildfowling. He wanted to understand what information was being used to inform decision making, i.e. how the Authority had determined could go wildfowling from the total number of permits issued.
61. The Applicant considered the Authority's response – that carrying capacity was calculated in the 1980s and the implication that it had not been reviewed since – to be evidence of poor record keeping.

The Authority's submissions

62. The Authority confirmed that it did not hold any information relevant to question 13 of the Applicant's request. It explained that the carrying capacity referred to was initially calculated in the early 1980s and that all personnel from that period had since retired.
63. In addition to the searches it carried out in response to the Applicant's request (as set out in paragraphs 46 and 47), the Authority confirmed that it checked with its Legal Services department who confirmed that they held no relevant information..

The Commissioner's View

64. Given the explanations and submissions provided by the Authority, the Commissioner accepts that the Authority took adequate and proportionate steps in the circumstances to

² <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:041:0026:0032:EN:PDF>

³ <https://eur-lex.europa.eu/eli/dir/2003/4/oj/eng>

establish if the information was held and he is satisfied, on balance, that it does not (and did not, on receipt of the request) hold the information requested by the Applicant.

65. While the Applicant believed and expected the information requested to be held by the Authority, the Commissioner is satisfied, on balance, that this was not the case. He therefore concludes that the Authority was entitled to give the Applicant notice, in terms of regulation 10(4)(a) of the EIRs, that it did not hold the information requested.

Question 15 – “Why is wildfowling on Aberlady Bay restricted to locals only?”

The Applicant’s submissions

66. The Applicant expected that a response to this question would be found in previous management plans covering the site. If this was “the basis for controlling any activity”, he considered that the Authority would – and should – have retained a record of this.

The Authority’s submissions

67. The Authority confirmed that it did not hold any information relevant to question 15 of the Applicant’s request.
68. In addition to the searches it carried out in response to the Applicant’s request (as set out in paragraphs 46 and 47), the Authority confirmed that it checked with its Legal Services department who confirmed that they held no relevant information.

The Commissioner’s view

69. Given the explanations and submissions provided by the Authority, the Commissioner accepts that the Authority took adequate and proportionate steps in the circumstances to establish if the information was held and he is satisfied, on balance, that it does not (and did not, on receipt of the request) hold the information requested by the Applicant.
70. While the Applicant believed and expected the information requested to be held by the Authority, the Commissioner is satisfied, on balance, that this was not the case. He therefore concludes that the Authority was entitled to give the Applicant notice, in terms of regulation 10(4)(a) of the EIRs, that it did not hold the information requested.

Question 17 – “Why are only duck allowed to be shot on Aberlady Bay?”

The Applicant’s submissions

71. The Applicant expected that this decision would be recorded in minutes and in the management plan for the site and he was dissatisfied that the Authority had not provided it to him.

The Authority’s submissions

72. The Authority confirmed that it did not hold any information relevant to question 17 of the Applicant’s request.
73. In addition to the searches it carried out in response to the Applicant’s request (as set out in paragraphs 46 and 47), the Authority confirmed that it checked with its Legal Services department who confirmed that they held no relevant information.

The Commissioner’s view

74. Given the explanations and submissions provided by the Authority, the Commissioner accepts that the Authority took adequate and proportionate steps in the circumstances to

establish if the information was held and he is satisfied, on balance, that it does not (and did not, on receipt of the request) hold the information requested by the Applicant.

75. While the Applicant believed and expected the information requested to be held by the Authority, the Commissioner is satisfied, on balance, that this was not the case. He therefore concludes that the Authority was entitled to give the Applicant notice, in terms of regulation 10(4)(a) of the EIRs, that it did not hold the information requested.

The public interest test in relation to regulation 10(4)(a)

76. The Commissioner has considered the public interest test in respect of regulation 10(4)(a) of the EIRs in relation to questions 10, 13, 15 and 17 of the Applicant's request.
77. The exception in regulation 10(4)(a) of the EIRs is subject to the public interest test in regulation 10(1)(b) and so can only apply if, in all the circumstances of the case, the public interest in maintaining the exception outweighs that in making the information available.
78. The question of whether a public authority holds information is a factual one, determined on the balance of probabilities. If a public authority does not hold the information, then there is no meaningful public interest test that can be undertaken.
79. In this case, for the reasons set out above, the Commissioner is satisfied that the Authority does not hold any information covered by the request and did not do so on receipt of the request.
80. Consequently, the Commissioner accepts that there is no conceivable public interest in requiring the disclosure of such information and finds that the public interest in making information available is outweighed by that in maintaining the exception.

Regulation 6(1)(a) – Form and format of information

Question 16 – “Provide the spreadsheets used to calculate the number of wildfowling visits per day, plus the quarry taken over the last 3 seasons for the above sites”

81. Regulation 6(1)(a) of the EIRs provides that where an applicant requests that information be made available in a particular form or format, a public authority shall make it so available unless it is reasonable for it to make the information available in another form or format.

The Applicant's submissions

82. The Applicant noted that a screenshot of the spreadsheet had been provided to him. However, he was dissatisfied that the number of wildfowling visits was unclear and that the format in which the spreadsheet was provided meant that he could not filter the document to identify daily visits.
83. In his requirement for review, the Applicant specifically asked for the “spreadsheets” that sought in question 16 of his request to be provided in “excel format”.

The Authority's submissions

84. At review stage, the Authority considered that it had provided the information requested. It believed that the Applicant's request in his requirement for review for the information to be disclosed in an “excel format” was a follow-up question and that the “format was not specified” in the original request.
85. During the investigation, the Authority provided the Commissioner with excel spreadsheets for the periods 2022-2023 and 2023-2024. Prior to these dates, the Authority explained that

information was processed using an Access Database – a program which was no longer supported by the Authority's IT systems at the time of the request. It explained that extracting data to excel "corrupts" the data, hence PDFs were provided for the additional years requested.

86. The Commissioner asked the Authority to confirm exactly what it provided to the Applicant in response to question 16 and in what format. The Authority confirmed that it had disclosed summaries of wildfowler returns had been provided in "redacted PDF format" for the periods 2020-2021, 2021-2022 and 2022-2023.
87. In response to further questions during the investigation, the Authority confirmed that its "standard approach", which was "based on precaution", was that information should not be released in excel spreadsheet or CSV format. This precaution was to ensure no risk of hidden personal data contained in any document being released, which could result in a data breach.
88. The Authority confirmed that redaction of information in "PDF format" ensured there was no risk of a data breach". In light of this, it said that it would not be in a position to disclose the information it held in excel format to the Applicant in that format.

The Commissioner's view

89. The Commissioner has carefully considered the wording of question 16 of the Applicant's request. In the circumstances, he is satisfied that the Applicant made it sufficiently clear that he wished to receive the information in spreadsheet form – his question specifically asks for the "spreadsheets used".
90. Were there any ambiguity about this, the Commissioner considers that the Applicant conclusively removed this in his requirement for review where he specifically noted the information had been disclosed in "PDF format" and asked for it to be provided in "excel format".
91. The Commissioner has also carefully considered the Authority's submissions that its standard approach was that information should not be released in excel or CSV format to minimise the risk of data breaches.
92. While the Authority is correct to wish to exercise caution and to take appropriate measures to minimise the risk of data breaches, the Commissioner does not accept, in this case, that these concerns provide sufficient justification for not disclosing the spreadsheets it holds in excel format to the Applicant in that format, as requested.
93. In all cases, regardless of format, public authorities must take reasonable steps to redact or otherwise withhold information which ought not to be disclosed. In the circumstances, the Commissioner considers it would be reasonable to expect the Authority to take the steps required to appropriately redact and sanitise the spreadsheets and to disclose them to the Applicant in the format requested (i.e. excel format).
94. In the circumstances, the Commissioner therefore requires the Authority to disclose in excel format the spreadsheets it already holds in that format that are relevant to question 16 of his request.

Regulation 11(2) – Personal data

Question 6 – "Provide copies of the minutes of the Management Committee meetings over the last five years for the above locations"

95. The Authority withheld the names of meeting attendees in the minutes of the Management Committee meetings it disclosed to the Applicant. It confirmed that individuals were identified within the minutes by name only, without listing their organisational affiliations.
96. Regulation 10(3) of the EIRs provides that a Scottish public authority can only make personal data in environmental information available in accordance with regulation 11.
97. Regulation 11(2) provides that personal data shall not be made available where the applicant is not the data subject and other specified conditions apply. These include that disclosure would contravene any of the data protection principles in the UK GDPR or DPA 2018 (regulation 11(3A)(a)).

Is the withheld information personal data?

98. "Personal data" are defined in section 3(2) of the DPA 2018 as "any information relating to an identified or identifiable individual".
99. Section 3(3) of the DPA 2018 defines "identifiable living individual" as a living individual who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, or an online identifier, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
100. Information will "relate to" a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them, or has them as its main focus. An individual is "identified" or "identifiable" if it is possible to distinguish them from other individuals.
101. Having carefully considered the withheld information, the Commissioner notes that it consists of names of individuals invited to the meeting – those present and those who sent apologies. He therefore accepts that the withheld information is personal data as it relates to identified (or identifiable) individuals and is satisfied that the withheld information in question is personal data in terms of section 3(2) of the DPA 2018.

Would disclosure contravene one of the data protection principles?

102. Article 5(1)(a) of the UK GDPR requires personal data to be processed "lawfully, fairly and in a transparent manner in relation to the data subject."
103. The definition of "processing" is wide and includes (section 3(4)(d) of the DPA 2018) "disclosure by transmission, dissemination or otherwise making available". For the purposes of the EIRs, personal data are processed when made available in response to a request.
104. This means that the personal data can only be made available if doing so would be both lawful (i.e. it would meet one of the conditions for lawful processing in Article 6(1) of the UK GDPR) and fair.

Lawful processing: Article 6(1)(f) of the UK GDPR

105. The Commissioner will first consider if disclosure of the personal data would be lawful. In considering lawfulness, he must consider whether any of the conditions in Article 6 of the UK GDPR would allow the personal data to be disclosed.
106. The Commissioner considers condition (f) (legitimate interests) in Article 6(1) of the UK GDPR to be the only one which could potentially apply in the circumstances of this case.

Condition (f): legitimate interests

107. Condition (f) states that the processing will be lawful if it is necessary for the purposes of legitimate interests pursued by the data controller or a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require the protection of personal data.
108. Although Article 6 of the UK GDPR states that this condition cannot apply to processing carried out by a public authority in performance of its tasks, regulation 11(7) of the EIRs makes it clear that public authorities can rely on Article 6(1)(f) when responding to requests under the EIRs.
109. The tests which must be met before Article 6(1)(f) can apply are as follows:
- (i) Does the Applicant have a legitimate interest in obtaining the personal data?
 - (ii) If so, would making the personal data available be necessary to achieve that legitimate interest?
 - (iii) Even if the processing would be necessary to achieve that legitimate interest, would that be overridden by the interests or fundamental rights and freedoms of the data subject?

Does the Applicant have a legitimate interest in obtaining the personal data?

110. There is no definition within the DPA 2018 of what constitutes a “legitimate interest”, but the Commissioner takes the view that the term indicates that matters in which an individual properly has an interest should be distinguished from matters about which he or she is simply inquisitive.
111. The Authority agreed that the Applicant had an interest in understanding the Authority’s decision-making process together with the information and meetings that inform those decisions. It also accepted that “by virtue of the community empowerment legislation”, the Applicant had a legitimate interest in the functions and decisions.
112. However, the Authority did not accept that the Applicant had a legitimate interest in disclosure of the withheld third-party personal data. It explained that it did not consider that the identities of specific individuals engaged in the routine activities of the Advisory Group was relevant to scrutiny of the activities of the group or any decisions made.
113. In his application, the Applicant expressed dissatisfaction that all information on stakeholders present at the management committee meetings had been redacted. He commented that he understood that “names may not be given” but he queried the names of organisations were redacted.
114. In view of the above and given that the withheld third-party personal data comprises names of individuals invited to the meeting, the Commissioner does not accept that the Applicant has demonstrated a legitimate interest in obtaining it. Notwithstanding the Applicant’s position that he understood that names may not be given, the Commissioner agrees that disclosure of the withheld third-party personal data would, given its nature, add little to the Applicant’s understanding – or that of the public more generally – of the activities of the group or decisions it made.
115. As the Commissioner has concluded that the Applicant does not have a legitimate interest in receiving the withheld third-party personal data in this case, he finds that condition (f) of

Article 6(1) of the UK GDPR cannot be satisfied. Accordingly, he accepts that making the personal data available would be unlawful.

116. Given that the Commissioner has found that the processing (i.e. making the information available, in response to the Applicant's request) would be unlawful, he is not required to go on to consider separately whether disclosure of the personal data would be necessary to fulfil any legitimate interest, or consider the data subjects' interests or fundamental rights and freedoms, and balance them against any legitimate interest in disclosure.
117. In all the circumstances of the case, in the absence of a condition in Article 6(1) of the GDPR being met, the Commissioner must conclude that making the withheld personal data available would be unlawful and would breach the data protection principle in Article 5(1)(a) of the UK GDPR. Consequently, he is satisfied that disclosure of the personal data is not permitted by regulation 11(2) of the EIRs.

Other matters

118. In the circumstances of this case, the Commissioner considers it appropriate to comment on two things.
119. First, the Commissioner would advise requesters to consider carefully what information they want and to be as clear and specific as possible when asking for that information. Requesters should try to ensure that the wording of their request reflects the outcome (i.e. the information) they are seeking. In this respect, the Commissioner would encourage requesters to consider the guidance in his [Tips for Requesters](#)⁴.
120. In this case, if the Applicant wishes to receive further or additional information not covered by the questions in the request considered in this decision notice, it is open to him to make a new request to the Authority for this information.
121. Second, the Commissioner would remind public authorities of the importance of recognising whether a requirement for review contains a new request for information. Where a requirement for review does not simply express dissatisfaction with an initial response to a request but also includes a new (valid) request for information, public authorities must respond to any new request in line with the requirements of FOISA and/or the EIRs.

Decision

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

However, the Commissioner finds that the Authority failed to comply with the EIRs in the following respects in responding to the information request made by the Applicant:

- In responding to question 10, the Authority failed to notify the Applicant, in terms of regulation 10(4)(a) of the EIRs, that it did not hold any relevant information and, in not doing so, failed to comply with regulation 13(b)
- In responding to question 16, the Authority failed to comply with regulation 6(1)(a) of the EIRs by providing the Applicant with the information requested in the format requested when it was reasonable to provide it in that format.

⁴ https://www.foi.scot/sites/default/files/2022-03/Tips_for_Requesters.pdf

The Commissioner requires the Authority to disclose the information requested in question 16 of the Applicant's in the excel format requested (to the extent that it already holds the information in that format), **by 13 July 2026**.

Given that he is satisfied that the Authority was entitled to rely on regulation 10(4)(a) of the EIRs in response to question 10 of the Applicant's request, the Commissioner does not require the Authority to take any action regarding this failure, in response to the Applicant's application.

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

27 May 2026

Appendix 1: Information request of 26 November 2024

REQUEST FOR INFORMATION REGARDING WILDFOWLING ON JOHN MUIR COUNTRY PARK AND ABERLADY BAY LOCAL NATURE RESERVES.

“Can you please provide me with the following information regarding the above locations?”

MANAGEMENT OF THE SITE

1. Identify where copies of the Management Plans for the above sites are stored and available to the public for reading. Are these available online?
2. Identify the dates when the byelaws for the above sites were last reviewed?
3. When is the next review of these byelaws due?
4. Where are the records of any amendments made to the byelaws for the above sites kept? Are these available for the public to read and where are they stored?
5. Where are the records kept of any amendments made to the Council's rules and regulations or operating procedures regarding wildfowling at the above sites? Where are these available for the public to read?
6. Provide copies of the minutes of the Management Committee meetings over the last five years for the above locations.
7. Provide copies of the Ranger reports on wildfowling for the above sites over the last five years.
8. East Lothian Council (ELC) had a meeting/s with the British Association for Shooting and Conservation (BASC) in 2024 on wildfowling matters. Please provide the agenda for any meetings, any minutes recorded and actions to be taken.
9. Provide copies of any other communications between BASC and ELC between September 2021 - August 2024. These to include emails, any written notes, visits to East Lothian Council sites and any verbal communications.
10. Provide all communications within the Council regarding the decision to limit the number of wildflowers permitted to use John Muir Country Park (JMCP) being introduced in the 2025-26 season.
11. Provide the decision-making process for limiting the numbers of wildfowling on JMCP.
12. Provide minutes and/or correspondence both written and oral of the committees and personnel who were involved with this decision making and the approval of this amendment to the Council's rules and regulations or operating procedures regarding wildfowling at JMCP. Where are these available for the public to read?
13. How was the carrying capacity for wildfowling initially calculated at JMCP and AB?
14. Has this process been reviewed for both of the above sites?
15. Why is wildfowling on Aberlady Bay restricted to locals only?
16. Provide the spreadsheets used to calculate the number of wildfowling visits per day, plus the quarry taken over the last 3 seasons for the above sites.
17. Why are only duck allowed to be shot on Aberlady Bay?

COMPLAINTS RECEIVED FROM THE COUNCIL REGARDING WILDFOWLING

18. Provide the number of complaints received regarding any issues from wildfowling on JMCP and Aberlady Bay (AB), over the last 5 years.
19. How many of the complaints were anonymous?
20. How many of the complainants provided their full details?
21. How many of the complainants resided in the East Lothian Council area?
22. How many complaints have been received from wildfowlers regarding their experiences at both sites over the last five years?
23. Were any of these complaints substantiated by staff from East Lothian Council?
24. Is there signage at all access points to identify that wildfowling takes place at both these LNRs?
25. How many wildfowling incidents were recorded at John Muir Country Park and Aberlady Bay over the last five years? Please provide the details of any offences.
26. How many of these wildfowlers received verbal or written warnings?
27. How many of these wildfowling incidents resulted in a ban or removal of the wildfowling permit (I do not need information on the failure to return permits)?
28. Is there a mechanism for appealing any decision made by the local authority on the above reserves? If so, could you please provide a description of the procedure.
29. For the number of permits issued during the last three seasons, how many permit holders were BASC members obtaining permits each season?
30. Has East Lothian Council undertaken any surveys/reviews to establish actions that could be undertaken to improve the wildfowling that takes place at the above sites?
31. Does East Lothian Council receive financial assistance from individuals, charities or any other organisation regarding the wildfowling/patrolling/ or improving the LNRs
32. Please identify if there is a Wildfowling Clubs on the LNRs?
33. Is there a wildfowling sub-committee for both sites?
34. What discussions took place between wildfowlers using JMCP and ELC regarding a booking slot system for wildfowling."