



Scottish Information
Commissioner
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Decision Notice 140/2026

Works at a specified address

Authority: Argyll and Bute Council
Case Ref: 202501535

Summary

The Applicant asked the Authority for drawings and correspondence relating to works at a specified address. The Authority withheld the information requested on the basis that disclosure would prejudice the confidentiality of proceedings. The Commissioner investigated and found that the Authority had not carried out adequate searches for some parts of the request and that it was not entitled to rely on the exception claimed for the information it had withheld. The Commissioner required the Authority to issue a revised review outcome to the Applicant.

Relevant statutory provisions

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

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of “the Act”, “applicant”, “the Commissioner” and “environmental information”) (Interpretation); 5(1), (2) (Duty to make environmental information available on request); 10(5)(d) (Exceptions from duty to make environmental information available); 17(1), (2)(a),(b) and (f) (Enforcement and appeal provisions)

The Building (Procedure) (Scotland) Regulations 2004 regulation 58(2),(3),(4) and (5) (Inspection of records and applications)

Background

1. On 28 June 2025, the Applicant made a request for information to the Authority. With reference to works at a specified address, he asked for electronic copies of:
 - (i) The approved building warrant drawings for the development;
 - (ii) The approved site plan, including all boundary dimensions and the declared site area;
 - (iii) Any amendments or variations submitted since the original warrant was granted;
 - (iv) Any correspondence confirming or discussing site measurements or boundary positions.
2. The Authority responded on 30 June 2025. It informed the Applicant that the information requested was contained within Part 2 of the Building Standards Register (the Register) and that copies could only be provided to an “interested party”, which it did not consider the Applicant to be.
3. On 24 July 2025, the Applicant wrote to the Authority requesting a review of its decision. He Applicant stated that he was dissatisfied with the decision because he disagreed with the assessment that he was not an interested party (i.e. that the information requested should be disclosed to him).
4. On 14 August 2025, the Authority requested evidence that the Applicant owned the adjoining property to the development in question. The Applicant provided evidence on the same day.
5. The Authority notified the Applicant of the outcome of its review on 19 August 2025. It informed the Applicant that it was withholding the information requested under the exception in regulation 10(5)(d) of the EIRs. However, it explained that the Applicant was entitled to view the warrant drawings (but not to take or obtain copies) and explained how he could do this.
6. On 28 October 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated that he was dissatisfied with the outcome of the Authority’s review because he did not believe that the exception in regulation 10(5)(d) of the EIRs applied or that the Authority had fully considered all parts of his request.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 28 October 2025, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the withheld information withheld (other than the warrant drawings, which the Commissioner understood to have been viewed by the Applicant). The Authority provided the information, and the case was allocated to an investigating officer.
9. 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 searches it had undertaken

in response to the request and the application of the exception in regulation 10(5)(d) of the EIRs.

Commissioner's analysis and findings

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

Handling in terms of the EIRs

11. The Authority considered the Applicant's request in accordance with the EIRs, on the basis that the information requested was environmental information, as defined in regulation 2(1) of the EIRs.
12. Where information falls within the scope of regulation 2(1) of the EIRs, a person has a right to access it (and the public authority has a corresponding obligation to respond) under the EIRs, subject to the various restrictions and exceptions contained in the EIRs.
13. Having considered the terms of the request and the nature of the information requested, the Commissioner accepts the decision of the Authority to deal with the request under the EIRs rather than under FOISA. He notes that the Applicant has not disputed the Authority's decision to handle his request under the EIRs.

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

14. Regulation 5(1) of the EIRs (subject to the various qualifications contained in regulations 6 to 12) 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 the information held by an 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 scope of the request. Having done so, regulation 5(1) of the EIRs requires the authority to make that information available, 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 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.
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 lies, the Commissioner considers 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 as to what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is actually held by the public authority (or was, at the time it received the request).

The Applicant's submissions

19. The Applicant did not believe that the Authority had considered or responded to all parts of his request, particularly parts (ii) and (iv).
20. During the investigation, the Applicant confirmed that part (iv) of his request was intended as a broad request and that it did not exclude internal correspondence

The Authority's submissions

21. The Authority submitted that it was clear that the information sought in parts (i) to (iii) of the request were held within Part 2 of the Register.
22. Regarding part (iv) of the request, the Authority explained it had interpreted it as seeking correspondence with parties other than the Applicant. However, it confirmed that Building Standards Officers involved in discussions with the Applicant undertook a search of their emails and identified a small amount of information which it considered should be withheld under the exception in regulation 11(1) of the EIRs.

The Commissioner's view

23. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority carried out adequate and proportionate searches in the circumstances to establish whether it held any information falling within scope of the parts (i) and (iii) of the request.
24. The Commissioner is therefore satisfied that the Authority complied with regulation 5(1) of the EIRs in terms of the searches it carried out in response to parts (i) and (iii) of the request.
25. However, regarding part (ii) of the request, the Commissioner notes that no document expressly identified as a site plan was provided to him. It is not clear whether the Authority considers the site plan to be subsumed into the warrant drawings (which the Commissioner did not request) or if no such plan was identified (despite comments implying this had been identified).
26. Regarding part (iv) of the request, the Commissioner is unclear – particularly given the terms of the request, which asked for “[a]ny correspondence” – why the Authority considered the request to be limited to correspondence with parties other than the Applicant. It is also not clear to the Commissioner whether the Authority carried out searches for purely internal correspondence.
27. Given these concerns, the Commissioner cannot be satisfied that the Authority has identified all relevant information falling within scope of parts (ii) and (iv) of the request. He therefore finds that the Authority failed to comply with regulation 5(1) of the EIRs in terms of the searches it carried out in response to parts (ii) and (iv).

Regulation 10(5)(d) – Confidentiality of proceedings provided for by law

28. The Authority withheld the information it identified under parts (i) and (iii) of the request under the exception in regulation 10(5)(d) of the EIRs.
29. The Authority also indicated that it considered the exception in regulation 10(5)(d) of the EIRs to apply to the information requested in part (ii) of the request. Given his findings above, the Commissioner has not gone on to consider whether this information is excepted under regulation 10(5)(d) of the EIRs, except insofar as this information might be contained within the information withheld under parts (i) and (iii).

30. Regulation 10(5)(d) of the EIRs provides that a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially the confidentiality of the proceedings of any public authority where such confidence is provided for by law.
31. As with all exceptions in regulation 10 of the EIRs, it is subject to the public interest test in regulation 10(1)(b), and in line with regulation 10(1)(a), must be interpreted in a restrictive way with a presumption in favour of disclosure.
32. The first matter for the Commissioner to consider is whether the information relates to proceedings of the Authority, the confidentiality of which is provided for by law. He must then consider whether disclosure of the information would, or would be likely to, prejudice substantially the confidentiality of those proceedings.
33. [The Aarhus Convention: An Implementation Guide](#)¹ notes (at document page 86) that the Convention does not define “proceedings of public authorities”. It suggests that one interpretation is that these may be proceedings concerning the internal operations of a public authority rather than substantive proceedings conducted by the public authority in its area of competence, and goes on to note that national law must provide a basis for the confidentiality.
34. The Commissioner’s [guidance on the EIRs](#)² notes that “proceedings” is not defined in the EIRs but will include a range of investigative, regulatory and administrative/governance processes and other activities carried out according to a statute.
35. The Authority confirmed that the proceedings in question were the building warrant process. It considered the confidentiality of this process to be provided for under regulation 58 of The Building (Procedure) (Scotland) Regulations 2004 (the 2004 Regulations).
36. The Commissioner agrees that the building warrant process constitutes proceedings for the purposes of the EIRs.
37. Having accepted that the information falls within the definition of “proceedings” for regulation 10(5)(d), the Commissioner must now determine whether the confidentiality of those proceedings is protected by law.
38. For information to be confidential under the common law, two main requirements must be met:
 - (i) The information must have the necessary quality of confidence about it, and it must not be generally accessible to the public already; and
 - (ii) The information must have been communicated in circumstances importing an obligation of confidentiality.
39. Although these tests are not directly applicable to a case, like this, where the Authority considers that confidentiality is provided for by the 2004 Regulations, they are helpful for informing consideration of whether confidentiality has genuinely been provided for and if disclosure would substantially prejudice any such confidentiality.

¹ https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf

² <https://www.foi.scot/sites/default/files/2022-03/EIRBriefingsExceptions.pdf>

Does the information have the necessary quality of confidence?

40. The Authority explained that it considered information within Part 2 of the Register to be confidential because of the restriction in only being able to provide copies to an “interested person”. However, it noted that the 2004 Regulations allow a person who is not considered to be an “interested person” to view Part 2 of the Register and noted that the Applicant in this case had taken the opportunity to view the Register.
41. Regulation 58(1) of the 2004 Regulations provides that Parts 1 and 2 of the Register shall be available for inspection by the public at all reasonable hours. Regulation 58(2) of the 2004 Regulations provides that copies of documents within Parts 1 and 2 of the Register shall be provided upon the payment of an appropriate fee. However, regulation 58(3) of the 2004 Regulations provides that documents shall not be made available for copying if either of two conditions apply:
- (i) the building is a non-residential building, copying would give rise to security concerns and no consent from the owner has been received; or
 - (ii) the building is a residential building to which the first condition does not apply, and the requester is not an interested party as defined in regulation 58(5) of the 2004 Regulations.
42. In this case, only the second condition has been suggested to apply.
43. Disclosure under the EIRs is disclosure to the world at large, not just to the Applicant. Whether the Applicant is an interested party, in terms of regulation 58(5) of the 2004 Regulations, is therefore not a relevant consideration for the Commissioner when considering the application of the exception in regulation 10(5)(d) of the EIRs.
44. As stated above, information within Part 2 of the Register is freely available for inspection. Clearly, disclosure to the Applicant – and, thus, to the world at large – would make the information more available, and less private, than permitting inspection within the Authority’s offices. However, effectively, the information is already available to the public at large. It is therefore, in a strict sense, not confidential at all.
45. Consequently, the Commissioner is not satisfied that the confidentiality of these proceedings would be substantially prejudiced by the disclosure of information that is already available for inspection.
46. In the circumstances, the Commissioner therefore finds that the Authority was not entitled to rely upon the exception in regulation 10(5)(d) of the EIRs to withhold the withheld information.
47. As the Commissioner has found that the exception in regulation 10(5)(d) does not apply to the withheld information, he is not required to go on to consider the public interest test.

Next steps

48. As stated above, the Commissioner has found that the Authority has failed to satisfy him that it has identified all relevant information in response to parts (ii) and (iv) of the request and that the Authority was not entitled to rely on the exception in regulation 10(5)(d) of the EIRs to withhold information under parts (i) and (iii) of the request.
49. The Commissioner therefore requires the Authority to issue a revised review outcome.

50. Before issuing the revised review outcome, the Authority must ensure that it undertakes adequate and proportionate searches to identify all relevant information and that the review outcome is in terms other than regulation 10(5)(d) of the EIRs in respect of the information it previously withheld under that exception for parts (i) and (iii) of the request. If the Authority wishes to withhold any of the information considered in its review outcome (including that it identified during the investigation and which it indicated was excepted from disclosure under regulation 11(1) of the EIRs), it must clearly identify any such information and justify and explain why it is being withheld.

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.

Specifically, the Commissioner finds that the Authority failed to comply with regulation 5(1) of the EIRS by:

- failing to satisfy him that it had identified all relevant information sought in parts (ii) and (iv) of the request
- incorrectly withholding information in parts (i) and (iii) of the request under the exception in regulation 10(5)(d) of the EIRs.

The Commissioner therefore requires the Authority to issue a revised review outcome to the Applicant, by **13 July 2026**. In doing so, he requires the Authority to have regard to the conditions set out in paragraph 50 above.

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

29 May 2026