Scottish Information Commissioner
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Decision Notice 186/2026

Farm inspection

Authority: Scottish Ministers
Case Ref: 202501147

Summary

The Applicant asked the Authority for information about farm inspections and the powers of inspectors. The Authority advised that it did not hold some of the information requested. The Commissioner investigated and found that the Authority partially complied with the EIRs in responding to the request.

Relevant statutory provisions

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

The Environmental Information (Scotland) Regulations 2004[2] (the EIRs) regulations 2(1) (definition of "the Act", "applicant" and "the Commissioner") (Interpretation); 5(1) (Duty to make environmental information available on request); 10(4)(a) (Information not held); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

Background

1. On 27 May 2024, the Applicant made a request for information to the Authority. See Appendix 1 for the full request wording for reference. Only certain parts of the multi-part request submitted by the Applicant are the subject of this investigation. Those parts covered by the investigation are set out below:

[1] https://www.legislation.gov.uk/asp/2002/13/contents
[2] https://www.legislation.gov.uk/ssi/2004/520/contents/made

i.

a) What is an RPID Officer allowed to discuss with an Agent?

b) Is an RPID Officer allowed to ask an Agent to make decisions on behalf of the client?

c) Are any RPID Officers allowed to have internal meetings to discuss asking the Agent to "liaise with the client to ensure family give authority for decisions to made for the business" and "get something in writing" to have the right to make decisions on behalf of the client".

ii.

a) Can an RPID Officer ask an Agent to be the "Responsible Person" for an Inspection?

b) Asking the Agent to make decisions on whether an animal could be "shot immediately on-site" and "be held back and slaughtered on the farm for uplift by the Fallen Stock Company"?

iii.

a) Following an illness as above, should the option of "force majeure and exceptions circumstances" have been offered by RPID, or at least discussed with the client?

b) Is an RPID Officer allowed to make the decision for the Inspection to go ahead without knowing how ill [name] was at the time, or discussing it with the other partner in the Business?

Detail was included in an RPID Report that [name] was "required for identifying and DNA testing" and was not in a position to do this. There was also a doctor's note to confirm [pronoun] "physical health". Should this have been taken into consideration as part of the Inspection and any outcomes?

iv.

a) Are there any circumstances that an RPID Officer can discuss a client's business information with a third party without consent or a mandate being in place?

b) Can you provide details of the area that covers a business data breach and a breach in confidentiality?

c) Is there any recompense for RPID Officers discussing business data and a breach of confidentiality with third parties without a mandate being in place?

v. What can be done if a Report, which is used to make decisions, is inaccurate, information omitted or information mis-leading to the audience?

vi. Can penalties be applied for 8 years previous when there is no time-scale provided?

vii. Article 31 states that "If that amount cannot be offset in the course of the three calendar years following the calendar year of the findings, in accordance with the rules laid down by the Commission .... " then follows, "the outstanding balance shall be cancelled". If the Findings Report was provided by RPID in December 2023, I read the above that any penalties should be offset in 2024, 2025 and 2026 - the following 3 calendar years.

a) Is this correct? Or are RPID allowed to withhold 2022 and 2023 payments to allow deductions to be made from them?

b) If this is so, where does it state payments can be withheld for this reason?

viii. Notice of Registration/Cattle inspection Appeal.

On form PF19 it states that an appeal meeting should be held within 60 days, and the outcome report provided within 60 days of the meeting. Only after waiting the initial 60 days, I was informed that this appeal is out of the normal scope and did not need to adhere to these time-scales.

a) Please can you provide details of where it states that this appeal is out of the normal scope and does not have to adhere to these time-scales?

b) If this is correct, is there a procedure in place that the client should be informed of this when submitting the appeal, along with being provided with time-scales of when the appeal is likely to be completed?

2. The Authority responded on 24 June 2024 in terms of EIRs by informing the Applicant that as the requested information was available from its rural payments and inspection guidance, which was accessible on its website, it was relying on regulation 6(1)(b) of the EIRs because the information was already publicly available and easily accessible in another form or format.

3. On 26 June 2024, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that she was dissatisfied with the decision because she did not consider the publications and correspondence, she had been directed to answer her request, or that she had been given a complete response.

4. The Authority notified the Applicant of the outcome of its review on 23 July 2024. The Authority upheld the original response in full but did provide some additional commentary and some web links to relevant legislation.

5. Following an application to the Commissioner on 16 October 2024, Decision Notice 091/2025[3] was issued to the Authority. This Decision Notice found that the Authority was not entitled to rely on regulation 6(1)(b) in response to the request and required it to carry out thorough and comprehensive searches for information falling within scope of the Applicant's request (and provide evidence of these searches) as well as issuing a revised review outcome.

6. The Authority notified the Applicant of the outcome of its revised review on 4 June 2025. The Authority advised that no information was held that specifically addressed parts i., iii., and iv(b) of the request. The Authority attempted to address the questions, providing some information and completing a public interest test in favour of upholding the exception in 10(4)(a) (information not held). The Authority provided information in response to the other parts of the Applicant's request.

7. On 16 July 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 she was dissatisfied with the outcome of the Authority's

[3] https://www.foi.scot/decision-0912025

revised review because she did not agree that it addressed all of her questions, she did not agree with its application of the public interest test, and she did not believe it held no further information.

Investigation

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

9. On 8 September 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.

10. 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 why it considered it did not hold any information relating to parts i., and iii., and iv.(b)., of the request, and some contextual questions about the statutory obligations in this area of service provision. Submissions were also sought from the Authority on its consideration of the application of the public interest test. The Authority was also asked to comment on the Applicant's view that the information/explanation provided in response to parts ii., v., vi, vii and viii did not fulfil her request and whether it held any recorded information which would fulfil these parts of the request.

Commissioner's analysis and findings

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

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

12. 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 information that is held by the authority when it receives a request.

13. 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 regulation 6 to 12 applies (regulation 5(2)(b)).

14. 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.

15. 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 falling within the scope of parts i., iii., and iv.(b) of the Applicant's request.

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

16. 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.

17. 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.

18. The Commissioner also considers, where appropriate, any reasons 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 information is (or was, at the time the request was received) held by the public authority.

The Authority's submissions

19. The Authority submitted that this request was one in a series from this Applicant relating to the outcome of a farm inspection and whilst the recorded information it held did not specifically address the questions asked, it had supplied some contextual information and an attempt to answer the questions was made.

20. The Authority explained that the Rural Payments and Inspections Division (RPID) completed a farm inspection at the cattle business concerned. The Inspection was conducted over a number of months, during which time, some animals died and the traceability for other animals was found to have been lost and therefore not compliant with the Cattle Identification (Scotland) Regulations 2007 (as amended)[4].

21. The Authority believed that this request and appeal are part of a campaign, by the Applicant, to challenge its actions and decision making in relation to the inspection outcome when these aspects have been properly challenged through the appeals process and the Scottish Land Court.

22. The Authority cited evidence of searches and how these were undertaken, which was submitted as evidence of compliance in relation to Decision Notice 091/2025[5]. The Authority posit that the Commissioner confirmed that it had complied with the requirements of decision 091/2025. It therefore understood that, given the terms of that Decision Notice, by confirming compliance the Commissioner had confirmed that he was satisfied with the searches conducted and the interpretation of the request.

23. The Authority advised that it conducted a targeted search of its records management system because the questions in parts i., to iv., were all related to what inspectors are able to do during cattle inspections. The Authority stated that a folder keeping guidance documents relating to this area was identified and within that a document called 'Cattle Inspection Guidance for 2022-2023'. The Authority commented that this document contains detailed guidance for inspectors on how to conduct inspections and is where relevant information is held.

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[4] https://www.legislation.gov.uk/ssi/2007/174/contents

[5] https://www.foi.scot/decision-0912025

24. The Authority described a series of searches in the Cattle Inspection Guidance document using parts of the questions. For example, 'what is an RPID officer allowed to discuss with an agent', 'responsible person', and 'Force Majeure' were searched for, yielding no results. 'Exceptional circumstances' was searched for and the results deemed to be not relevant. The search term 'agent' returned one result and a screenshot provided evidenced that this was not relevant. The RPID Powers of Entry – Legislation List which was supplied in full to the Applicant as answer to part 1 was also searched for 'Agent' and yielded no results.

25. A manual search was completed on the legislation The Cattle Identification (Scotland) Regulations 2007[6] and the findings in Regulation 10 – 'Powers of Inspectors', was supplied to the Applicant in the Authority's response, for assistance. The Authority also supplied a copy of the PF05 Business Mandate Form[7], for assistance.

26. The Authority described searching its website for information in relation to part ii., of the request and finding the Roles and Responsibilities[8] section to be relevant and supplying parts of this for assistance.

27. The Authority believed that it had supplied everything it could and provided more than enough advice and assistance to the Applicant in the process.

The Applicant's submissions

28. The Applicant advised that she believes that the information requested is of interest to the public as well as herself.

29. The Applicant would like to understand why certain things happened during the course of the investigation and questioned where within any mandate or guidance/regulations etc it states that inspectors are able to do this, for their own information, as well as providing clarity on the overall inspection. The Applicant commented that farmers are the public and these questions over what Agents can do between RPID and themselves is of great interest to them.

30. The Applicant stated that understanding what happens when there is an unexpected illness during an inspection would be of benefit to the wider public also.

31. The Applicant believes that data protection is very much in the public interest. It is her view that every member of the public wants to be assured that their information is safe and secure at all times and not released to anyone without consent or the appropriate mandates being in place.

The Commissioner's view about 10(4)(a)

32. The Commissioner has considered this case carefully and recognises the complexity of the legislative obligations of the Authority, as well as the personal investment of the Applicant.

33. The Commissioner appreciates the depth of this investigation to have been met with prompt and thorough responses from the Authority.

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[6] https://www.legislation.gov.uk/ssi/2007/174/contents

[7] https://www.ruralpayments.org/media/resources/PF05-Business-mandate-form-for-offline-businesses---June-2025---Future-Farming-Investment-Scheme.pdf

[8] https://www.ruralpayments.org/topics/customer-services/getting-online/

34. The Commissioner has been careful here to remain within the confines of the remit of his office and therefore can only provide consideration to whether the Authority fulfilled its obligations under the EIRs.

35. Generally, the Commissioner considers the Authority's evidence of searches, whilst compliant for the purposes of Decision Notice 091/2025, demonstrate a very limited search of a document that on closer scrutiny could have offered greater understanding to the Applicant. Perhaps this is also an example of where the relationship between Applicant and Authority has been eroded so significantly that answering such questions in this manner appears restrictive rather than helpful.

36. The Commissioner notes that the Authority identified the Cattle Inspection Guidance for 2022-2023 document as relevant enough to the request to complete searches within it but then submitted during the course of the investigation that the Cattle Inspection Guidance document was not within scope of the request; a contradictory position that gives the impression of being obstructive. The Commissioner found several sections within this document that could support a better understanding and address directly parts of the Applicants request.

37. The Commissioner, therefore, finds that the Authority was not correct to rely on regulation 10(4)(a) with regard to information which would fulfil parts i(a), i(b), and all of iii of the Applicant's request and he requires the Authority to reconsider the information provided to the Commissioner, specifically the cattle Inspection Guidance document, and provide a new review outcome in this respect.

38. Whilst the Commissioner believes that the Authority cannot rely on 10(4)(a) for all of iii. The Commissioner accepts that the Authority did answer parts iii(a) and iii(c) as it provided part of the appeal report for the inspection which would reasonably answer these questions. As such, iii(b) is the only part of this question that the Commissioner considers as being covered by 10(4)(a).

39. As the Commissioner finds that the Authority was not entitled to rely on regulation 10(4)(a) of the EIRs, he is not required to go on to consider the application of the public interest test in regulation 10(1) in respect of parts i.(a), i.(b), and iii.(b).

40. However, in respect of parts i.(c) and iv.(b), the Commissioner can only focus on what recorded information is actually held by the Authority (or was at the time of the request). While the Applicant believed and expected the specified information to be held by the Authority, the Commissioner is satisfied, on the basis of the submissions from the Authority, that this is not the case.

41. The Commissioner therefore concludes that the Authority was correct to give the Applicant notice, in terms of regulation 10(4)(a) of the EIRs, that it did not hold the information which would fulfil parts i.(c) and iv.(b).

The public interest test

42. 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, the public interest in making the information available is outweighed by that in maintaining the exception.

43. The question of whether or not 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.

44. The Applicants submissions in relation to why she considers there to be a public interest in disclosure of the requested information are set out in paragraphs 28 to 31 above.

45. The Authority agreed that there was a public interest in understanding how farm inspections worked and the basis on which decisions were made. The Authority also recognised the general public interest in the information for reasons of openness, transparency and accountability. However, the Authority commented that this information was not held and so could not be provided. It therefore concluded that there was no public interest in requiring it to provide information it did not hold.

46. In this case, for the reasons set out above, the Commissioner is satisfied that the Authority did not hold the information requested in relation to i.(c) and iv.(b), on receipt of the request. Consequently, he 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.

Did the Authority answer all parts of the Applicants request

47. The Applicant believed that the Authority did not provide a response to all aspects of her request.

48. The Applicant commented that the request was very specific in requesting the Authority to "provide any guidance, procedures, constitution, regulatory, legal or other similar documentation, highlighting the specific area within these documents which answers the following questions", and the Authority had not provided this in every instance. The Applicant explained that the links were not easy to navigate and in most instances did not answer the question asked.

49. The Authority submitted that it had answered the Applicant's questions as best as it could, on the basis of the recorded information held. It recognised that the Applicant might be unhappy with the responses but commented that they were the answers to her questions. The Authority stated that it had no more recorded information to provide to the Applicant in respect of these questions.

50. The Commissioner has carefully considered the responses provided by the Authority to all of the questions posed and notes that the Authority did answer questions ii.(a), iii.(a),, iii(c), iv.(a), iv.(c), v., vi., vii., and viii.

51. The Commissioner has considered the information supplied in answer to these parts of the request and recognises that the Authority was operating within the confines of the recorded information it actually held. However, the Commissioner would also draw the Authority's attention to the Regulation 10(4)(a) Briefing[9] document, which provides advice on answering "yes/no" questions. The responses to questions ii.(a), iv.(a) and vii.(a), could have been clearer if a direct answer had been supplied. As it is, the explanation provided and references to guidance/legislation left the answer open to some interpretation but answered, nonetheless.

52. In relation to questions iii.(a) and (c), the Authority's response provided an answer to these questions in referencing the part of the report acknowledging specific circumstances around the inspection (a report already supplied to the Applicant). Question iv.(c) was answered directly. Question v. was answered with links to relevant sections of the RPID website, which were reasonably accessible. Question vi. was answered directly and with signposting to the

[9] https://www.foi.scot/sites/default/files/2022-04/InformationNotHeldEIRs%20%281%29.pdf

relevant legislation, along with a link to it. Question vii.(b) was answered with some guidance information and a reference to the relevant legislation, along with a link. Question viii. was answered with some guidance, reference to other information already supplied and a link to the review form. There appeared to be some confusion on the Applicant's side about processes here.

53. The Commissioner would also remind applicants that it is not the responsibility of this office, or indeed the Authority, to explain how legislation/guidance (outside of this office's jurisdiction) applies to an Applicants specific circumstances; that would be for Applicants to pursue with an independent legal advisor.

54. The Commissioner observes that the style of the questions in this case likely made it more complicated than necessary.

55. However, in reviewing the responses from the Authority to the Applicant, the Commissioner finds that the Authority does not appear to have provided a response to part ii.(b) of the request. This was where the Applicant asked whether an Agent could be asked to make decisions on whether an animal could be "shot immediately on-site" and "be held back and slaughtered on the farm for uplift by the Fallen Stock Company"? Whilst the Authority provided the Applicant with information which set out the roles and responsibilities of Advisory Firms and Responsible Persons, it did not specifically address the question asked at part ii.(b).

56. Whilst the Commissioner recognises that cattle farming regulation is governed by extensive and complex legislation, the Commissioner also notes that it is the Authority which has the expertise here. The communication styles on both sides were unhelpful and possibly led to the missed question.

57. The Commissioner therefore finds that the Authority should address the remaining question directly as part of the revised review outcome.

Decision

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

The Commissioner finds that by relying on regulation 10(4)(a) with regard to parts i.(c) and iv.(b) of the Applicant's request, the Authority complied with the EIRs.

However, by relying on regulation 10(4)(a) with respect to parts i.(a), i.(b), and iii.(b) (when it was not entitled to do so, in breach of regulation 5(1)), the Authority failed to comply with the EIRs.

The Commissioner therefore requires the Authority to:

- reconsider whether any of the further information it identified in its searches and supplied to the Commissioner falls within scope of the Applicant's request,
- provide the Applicant with a revised review outcome (in terms of regulation 16 of the EIRs) in respect of parts i.(a), i.(b), and iii.(b), either disclosing the information which falls within scope or explaining why (in accordance with any relevant provision in the EIRs, except regulation 10(4)(a)) the information cannot be disclosed.

- Address and respond to question ii(b).

The Commissioner requires the Authority to do this by 7 September 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

24 July 2026

Appendix 1

i. “What is an RPID Officer allowed to discuss with an Agent? Is an RPID Officer allowed to ask an Agent to make decisions on behalf of the client? Are any RPID Officers allowed to have internal meetings to discuss asking the Agent to "liaise with the client to ensure family give authority for decisions to made for the business" and "get something in writing" to have the right to make decisions on behalf of the client". All done/discussed without the knowledge of the client.

ii. I have been informed that an RPID Inspector has "no authority to have animals shot". Can an RPID Officer ask an Agent to be the "Responsible Person" for an Inspection? Asking the Agent to make decisions on whether an animal could be "shot immediately on-site" and "be held back and slaughtered on the farm for uplift by the Fallen Stock Company"? All done/discussed without the knowledge of the client.

iii. Article 4 - An explanation has been supplied here for "force majeure and exceptional circumstances". It also detail an explanation "if a beneficiary has been unable to comply with the eligible criteria or other obligation as a result of force majeure or exceptional circumstances he shall retain his right to as in respect of the area or animals eligible at the time when the case of force majeure or the exceptional circumstance occurred". An RPID Officer was verbally asked on the 13th February 2023 if the Inspection could be postponed, but informed that the decision had already been made and the inspection "had to go on" prior to this date and without any discussing it with the client. The client was unaware of this exception when asking for the postponement on 13th February 2023 and only found out about this exception following completion of the inspection on-site. Following an illness as above, should the option of "force majeure and exceptions circumstances" have been offered by RPID, or at least discussed with the client? Is an RPID Officer allowed to make the decision for the Inspection to go ahead without knowing how ill [name] was at the time, or discussing it with the other partner in the Business? Detail was included in an RPID Report that [name] was "required for identifying and DNA testing" and was not in a position to do this. There was also a doctor's note to confirm [pronoun] "physical health". Should this have been taken into consideration as part of the Inspection and any outcomes?

iv. Are there any circumstances that an RPID Officer can discuss a client's business information with a third party without consent or a mandate being in place? I have been informed that "data protection" only covers personal data. Can you provide details of the area that covers a business data breach and a breach in confidentiality? Is there any recompense for RPID Officers discussing business data and a breach of confidentiality with third parties without a mandate being in place?

v. What can be done if a Report, which is used to make decisions", is inaccurate, information omitted or information mis-leading to the audience?

vi. 1306/2013, Article 58 covers - Protection of the financial interests of the Union as well as Article 59 which covers - General principles of checks, and Article 63 covers Undue payments and administrative penalties. Can penalties be applied for 8 years previous when there is no time-scale provided?

vii. Article 31 states that "If that amount cannot be offset in the course of the three calendar years following the calendar year of the findings, in accordance with the rules laid down by the Commission .... " then follows, "the outstanding balance shall be cancelled". If the Findings Report was provided by RPID in December 2023, I read the above that any penalties should be offset in 2024, 2025 and 2026 - the following 3 calendar years. Is this correct? Or are RPID allowed to withhold 2022 and 2023 payments to allow deductions to be made from them? If this is so, where does it state payments can be withheld for this reason?

viii. Notice of Registration/Cattle inspection Appeal. On form PF19 it states that an appeal meeting should be held within 60 days, and the outcome report provided within 60 days of the meeting. Only after waiting the initial 60 days, I was informed that this appeal is out of the normal scope and did not need to adhere to these time-scales. Please can you provide details of where it states that this appeal is out of the normal scope and does not have to adhere to these time-scales? If this is correct, is there a procedure in place that the client should be informed of this when submitting the appeal, along with being provided with time-scales of when the appeal is likely to be completed?"