



Scottish Information
Commissioner
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Decision Notice 206/2026

Construction of HMP Glasgow

Authority: Scottish Prison Service
Case Ref: 202501998

Summary

The Applicant asked the Authority for information about the construction of HMP Glasgow. The Authority informed the Applicant that the information requested was intended for future publication and therefore exempt from disclosure under FOISA. Following an investigation, the Commissioner concluded that at least some of the information requested was environmental information (and therefore subject to the EIRs) and that the Authority had failed to satisfy him that it had identified all relevant information falling within the scope of the request. He required the Authority to issue a revised review response.

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 “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 20 July 2025 the Applicant made a request for information to the Authority about the construction costs and design of HMP Glasgow. He asked for “publicly available documentation that covers [specified] areas, including project briefs, budget breakdowns, business cases, or design specifications.”

2. The specified areas referred to by the Applicant were:
 - (i) The materials and construction techniques being specified
 - (ii) The design rationale, including scope and capacity (noting Glasgow is expected to house 1,400 prisoners vs. 1,000 at Edinburgh)
 - (iii) The procurement and contracting strategies being used
 - (iv) How inflation, market conditions, and risk allowances have been factored into cost estimates
 - (v) Any lessons learned from previous prison construction projects in Scotland.
3. The Authority responded on 20 August 2025. It informed the Applicant that the information requested was intended for future publication and that a business case summary was currently in draft, which it hoped to publish in September 2025.
4. Later the same day, 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 the Authority should disclose whatever information was currently available, even if the final business case summary was pending publication, and that the public interest favoured disclosure.
5. The Authority notified the Applicant of the outcome of its review on 17 September 2025, which upheld its original decision to withhold the information requested and confirmed that it was relying on the exemption in section 27(1) of FOISA.
6. On 4 November 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 he was dissatisfied with the outcome of the Authority's review because he did not agree that the Authority was entitled to withhold the information requested under the exemption in section 27(1) of FOISA.

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 January 2026, 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 allocated to an investigating officer.
9. During the investigation, the Authority informed the Applicant that it had now published the withheld information (the business case summary for HMP Glasgow) on its website and provided him with a [link](https://www.sps.gov.uk/sites/default/files/2026-01/HMP%20Glasgow%20Business%20Case%20Summary.pdf)¹ to this information.

¹ <https://www.sps.gov.uk/sites/default/files/2026-01/HMP%20Glasgow%20Business%20Case%20Summary.pdf>

10. The Applicant confirmed to the Commissioner that he still required a decision on his application because he did not consider that the information now published by the Authority fully addressed the substance of his request.
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 about whether it considered any of the information to be environmental information and about the completeness of the Authority's response.

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 EIRs?

13. The relationship between FOISA and the EIRs was considered at length in [Decision 218/2007](#)². Broadly, in the light of that decision, the Commissioner's general position is as follows:
 - (i) The definition of what constitutes environmental information should not be viewed narrowly.
 - (ii) 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.
 - (iii) Any request for environmental information therefore must be handled under the EIRs.
 - (iv) In responding to a request for environmental information under FOISA, an authority may claim the exemption in section 39(2).
 - (v) 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).
 - (vi) 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. Given the subject matter of the request, the Commissioner found it appropriate to consider whether the information requested by the Applicant should properly be regarded as environmental information, as defined in regulation 2(1) of the EIRs, and therefore subject to the EIRs.
15. The Authority confirmed that it had not specifically considered whether the EIRs may apply.
16. However, the Authority noted that the request related to the planning, design, construction and procurement of a new custodial facility. It acknowledged that certain aspects of the requested information, particularly those relating to land use, construction and infrastructure

² <https://www.foi.scot/decision-2182007>

development, may therefore fall within the definition of environmental information for the purposes of the EIRs.

17. The Commissioner accepts that information will not necessarily be environmental information simply because it has a slight or tangential association with the state of the elements of the environment. On the other hand, he acknowledges that no types of information are excluded from the potential ambit of environmental information and that court cases have confirmed that environmental information, and the scope of the Directive, should be interpreted broadly.
18. Having considered both the terms of the request and the withheld information, the Commissioner finds that some of the requested information is environmental information, as defined in regulation 2(1) of the EIRs.
19. Given that the Authority failed to deal with it as such, the Commissioner also finds that the Authority failed, to the extent that the information was environmental, to deal with the Applicant's request for that information in accordance with regulation 5(1) of the EIRs.
20. Where the information falling within the scope of a request comprises both "environmental" and "non-environmental" information, then the specific component information must be processed in accordance with the appropriate regime. Environmental information falling within the scope of the request, therefore, must be processed in accordance with both FOISA and the EIRs, while any non-environmental information should be processed in accordance with FOISA alone.

Section 39(2) of FOISA – Environmental information

21. 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.
22. In this case, the Authority responded to the request and requirement for review solely under FOISA.
23. The Commissioner finds that the Authority would have been entitled to apply the exemption in section 39(2) of FOISA to some of the information requested, given his conclusion that some of the information requested was properly classified as environmental information.
24. As there is a separate 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 parts of the request under the EIRs) outweighs any public interest in disclosing the information under FOISA.

Regulation 16 of the EIRs

25. Regulation 16 of the EIRs states that, on receipt of a requirement to conduct a review, the authority shall review the matter and decide whether it has complied with the EIRs, within 20 working days (regulations 16(3) and (4)). It also states that, where an authority has not complied with its duty under the EIRs, it shall immediately take steps to remedy the breach of duty (regulation 16(5)).
26. Although the Authority responded to the Applicant's requirement for review on 17 September 2025, as explained above, this was a result of the Authority considering the request solely in terms of FOISA and not, at least in part, under the EIRs.
27. It is apparent that the Authority failed to respond to the Applicant's request of 20 July 2025 in terms of the EIRs and therefore failed to comply with regulation 5(1) of the EIRs. It is also

apparent that the Authority failed to carry out a review meeting the requirements of regulation 16 of the EIRs.

28. The Commissioner, therefore, to the extent that the information requested was environmental, requires the Authority to provide a revised response to the Applicant's requirement for review of 20 August 2025 in terms of regulation 16 of the EIRs.

Information falling within the scope of the request

29. In considering whether a Scottish public authority has complied with the requirements of FOISA or the EIRs in any given case, the Commissioner must be satisfied that the authority has carried out adequate, proportionate searches in the circumstances, taking account of the terms of the request and all other relevant circumstances.
30. The Commissioner will consider the scope, quality, thoroughness and results of those searches, applying the civil standard of proof (the balance of probabilities). Where appropriate, he will also consider any reasons offered by the public authority to explain why it does not, or could not reasonably be expected to, hold the information.
31. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold the information (or holds no more information than it has identified and located in response to the request).
32. The Authority explained that it had interpreted the request as focusing on the business case and associated material explaining the rationale, cost and procurement approach for the project. It did not interpret it as extending to all historic or ancillary documentation relating to the development of HMP Glasgow.
33. In all of the circumstances, the Commissioner does not consider that the Authority has interpreted the request broadly enough.
34. The request sought information on specified aspects of the project, not simply the business case and associated material. While the Applicant referred to examples of relevant classes of information, he did not limit his request to those examples.
35. In any event, the Commissioner notes that the list of examples provided by the Applicant ("project briefs, budget breakdowns, business cases, or design specifications") includes, but is not limited to, business cases.
36. On a plain reading of the Applicant's request, the Commissioner is not satisfied that there was a reasonable basis for the Authority to exclude historic, ancillary or other documentation where it contained information falling within the scope of the request.
37. The Commissioner therefore finds that the Authority interpreted the Applicant's request too narrowly. Consequently, the Authority has also failed to satisfy the Commissioner that it has identified all relevant information falling within the scope of the request.
38. The Commissioner requires the Authority to carry out fresh searches for information falling within the scope of the request and to issue the Applicant with a revised review outcome.
39. In doing so, the Authority should ensure that it has correctly understood the scope of the Applicant's request. If the Authority is unsure of the correct scope of this request, the Commissioner would remind the Authority that it should, in line with the requirements of the Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public

Authorities under FOISA and the EIRs (the [Section 60 Code](#)³), engage with the Applicant to clarify the precise scope of the 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 responding to the information request made by the Applicant.

To the extent that some of the information requested is environmental information, as defined by regulation 2(1) of the EIRs, the Commissioner finds that the Authority failed to comply with the requirements of regulations 5(1) and 16 in responding to the Applicant's information request and requirement for review.

In failing to accurately interpret the Applicant's request and in failing to satisfy the Commissioner that it does not hold any further information beyond that already identified, the Commissioner also finds that the Authority failed to comply with Part 1 of FOISA (in particular section 1(1)) and regulation 5(1) of the EIRs.

The Commissioner therefore requires the Authority to carry out adequate and proportionate searches, reach a decision on the basis of these searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA or regulation 16 of the EIRs), by **28 September 2026**.

In doing so, the Authority should have regard to paragraph 31 above.

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

14 August 2026

³ <https://www.gov.scot/publications/foi-eir-section-60-code-practice/>