



Scottish Information
Commissioner
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Decision Notice 194/2026

Purchase of development site

Authority: Highland Council
Case Ref: 202500512

Summary

The Applicant asked the Authority for documentation containing references to the purchase of the site at the House of Rosskeen. The Authority disclosed some information and withheld other information. During the investigation, the Authority located and disclosed further information to the Applicant. The Commissioner investigated and found that the Authority had breached the EIRs by failing to identify all information held at the time of the request. However, he was satisfied, on balance, that the Authority had, by the close of the investigation, 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 29 January 2025, the Applicant made a request for information to the Authority. She asked for:

“All documentation – including meeting minutes and emails – that contain any and all references to the [Authority’s] plans to purchase, negotiations and final purchase of the site at the House of Rosskeen, Invergordon (application no. 23/05466/FUL)”

2. The Authority did not respond to the information request.
3. On 27 February 2025, the Applicant wrote to the Authority requesting a review of its failure to respond.
4. The Authority notified the Applicant of the outcome of its review on 3 April 2025. It disclosed some information to the Applicant and withheld other information under the exceptions in regulations 10(5)(d), 10(5)(e) and 11(2) of the EIRs.
5. On 5 April 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 believe the Authority had provided her with all information falling within the scope of her request
 - the disclosed information contained unexplained redactions
 - the public interest favoured disclosure of the information requested.

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 9 April 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.
9. During the investigation, the Authority disclosed further information to the Applicant:
 - On 15 October 2025, the Authority disclosed information that it acknowledged it had previously wrongly withheld under the exception in regulation 10(5)(d) of the EIRs
 - On 13 February 2026, the Authority identified and disclosed (subject to the redaction of third-party personal data under the exception in regulation 11(2) of the EIRs) further information relating to the purchase of properties at the House of Rosskeen site.
10. On 11 March 2026, the Applicant confirmed that, although the information had now been disclosed, she still wished to receive a formal decision from the Commissioner. She commented that the delay in providing this information went significantly beyond the statutory timeframe and, had it been provided when it should have been, it would have provided

material relevant to a judicial review she had recently pursued (which had since concluded with an outcome not in her favour).

11. In light of the above, the Commissioner wrote to the Applicant on 19 May 2026 to confirm that his decision would consider whether the Authority had failed to comply with the EIRs by not identifying and disclosing all information falling within the scope of her request (unless subject to relevant exceptions in the EIRs) by the date of the review outcome (at the latest).

Commissioner's analysis and findings

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

Application of the EIRs

13. 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.
14. 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.

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

15. 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.
16. 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)).

The Authority's submissions

17. As stated above, the Authority did not respond to the Applicant's request, but it disclosed some information to her in response to her requirement for review.
18. During the investigation, the Commissioner asked the Authority for submissions on how it established what information was covered by the Applicant's request. In particular, he asked the Authority to respond to the Applicant's belief that it held further information falling within the scope of her request, including minutes of meetings relating to the purchase of the House of Rosskeen and additional correspondence that had seemingly not been identified or located.
19. The Authority responded that officers involved in the land transaction from the Housing Development Team had been consulted in response to the Applicant's request. At that stage, it confirmed that it held no minutes of meetings regarding the site purchase and indicated that it held no further information falling within the scope of the Applicant's request.
20. As stated above, the Authority disclosed information during the investigation that it acknowledged it had previously wrongly withheld under the exception in regulation 10(5)(d) of the EIRs.

21. Later during the investigation, the Authority questioned its initial interpretation of the request. It confirmed that, after a further review of its position, it was concerned that the Housing Development Team had been “too narrowly focused” on the negotiations and final purchase elements of the request.
22. Consequently, the Authority again consulted with the Housing Management Team to determine whether any further information was held falling within the scope of the Applicant’s request.
23. As stated above, the Authority subsequently identified and disclosed (subject to the redaction of third-party personal data under the exception in regulation 11(2) of the EIRs) further information relating to the purchase of properties at the House of Rosskeen site.

The Applicant’s submissions

24. As stated above, the Applicant confirmed that, although the information had now been disclosed, she still wished to receive a formal decision from the Commissioner.
25. The Applicant commented that the delay in providing this information went significantly beyond the statutory timeframe and, had it been provided when it should have been, it would have provided material relevant to a judicial review she had recently pursued (which had since concluded with an outcome not in her favour).
26. The Applicant stated that she found this “deeply concerning” when earlier disclosure of this information – and information requested in previous information requests to the Authority – could have informed matters considered by the court.
27. The Applicant submitted that the delays by the Authority in responding to this request and her other requests raised concerns regarding a “repeated pattern of non-compliance”. She commented that she had seen further evidence of this on the Commissioner’s website and suggested this was indicative of a systemic failure in the Authority’s handling of information requests and its duties under FOISA and the EIRs.

The Commissioner’s view

28. Having considered all relevant submissions, including the Applicant’s confirmation that she had now received 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.
29. The Commissioner is therefore satisfied, on balance, that (by the close of the investigation) the Authority identified and located all the relevant information it held.
30. However, the Commissioner must find that in failing to take adequate steps to identify, locate and provide all the information requested (subject to redactions under relevant exceptions in the EIRs) by the date of the review outcome (at the latest), the Authority failed to comply with regulation 5(1) of the EIRs.
31. The Commissioner must also find that the Authority failed to comply with regulation 5(1) of the EIRs, by wrongly withholding information under the exception in regulation 10(5)(d) of the EIRs that it later disclosed on the basis that it accepted it had been wrongly withheld. This information should also have been disclosed to the Applicant by the date of the review outcome (at the latest).
32. The Commissioner acknowledges the Authority’s admission that it had focused too narrowly on the negotiations and final purchase elements of the request. He cannot stress enough

the importance of ensuring that the terms of any information request received by a Scottish public authority are clearly understood before proceeding to respond.

33. In this case, the Commissioner is satisfied that the Applicant's request was sufficiently clear on its own terms. However, to the extent that any request is unclear, he would urge the Authority, and indeed all Scottish public authorities, to engage with requesters to clarify the precise scope of the request.
34. While the Commissioner welcomes that the Authority identified and disclosed further information during his investigation, he must reiterate that it should have done so by the date of the review outcome (at the latest). He does not consider that the Authority's failure to locate all of the information requested by the review stage was wilful or intentional. However, it underlines the importance of public authorities undertaking adequate and proportionate searches at that stage by fully engaging with the terms of the request and by utilising appropriate search terms.
35. As stated above, the Applicant considered that the further information belatedly identified and disclosed to her by the Authority would have provided material relevant to a judicial review she recently pursued (which had since concluded with an outcome not in her favour).
36. The Commissioner appreciates why the Applicant has found this "deeply concerning". In his view, such unnecessary delays undermine the information rights of requesters and the utility of the information itself. Public authorities must take all reasonable steps to fully comply with information requests within the statutory timescales and to ensure that their responses are based on a full assessment of the recorded information falling within the scope of the request, following adequate and proportionate searches.
37. The Commissioner also notes the Authority's failure to respond to the Applicant's request within the timescale laid down by regulation 5(2)(a) of the EIRs. This deprived the Applicant of the ability to submit a requirement for review of the substantive content of the Authority's response.
38. The Commissioner considers it likely that some failures to comply with EIRs that he has found above might have been identified and corrected, at least to some extent, had the Authority responded to the request and then been able to consider and respond to a substantive requirement for review from the Applicant. He would therefore urge authorities to ensure that they meet the statutory timescale laid down by regulation 5(2)(a) of the EIRs.
39. Given that he now accepts, on balance, that the Authority has now located all the information falling within the scope of the Applicant's request and disclosed it to her (subject to redactions under relevant exceptions in the EIRs), the Commissioner does not require the Authority to take any action in respect of this failure, in response to the Applicant's application.
40. However, in the circumstances, the Commissioner considers it necessary to comment further on the Authority's handling of information requests under FOISA and the EIRs.

Handling matters

41. The Commissioner considers that the issues in this case go beyond a simple failure to comply with a single information request and instead are symptomatic of what appear to be systemic failures in the Authority's ability to carry out its statutory functions under FOISA and the EIRs.

42. The Commissioner has serious concerns about the Authority's ability to manage and comply with FOI requests, and he considers that these issues cannot be resolved with a single decision notice.
43. In light of the above, the Commissioner is considering the scope of further action to assist the Authority in identifying any internal issues that may be negatively impacting on its ability to comply with the requirements of FOISA and the EIRs and thereafter to improve its performance in handling information 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.

The Commissioner finds that, by failing to identify and locate all the relevant information it held in response to the Applicant's request by the date of the review outcome (at the latest), the Authority failed to comply with regulation 5(1) of the EIRs.

Given that he accepts that the Authority identified and located all the relevant information it held by the close of the investigation (which it has disclosed, subject to redactions under relevant exceptions in the EIRs), 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.

Euan McCulloch
Head of Enforcement

28 July 2026