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Commissioner  
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# Decision Notice 196/2026

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## Planning applications to East Dunbartonshire Council

Authority: Scottish Ministers  
Case Ref: 202600545

### Summary

The Applicant asked the Authority for evidence relating to full planning applications submitted by him to East Dunbartonshire Council in 2015. The Authority directed the Applicant to various publicly available information, but the Applicant believed the Authority had not provided him with all the information he had requested. The Commissioner investigated and found that the Authority had identified and provided the Applicant with all the information it held and which fell within the scope of his request.

### 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”, “the Commissioner” and the definition of “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 14 October 2022, the Applicant made a request for information to the Authority. Among other things, he asked for:

“Please under FOI forward any evidence that two full planning application were submitted by myself in the year 2015 to EDC. Or confirmed this is just another lie?”.

2. The Authority responded on 28 October 2022 in terms of the EIRs. It directed the Applicant to information contained within four publicly accessible webpages hosted by its Planning and Environmental Appeals Division (DPEA).
3. On 8 December 2022, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he considered that he had submitted one planning application and that the Authority had failed to confirm that “no others exist”.
4. The Authority notified the Applicant of the outcome of its review on 5 January 2023, which upheld its original decision.
5. On 26 June 2023, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. On 3 February 2026, the Commissioner determined that the Applicant’s application had been settled in terms of section 49(3) of FOISA and closed the case.
6. Following correspondence from the Applicant, the Commissioner exceptionally accepted a fresh application from him on 19 March 2026, for a decision in terms of section 47(1) of FOISA in relation to the Authority’s review outcome of 5 January 2023. 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 of 5 January 2023, because he considered that he had submitted only one full planning application in 2015 and the Authority had therefore not provided him with all the information he had requested.

## 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 20 March 2026, the Authority was notified in writing that the Applicant had made a valid application, and 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, related to how it interpreted the Applicant’s request and how it established what information it held falling within the scope of that request.
10. The Applicant raised some matters in his application to the Commissioner that do not fall within the Commissioner’s remit. The Commissioner will therefore not consider these matters in his decision notice. His remit is limited to considering whether the Authority complied with freedom of information law (particularly the EIRs) in responding to the Applicant’s request: he has no locus to comment on any authority’s obligations under, or compliance with, planning law.
11. As the Commissioner has stated in previous decisions, he also cannot comment on the accuracy of any recorded information an authority holds. To that extent, the Commissioner is

not assessing the accuracy of the recorded information, but rather the extent of information held by the Authority and covered by the request.

## **Commissioner's analysis and findings**

12. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.
13. When determining whether a public authority complied with the EIRs in responding to an information request, the Commissioner must make his assessment in relation to the specific circumstances of the case on each occasion. As recognised by the Court of Session at paragraph [31] in *Scottish Ministers v Scottish Information Commissioner* [2006] CSIH 8, the assessment must be made at the time of the review, at the latest (i.e. 5 January 2023).

### ***Handling in terms of the EIRs***

14. 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.
15. The Applicant has not challenged the Authority's decision to handle his request under the EIRs. The Commissioner is satisfied, in the circumstances, that the information requested by the Applicant falls within the definition of environmental information set out in regulation 2(1) of the EIRs.

### ***Section 39(2) of FOISA – Environmental information***

16. 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.
17. In this case, the Commissioner accepts that the Authority was entitled to apply this exemption to the information requested, given his conclusion that it is properly classified as environmental information.
18. 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 disclosing the information 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 should be more likely under FOISA than under the EIRs.
19. The Commissioner therefore concludes that the Authority was correct to apply the exemption in section 39(2) of FOISA and consider the Applicant's information request under the EIRs.

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

20. Regulation 5(1) of the EIRs 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, as opposed to information an applicant believes the authority should hold, but which is not in fact held.

21. 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.
22. 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).

#### *The Applicant's submissions*

23. The Applicant provided detailed arguments in support of his view that he had submitted only one full planning application in 2015, that the application had been granted and remained valid and in effect, and that there had been various significant errors in the handling of the substantive planning matters which underpinned his request in this case.
24. The Commissioner has fully considered these submissions. However, as set out in paragraph 10 above, his role is restricted to considering whether the Authority complied with the EIRs in responding to the Applicant's request. In what follows, he has therefore summarised only those key aspects of the Applicant's submissions that relate to the Authority's handling of the request.
25. Although the Authority directed him to four hyperlinks in response to his request, the Applicant considered that the Authority had failed to provide all of the information it held and which fell within the scope of his request.
26. The Applicant reiterated that he had submitted "one and only original full planning application made by myself", which was granted on 29 May 2015, and which was "not open to dispute by any aggrieved party outwith the Court of Session". He considered that, in responding to his request, the Authority had failed to confirm that "no others exist" (i.e. no other full planning applications existed other than the one full planning application he submitted in 2015).

#### *The Authority's submissions*

27. The Authority accepted that the Applicant had submitted one full planning application to East Dunbartonshire Council (the Council) in 2015. It noted that the Applicant had also submitted a listed building application to the Council in 2015.
28. By way of background, the Authority explained that the Council had issued a decision to the Applicant in 2015 granting planning permission, which it later withdrew and replaced with a refusal of planning permission. It said it understood the Applicant considered that the Council was not entitled to do this. However, it stated that it was not involved in the withdrawal and replacement of that decision and that it had previously confirmed to the Applicant that these were matters that he needed to raise with the Council.
29. The Authority explained that the Applicant had submitted a further listed building application to the Council in December 2016. It commented that this application was refused and that an appeal was subsequently lodged with the Authority's Planning and Environmental Appeals Division (DPEA) in March 2017 against the refusal of listed building consent by the Council. A reporter was appointed, who refused the appeal on 20 June 2017.
30. The Authority explained that all information relating to that 2017 appeal was held on the DPEA's Case Management System (CMS) but that relevant information was published on its

external-facing case website, where members of the public were able to view case information. In the vast majority of cases, it said that the public was able to view “all of the information that the reporter is taking into account when considering a case”.

31. The Authority stated that it had carried out searches of the CMS for any planning applications submitted by the Applicant and that specific searches were undertaken of the CMS using relevant keywords, including “planning application” and “application”. It explained that it had identified 196 documents of potential relevance, each of which was opened and reviewed, with particular attention paid to the following document categories: “Appeal Documentation”, “Authority Response”, “Written submissions”, “Comments on planning authority response” and “Comments from main parties”.
32. Having undertaken this exercise, the Authority was satisfied that it identified and provided all relevant information to the Applicant in response to his request. In respect of the hyperlinks to which it directed the Applicant in its initial response, the Authority explained that these were relevant for the following reasons:
  - The first link included two attachments detailing the planning history of the site and which confirmed that two applications (a full planning application and a listed building application) were submitted to the Council in 2015
  - The second link comprised a listed building consent notice dated 29 May 2015, which supported the fact that the Applicant submitted a listed building application in 2015
  - The third link was a document submitted by the Council in response to the Applicant’s 2017 appeal, which contained copies of the full planning consent notice and listed building consent notice issued in 2015, which supported the fact that the Applicant had submitted a full planning application in 2015
  - The fourth link consisted of a document submitted by the Council in response to grounds of the Applicant’s 2017 appeal, which provided the Council’s summary of the planning history of the site.
33. In response to a request from the Commissioner, the Authority provided the documents which had been publicly accessible via these links at the time of the Applicant’s request.

#### *The Commissioner’s view*

34. The Commissioner has carefully considered the submissions from both parties, together with the terms of the request. He will now consider the Authority’s interpretation of the request.
35. As set out in paragraph 1 above, the Applicant asked for “any evidence” that two full planning applications had been submitted by him in 2015, or for confirmation that this was not the case.
36. The Commissioner accepts that the request could have been read narrowly, as seeking confirmation only of the number of applications submitted. However, given the express reference to “any evidence”, he considers that it was reasonable for the Authority to have interpreted the request as seeking recorded information showing, or indicating, that two full planning applications were submitted by the Applicant in 2015. As stated above, the Authority has now confirmed that the Applicant submitted only one full planning application in 2015.
37. The Commissioner also notes that, in his application, the Applicant asked the Commissioner to carry out an investigation to determine whether the Authority held further information

falling within the scope of his request. This would support the Authority's interpretation of the request as being for recorded information, rather than confirmation only.

38. In the circumstances, the Commissioner is therefore satisfied that the Authority's interpretation of the request was reasonable. However, he considers that it would have been useful for the Authority's review outcome to have, assuming it was in a position at that time to do so, explicitly addressed the Applicant's underlying concern and confirmed – as it now has in its submissions to the Commissioner – that the Applicant had only submitted one full planning application in 2015.
39. The Commissioner will now consider whether the Authority held any further information falling within the scope of the Applicant's request.
40. Given the explanations and submissions provided (including the documentation provided to him which was previously accessible to the Applicant), the Commissioner accepts that the Authority took adequate and proportionate steps in the circumstances to establish whether it held any further information that fell within the scope of the Applicant's request.
41. The Commissioner considers that the Authority's searches were reasonable in terms of the search terms used and the location searched. He finds that they would have been capable of locating all relevant information falling within the scope of the request. He is satisfied, on balance, that the Authority identified and located all the relevant information it held.
42. In all of the circumstances, the Commissioner is satisfied, on balance, that the Authority does not (and did not, on receipt of the request) hold further information falling within the scope of the request. He therefore finds that, in this respect, the Authority complied with regulation 5(1) of the EIRs in responding to the request.

## **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.

**Euan McCulloch**  
**Head of Enforcement**

**29 July 2026**