



Scottish Information
Commissioner
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Decision Notice 207/2026

Statistics on statutory nuisances

Authority: Scottish Courts and Tribunals Service
Case Ref: 202301534

Summary

The Applicant asked the Authority for statistical information relating to statutory nuisances. The Authority refused to respond to the request on the grounds that it was manifestly unreasonable. The Commissioner investigated and agreed that the request was manifestly unreasonable, and so the Authority was not obliged to respond.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) section 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); 4(1) and (2) (Active dissemination of environmental information); 5(1) (Duty to make environmental information available on request); 10(1), (2), (4)(b) (Exceptions from duty to make information available); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

The Environmental Protection Act 1990 section 82(1) and (2).

Background

1. On 23 February 2023, the Applicant made a request to the Authority. They asked for:
 - (i) As regards Scotland, how many summary applications have been made under section 82(1) of the Environmental Protection Act 1990 (as amended) in each year since 2017.
 - (ii) As regards Scotland, how many orders have been made under section 82(2) of the Environmental Protection Act 1990 (as amended) in each year since 2017.

2. The Authority responded on 23 March 2023 in terms of the EIRs. It refused to make information available which would fulfil the request, arguing that it would be manifestly unreasonable (in line with regulation 10(4)(b) of the EIRs) to do so.
3. On 4 May 2023, the Applicant wrote to the Authority requesting a review of its decision. They stated that they were dissatisfied with the decision because they did not agree the request was manifestly unreasonable and, in any event, they considered the public interest favoured disclosure.
4. The Authority notified the Applicant of the outcome of its review on 6 June 2023, which fully upheld its original decision.
5. On 5 December 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 they were dissatisfied with the outcome of the Authority's review because they did not agree the Authority was entitled to treat the request as manifestly unreasonable.

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 8 February 2024, 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. The Authority provided its comments on the application.
8. The case was subsequently allocated to an investigating officer.

Commissioner's analysis and findings

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

Handling in terms of the EIRs

10. 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.
11. 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. He would also note that he can see no detriment to the Applicant by considering their request under the EIRs rather than FOISA, nor has the Applicant disputed the Authority's decision to handle their request under the EIRs.

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

12. 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.
13. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 applies.

Regulation 10(4)(b) of the EIRs - Manifestly unreasonable

14. Regulation 10(4)(b) provides that a Scottish public authority may refuse to make environmental information available to the extent that the request for information is manifestly unreasonable. In considering whether the exception applies, the authority must interpret it in a restrictive way and apply a presumption in favour of disclosure. Even if it finds that the request is manifestly unreasonable, it is still required to make the information available unless, in all the circumstances, the public interest in doing so is outweighed by that in maintaining the exception.
15. The Commissioner's general approach is that the following factors are relevant when considering whether a request is manifestly unreasonable. These are that the request:
 - (i) would impose a significant burden on the public authority;
 - (ii) does not have a serious purpose or value;
 - (iii) is designed to cause disruption or annoyance to the public authority;
 - (iv) has the effect of harassing the public authority;
 - (v) or would otherwise, in the opinion of a reasonable person, be considered manifestly unreasonable or disproportionate.
16. This is not an exhaustive list. Depending on the circumstances, other factors may be relevant, provided the impact on the authority can be supported by evidence. The Commissioner recognises that each case must be considered on its merits, taking all the circumstances into account.

The Applicant's submissions

17. The Applicant argued that the exception in regulation 10(4)(b) of the EIRs was not available to the Authority in response to their request, even if the burden was significant. They gave two reasons for this.
18. First, the Applicant submitted that the [Aarhus Convention Implementation Guide](https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf)¹, which offers guidance on the interpretation of the Convention from which the EIRs derived, made no mention of the cost to the public authority of responding to a request being a relevant consideration when public authorities consider the use of the “manifestly unreasonable” exception.
19. Second, the Applicant considered that, as the request must be not just unreasonable but manifestly unreasonable, it appeared that the exception in regulation 10(4)(b) of the EIRs is only available where it is objectively clear to any reasonable observer, on the face of the request, that the request is unreasonable.

¹ https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf

20. In this case, the Applicant argued that the request was only unreasonable, as viewed internally within the Authority, because of the way the Authority decided to set up its case management system.
21. The Applicant also disputed the Authority's application of the exception in regulation 10(4)(b), even if the exception was available in this case.
22. The Applicant argued that the request was completely clear and unambiguous. They submitted that there was no question that the request was vexatious, in the ordinary meaning of that word: the question was solely whether the burden of responding would be so great that it justified non-disclosure.
23. The Applicant commented that no other public authority held the environmental information requested. They therefore considered it entirely reasonable to expect the only public authority holding the environmental information to keep it in a retrievable way that would not entail unreasonable costs to retrieve.
24. The Applicant considered that the Authority's case management system appeared to have been set up with arbitrarily chosen specific categories, meaning that it was a matter of ill-fortune that the type of case they sought did not have a specific category of its own in that system.
25. Furthermore, the Applicant argued that, under regulation 4 of the EIRs, the Authority had a duty to organise and disseminate the information it held about all civil and criminal cases relating to the environment.
26. The Applicant also noted that they had made several other requests for information to the Authority, which they considered showed inconsistencies in the way that the Authority reported the information held. They suggested that these responses implied that the Authority sometimes considered manual collation of statistics was justified.

The Authority's submissions

27. The Authority explained that it considered the work that would be involved in searching for and compiling the information requested and concluded that it would impose a significant burden on it. It concluded that it would require a disproportionate amount of time and the diversion of an unreasonable proportion of resource away from the Authority's other statutory and core operations.
28. Given the number of records that would require to be manually searched, the Authority did not consider that an extension under regulation 7 of the EIRs would have sufficiently alleviated the effect that responding to part (i) and part (ii) of the request would have on the Authority's ability to deliver its statutory and core operations.
29. The Authority explained that applications lodged with the court under section 82(1) and (2) of the Environmental Protection Act 1990 are by way of a summary application. When a court first registers a summary application on the Authority's civil case management system, it does so under a specific heading or subcategory which identifies the type of summary application it is.
30. However, given the very broad range of types of summary applications which can be lodged under a vast array of different legislation, the Authority stated that not all types of summary applications have a specific category on its system. When this is the case, they are recorded on the case management system under the category of a "Miscellaneous Summary Application – other".

31. The Authority confirmed that there was no further marker on the system that would allow it to electronically identify which of the summary applications were applications under section 82(1) and (2) of the Environmental Protection Act 1990. It noted that the information held on the system was structured for the Authority's operational needs rather than for statistical reporting or research purposes.
32. The Authority explained that not all of the searches for the information requested could be done by accessing information solely on its case management system. During the COVID-19 pandemic, there were electronic and paperless workarounds in place (although local practices and workarounds varied in the sheriff courts, due to local business needs) and some summary applications were uploaded under the case file on its case management system. However, the vast majority were not currently uploaded as standard practice. A significant element of the manual interrogation required to respond to the request could therefore only be achieved by accessing physical papers.
33. During the investigation, the Authority stated that there were 4,588 summary applications recorded under the category of a 'Miscellaneous Summary Application – other'. Taking what it described as an "optimistic" estimate of five minutes per case to retrieve the file from storage (or, rarely, from the case management system) and to interrogate the file for the relevant information, the Authority calculated that it would take a minimum of 382 hours to identify the relevant documents. At a rate of £15 per hour (the maximum rate that can be charged under FOISA), this would cost £5,730. (The actual cost of searches, based on the hourly rate of the operational staff most qualified to undertake such searches, was estimated to be £6,750.)
34. At review stage, the Authority had estimated there would be approximately 3,000 summary applications and that it would take 250 hours to identify the relevant documents. At a rate of £15 per hour, this would cost £3,750.
35. The Authority noted that information on "craves" sought in a summary application were only contained within the application itself. To identify the information requested would therefore require court staff to manually read each summary application for each case registered under this category.
36. Regarding part (ii) of the request, the Authority submitted it would need to undertake the manual interrogation of records set out above and thereafter read the final interlocutors for each case to compile statistics sought on the specific order mentioned. It considered that, due to the burden part (i) of the request would impose, it would not be possible to be in a position to consider part (ii) even as a separate standalone request.

The Commissioner's view

37. The Commissioner has carefully considered the submissions from the Applicant and the Authority. He will firstly address the Applicant's argument that the exception in regulation 10(4)(b) of the EIRs was not available to the Authority in response to the request.
38. The Commissioner has consistently found that burden can be sufficient to render a request manifestly unreasonable, even in the absence of other factors suggestive of unreasonableness. He also notes that the Upper Tribunal (Administrative Appeals Chamber) found in [Craven v Information Commissioner and DECC 2012 UKUT 442](#)² that:

² <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3682>

“... the whole purpose of both section 14(1) [of the Freedom of Information Act 2000 (FOIA)] and regulation 12(4)(b) [of the Environmental Information Regulations 2004 (EIR)] was to protect public authorities from exposure to a disproportionate burden in handling information requests.”

39. In the same case, the Upper Tribunal also found that:

“... it must be right that a public authority is entitled to refuse a single extremely burdensome request under regulation 12(4)(b) [of the EIR] as ‘manifestly unreasonable’, purely on the basis that the cost of compliance would be too great (assuming, of course, it is also satisfied that the public interest test favours maintaining the exception). The absence of any provision in the EIR equivalent to section 12 of FOIA makes such a conclusion inescapable.”

40. The Commissioner is not bound by the Upper Tribunal's findings, but he is of the view that its interpretation of the equivalent (FOIA and EIR) provisions can be taken as a reasonable guide in this case. In his view, they are an accurate statement of the law under the EIRs. He is therefore satisfied that, in appropriate circumstances, burden can be sufficient to render a request manifestly unreasonable under regulation 10(4)(b) of the EIRs.

41. The Commissioner recognises that, given the pejorative connotation of the term “manifestly unreasonable”, there is some appeal to the argument that requests should not be labelled manifestly unreasonable if the requester could not reasonably anticipate that the request would be manifestly unreasonable. However, as described above, this exception does not exist solely to address bad faith and abusive requests but also to protect the resources of the Authority.

42. The Commissioner therefore accepts that a request can be manifestly unreasonable, even if this unreasonableness is not clear in advance to a third party, unaware of how the Authority stores its information.

43. Having accepted that the burden of a request could render a request manifestly unreasonable for the purposes of the exception in regulation 10(4)(b) of the EIRs, the Commissioner must go on to consider whether, in the circumstances of this case, the burden was sufficient to render the request under consideration manifestly unreasonable.

44. The Commissioner acknowledges that the Applicant clearly believed that the Authority's systems should have allowed it to more easily retrieve the information requested.

45. However, the Commissioner is required to consider whether regulation 10(4)(b) of the EIRs applies in this case, regarding the recording systems in use by the Authority (at the date of the review outcome), and not with regard to what an Applicant might wish these systems to be capable of. Furthermore, as noted in [Decision 050/2021](https://www.foi.scot/sites/default/files/Decision050-2021.pdf)³, it is not within the Commissioner's remit to instruct a public authority to change its data recording systems.

46. That said, and while recognising that not every requester's expectations can be anticipated (or will necessarily be reasonable), the Commissioner would strongly recommend that public authorities ensure that their systems (including procedures for recording information) and associated software can extract and interrogate information effectively and accurately, so that requests under FOISA and the EIRs can be responded to as readily and efficiently as possible. While not matters he can address by way of enforcement of the legislation in individual cases, he can pursue an authority's records management (where impacting on the discharge of the authority's access to information functions) as a question of good practice,

³ <https://www.foi.scot/sites/default/files/Decision050-2021.pdf>

in terms of the Code of Practice made by the Scottish Ministers in terms of section 61 of FOISA.

47. The Commissioner does not accept, based on the submissions received, that it would be strictly necessary for the Authority to carry out the searches for part (i) of the request to facilitate searches for part (ii). It appears that inspecting final interlocutors to identify relevant cases could be done without first identifying the subset of cases where the relevant orders were sought. However, the Commissioner agrees that carrying out searches for part (i) of the request would substantially simplify compliance with part (ii) and that the Authority's proposed sequencing appears reasonable.
48. In the circumstances, the Commissioner considers that the searches required for each part of the request, considered independently, would be substantially similar and give rise to a substantially similar burden. He will therefore consider the burden of responding to these requests together.
49. The Commissioner accepts that, given the technical, and partly paper-based, nature of the records containing this information, the Authority's estimate of five minutes per case appears reasonable.
50. There is no cost limit for determining what is deemed to be an excessive cost of compliance under the EIRs, as there is in FOISA. Under FOISA, public authorities do not have to comply with a request if the cost of compliance exceeds £600. Despite the EIRs themselves lacking a cost ceiling, the Commissioner recognises that there may be cases where the time and expense involved in complying with a request for environmental information means that any reasonable person would regard it as excessive.
51. In the Commissioner's view, the Authority has – despite the not insignificant difference between the cost estimate provided at review and during the investigation – provided a reasonable estimate of the time it would take and the costs it would incur to comply with part (i) and (ii) of the requests.
52. Having considered the nature of the information requested and the submissions provided by the Authority, the Commissioner accepts that there is a significant volume of information that would require to be interrogated and that to comply with the request would therefore impose a significant burden on the Authority, given the time, cost and diversion of resources that would be involved.
53. In all of the circumstances, the Commissioner is satisfied, on balance and despite his reservations over the difference in the cost estimates, that responding to part (i) and (ii) of the request would have imposed a significant burden on the Authority, which would, in the circumstances, have been manifestly unreasonable. Having reached this conclusion, the Commissioner is required to consider the public interest test in regulation 10(1)(b) of the EIRs.

Public interest test – regulation 10(4)(b)

54. Having found that regulation 10(4)(b) is engaged, the Commissioner must now go on to consider the public interest in regulation 10(1)(b) of the EIRs. This specifies that a public authority may only withhold information to which an exception applies where, in all the circumstances, the public interest in making the information available is outweighed by the public interest in maintaining the exception.

The Applicant's submissions on the public interest

55. The Applicant explained that they wanted to know the extent to which the statutory regime in question was utilised by the public and the success rate of this type of summary application. They argued that there was a wider public interest in making such information available, because it could lead to useful proposals for law reform.
56. The Applicant submitted that there was a strong public interest in the effectiveness of environmental protection regimes and that the only way to begin to determine the effectiveness of an environmental protection regime involving members of the public making summary applications to the sheriff court was to know how often that regime was utilised and the success rate of such applications.
57. The Applicant considered the Authority was under a statutory duty under regulation 4(2) of the EIRs, to publish online "progress reports on the implementation" in Scotland of section 82 of the Environmental Protection Act 1990. To fulfil that duty, the Authority would have to carry out the manual searches it had described of both its case management system and its hard copy files.
58. The Applicant also noted that they had made several other requests for information to the Authority, which they considered showed inconsistencies in the way that the Authority reported the information held. They suggested that these responses implied that the Authority sometimes considered manual collation of statistics was justified.

The Authority's submissions on the public interest

59. The Authority recognised that the Applicant had a particular professional interest in the information. However, it did not consider there to be any indication of a pressing wider public interest concerning this information at this time, which would supersede the strong public interest in a Scottish public authority being able to carry out its statutory functions without unreasonable disruption.
60. The Authority explained that it had considered the application of the exception in regulation 10(4)(b) of the EIRs in a restrictive manner and taken account of the presumption towards disclosure. It also accepted that providing the information requested might be in the interest of the public.
61. However, on balance, the Authority considered that it remained in the greater interest of the public not to divert an unreasonable amount of key operational staff resources to answer the request. Doing so would affect the Authority's ability to deliver its statutory core functions: ensuring the provision of officers and other staff required for the purposes of the Scottish courts, the judiciary of those courts and taking account of, in particular, the needs of members of the public and those involved in proceedings in the Scottish courts.
62. The Authority explained that it did not interpret regulation 4 of the EIRs as placing an obligation on it to publish information it held about all civil and criminal cases relating to the environment by virtue of the administrative support it provided to the Scottish Courts.
63. The Authority stated that it did not hold a progress report on the implementation of the Environmental Protection Act 1990 (or a section of it), electronic or otherwise, and it was not required to create such a report in the course of its statutory functions. It therefore did not agree that regulation 4 of the EIRs put it under any obligation to gather, update and disseminate this information.

The Commissioner's view on the public interest

64. The Commissioner has carefully considered the submissions from the Applicant and the Authority.
65. In [Decision 282/2025](#)⁴, the Commissioner found that the public authority's failure to comply with a statutory duty to publish information (i.e. not in response to an information request under the EIRs) was a relevant consideration in determining whether the request was manifestly unreasonable in terms of regulation 10(4)(b) of the EIRs.
66. Where such a statutory duty exists and has not been fulfilled, the Commissioner would also consider that to be a relevant consideration when determining whether the public interest in maintaining the exception in regulation 10(4)(b) of the EIRs is outweighed by the public interest in responding to a request.
67. The duty under regulation 4(1) of the EIRs to prepare information for dissemination and progressively publish information is not limited to the eight categories of information set out in regulation 4(2). However, the Commissioner recognises that the wording of regulation 4(1) of the EIRs gives significant latitude to public authorities to determine what information, beyond the categories in regulation 4(2), they shall organise and update.
68. Having considered the submissions of both parties, the Commissioner is not satisfied that the Authority is obliged by regulation 4 of the EIRs to organise and update the information requested with a view to publication.
69. In the Commissioner's view, there is an inherent public interest in the disclosure of information to ensure that an authority is transparent and accountable. In this case, disclosure of the information requested would allow public scrutiny of the effectiveness (or otherwise) of the statutory nuisance regime.
70. More broadly, the Commissioner considers that there is a public interest in the transparency of judicial proceedings, and he acknowledges that the disclosure of the information requested would, to a limited extent, contribute to this public interest.
71. Against this, the Commissioner has considered the strong public interest in ensuring an authority can carry out its other core and statutory functions without unreasonable or disproportionate disruption.
72. As noted above, the Commissioner has already accepted that providing the information requested in this case would incur significant costs to the Authority in staff time and resources and, to a certain extent, divert resources away from other core functions.
73. While public authorities are encouraged to act in a transparent and accountable way, which benefits the public as a whole, the Commissioner acknowledges that responding to requests which require them to devote excessive or disproportionate amounts of time can only be at the expense of other areas of work.
74. The Commissioner recognises that there is a public interest in protecting the integrity of the EIRs, but it is not the intention of the legislation to require public authorities to devote excessive or disproportionate amounts of resource to a particular request. In fact, one aspect of protecting the integrity of the regime is ensuring that it can function effectively, without being disrupted by requests – even those that could not necessarily be foreseen as

⁴ <https://www.foi.scot/sites/default/files/2025-12/Decision282-2025.pdf>

causing such disruption – that require them to devote a disproportionate amount of time to responding.

75. On balance, therefore, the Commissioner accepts that, in all the circumstances of this case, the public interest arguments in favour of making the information captured by this request available are outweighed by the public interest in maintaining the exception in regulation 10(4)(b) of the EIRs.
76. Having reached this conclusion, the Commissioner (bearing in mind his comments at paragraph 46 above) would still urge the Authority to keep under consideration the reasonable and proportionate steps it might take to organise its records in such a way as to facilitate access to environmental information.

Other matters

77. During the investigation, the Authority acknowledged that it had potentially misinterpreted a previous related request made by the Applicant that had not been appealed to the Commissioner. It expressed willingness to reconsider that request and provide further explanation and information on to the Applicant.
78. Given the separate request mentioned above has not been appealed to his office, the Commissioner shall not consider the apparent misunderstanding regarding it in any detail. However, he would encourage the Authority to engage with the Applicant in view of the potential misinterpretation of that request and to provide them with any further explanation and information it can.

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

14 August 2026