



Scottish Information
Commissioner
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Decision Notice 204/2026

Validity of the requirement for review

Authority: West Dunbartonshire Council
Case Ref: 202502277

Summary

The Applicant asked the Authority for various recorded information in relation to a specified property. The Authority responded but refused to conduct a review as it considered the requirement for review was invalid. The Commissioner investigated and found that the requirement for review was valid. He required the Authority to respond to the requirement for review.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 20(1) and (3) (Requirement for review of refusal); 21(1) (Review by Scottish public authority); 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 “environmental information”) (Interpretation); 5(1) (Duty to make environmental information available on request); 16 (Review by a Scottish public authority); 17(1), (2)(a),(b) and (f) (Enforcement and appeal provisions).

Background

1. On 12 October 2025, the Applicant made a request for information to the Authority. Following a review response issued by the Authority on 6 October 2025, he asked for various recorded information held by the Authority for the period 6 October 2025 to the date of the request under the following three headings in relation to a specified property:

- (i) Repairs and voids
 - (ii) Internal and contractor correspondence
 - (iii) Allocation shortlists
2. The text of the request is reproduced in Appendix 1, subject to certain redactions.
 3. The Authority responded on 10 November 2025, in the following terms:
 - For part (i), it stated that there were no current repairs in the system as at 13 October 2025 for the address specified in the request and that the current status of the property was “let”
 - For parts (ii) to (iii), it stated “not applicable” as the property was “relet prior to the dates requested”.
 4. Later that same day, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision for several reasons, which he grouped under the following headings.
 - Scope and search period
 - Search description
 - Section 17 notice
 - Allocation shortlists not addressed
 - Internal and contractor correspondence not addressed
 - Advice and assistance not provided
 - Repairs and voids – partial search/ no section 17 notice.
 5. Later that same day, the Applicant wrote to the Authority to add a supplementary clarification to his requirement for review.
 6. The text of the requirement for review and the supplementary clarification are reproduced in Appendix 2, subject to certain redactions.
 7. The Authority responded to the Applicant’s requirement for review on 5 December 2025. It informed the Applicant that his requirement for review did not constitute a valid requirement for review under section 20 of FOISA. It stated that a review can only be carried out where a requester believed that the Authority had failed to comply with Part 1 of FOISA in responding to the request. In this case, it submitted that it had provided all recorded information held for the dates specified.
 8. On 15 December 2025, the Applicant wrote to the Commissioner, stating that he was dissatisfied with the Authority’s response that his requirement for review was invalid and applying for a decision in terms of section 47(1) of FOISA. The enforcement provisions of FOISA apply to the enforcement of the EIRs, subject to specified modifications – see regulation 17.

Investigation

9. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
10. On 30 March 2026, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
11. 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 why it considered the Applicant's requirement for review invalid.

Commissioner's analysis and findings

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

FOISA or the EIRs?

13. The relationship between FOISA and the EIRs was considered at length in [Decision 218/2007](#)¹. Broadly, in the light of that decision, the Commissioner's general position is as follows:
 - The definition of what constitutes environmental information should not be viewed narrowly.
 - There are two separate statutory frameworks for access to environmental information, and an authority is required to consider any request for environmental information under both FOISA and the EIRs.
 - Any request for environmental information therefore must be handled under the EIRs.
 - In responding to a request for environmental information under FOISA, an authority may claim the exemption in section 39(2).
 - If the authority does not choose to claim the section 39(2) exemption, it must respond to the request fully under FOISA: by providing the information; withholding it under another exemption in Part 2; or claiming that it is not obliged to comply with the request by virtue of another provision in Part 1 (or a combination of these).
 - Where the Commissioner considers a request for environmental information has not been handled under the EIRs, he is entitled (and indeed obliged) to consider how it should have been handled under that regime.
14. It is apparent from the terms of the request that at least some of the information requested is environmental information as defined by regulation 2(1) of the EIRs. However, the Commissioner does not accept that all of the information requested is environmental information.
15. Having drawn this conclusion, the Commissioner finds that the Authority correctly responded to the request in terms of FOISA with regard to the information which was not environmental

¹ <https://www.foi.scot/decision-2182007>

information. However, he finds that the Authority failed to recognise that some of the information requested was environmental information and that it was required to consider disclosure of such information in terms of the EIRs and not in terms of FOISA.

Section 39(2) of FOISA – Environmental information

16. The exemption in section 39(2) of FOISA provides, in effect, that environmental information 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 would have been entitled to apply this exemption to the information requested insofar as it comprised environmental information.
18. As there is a separate statutory right of access to environmental information available to the Applicant, the Commissioner accepts that in this case the public interest in maintaining this exemption (insofar as the information requested comprised environmental information) and in dealing with the request in line with the requirements of the EIRs outweighs any public interest in considering this environmental information under FOISA.

Validity of the requirement for review

19. Section 20(1) of FOISA provides that a person who is dissatisfied with the way in which a Scottish public authority has dealt with a request for information may require it to review its actions and decisions in relation to that request.
20. Section 20(3) of FOISA provides that a requirement for review must be in writing or some other form of permanency, it must state the name of the applicant and an address for correspondence, and it must specify the request for information to which the requirement for review relates and the matter which gives rise to the applicant's dissatisfaction.
21. Regulation 16 of the EIRs provides that a person who is dissatisfied with the way in which an authority has dealt with their request may require it to review its actions and decisions in relation to that request.
22. While regulation 16 of the EIRs requires the requirement for review to be made in writing, it does not otherwise contain the same requirements in section 20(3) of FOISA for a requirement for review under FOISA.

The Applicant's submissions

23. The Applicant argued that he had submitted a valid requirement for review, in terms of section 20 of FOISA, and that the Authority was not entitled to treat his requirement for review as invalid on the basis that it considered it had provided all of the recorded information it held.

The Authority's submissions

24. As stated above, the Authority did not consider that the Applicant's requirement for review constituted a valid requirement for review under section 20 of FOISA.
25. The Authority stated that it responded to the Applicant's request within the statutory 20 working day period, having carried out all relevant searches and provided all recorded information held for the specified period of 6 to 13 October 2025, rather than information relating to a single day. It also confirmed that it had already addressed a previous request from the Applicant.

26. The Authority noted that the Applicant's requirement for review stated that the Authority had provided information based on "a snapshot of time". However, it submitted that the Applicant has misinterpreted the initial response as relating to a single day when it in fact represented the full period specified in the request.
27. The Authority considered that the Applicant was seeking information that had already been disclosed. It stated that "no new or materially different request has been identified" and "[a]ny further response would therefore amount to a duplication of the information already provided".
28. The Authority noted that, in accordance with section 14(2) of FOISA, public authorities are not required to comply with a request that is identical or substantially similar to one previously responded to by the same requester, unless a reasonable period of time has elapsed. In this case, it argued that no reasonable period had passed and no new or materially different request had been made.
29. Accordingly, the Authority submitted that it was not obliged to undertake a review or provide the same information again. It maintained that the Applicant had not submitted a valid requirement for review.

The Commissioner's view

30. The Commissioner has carefully considered the terms of the Applicant's requirement for review. It is an email, signed off with the Applicant's full name, which expressed clear dissatisfaction with the Authority's response of 10 November 2025 to his request of 12 October 2025.
31. In the circumstances, the Commissioner is satisfied that the Applicant's requirement for review meets the requirements set out in section 20(3) of FOISA. To the extent that the request sought environmental information, he is also satisfied that the Applicant's requirement for review meets the requirements set out in regulation 16 of the EIRs. Under either regime, the Applicant's requirement for review is valid.
32. The Commissioner considers that the Authority is conflating what it views as the merits of the Applicant's requirement for review with the validity of the requirement for review. Under either FOISA or the EIRs, these must be distinct considerations.
33. A requirement for review is valid if it meets the basic requirements set out in section 20(3) of FOISA or regulation 16 of the EIRs. A valid requirement for review is not rendered invalid because an authority does not agree with the merits of the requirement for review or considers that it has already fully satisfied the request, either through its initial response or through a response to a previous request.
34. The purpose of the review stage in FOISA and the EIRs is to provide authorities with the opportunity to reconsider their handling of an initial information request, in order to ensure that they are satisfied that the request has been dealt with fully in accordance with FOISA or the EIRs (as appropriate), prior to an application being made to the Commissioner (if necessary).
35. It was open to the Authority to uphold its initial response at review stage, if it considered that the response had fully satisfied the request. However, it was not open to the Authority to treat a valid requirement for review as invalid because it considered that it had already fully addressed the request.

36. It is apparent from the terms of the Applicant's present request that it followed from a previous request he made to the Authority (i.e. it specifically refers to a review outcome issued on 6 October 2025). As the Authority failed to issue a review outcome in response to the Applicant's requirement for review, the Commissioner will not substantively consider the Authority's position that section 14(2) of FOISA is applicable.
37. However, to the extent the information requested is environmental information, the EIRs contain no equivalent exception for repeated requests. To the extent the information requested is not environmental information, for section 14(2) of FOISA to apply, the Authority must consider the following:
- (i) whether the Applicant's previous request was identical or substantially similar to the request under consideration;
 - (ii) whether the Authority complied with the previous request; and, if so
 - (iii) whether there was a reasonable period of time between the submission of the previous request and the submission of the subsequent request.

Handling of the requirement for review

38. As stated above, the Commissioner is satisfied that the Applicant's requirement for review of 10 November 2025 was valid under FOISA and, to the extent that his request sought environmental information, under the EIRs.
39. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. Again, this is subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 16(4) of the EIRs.
40. It is therefore a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
41. The remainder of section 21 of FOISA and regulation 16 of the EIRs set out the requirements to be followed by a Scottish public authority in carrying out a review. As no review has been carried out in this case, the Commissioner finds that the Authority failed to discharge these requirements: he now requires a review to be carried out in accordance with section 21 of FOISA/regulation 16 of the EIRs.
42. In carrying out a review, the Commissioner requires the Authority to:
- fully engage with the dissatisfaction expressed by the Applicant in his requirement for review and supplementary clarification;
 - distinguish between environmental and non-environmental information and process the information in accordance with the principles set out in paragraph 13 above; and
 - have regard to the principles set out in paragraph 37 above if it considers the request to be a repeated request.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in dealing with the information request made by the Applicant.

In particular, the Commissioner finds that the Applicant's requirement for review was valid and that the Authority failed to respond to the requirement for review within the timescales laid down by section 21(1) of FOISA and regulation 16(4) of the EIRs.

The Commissioner requires the Authority to issue a response to the Applicant's requirement for review by **25 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.

Cal Richardson
Deputy Head of Enforcement

11 August 2026

Appendix 1: Information request of 12 October 2025

Under the **Freedom of Information (Scotland) Act 2002**, I request the following recorded information held by West Dunbartonshire Council in relation to the **[specified property]** for the period **6 October 2025 to the date of this request** (i.e. following the review decision issued by [Authority staff member] on 6 October 2025).

1. Repairs and Voids

All recorded information (including job orders, line-item breakdowns, completion notes, inspection logs, photographs, and system entries) showing repairs, maintenance, or void-status updates for **[specified property]** within the above period. Please include any job or order numbers raised after 6 October 2025, and any documents confirming the property's status as "still at repair", "rematched", or "ready for letting."

2. Internal and Contractor Correspondence

All correspondence (emails, memos, notes, or reports) between **Housing Operations, Building Services, the Voids Team, or any contractors** referring to repairs, inspections, or re-letting of this address in the same period.

3. Allocation Shortlists (Anonymised)

An anonymised allocation shortlist (or equivalent system export) for:

- the **initial allocation that was subsequently refused**, and
- the **current re-match**, showing applicant reference codes or anonymised identifiers, points or point bands, and group category (e.g. Medical, Homeless, Transfer, General).

For clarity, no personal identifiers are sought. The refused allocation no longer relates to any identifiable individual, so s. 38 (1)(b) FOISA does not apply; anonymised or banded data are sufficient.

4. Advice and Assistance

If any part of this request risks exceeding cost limits under s. 12 FOISA, please advise under s. 15 how I can refine its scope.

Please provide the information electronically. If any data are withheld, cite the precise exemption(s) relied upon and provide redacted copies wherever possible. If any information is not held, confirm this under s. 17 FOISA and describe the searches undertaken.

Appendix 2: Requirement for review and supplementary clarification, both of 10 November 2025

Requirement for review

Please treat this as a formal request for review under section 20 of the Freedom of Information (Scotland) Act 2002 regarding FOI 25/3139294 – Repairs and Allocation Status, [specified property].

My original request (12 October 2025) sought all recorded information for the period 6 to 12 October 2025, following the FOI review decision issued on 6 October 2025. The Council's reply of 7 November 2025 refers only to data "as at 13 October 2025" and does not specify what systems or searches were carried out. It also does not address my questions on repairs and voids, correspondence, allocation shortlists, or the duty to advise and assist under sections 1, 15 and 17 FOISA.

FOI 25/3139294 – Review Grounds

1. Scope and Search Period

My request covered 6–12 October 2025. The response refers only to system data "as at 13 October 2025," representing a single-day snapshot rather than a search covering the full period. Under section 1 FOISA, the Council must identify and disclose all recorded information held for the timeframe specified, not only data from one date.

2. Search Description and Section 15 Duty

The response does not specify which systems were searched (e.g. QL Voids/Repairs, Allocations, Building Services), which officers or teams were consulted, or what search terms were used. Under section 15 FOISA, the Council should have explained any search limitations or provided advice and assistance if scope clarification was needed.

3. Section 17 Notice

If no records exist for any part of the requested period, a formal section 17 notice should have been issued for each element (repairs, correspondence or allocation lists) confirming that the information is not held. The current response uses "not applicable" instead, which does not meet section 17 requirements.

4. Allocation Shortlists Not Addressed

My request asked for anonymised allocation-shortlist data for both (1) the initial allocation that was refused and (2) the current re-match, showing anonymised reference codes or bands. The response states only that the property "was re-let prior to the dates requested," without confirming whether the shortlist records exist. Under sections 1 and 17 FOISA, the Council should either disclose anonymised shortlist data or confirm none is held and describe the search conducted.

5. Internal and Contractor Correspondence Not Addressed

My request also sought all correspondence (emails, memos, notes or reports) between Housing Operations, Building Services, the Voids Team and contractors regarding repairs, inspections or re-letting for 6–12 October 2025. The response again states "not applicable as the property was re-let prior to the dates requested," without confirming whether any correspondence exists. Under sections 1 and 17 FOISA, the Council should either disclose such records or issue a formal section 17 notice describing the search.

6. Advice and Assistance Not Provided

Point 4 of my request asked the Council to advise under section 15 FOISA if any part of the request risked exceeding cost limits or required scope refinement, and to cite any exemptions or section 17 notices as appropriate. The response simply states “not applicable,” without confirming whether cost or search limitations were considered or if section 17 applied. This does not demonstrate compliance with the duty to advise and assist.

7. Repairs and Voids – Partial Search / No Section 17 Notice

Point 1 of my request sought all records of repairs and void-status updates for 6–12 October 2025.

The response refers only to “no current repairs in system as at 13 October 2025,” which appears to be a single-day snapshot. No job orders, inspection notes or status updates were disclosed, and no formal section 17 notice was issued. Under sections 1 and 17 FOISA, the Council should either disclose any recorded information held for that period or confirm formally that none is held and describe the searches undertaken.

8. Clarification Requested

Please confirm in the review outcome:

- The full date range searched across all relevant systems (6 → 12 October 2025)
- The officers and departments consulted;
- The search terms or criteria applied; and
- Whether any responsive information was created or updated during that period but excluded because the system was checked only “as at 13 October.”

Please confirm the review outcome within 20 working days in accordance with section 21 of FOISA, including details of all systems searched, search terms used, and officers consulted

Supplementary clarification

Further to my review request of **10 November 2025** concerning FOI 25/3139294, please acknowledge this as a supplementary clarification to be considered as part of the same review.

(Please note: my previous email mistakenly referred to 11 November; the correct date of submission was 10 November 2025.)

The Council’s response dated 7 November 2025 stated that, as at 13 October 2025, the “current status of the property is let.” However, the Void Status Maintenance Log dated 16 October 2025, released under FOI 25/3137095, still listed the same property as “VOID.”

To ensure accuracy under section 1 FOISA, please confirm in the review outcome:

- which system record showed the “let” status on 13 October 2025;
- whether any update occurred between **6 and 16 October 2025**; and
- the exact date on which the system record was updated to show the property as “let.”

I would be grateful if you could confirm receipt of this clarification and ensure it is logged alongside my review request of 10 November 2025.