



Scottish Information
Commissioner
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Decision Notice 191/2026

Correspondence and communications between Prince William and the First Minister regarding certain environmental issues

Authority: Scottish Ministers
Case Ref: 202600441

Summary

The Applicant asked the Authority for correspondence and communications between Prince William and the First Minister regarding certain environmental issues generated over a specified period. The Authority informed the Applicant that it did not hold the information requested. The Commissioner investigated and found that the Authority had been entitled to inform the Applicant that it did not hold the information requested.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 39(2) (Health, safety and the environment); 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) (Duty to make environmental information available on request); 10(1), (2) and (4)(a) (Exceptions from duty to make information available); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 5 December 2025, the Applicant made a request for information to the Authority. He asked for correspondence and communications generated between 5 December 2024 and the date of his request from:

- (i) Prince William/the Duke of Rothesay (and anyone known to have corresponded and communicated on his behalf) to John Swinney in relation to certain environmental issues.
 - (ii) John Swinney (and anyone known to have corresponded and communicated on his behalf) to Prince William/the Duke of Rothesay.
2. The Applicant specified the environmental issues referred to in the preceding paragraph as follows:
 - (a) Housing provision within Scotland and the need to build more sustainable housing.
 - (b) Sustainable development in Scotland.
 - (c) Farming and/or agriculture and/or food production in Scotland.
 - (d) The state of Scotland's waterways and rivers and/or lakes.
 - (e) Pollution in Scotland.
 - (f) The impact of climate change in Scotland and the best way of tackling climate change.
 - (g) Scotland's woodland and forests and/or the issue of deforestation in Scotland.
 3. The Authority responded on 5 January 2026. It informed the Applicant that it held no information falling within the scope of his request and issued him with a notice to this effect in terms of regulation 10(4)(a) of the EIRs.
 4. On 14 January 2026, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied because he considered it likely that the Authority held information relevant to his request.
 5. The Authority notified the Applicant of the outcome of its review on 10 February 2026, which fully upheld its original response.
 6. On 6 March 2026, 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 believed that the Authority held information relevant to his request due to the Duke of Rothesay's constitutional position and ongoing interest in matters relating to the environment.

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 19 May 2026, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently 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 about its reasons for concluding that it held no relevant information.

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. 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.
12. 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.

Section 39(2) – Environmental information

13. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined by regulation 2(1) of the EIRs) is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs.
14. As noted above, the Commissioner accepts that the Authority was entitled to apply this exemption to the information requested, given his finding that the Authority was entitled to classify the information requested as environmental information.
15. As there is a statutory right of access to environmental information available to the Applicant in this case, the Commissioner accepts, in all the circumstances, that the public interest in maintaining this exemption (and responding to the request under the EIRs) outweighs any public interest in dealing with the request under FOISA. Both regimes are intended to promote public access to information and there would appear to be no reason why (in this particular case) disclosure of the information, if held, should be more likely under FOISA than under the EIRs.
16. The Commissioner therefore concludes that the Authority would have been entitled to apply section 39(2) of FOISA and to consider the Applicant's information request under the EIRs. The Commissioner will consider the request in what follows solely in terms of the EIRs.

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

17. 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.
18. 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)).
19. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 applies.

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

20. Regulation 10(4)(a) of the EIRs states that a Scottish public authority may refuse to make information available to the extent that it does not hold that information when it receives the request.
21. The standard of proof to determine whether a Scottish public authority holds the information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.
22. 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 Applicant's submissions

23. The Applicant considered it highly likely that the Authority held information relevant to his request, not least because the Duke of Rothesay has an active interest in matters relating to the environment, sustainable development and housing.

The Authority's submissions

24. To establish whether it held information relevant to the request, the Authority explained that it considered that searches of its electronic records management system (eRDM), together with searches by the First Minister's Private Office would be sufficient. It expected that all correspondence, if held, would be saved to eRDM as this is where recorded information is saved as part of the corporate record.
25. At request stage, the Authority carried out the following keyword searches of the entirety of the eRDM global directory for the period specified in the request:
 - Prince William – 0 documents identified;
 - Duke of Rothesay – 12 documents identified, 0 within scope;
 - Prince of Wales – 19 documents identified, 0 within scope;
 - Prince – 82 documents identified, 0 within scope.
26. The Authority noted that these searches did not include the topics specified in the request, but it explained that the searches were broad enough to capture all the information requested (if held).
27. At the review stage, the Authority conducted additional searches to:
 - check the document content in addition to the document name;
 - not limit the searches by the date on which a document was added to eRDM, in order to capture documents potentially added after 5 December 2025 that might relate to the period specified in the request;
 - search using other titles held by Prince William (in addition to Prince of Wales and Duke of Rothesay).
28. As part of these additional searches, the Authority used the following keywords:

- Prince William OR Prince of Wales OR Duke of Rothesay AND First Minister OR John Swinney – 165 results;
 - Duke of Cambridge OR Duke of Cornwall AND First Minister OR John Swinney – 77 results;
 - Earl of Carrick OR Earl of Strathearn OR Baron of Renfrew AND First Minister OR John Swinney – 10 results;
 - Lord of the Isles OR Great Steward of Scotland AND First Minister OR John Swinney – 464 results;
 - Duke of Rothesay – 12 results (the same as in the original searches);
 - Prince William – 0 results (the same as in the original searches);
 - Prince of Wales – 19 results (the same as in the original searches);
 - Prince – 88 results (6 additional results compared with the original searches).
29. The Authority confirmed that it had reviewed each of these results and that none fell within the scope of the request.
30. The Authority explained that the Planning Architecture and Regeneration Directorate led on responding to the request and the requirement for review, but that the information reviewed, as expected, crossed many areas of the Authority.
31. The Authority stated that it engaged the First Minister's Private Office, which confirmed that no communications relevant to the request had taken place over the period specified and that no information relevant to the request was held. It stated that the search conducted by the First Minister's Private Office would have captured any other information (if held) that had not been saved to eRDM (e.g. diaries or correspondence not yet saved to the corporate record).

The Commissioner's view

32. The Commissioner has taken account of the submissions provided by both parties.
33. 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 the scope of the request.
34. The Commissioner considers that the Authority's searches were reasonable, in terms of the staff and departments consulted, the search terms used and the locations searched; he finds that they would be capable of locating the information requested.
35. In the circumstances, the Commissioner is therefore satisfied, on the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold any information falling within the scope of the Applicant's request.
36. While the Applicant believed and expected that the Authority held the information requested, the Commissioner is satisfied that this was not the case. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide.

37. 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 requested.

The public interest test

38. 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 the public interest in making the information available.
39. 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.
40. 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.
41. Consequently, the Commissioner accepts that there is no conceivable public interest in requiring the disclosure of information that is not held and finds that the public interest in making information available is outweighed by that in maintaining the exception.

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.

Cal Richardson
Deputy Head of Enforcement

28 July 2026