



Scottish Information
Commissioner
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Decision Notice 133/2026

Complaints about a specified address

Authority: South Lanarkshire Council
Case Ref: 202501364

Summary

The Applicant asked the Authority for information relating complaints made about a particular matter at a specific address. The Authority withheld the information under various exceptions in the EIRs. The Commissioner investigated and found that the Authority was entitled to withhold the information 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”, “the Commissioner”, “data protection principles,” “data subject” and “environmental information”) (Interpretation); 5(1) (Duty to make environmental information available on request); 10(1), (2), (4)(e) and (5)(f) (Exceptions to the duty to make environmental information available), 11(2) (Personal data), 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

United Kingdom General Data Protection Regulation (the UK GDPR) Articles 5(1)(a) and (b) (Principles relating to processing of personal data) and 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 1 April 2025, the Applicant made a request for information to the Authority. She asked for:
 - (i) “a copy of all correspondence between [the Authority] and any people who have submitted a complaint about a fence erected at [a specific address]”;
 - (ii) “... copies of all internal [Authority] correspondence/reports/emails regarding the complaints.”
2. The Authority responded on 24 April 2025 in terms of the EIRs. It withheld the information requested under the exceptions in regulations 10(4)(e) and 10(5)(d) of the EIRs.
3. On 25 April 2025, the Applicant wrote to the Authority requesting a review of its decision. She stated that she was dissatisfied with the decision because she did not agree that the EIRs exceptions cited by the Authority applied.
4. The Authority notified the Applicant of the outcome of its review on 30 May 2025. It upheld the application of the exception in regulation 10(4)(e) of the EIRs but relied on the exception in 10(5)(f) instead of the exception in 10(5)(d).
5. On 18 May 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 agree that the EIRs exceptions cited by the Authority applied.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 10 September 2025, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information, and the case was subsequently 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 the applicability of the EIRs exceptions claimed and any third-party personal data in the withheld information.

Commissioner’s analysis and findings

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

Handling in terms of the EIRs

10. The Authority considered and responded to the Applicant's request in accordance with the EIRs, having concluded that the information requested was environmental information as defined in regulation 2(1) of the EIRs.
11. Where information falls within the scope of this definition, a person has the right to access it (and the public authority has a corresponding obligation to respond) under the EIRs, subject to various restrictions and exceptions contained in the EIRs.
12. The Commissioner has considered the subject matter of the request, together with the withheld information falling within the scope of the request and is satisfied that it is "environmental information" as defined in regulation 2(1) of the EIRs.
13. The Applicant has not disputed the Authority's decision to handle his request under the EIRs, and the Commissioner will consider the information 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 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.
15. 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) of the EIRs requires the authority to provide that information to the requester, unless a qualification in regulations 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.

Regulation 11(2) – Personal data

17. During the investigation, the Authority advised the Commissioner that it considered most of the withheld information to be personal data.
18. 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.
19. Regulation 11(2) of the EIRs 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?

20. Personal data" are defined in section 3(2) of the DPA 2018 as "any information relating to an identified or identifiable individual". 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.
21. 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.

22. The Authority submitted that some of the withheld information could allow the complainer(s) to be unambiguously identified, while other information would assist in identifying them by identifying the pool of individuals that the complainer(s) could come from.
23. The Commissioner must be careful not to reveal the specific content of the withheld information. However, much of it consists of correspondence with the complainer(s). In all of the circumstances, the Commissioner is satisfied that the withheld information contains sufficient detail to permit identification, at least by other individuals within the same neighbourhood.
24. The withheld information includes other documents which do not consist of correspondence with the complainer(s). However, these documents contain small amounts of information (including names) which, in the Commissioner's view, would permit identification of the complainer(s) and the Authority's staff.
25. Having considered the Authority's submissions and the withheld information, the Commissioner accepts that most of the withheld information is third-party personal data as it relates to identified or identifiable individual(s). He is therefore satisfied that this information is personal data in terms of section 3(2) of the DPA 2018.
26. However, the Commissioner finds that there are elements of the withheld information that do not constitute third party personal data as they are not capable of identifying the complainer(s) or any other third party (i.e. the Authority's staff). He is therefore not satisfied that this information is personal data in terms of section 3(2) of the DPA 2018.
27. The Authority also applied the exception in regulation 10(4)(e) of the EIRs to withhold the information he has found in the preceding paragraph is not personal data. The Commissioner will consider whether the Authority was entitled to withhold this information under the exception in regulation 10(4)(e) of the EIRs later in his decision notice.

Would disclosure contravene one of the data protection principles?

28. 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".
29. In terms of section 3(4) of the DPA 2018, disclosure is a form of processing. In the case of the EIRs, personal data are processed when disclosed in response to a request. Personal data can only be made available if making the data available would be lawful (i.e. if it would meet one of the conditions of lawful processing listed in Article 6(1) of the UK GDPR) and fair.

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

30. The Commissioner will now 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.
31. The Commissioner considers condition 6(1)(f) 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

32. 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.
33. Although Article 6 states that this condition cannot apply to processing carried out by a public authority in performance of their 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.
34. 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(s)?

Does the Applicant have a legitimate interest?

35. The Authority suggested that the Applicant had not indicated any legitimate interest.
36. The Applicant outlined a range of her concerns stemming from her experience at the address specified in her request, at which she resides. The Commissioner has fully considered these concerns but has not reproduced them in his decision notice.
37. The Applicant also submitted that the Authority had not handled her request in a fair, open or transparent manner. However, she agreed that she did not have an interest in personal details.
38. The Commissioner agrees that residents have a legitimate interest in understanding complaints made about their homes and that disclosure of the majority of the withheld personal information would assist in satisfying this interest.
39. However, given the Applicant's statement that she is not seeking personal details, the Commissioner finds that the Applicant does not have a legitimate interest in the names and contact details contained within these documents.

Is disclosure necessary to meet the Applicant's legitimate interests?

40. The Commissioner must now consider whether disclosure of the personal data in which he has found the Applicant has a legitimate interest is necessary to meet that legitimate interest. In doing so, he must consider whether these interests might reasonably be met by any alternative means.
41. "Necessary" means "reasonably" rather than "absolutely" or "strictly" necessary. When considering whether disclosure would be necessary, public authorities should consider whether the disclosure is proportionate as a means and fairly balanced as to the aims to be achieved, or whether the Applicant's legitimate interests can be met by means which interfere less with the privacy of the data subject(s).

42. Given that information can be provided by the planning authority “about the subject matter”, the Authority considered that it was not necessary for disclosure of the withheld personal data to be made publicly available in order to fulfil any legitimate interest of the Applicant.
43. It is not altogether clear to the Commissioner what the Authority means by information which can be provided by the planning authority about the subject matter. However, the Commissioner accepts that the Applicant wants to see the actual information that has been communicated to the Authority in the complaint correspondence regarding her property. There seems no other way to achieve a complete understanding of this information without full disclosure of the withheld personal data in which he has found the Applicant has a legitimate interest.

Interests and fundamental freedoms of the data subject(s)

44. The Commissioner must now balance the legitimate interest in disclosure against the interests or fundamental rights and freedoms of the data subject(s). Only if the legitimate interests of the Applicant outweigh those of the data subject(s) can the information be disclosed.
45. The Commissioner’s [guidance](#)¹ on regulation 11 of the EIRs notes some of the factors that should be taken into account in considering the interests of the data subject(s) and carrying out the balancing exercise. He makes it clear that, in line with Recital (47) of the GDPR, much will depend on the reasonable expectations of the data subject(s) and that these are some of the factors public authorities should consider:
- (i) whether the information relates to an individual’s public life (i.e. their work as a public official or employee) or their private life (e.g. their home, family, social life or finances);
 - (ii) the potential harm or distress that may be caused by the disclosure;
 - (iii) whether an individual objected to the disclosure.
46. The Authority submitted that the complainer(s) had a reasonable expectation of confidentiality with regards the complaints they made to the Authority and that they would be substantially distressed were the information requested to be disclosed.
47. The Commissioner agrees that the information requested would be information a person would generally expect to be kept confidential and only shared amongst limited individuals for specific purposes. He accepts that the data subject(s) would have no reasonable expectation that the information requested would be disclosed into the public domain (which is the effect of information being disclosed under the EIRs) and that disclosure would therefore be likely to cause the data subject(s) a degree of harm and distress.
48. After carefully balancing the legitimate interest of the Applicant against the interests or fundamental rights or freedoms of the data subject(s), the Commissioner finds that the legitimate interest served by disclosure of any information held would be outweighed by the unwarranted prejudice that would result to the rights and freedoms or legitimate interests of the data subject(s).
49. Having found that the legitimate interest served by disclosure of the personal data is outweighed by the unwarranted prejudice that would result to the rights and freedoms or

¹ <https://www.foi.scot/sites/default/files/2022-04/EIRs%20Guidance%20Regulation%2011%20Personal%20Data.pdf>

legitimate interests of the data subject(s), the Commissioner finds that condition (f) in Article 6(1) of the GDPR cannot be met in this case.

50. In the absence of a condition in Article 6(1) of the UK GDPR being met, the Commissioner must, therefore, conclude that that disclosure of the personal data would be unlawful and would therefore 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.
51. As stated above, the Authority also applied the exception in regulation 10(4)(e) of the EIRs to withhold the information that the Commissioner has found is not personal data and to which the exception in regulation 11(2) therefore does not apply. He will now consider whether the exception in regulation 10(4)(e) applies to this information and whether it applies to a single document which it withheld solely under this exception.
52. However, the Commissioner will not consider whether the information he has found was excepted from disclosure under regulation 11(2) of the EIRs is also excepted from disclosure under regulation 10(4)(e.)

Regulation 10(4)(e) – Internal communications

53. Regulation 10(4)(e) of the EIRs allows authorities to refuse to disclose internal communications. This is a class-based exception, meaning that there is no need to consider whether disclosure of the communication would cause harm before applying the exception.
54. For information to fall within the scope of the exception in regulation 10(4)(e) of the EIRs, it need only be established that the information is an internal communication.
55. As with all of the exceptions under regulation 10 of the EIRs, a Scottish public authority applying this exception must interpret it in a restrictive way and apply a presumption in favour of disclosure (regulation 10(2)). Even where the exception applies, the information must be disclosed unless, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception (regulation 10(1)(b)).
56. Having considered the withheld information under this exception, the Commissioner is satisfied that it constitutes internal communications and therefore the exception in regulation 10(4)(e) of the EIRs is engaged.
57. As the exception in regulation 10(4)(e) of the EIRs is subject to the public interest test in regulation 10(1)(b), the Commissioner must, therefore, go on to consider whether, in all of the circumstances of this case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exception.

The public interest test

58. Regulation 10(2)(b) of the EIRs builds in an explicit presumption in favour of disclosure, which makes it clear that where arguments are evenly balanced for withholding and disclosing the information, the information must be disclosed.
59. The starting position is, therefore, that there is a public interest in disclosure of environmental information (as expressed in the EIRs and associated EU Directive) and that only if there is a stronger competing public interest in withholding the information should exceptions be applied.

The Applicant's comments on the public interest

60. As rehearsed earlier, the Applicant has a range of concerns stemming from her experience at the address specified in the request and regarding the Authority's handling of the request. The Commissioner has fully considered these concerns in what follows, to the extent that they are relevant to the public interest test.

The Authority's comments on the public interest

61. The Authority acknowledged the public interest in transparency. However, it considered this factor was outweighed by the public interest in protecting the ability of its staff to share information and discuss options, to ensure that it found the best solutions.
62. The Authority explained that the request sought information relating to an allegation of a breach of planning control. It said that this allegation could ultimately result in the Authority taking formal enforcement action which, in turn, could result in a failure to comply with the notice being reported to the Procurator Fiscal for possible prosecution.
63. The Authority also submitted that investigations, findings and submissions on the matter would inform any subsequent decision on prosecution made by the Procurator Fiscal. It therefore considered that disclosure would be likely to prejudice substantially any future criminal investigation under the planning enforcement process, as well as being likely to prejudice actions potentially resulting from the investigation.
64. The Authority also expressed concern that making public information about enforcement investigations might discourage complainers from coming forward and providing full information.
65. In summary, the Authority concluded that the public interest was best served when its employees were able to share information in a free and frank manner and where it did not prejudice its ability to take all actions required in order to enforce its planning decisions.

The Commissioner's view

66. As stated above, the Commissioner must be careful not to reveal the specific content of the withheld information. However, he notes that the remaining withheld information that is being considered under the exception in regulation 10(4)(e) of the EIRs consists of routine administrative documents.
67. Given the nature of the remaining withheld information, the Commissioner does not agree that disclosure would be likely to materially impinge on the safe space within the Authority for sharing information and discussing options. For the same reason, he considers that any inhibition to the willingness of complainers to report issues to the Authority, or any prejudice to a possible prosecution, would be limited.
68. However, given the nature of the remaining withheld information, the Commissioner does not consider that it would not provide any significant insight into the substantive decisions taken by the Authority or the complaint(s) which led to these decisions.
69. In all of the circumstances, the Commissioner is not satisfied that the residual general public interest in transparency outweighs the public interest in protecting the Authority from the limited risk of prejudice to its ability to receive complaints and the limited risk of prejudice to any potential criminal investigation under the planning enforcement process. He therefore finds, on balance, that the Authority was entitled to withhold this information under the exception in regulation 10(4)(e).

70. As the Commissioner has found that the Authority was entitled to withhold this information under regulations 10(4)(e) and 11(2) of the EIRs he is not required to go on to consider whether the exception in regulation 10(5)(f) also applies to this information.

Decision

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

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