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Commissioner  
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# Decision Notice 227/2026

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## Information relating to void property

Authority: West Dunbarton Council  
Case Ref: 202501948

### Summary

The Applicant asked the Authority for information relating to a void property. The Authority considered the request under FOISA. It disclosed some information to the Applicant, gave him notice that other information was not held, and withheld some information on the grounds that it was personal information.

The Commissioner investigated and found that the Authority had failed to identify that most of the request was seeking environmental information and as such, it should have considered the request under the EIRs as well as FOISA. The Commissioner required the Authority to respond to the requests for environmental information under the EIRs, and to carry out new searches under FOISA, for the request seeking non-environmental information.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 21(1) (Review by Scottish public authority); 39(2) (Health, safety and 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” and “the Commissioner” and paragraphs (a), (b), (c) and (f) of the definition of “environmental information”) (Interpretation); 5(1) (Duty to make environmental information available on request); 16 (Review by Scottish public authority); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

## Background

1. On 13 August 2025, the Applicant made a request for information to the Authority. He asked for the primary records in relation to the void status of and gas meter works for a named address from 4 April 2025 to the date of the request, specifically:
  - (i) The full void property status log for this address.
  - (ii) All repair orders, job tickets, and completion notes relating to the gas meter works.
  - (iii) All internal and external correspondence (including emails, letters, and memos) between WDC, contractors, and the utility provider regarding the gas meter issue.
  - (iv) Any official notices or documentation from the utility provider explaining the reason for the delay and the expected completion date.
  - (v) The dates on which modernisation works were instructed, started, and completed following the previous tenant's departure.
  - (vi) Any viewing appointment records, including invitations, acceptance, and attendance details, for [named property] since 4 April 2025.
2. The Authority responded on 9 September 2025. It provided some narrative information in respect of requests (i), (ii), (iii), (iv), (v) and (vi) and disclosed some information (in the form of an email) in relation to requests (ii), (iii), and (iv).
3. Later that day, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because his request sought the primary records and these had not been provided. The Applicant raised dissatisfaction with requests (i), (ii), (iii), (iv) and (vi). He also asked for further information relating to aspects of the Authority's initial response.
4. On 19 September 2025 the Authority asked the Applicant to confirm whether he would like specific points (which it highlighted from his requirement for review) to be raised as a new information request, because these did not form part of the original request and could not therefore be considered by the review.
5. The Applicant clarified later that same day that he considered specific parts of his requirement for review had raised dissatisfaction with the Authority's initial response. He detailed these under headings (as opposed to numbering the parts of the request). These headings were: the void property status log, the repair order, internal/external correspondence (including with the provider) about the gas meter and viewings/letting records. He accepted other parts of his Requirement for Review constituted a separate information request (which does not form part of this appeal).
6. The Authority notified the Applicant of the outcome of its review on 17 October 2025. It disclosed further information to the Applicant in relation to requests (i), (ii), (iii) and (iv) (with some redactions for personal information) and it advised him that some of the information he had requested was not held, although it did not specify which information.
7. On 23 October 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 in respect of requests (i), (ii), (iii), (iv) and (vi) because the Authority had not specified which information was not held and had not complied with its duty to advise and assist under section 15(1) of FOISA. The Applicant was also dissatisfied because he believed further information falling within scope of his request was held.

## **Investigation**

8. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
9. On 11 December 2025, the Authority was notified in writing that the Applicant had made a valid application, and the case was allocated to an investigating officer.
10. 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 included questions about the searches it had carried out, and whether the Authority considered that any of the information falling within scope of the request was environmental information as described in regulation 2(1) of the EIRs.

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

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

### ***FOISA or the EIRs?***

12. "Environmental information" is defined in regulation 2(1) of the EIRs. Where information falls within the scope of this definition a person has a right to access it under the EIRs, subject to regulations 10 and 11 of the EIRs.
13. The Applicant asked the Authority for information regarding the void status and gas meter works in relation to a specified property.
14. During the investigation, the Commissioner asked the Authority whether it had considered whether any part of the request sought environmental information.
15. In response, the Authority submitted that the information in relation to the meter works should have been processed under the EIRs. It stated that any works to the meter were related to gas works and were therefore environmental considerations.
16. The Commissioner has considered the terms of the Applicant's request and the information which was disclosed to the Applicant by the Authority.
17. The Commissioner notes that each of the documents the Authority disclosed to the Applicant with the request and review outcome, contained what he considers to be environmental information. For example, the Final Inspection Void Property - Ready for Let document includes information about the gas and electric supplies, including gas safety, the survey sheet contains detailed information about the fabric of the building and two documents concerning information covering the vacation and re-occupation of the property cover information about the water and energy suppliers.

18. The Commissioner has reviewed each document disclosed, and information provided, in relation to requests (i), (ii), (iii) and (iv). He is satisfied that each of these requests sought environmental information within the terms of the definition in regulation 2(1)(a), (b), (c) and (f) of the EIRs.
19. The Commissioner has also considered the subject matter of request (vi), which was information relating to viewing appointments. He is satisfied that the Authority correctly treated this part of the request under FOISA. He does not consider that a record of viewings of the property, in this context, is environmental information.
20. Given that the Commissioner has found the information sought in requests (i), (ii), (iii) and (iv) to be environmental information, the Authority had a duty to consider it in terms of regulation 5(1) of the EIRs. In failing to do so, it failed to comply with regulation 5(1).

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

21. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined in 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, as stated above, the Authority responded to the Applicant's request 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 requests (i), (ii), (iii) and (iv), given his conclusion that 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, the Commissioner also accepts that, in this case, the public interest in maintaining this exemption and in handling the request in line with the requirements of 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 (regulation 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 October 2025, this was only in terms of handling the request solely in terms of FOISA and not the EIRs.
27. It is apparent that the Authority failed to respond to the Applicant's request of 13 August 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 requires the Authority to provide a response to the Applicant's requirement for review of 9 September 2025 (taking into account the clarifications from both the Applicant and the Authority of 19 September 2025), in terms of regulation 16 of the EIRs.

### ***The Authority's change of position during the investigation***

29. During the investigation the Authority indicated that it was withholding some information it believed to be commercially sensitive (while the relevant section of FOISA is section 33(1)(b), the Authority appears to have mistakenly referenced section 43). Given this change in position the Authority should, in its revised review outcome, notify the Applicant of any exemptions or exceptions it is relying on to withhold this information.
30. The Commissioner notes that in its submissions, the Authority referred to its application of regulation 13 (Personal data) to some of the information. The Commissioner considers that this appears to be a [UK EIR](#)<sup>1</sup> reference, not a reference to [the EIRs which apply in Scotland](#)<sup>2</sup>, where third-party personal data is covered by regulation 11(2).
31. The Authority should also therefore ensure that it references the relevant legislation in its revised review outcome in relation to any exemption or exceptions it applies.

### ***Information held by the Authority***

32. In his application to the Commissioner, the Applicant raised dissatisfaction that the Authority in its review outcome of 17 October 2025, stated that some information was not held but did not specify which requests this applied to.
33. In its submissions to the Commissioner, the Authority stated that it considered it did not hold recorded information in relation to viewing arrangements (i.e. request (vi)).
34. The Authority provided the Commissioner with details of the searches it carried out in response to the different parts of the request as part of its submissions in this case.
35. The Authority provided details of the IHMS system used to carry out searches, what search terms were used and the names of four staff members and an external agency which were asked to search for information within scope of the request. It also explained why the different parties asked to search would have knowledge of the subject matter being searched for.
36. The Authority commented that its Integrated Housing Management System (IHMS) provided a central, permanent record of matters such as repairs, letting activity, tenant information and void periods and that information would be retried or downloaded from the system as required. Furthermore, it explained that all information within the system was date-stamped at the point it was added to the system.
37. Having considered the submissions and explanations provided by the Authority, the Commissioner is satisfied that the searches carried out by the Authority in respect of requests (i), (ii), (iii) and (iv) were adequate and proportionate, and capable of locating any information falling within the scope of these requests. In reaching this view, the Commissioner has considered the details the Authority provided about the system in which information was held, the staff and external agency who carried out searches and the details of the searches carried out.
38. However, from the submissions provided the Commissioner cannot be satisfied that no records are held in relation to viewing appointments (request (vi)).

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<sup>1</sup> <https://www.legislation.gov.uk/ukxi/2004/3391/contents>

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

This does not mean that he believes such information is held, only that he cannot be satisfied, based on the submissions provided, that it is not.

39. The Commissioner therefore requires the Authority to carry out further searches in relation to request (vi) (which asked for information about any viewing appointment records) and to include the outcome of these searches in a revised review outcome (as this information is not environmental, the revised review of request (vi) should be issued under FOISA).
40. The Commissioner requires the Authority to inform the Applicant, in its revised review outcome, of the particular requests where it considers that information is not held.
41. In his application, the Applicant raised concerns about what he believed to be inconsistencies in the information disclosed to him (in respect of the void status of the property apparently changing between two dates) which led him to believe that further information was held. The Authority provided the Commissioner with an explanation in relation to these apparent inconsistencies in which it stated that one date queried by the Applicant was the date the document was downloaded and did not reflect the void status of the property at that time.
42. The Commissioner requires the Authority to provide this explanation to the Applicant in its revised review outcome.

## Decision

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

By failing to identify that most of the request sought environmental information, the Authority failed to comply with regulation 5(1) of the EIRs.

In respect of request (vi) the Commissioner finds that the Authority correctly responded to the request under FOISA, but he is not satisfied that the Authority does not hold any information falling within the scope of request (vi).

The Commissioner requires the Authority to carry out a revised review of request (vi) under FOISA. In doing so, it must:

- carry out further searches in respect of request (vi) (as required by paragraph 39) and issue the Applicant with a revised review outcome, based on the results of those searches.

The Commissioner also requires the Authority to carry out a revised review of requests (i), (ii), (iii) and (iv) under the EIRS. In doing so, it must:

- advise the Applicant of any exceptions applied to the information, referencing the relevant legislation (as required by paragraphs 29-31);
- Clarify to the Applicant where the Authority's position is that it does not hold information (as required by paragraph 40), and
- provide an explanation to the Applicant (as required by paragraph 41-42);

The Commissioner requires the Authority to provide a revised response to the Applicant's requirement for review, in terms of the regulation 16 of the EIRs and section 21 of FOISA, by **23 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.

**Jennifer Ross**  
**Deputy Head of Enforcement**

**08 September 2026**