



Scottish Information
Commissioner
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Decision Notice 221/2026

Noise Complaint

Authority: Fife Council
Case Ref: 202500738

Summary

The Applicant asked the Authority for information relating to complaints about Grahams Dairy. The Authority disclosed email correspondence and records showing site visits but stated that some information was not held. The Commissioner investigated and found that the Authority partially complied with the EIRs.

Relevant statutory provisions

[Freedom of Information \(Scotland\) Act 2002](#)¹ (FOISA) sections 1(1), (2) and (6) (General entitlement); 47(1) and (2) (Application for decision by Commissioner).

[The Environmental Information \(Scotland\) Regulations 2004](#)² (the EIRs) regulations 2(1) (definition of “the Act”, “applicant” and “the Commissioner”) (Interpretation); 5(1) (Duty to make environmental information available on request); 10(4)(a) (exceptions from duty to make environmental information available); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

Background

1. On 24 January 2025, the Applicant made a request for information to the Authority. He asked for the following:

¹ <https://www.legislation.gov.uk/asp/2002/13/contents>

² <https://www.legislation.gov.uk/ssi/2004/520/contents/made>

[Council Officer 1] 'Based on the dates / times from your complaints, and the descriptions provided, along with the information from the monitors, unfortunately it has not been possible to pinpoint a specific noise / source'.

Please provide full details including dates, times, duration of stay, exact locations, and officer details (whether it be one or two officers) and the full findings of any recordings undertaken by these same Authority Public protection officers in relation to noise complaints about Grahams Dairy Cowdenbeath Fife from their visits to pinpoint noise as described in email of 24th January.

From the period 1st November 2024 to current dates which supports [Council Officer 1] email. (Email quoted above).

This also includes all emails to and from [Council Officer 1], [Council Officer 2], and [Council Officer 3] on this matter which includes any reference to either (Grahams) Dairy, noise complaint or my name.

For the same time period.

That includes any emails from same period from either which may be deleted (and subsequent saved in [the Authority's] databases as required to meet retention laws)

2. The Authority sought clarification on 3 March 2025 about whether, in respect of the second part of his request, the Applicant was asking for all emails about the dairy exchanged by officers or only emails relating to the email the Applicant quoted from 24 January. The Applicant responded on the same day, confirming that he sought all emails and extending the timescale to be from 1 October 2024. He also commented that this should include any emails sent or received by any or each of these officers, to or from anyone at Graham's Dairy or any representatives of Grahams Dairy, during the same period.
3. The Authority responded on 28 March 2025, under the EIRs, providing the Applicant with over four hundred pages of emails, which they advised contained some of the Applicant's personal data and personal data of third parties (which was redacted under regulations 11(1) and 11(2) respectively). The Authority provided some information about the noise recording devices and site visits but advised the Applicant that it did not hold all of the information requested about this, applying regulation 10(4)(a).
4. On 30 March 2025, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because he believed the Authority provided conflicting records for a site visit from 16 January 2025 and he did not agree that no further information was held.
5. The Authority notified the Applicant of the outcome of its review on 7 May 2025. The Authority explained that the visits detailed in the table of information related to visits carried out by Licensing Standards Officers and the site visits detailed above the information in the table were carried out by Council Officer 1. The Authority noted that this did not appear to have been clearly detailed in its response issued on 28 March and apologised for any confusion that may have caused. The Authority advised that further searches were conducted and no more information about the site visits was found other than diary entries. The Authority upheld its application of the exception in 10(4)(a) of the EIRs.
6. On 12 May 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 he was dissatisfied with the outcome of the Authority's review because he is dissatisfied with the information supplied, believing that more information is held in relation to site visits.

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 2 June 2025, the Authority was notified in writing that the Applicant had made a valid application. The case was 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. These related to the searches the Authority completed to gather information and also about discrepancies in reporting between two teams.

Commissioner's analysis and findings

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

Application of the EIRs

11. The authority responded to the initial request in terms of the EIRs.
12. Where information falls within the scope of the definition "environmental information" in regulation 2(1) of the EIRs, a person has a right of access to it (and the public authority a corresponding obligation to respond) under the EIRs, subject to various restrictions and exceptions contained within the EIRs.
13. The Applicant has not disputed the Authority's decision to handle the request under the EIRs.
14. 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). In particular, he would consider the request to fall within paragraphs (a) (Elements of the environment), (b) (Factors affecting or likely to affect the elements), and (c) (Measures and activities) as the request relates to information about a noise complaint from a local dairy factory and the local authority monitoring of it.
15. In the circumstances, the Commissioner will consider the case, in what follows, solely in terms of the EIRs.

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

16. 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.
17. 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)

requires the authority to make that information available, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).

18. Under the EIRs, a Scottish public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 applies and, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
19. In this case, the Authority is relying on the exceptions in regulations 10(4)(a), 11(1) and 11(2) of the EIRs.
20. Given the Applicant has not disputed the application of regulation 11 to the information released, the Commissioner will only consider the application of 10(4)(a) (information not held) here.

Regulation 10(4)(a) – information not held

21. Regulation 10(4)(a) of the EIRs states that a Scottish public authority may refuse to make environmental information available to the extent that it does not hold the information when it received the request.
22. The standard of proof to determine whether a Scottish public authority holds the information is the civil standard of the balance of probabilities. In determining where the balance of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority. He also considers, where appropriate, any reasons offered by the public authority to explain why it does not hold the information.
23. While it may be relevant as part of this exercise to explore expectations about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is (or was, at the time the request was received) held by the public authority.

Contextual information

24. In response to that part of the Applicant's request where he asked for information as to "...full details, including dates, times, duration of stay, exact locations, and officer details (whether it be one or two officers) and the full findings of any recordings undertaken by these same Authority Public Protection officers, in relation to noise complaints about Grahams Dairy...", the Authority provided, amongst other information, a table and a note of when in particular the site visits occurred.
25. For context, the information in the table provided was a record of site visits made by Licensing Officers and contained the dates of visits, a description of a particular area (doors open/closed) and observed noise levels. There is a recorded site visit on 16 January 2025 at 22:30hrs; this is the same time and date about which the Public Protection officer [Council Officer 1] sent an email to Graham's Dairy. The email was discovered by the Applicant and described the noise level to be of concern and the door to be open, directly contradicting the record in the Licensing Officers' spreadsheet.

The Authority's submissions

26. The Authority explained that it had conducted its review specifically addressing the points raised in the Applicant's requirement for review, which asked it to recheck the information contained in the table (a record of the site visits carried out) provided and the records produced from the site visit undertaken on 16 January 2025.

27. The Authority advised that the reason for confusion was in part because of the volume of correspondence with the Applicant. It stated that the Applicant was in direct communication with officers in relation to an ongoing noise complaint, as well as submitting requests for all correspondence held at regular intervals.
28. In its submissions the Authority explained that the original request and review request was sent to the staff member [Council Officer 1] responsible for this area of work: this was the officer that attended the site visit, who was also the line manager of another relevant member of staff [Council Officer 2]. It explained that any communications around this would be sent to or from this person [Council Officer 1].
29. The Authority explained that the Environmental Health (Public Protection) team were regularly asked to provide information in response to information requests and had received training for this in January 2025. The Authority supplied copies of its training slides, which covered the difference between recorded information and information that would fall outwith the legislation.
30. The Authority also commented that officers in this team were competent in searching for information and as they were directly involved in the case, have a vast knowledge of the information and communication held in relation to this subject.
31. The Authority explained that thorough searches were undertaken by the Public Protection Manager [Council Officer 1], which covered individual staff mailboxes for all named staff as well as the generic mailbox for the Licensing Standards Officer.
32. Further searches were carried out of diaries and electronic systems and applications such as SharePoint, Uniform, One Drive and Teams. The search terms used when carrying out these searches included the terms 'Dairy' and 'Grahams'. Calendars were also reviewed to identify any recorded site visits falling within the relevant timescale. The Authority explained that the process for Licensing Officers attending a site visit was to update the relevant spreadsheet and there was no expectation that communication would be sent in relation to the visits. The Authority provided the Commissioner with an email from the Public Protection Manager which clearly explained the circumstances in relation to the purpose and duration of the visit he made, as well as that of the Licensing Standards Officer.
33. The Authority posited that the Applicant had misunderstood the two reports about the site visit on 16 January, explaining that two different teams had officers in attendance on the same evening. The Authority accepted that recorded observations about the conditions found on site showed that one officer found a door closed and noise levels to be of no concern (updating a spreadsheet as required for the Licensing Standards team purposes). Another officer [Council Officer 1] attended around the same time as a follow up to noise complaints and stayed onsite for approximately 30-60 minutes; during this visit, the door in question was at first closed and then found open with intermittent noise levels that this officer found concerning enough to send an email to the dairy.
34. The Authority supplied screenshots as evidence of searches and an explanation about the circumstances surrounding how two officers, simultaneously, could attend a site visit for the same business unknowingly and without digital or physical interaction.
35. The Authority advised that no further emails are held, but it was open to sharing some of the evidence supplied to the Commissioner as a way of assisting the Applicant in his understanding of what happened.

The Applicant's submissions

36. The Applicant explained that he did not believe that no communications existed between two different officers attending the same site simultaneously.
37. The Applicant observed that evidence in an email from one staff member [Council Officer 1 – Public Protection] to the Dairy recorded observed concerns about the noise levels when a door was left open. The Applicant compared this to the records provided from the Licensing Team's site visit, which observed the same door to be closed and no noise disturbance. The Applicant stated that the two officers involved in site visits were from the same management structure and therefore suggested that an absence of communication between the two teams relating to this visit was unlikely.
38. The Applicant further posited that there is a concerning absence of key email exchanges between Licensing Officers and the three officers in Public Protection. The Applicant also challenges the presentation and recording, by two officers, of entirely different accounts of the same incident at the same time and location. He believes clarification and investigation into those inconsistencies to be necessary.
39. The Applicant also considered there to be a reasonable expectation that any site attendance by another officer or team would have been directed by the Public Protection Service Manager and findings would have been reported back accordingly. The Applicant reasoned that if this was indeed the case there should be a clear and traceable record, along with a documented account of the Licensing Officer's observations, but no such information had been provided to him. Whilst the Applicant acknowledged that he was provided with a report and table of contents, he noted that the source of the data in the table was unclear.
40. The Applicant directed the investigation towards answering specific questions like:
 - Who instructed the licensing officer to attend?
 - Where is the record of that instruction?
 - What findings were reported back, and why have they not been disclosed?
41. The Applicant believed that transparency in this was essential, in part for maintaining public confidence in the Authority.

The Commissioner's view

42. The Commissioner has taken account of the submissions provided by both parties.
43. The Commissioner appreciates the Authority's candour about the misunderstanding surrounding the site visits by two different officers on the same date and approximate time.
44. The Commissioner also recognises the Applicant's personal investment in his ongoing noise complaint.
45. The Commissioner notes that the exception in 10(4)(a) was only applied to the site visit information, so the findings here are only in terms of whether any further recorded information is held about site visits (including any emails between the visiting teams/officers).
46. The Authority supplied a reasonable explanation in relation to how and why the two site visits on 16 January 2025 could have yielded different recorded observations and also how the officers attending might have missed each other. The Commissioner notes that whilst this may seem difficult to believe, and give the appearance of incompetence at worst, there is

recorded evidence to support this assertion. The Commissioner would suggest that the Authority should, in line with its offer, supply the email evidence in Document 1 provided to this office in its submissions to the Applicant in full for the Applicant's benefit.

47. With regard to the Applicant's concern that the source of the data in the table made available to him was unclear, the Commissioner would draw the Applicant's attention to the review outcome from the Authority dated 7 May 2025. This advised him that the information from the table related to visits carried out by the Licensing Standards Officers, whereas the information above the table was provided by Council Officer 1. The Authority apologised for not providing this detail in its initial response. Furthermore, the process followed by Licensing Standards Officers who make such visits is to update records contained in a specific spreadsheet. The Commissioner is satisfied that, taken together, this information provides the Applicant with clarity over the source of the information in the table provided to him.
48. The Commissioner would also remind Applicants that complaints about service provision by Local Authorities have their own process: as frustrating as it may be to go through that process, the remit of this office remains limited to rights of access to information.
49. In terms of regulation 10(4)(a), however, the Commissioner considers that the Authority supplied adequate evidence of searches and he is satisfied that the personnel involved in the searches were the most appropriate individuals to do so. He also accepts the explanation and evidence provided that the two teams were operating in isolation.
50. The Commissioner also accepts that the established process was for Licensing Officers to populate a particular spreadsheet with details of their visit and findings, the content of which was accessible to the Public Protection Manager.
51. In all of the circumstances, therefore, the Commissioner is satisfied, on the balance of probabilities, that the Authority does not (and did not at the time of receipt of the request) hold any other recorded information which would fulfil this part of the Applicant's request. The Authority was therefore entitled to rely on the exception in regulation 10(4)(a) of the EIRs, on the basis that it did not hold the information requested.

Public Interest Test

52. The exception in regulation 10(4)(a) of the EIRs is subject to the public interest test in regulation 10(1)(b) and so can only apply if, in all the circumstances of the case, the public interest in maintaining the exception outweighs that in making the information available. The question of whether or not a public authority holds information is a factual one, determined on the balance of probabilities. If a public authority does not hold the information, then there is no meaningful public interest test that can be undertaken.
53. In this case, for the reasons set out above, the Commissioner is satisfied that the Authority does not hold any further recorded information covered by this part of the request and did not do so on receipt of the request. Consequently, he accepts that there is no conceivable public interest in requiring the disclosure of such information and finds that the public interest in making information available is outweighed by that in maintaining the exception.

Other information in scope and already disclosed

54. During the investigation, the Commissioner viewed the correspondence that was disclosed and questioned whether there was information missing from it. Despite assurances from the

Authority that it recognised the error and would rectify, providing a new file for release, no further communication was ever received.

55. To be clear, the Commissioner does not believe that there are more emails to be discovered, but that there **may** be attachments and embedded information that was intended for disclosure and not included in what was made available to the Applicant. The Commissioner recognises that where there are multiple requests from the same Applicant, processing similar requests can become challenging.
56. Given there has been neither confirmation that this was checked and re-issued, nor any communication to suggest that the Authority's admission was inaccurate, the Commissioner has no option but to require that the Authority should double-check what was released, to ensure that all of the information intended for release has been disclosed (i.e. to carry out a further review to this end).
57. The Commissioner also considers that at least some of the information within the documents provided to him during the investigation may enhance the Applicant's understanding, and so he requires the Authority to consider these when preparing a revised review outcome.
58. The Commissioner therefore finds that the Authority failed to comply with the requirements of regulation 5(1) of the EIRs, as it did not make this information available to the Applicant in response to his information request.

Decision

The Commissioner finds that the Authority partially complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by the Applicant.

The Commissioner finds that the Authority was entitled to rely on the exception in regulation 10(4)(a) of the EIRs in respect of information relating to the site visit of 16 January 2025 and therefore, to that extent, the Authority complied with the EIRs.

However, the email correspondence disclosed to the Applicant between 01/10/2024 and 24/01/2025 may be incomplete, and as such the Commissioner cannot be satisfied that the Authority complied with the EIRs, regulation 5(1).

The Commissioner therefore requires the Authority to issue a revised review, by 19 October 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.

Euan McCulloch
Head of Enforcement

4 September 2026