



Scottish Information
Commissioner
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Decision Notice 192/2026

Records relating to pigeons trapped by netting

Authority: Glasgow City Council
Case Ref: 202301180

Summary

The Applicant asked the Authority for records regarding pigeons being trapped by netting under Partick railway bridge and other locations in Glasgow in July 2020 and August 2020. The Authority disclosed information to the Applicant, subject to some redactions. During the Commissioner's investigation, the Authority located further relevant information. The Commissioner found that the Authority had breached the EIRs by failing to identify the information requested as environmental information and by failing to identify all information held at the time of the request. However, he was satisfied, by the close of the investigation, that the Authority had identified all information falling within the scope of the request.

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) (Duty to make environmental information available on request); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 3 July 2023, the Applicant made the following request for information to the Authority:

“Please send me the full [Authority] records regarding pigeons being trapped by netting under Partick railway bridge and other locations in Glasgow in July 2020 and August 2020.”

2. The Authority responded on 27 July 2023 in terms of FOISA. It informed the Applicant that it did not hold the information requested and issued him with a notice, in terms of section 17(1) of FOISA, to that effect.
3. On 28 July 2023, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he believed that the Authority held information relevant to his request. In particular, he referred to articles published by the Evening Times and the Daily Record in July 2020 regarding pigeons being trapped under Glasgow bridges. He submitted that the contact made by the journalists with the Authority regarding this matter would have resulted in information falling within the scope of his request being created.
4. The Authority notified the Applicant of the outcome of its review on 23 August 2023. It identified email correspondence falling within the scope of the request, which it disclosed to the Applicant (subject to certain redactions to out-of-scope information and third-party personal data under the exemption in section 38(1)(b) of FOISA).
5. On 19 September 2023, 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 Authority’s review because he still did not believe that it had identified and disclosed all of the information it held falling within the scope of his request. (The Applicant did not challenge the Authority’s application of the exemption in section 38(1)(b) of FOISA to withhold some third-party personal data.)

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 29 September 2023, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and invited its comments.
8. The case was subsequently allocated to an investigating officer.
9. During the investigation, the Commissioner sought, and obtained, further comments from the Authority regarding how it established what information it held falling within the scope of the request.
10. As stated above, the Applicant did not challenge the Authority’s reliance on section 38(1)(b) of FOISA in his application. The Commissioner will therefore not consider the application of that exemption (or the equivalent exception under the EIRs) in his decision notice.

Commissioner’s analysis and findings

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

FOISA or EIRs?

12. "Environmental information" is defined in regulation 2(1) of the EIRs. Where information falls within the scope of this definition, a person has a right to access it under regulation 5(1) of the EIRs, subject to various restrictions and exceptions contained in the EIRs.
13. As stated above, the Authority considered the request under FOISA. However, during the investigation, the Authority reconsidered matters and accepted that the request ought to have been considered under the EIRs.
14. The Commissioner is satisfied that the information requested falls within the scope of the definition of environmental information contained in regulation 2(1) of the EIRs. He will therefore consider the request in what follows solely in terms of the EIRs.
15. Given that the information requested is properly considered to be environmental information, the Authority had a duty to consider it in terms of regulation 5(1) of the EIRs. In failing to do so, the Authority failed to comply with regulation 5(1).

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

16. 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, as opposed to information an applicant believes the authority should hold, but which is not in fact held.
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 held, at the time it received the request).

Information disclosed during the investigation

19. During the investigation, the Authority identified further information falling within the scope of the request. It disclosed this information to the Applicant (subject to the redaction of third-party personal data).
20. This information should have been disclosed to the Applicant by the date of the review outcome (at the latest). The Commissioner must therefore find that the Authority's failure to disclose this information in response to the initial request or requirement for review was a breach of regulation 5(1) of the EIRs.

Whether the Authority holds any further relevant information

21. In response to receiving further information from the Authority during the investigation, the Applicant confirmed that he still required a decision notice from the Commissioner. The Commissioner will therefore consider whether the Authority holds any further information falling within the scope of the request.

The Applicant's submissions

22. The Applicant stated that he was dissatisfied with the Authority's review outcome as he did not believe it had identified all of the information requested.
23. In particular, the Applicant explained that he believed that the Authority held the following further information falling within the scope of his request:
 - complaints and responses from members of the public regarding this "very visible" issue
 - records of email and telephone correspondence with whoever the Authority got to install the netting and later remove the dead birds, which he said was done within days of the newspaper articles referred to in his requirement for review
 - reports and records of the teams and staff of the Authority that visited the bridge to clear the dead birds and put up the netting
 - instructions given to these teams and staff on their future conduct and questions regarding how the issue happened

The Authority's submissions

24. At request stage, the Authority explained that officers within the Performance and Information Management Unit (PIMU) were tasked with carrying out searches. It explained that, at this stage, it believed the incident related to a pest control and environmental and/or public health issue. As such, the searches carried out were restricted to these officers within PIMU.
25. The Authority confirmed that no records were found on the Authority's "Remedy recording system" regarding trapped pigeons for the dates provided by the Applicant. A further search on this system was completed using the search terms "birds / pigeons", which returned no results. This was peer checked by another member of staff, who confirmed the results of the initial search.
26. The Authority added that Environmental Health confirmed that it held no records falling within the scope of the request. This conclusion was reached following a search, using the search term "pigeon" of the Authority's "Uniform" database, the Environmental Health department's main method of logging and managing service requests, which yielded no results. It explained that animal welfare enquiries usually went to agencies such as the SSPCA or RSPB.
27. Following receipt of the Applicant's requirement for review, the Authority commented that it became apparent that further searches by other officers were required.
28. The Authority explained that those officers who had provided a response to the initial request were again contacted to request a further check of their records. However, these further searches did not yield any results.
29. The Authority stated that officers from the Authority's press team and those responsible for the maintenance of bridges within Glasgow were also contacted and asked to search their records. These officers and departments were identified as those who may have been involved in investigating the incident or responding as part of the newspaper articles referred to by the Applicant.
30. The Authority explained that it contacted the Public Relations officer who had provided a response to the newspaper articles and the relevant officers within the Neighbourhoods,

Regeneration and Sustainability (NRS) department responsible for bird-proofing bridges in Glasgow.

31. The Authority confirmed that each of these officers carried out searches of their Microsoft Outlook mailboxes, the only place that any such information would be shared and stored for them, using the period specified in the request along with the search term “pigeon”.
32. The Authority noted that these additional searches identified emails falling within the scope of the request, with the officers confirming that there was no record of any phone calls or Microsoft Teams messages or calls having taken place. It disclosed these emails to the Applicant at the review stage, subject to redactions to out-of-scope information and third-party personal data.
33. During the investigation, the Authority confirmed that it identified some further information that it believed it should have identified and disclosed to the Applicant earlier. It explained that the failure to identify these documents earlier was the result of human error and not a deliberate attempt to mislead the Applicant or frustrate his rights under FOISA or the EIRs.
34. The Authority submitted that the further information related to the approved pest control company used by the Authority to remove trapped, dead birds under bridges and provide bird proofing and an internal email formulating a response to the press team. As noted above, the Authority disclosed this information to the Applicant (subject to the redaction of third-party personal data).
35. The Commissioner asked the Authority to account for why this information was not identified earlier. The Authority provided further details and evidence of the searches it undertook in response to the request and confirmed that it considered it otherwise wished to rely on its position that it had identified all information falling within the scope of the request.

The Commissioner’s view

36. Having considered all relevant submissions and the nature of the information requested, the Commissioner accepts that (by the close of the investigation) the Authority took adequate, proportionate steps in the circumstances to establish what information it held falling within the scope of the request.
37. The Commissioner considers that the Authority’s searches were (by the close of the investigation) reasonable in terms of those asked to carry out the searches and the locations searched; he finds that they would be capable of locating any further information relevant to the request, if it were held. He is therefore satisfied, on balance, that (by the close of the investigation) the Authority identified and located all the relevant information it held.
38. While the Applicant believed and expected further relevant information to be held by the Authority, the Commissioner is satisfied, on balance, by the close of the investigation, 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.
39. The Commissioner would urge all public authorities to ensure they take adequate, proportionate steps in the circumstances to establish what information they hold when responding to information requests and to ensure that, at the earliest opportunity – and by the date of the review outcome, at the latest – requesters receive full responses to their requests.

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 identify the information requested as environmental information and to deal with the request accordingly under the EIRs
- failing to identify and locate all the relevant information it held falling within the scope of the request by the date of the review outcome (at the latest).

Given that the Authority identified and located all the relevant information it held by the close of the investigation (which it has disclosed to the Applicant, subject to some redactions), 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.

Cal Richardson
Deputy Head of Enforcement

28 July 2026