



Scottish Information
Commissioner
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Decision Notice 229/2026

Itemised costs for the Inchgreen redevelopment works

Authority: Inverclyde Council
Case Ref: 202600089

Summary

The Applicant asked the Authority for the itemised financial breakdown in relation to the cost of works in the redevelopment at Inchgreen that was awarded £11 million from the Glasgow City Region Deal. The Authority withheld the information requested as it considered to be commercially sensitive. The Commissioner investigated and found that the Authority complied with the EIRs in responding to the request.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 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 “environmental information”) (Interpretation); 5(1) (Duty to make environmental information available on request); 10(1), (2) and (5)(e) (Exceptions from duty to make environmental information available); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 17 September 2025, the Applicant made a request for information to the Authority relating to the Inchgreen Marine Park redevelopment. They asked for:

“The itemised financial breakdown of the cost of works in the redevelopment [at] Inchgreen that was awarded £11m from the Glasgow Region City Deal”.

2. Inchgreen Marine Park is a partnership project between the Authority and Clydeport Operations Ltd, part of the Peel Ports Group, which operates Clydeport, a multi-harbour system extending over approximately 450 square miles of the River Clyde. The Inchgreen project involves the redevelopment of brownfield sites and underutilised quay assets.
3. The Authority responded on 14 October 2025. It withheld the information falling within the scope of the request under the exemption in section 33(1)(b) of FOISA.
4. On 22 October 2025, the Applicant wrote to the Authority requesting a review of its decision. They stated that they were dissatisfied with the decision response because they disagreed that disclosure of the information requested would prejudice substantially the commercial interests of any person or organisation.
5. The Authority notified the Applicant of the outcome of its review on 20 November 2025. It stated that it considered the information requested was environmental information and that it was responding in terms of the EIRs. It withheld the information requested under the exception in regulation 10(5)(e) of the EIRs.
6. On 14 January 2026, 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 it had a public duty to be fully transparent and accountable regarding the expenditure of public funds.

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 1 April 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 subsequently 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, related to its reasons for withholding the information requested under regulation 10(5)(e) of the EIRs and its consideration of the public interest test.

Commissioner's analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.
11. However, given the level of detail provided by both parties, the Commissioner has only summarised in this decision notice what he considers to be the most salient points of these submissions.

Application of the EIRs

12. Where information falls within the scope of the definition of “environmental information” in regulation 2(1) of the EIRs, a person has a right to access it (and the public authority a corresponding obligation to respond) under the EIRs, subject to various restrictions and exceptions contained in the EIRs.
13. 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.
14. The Applicant did not challenge the Authority’s decision to deal with the request as one for environmental information. The Commissioner will therefore consider this case solely under the EIRs.

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

15. Regulation 5(1) of the EIRs (subject to the various qualifications contained in regulations 6 to 12) requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant.
16. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 apply and, in all the circumstances of the case, the public interest in maintaining the exception(s) outweighs the public interest in making the information available (regulation 10(1)). It must interpret any exceptions restrictively and apply a presumption in favour of disclosure (regulation 10(2)).

Regulation 10(5)(e) of the EIRs – Confidentiality of commercial or industrial information

17. Regulation 10(5)(e) provides that a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially the confidentiality of commercial or industrial information where such confidentiality is provided for by law to protect a legitimate economic interest.
18. [The Aarhus Convention: An 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 are derived, notes (at page 88) that the first test for considering this exception is whether national law expressly protects the confidentiality of the withheld information. The law must explicitly protect the type of information in question as commercial or industrial secrets. Secondly, the confidentiality must protect a “legitimate economic interest”: this term is not defined in the Convention, but its meaning is further considered below (at paragraph 37).
19. Having taken this guidance into consideration, the Commissioner’s view is that, before regulation 10(5)(e) of the EIRs can be engaged, authorities must consider the following matters:
 - (i) Is the information publicly available?
 - (ii) Is the information industrial or commercial in nature?
 - (iii) Does a legally binding duty of confidence exist in relation to the information – express or implied?

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

- (iv) Would disclosure of the information cause, or be likely to cause, substantial harm to a legitimate economic interest?

The Applicant's submissions

20. The Applicant commented that the City Deal had provided money on application from the Authority, which subsequently passed this funding to Inchgreen Marine Park Limited. This process involved the Authority providing a business case outlining the proposed development and it provided the names of companies that would move into the park.
21. The Applicant stated that, to date, "none of these companies have set up businesses on the park and have all disappeared, no jobs created". They therefore disagreed that disclosure of the information requested would prejudice substantially the commercial interests of any person or organisation.
22. The Applicant provided detailed further submissions to the Commissioner relating to the background to the Inchgreen redevelopment works and why disclosure of the information requested was important. The Commissioner has fully considered these submissions and has summarised them, to the extent appropriate, later in his decision notice as part of the consideration of the public interest test.

The Authority's submissions

23. By way of further background information, the Authority explained that the Authority and Clydeport Operations Ltd had established a Joint Venture Corporate Vehicle (joint venture) which is owned on a 50/50 basis by the two parties. The joint venture was incorporated on 28 March 2022, and the joint venture company was called Inchgreen Marine Park Limited. Clydeport Operations Ltd transferred certain land interests to the joint venture for the purposes of the project.
24. The Authority secured funding of £9.47 million for the project through the Glasgow City Region City Deal. This funding had been used by the joint venture for certain works relating to site preparations, site clearance and remediation works, dredging, quayside stabilisation and upgrading of infrastructure. A further £300,000 was procured from the City Region for the diocese site acquisition contribution and £1.36 million was obtained through Clyde Mission funding for the Platers Shed which forms part of the redevelopment.
25. Under the terms of a development agreement between the Authority and Clydeport Operations Ltd, the works undertaken were procured by Clydeport Operations Ltd, on behalf of the joint venture. Clydeport Operations Ltd, as a subsidiary of Peel Ports Group, which is a port authority, had access to more competitive commercial rates for works of the type required than the Authority, as a local authority, did.
26. The Authority submitted that none of the information requested was publicly available.
27. The Authority stated that the information requested was commercial in nature. It constituted detailed financial information, including prices secured by Clydeport Operations Ltd, for individual elements of works and services (provided by named contractors, in some cases) to be provided under a contract to redevelop the site at Inchgreen Marine Park.
28. The Authority contended that the information requested was subject to the common law of confidence. The information was provided by Clydeport Operations Ltd to the Authority in confidence, with information relating to pricing from third party contractors also being provided to Clydeport Operations Ltd in confidence. The nature of the information (i.e. detailed pricing for works and services) and the circumstances in which it was shared (i.e. for

the purposes of competitive tendering pursuant to the joint venture project) made the information inherently confidential.

29. The Authority also stated that the information requested was subject to contractual obligations of confidentiality. The information was considered by the Authority and Clydeport Operations Ltd to be “Confidential Information” under the terms of clause 18 of the joint venture agreement between the two parties, in respect of which the Authority had given undertakings not to disclose the information. Clydeport Operations Ltd had entered into similar contractual obligations of confidentiality with the third-party contractors.
30. The Authority submitted that disclosure of the information requested would harm the legitimate economic interests of the following parties:
 - Clydeport Operations Ltd – in terms of harm to its ability to secure the best possible rates for works and services in a competitive marketplace, to attract tenders from third parties and to secure the best possible rates for this and other projects.
 - Third-party contractors – in terms of their ability to operate within a competitive market environment and secure future contract opportunities.
 - The Authority – in terms of its ability to attract private sector partners to work with to deliver projects of this type and to do so in a way that ensured best value when spending public money.
31. The Commissioner asked the Authority how and why disclosure of the information requested would cause, or would be likely to cause, substantial harm to the legitimate economic interests identified above.
32. For Clydeport Operations Ltd, the Authority submitted that revealing the itemised pricing of the individual elements of the contract would reveal the rates Clydeport Operations Ltd had secured for each item of works/services of this type. This information could be used by other contractors seeking to obtain contracts from Clydeport Operations Ltd or to compete with Clydeport Operations Ltd for contract opportunities to benchmark and thereafter modify their existing rates to improve their chances of securing the contract.
33. The Authority considered that it could also reduce the number of contractors willing to bid for the contract opportunities advertised by Clydeport Operations Ltd, who might fear that in doing so their pricing and rates would be made public and they would suffer the detriment described below in relation to third-party contractors.
34. The Authority explained that Clydeport Operations Ltd had confirmed this view. In particular, Clydeport Operations Ltd considered that disclosure would allow tenderers to reverse-engineer cost structures and pricing strategies, and gain insight into margins and financial tolerances to be used in future tenders/negotiations. This would directly weaken Clydeport Operations Ltd’s competitive position in the market to deliver this project and similar projects with public partners.
35. For third-party contractors, the Authority stated that disclosure would reveal their identities as contractors carrying out the works and the pricing/rates they had agreed to deliver elements of the contract under. This could be used by their competitors to undercut them in future tenders. Clydeport Operations Ltd confirmed this view, arguing that disclosure would allow competitors of the third-party contractors to gain unfair insights into the contractors’ pricing, which would be likely to weaken their competitive positions in the market.

36. For the Authority itself, the Authority considered that its relationship with Clydeport Operations Ltd, as a partner to the joint venture, would be seriously damaged in terms of the trust and transparency between the parties. Due to the substantial prejudice that disclosure would cause to Clydeport Operations Ltd, it might become reluctant to share information with the Authority out of fear of the information entering the public domain and causing further harm to its commercial interests. This could jeopardise the success of the entire project.
37. The Authority also submitted that any economic harm of the type described above that Clydeport Operations Ltd might suffer in the future would also directly impact the Authority, as the partner in the joint venture responsible for securing the funding for the works. It might also deter other private sector partners from considering or agreeing to enter into similar partnership projects with the Authority, for those same reasons.

The Commissioner's view

38. In the following, the Commissioner will consider if the Authority was justified in withholding the information requested under regulation 10(5)(e) of the EIRs.
39. As stated in many previous decisions, the disclosure or withholding of information in one case should not be taken to mean that information in a similar case would necessarily require to be disclosed or withheld. As the Commissioner has made clear in many other decision notices, each case must be considered separately and on a case-by-case basis.

Is the information publicly available?

40. The Commissioner has examined the withheld information and accepts that it is not, and has not been, in the public domain.

Is the information commercial or industrial in nature?

41. Having considered the withheld information and the nature of the redevelopment of Inchgreen Marine Park, alongside the Authority's submissions, the Commissioner is satisfied that the withheld information is commercial in nature for the purposes of regulation 10(5)(e) of the EIRs.

Does a legally binding duty of confidence exist in relation to the information?

42. In terms of regulation 10(5)(e) of the EIRs, confidentiality "provided by law" will include confidentiality imposed on any person under the common law of confidence, under a contractual obligation, or by statute.
43. The Commissioner acknowledges that, under the terms of clause 18 of the joint venture agreement between the Authority and Clydeport Operations Ltd, the Authority gave undertakings not to disclose the information requested, and that Clydeport Operations Ltd had entered into similar contractual obligations of confidentiality with the third-party contractors.
44. However, the Commissioner does not accept that contractual terms, of themselves, mean that all information identified should be, or will be, automatically considered confidential. To accept such a proposition would essentially give public authorities the ability to withhold such information under the EIRs, regardless of whether the information in question is confidential. The Commissioner is required to focus on the nature of any withheld information to determine whether a duty of confidence should stand.
45. Having reviewed the withheld information and the Authority's submissions, the Commissioner is satisfied that there is no reasonable basis for treating the information requested as

anything other than confidential. It is not accessible to the public already, it was communicated in circumstances importing an obligation of confidentiality and unauthorised use or disclosure of the information would be to the detriment of the parties communicating it.

46. In the circumstances, the Commissioner is therefore satisfied that a legally binding duty of confidence exists in relation to the information.

Would disclosure of the information cause, or be likely to cause, substantial harm to a legitimate economic interest?

47. The term “legitimate economic interest” is not defined in the EIRs. In the Commissioner’s view, the interest in question should be financial, commercial or otherwise “economic” in nature. The prejudice to that interest must be substantial; in other words, it must be of real and demonstrable significance.
48. The withheld information in this case, as requested, comprises a detailed, itemised breakdown of costs attributable to specific elements of the works in the ongoing redevelopment at Inchgreen. The Commissioner therefore accepts that the withheld information retains current commercial sensitivity.
49. The Commissioner is satisfied that disclosure of the withheld information in this case would be likely to substantially prejudice the Authority’s legitimate economic interests as well as those of Clydeport Operations Ltd and other third-party contractors. He has reached this conclusion having carefully considered the withheld information and submissions from both the Authority and the Applicant. He has also borne in mind that disclosure under the EIRs (and, for that matter, FOISA) is effectively disclosure to the world at large and not simply to the Applicant.
50. In particular, the Commissioner accepts that disclosure of the withheld information, by allowing competitors to gain significant insights into their commercial strategy and pricing rates, would be likely to substantially prejudice the ability of Clydeport Operations Ltd and the third-party contractors to negotiate and compete effectively in the wider market and participate effectively in future competitive exercises.
51. The Commissioner also accepts that disclosure of the withheld information would be likely to deter other private sector partners from considering or agreeing to enter into similar partnership projects with the Authority. This would be likely to substantially prejudice its ability to deliver projects of this type and to achieve best value when spending public money.
52. In the circumstances, therefore, the Commissioner is satisfied that the Authority was entitled to apply the exception in regulation 10(5)(e) of the EIRs to withhold the information requested. He accepts that the exception applies to each element of the information requested, albeit to a greater or lesser degree. In other words, while some individual costs may be more commercially sensitive than others, he accepts that the same underlying considerations and commercial sensitivity exist across the itemised breakdown as a whole.

The public interest test

53. Having accepted that the exception in regulation 10(5)(e) applies to the withheld information, the Commissioner is required to consider the public interest test in regulation 10(1)(b) of the EIRs. This states that a Scottish 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 about the public interest

54. The Applicant explained that the Authority had prepared an Outline Business Case and a Final Business Case. While the former was made publicly available, the latter was not. Only a heavily redacted version of the Final Business Case was disclosed in response to an information request.
55. The Applicant noted that the Outline Business Case indicated that four companies had expressed firm interest in moving in to set up and conduct business in the completed Marine Park. However, the Final Business Case made no mention of these four companies, and no explanation had been given for this omission.
56. The Applicant stated that the Authority and the joint venture, Inchgreen Marine Park Ltd, had not published any accounts in relation to the use of public funds to refurbish the Inchgreen facility. They also noted that the joint venture had not published any minutes for councillors in Inverclyde or the public and had only agreed to provide an annual report to councillors following a formal complaint.
57. The Applicant explained that employment was the main reason public funds were awarded for Inchgreen's refurbishment, but no jobs had been created in the five years since the joint venture was formed in 2021.
58. The Applicant contended that there was no transparency by the Authority on the operations of the joint venture, resulting in it being necessary to make continual requests for disclosure of information on how public funding had been used. Where information had been disclosed, it had been so heavily redacted as to be more or less useless.
59. The Applicant suspected that unauthorised funds might have been used by the joint venture, outwith the parameters and scope of the business case application for the £11.5 million funding. They referred to statements made by the local MP and the Scottish Secretary, indicating that work had been done to the east end of the Dry Dock when no information had ever been published that this area had been included in the scope of the joint venture.
60. The Applicant explained that they were aware that a company had estimated that a refurbishment of the Platers Shed at Inchgreen Marine Park would cost around £400,000. However, the Authority applied for £1.3 million of funding for this refurbishment and produced no accounts for this development.
61. The Applicant considered that the Authority had a public duty to be fully transparent and accountable regarding the expenditure of public funds and that it should disclose all necessary information, sufficient to allow public scrutiny.
62. While the Applicant welcomed investment in Inchgreen, they said that the public needed to be able to see how such substantial public funds had been allocated and invested. They did not consider it served democracy well to claim that disclosure was not in the public interest. They commented that there was a "lot of secrecy" regarding the use of the millions of pounds of public funds by the Authority.
63. The Commissioner has also fully considered the other submissions made by the Applicant, to the extent that they are relevant to considering the balance of the public interest test.

The Authority's submissions about the public interest

64. The Authority explained that it interpreted the exception in regulation 10(5)(e) of the EIRs in a restrictive way, by considering whether the information held could be disclosed in a way that

would not result in the substantial prejudice to legitimate economic interests required for the exception to apply. However, it concluded that there was no way to provide the information requested without the identified harm being caused.

65. In terms of issues favouring the disclosure of the information requested, the Authority noted that the works to redevelop Inchgreen Marine Park were high-profile, high-value and funded with public money through the Authority's participation in the Glasgow City Region Deal and the Clyde Mission Fund. Consequently, there is clear public interest in ensuring this money is properly spent and accounted for, and in a way that secures best value for the public.
66. The Authority also recognised the general public interest in transparency and accountability around the spending of public money and public authority decision-making.
67. In terms of issues favouring maintaining the exception in regulation 10(5)(e) of the EIRs, the Authority considered that, given the underlying aims of the joint venture at Inchgreen to redevelop a brownfield site and attract investment into the local area and create jobs, there was considerable public interest in the joint venture succeeding. This would be substantially prejudiced, for the reasons set out earlier, if the information were disclosed.
68. The Authority submitted that there was considerable public interest in it being able to partner effectively with the private sector to deliver projects like the redevelopment of Inchgreen. To do this, the Authority and Clydeport Operations Ltd (and any other private party the Authority might seek to work with) needed to be able to freely share detailed financial information, knowing that the information would remain confidential, so that the project, including the finances, could be managed properly and ensure best value was achieved in the spending of public money.
69. The Authority stated that there was, therefore, significant public interest in ensuring that the substantial prejudice the parties would suffer in the event that the information were disclosed, as set out earlier, which included jeopardising the joint venture and the redevelopment of Inchgreen, did not materialise through the disclosure of the information requested.
70. The Authority submitted that there was also considerable public interest in ensuring that Clydeport Operations Ltd and the third-party contractors were not placed at a competitive disadvantage by virtue of having their rates and pricing for specified works being made available to their competitors.
71. In particular, the Authority argued that it was not in the public interest that markets were distorted and rendered unfair by virtue of their rates entering the public domain, to their commercial and economic detriment. This would deter private contractors from engaging with public authorities in these projects, which would be to the detriment of public authorities, those contractors and the wider public who benefitted from the output of those partnership projects.
72. The Authority also stated that there was a general public interest in confidences being maintained.
73. On balance and taking into account the presumption in favour of disclosure, the Authority considered that the public interest in maintaining the exception in regulation 10(5)(e) of the EIRs was so great that it outweighed the public interest in disclosing the information. This was because the prejudice to the economic interests of the Authority, Clydeport Operations Ltd and third-party contractors, together with the likely harm to the success of the Inchgreen redevelopment and future public/private partnerships, would be substantially contrary to the

public interest. The public interest was best served by maintaining the confidence of this information.

74. The Authority contended that the public interest in transparency around the public money spent on the works at Inchgreen was satisfied by the regular updates on progress of the project and the joint venture to the Authority's Environment and Regeneration Committee, on matters which could be put into the public domain. It noted that the spending of Glasgow City Region City Deal funding was also scrutinised and audited under its Assurance, Governance and Programme Management Framework 2025.

The Commissioner's view on the public interest

75. The Commissioner has carefully considered the submissions made by both parties on the public interest test, together with the withheld information (to which, as noted above, he accepts the exception in regulation 10(5)(e) of the EIRs applies).
76. The Commissioner acknowledges the general public interest in transparency and accountability, particularly in relation to the expenditure of public funds.
77. In this case, the Commissioner recognises that there is a significant public interest in understanding how substantial sums of public money allocated to the Inchgreen project have been spent. There is some information in the public domain providing a broad overview of the works undertaken and of overall funding allocations, but this would not enable the public to determine precisely how funding was distributed and what it was spent on.
78. The Commissioner recognises that disclosure of the information requested would therefore contribute materially to transparency and accountability in the use of the substantial sums of money allocated to the Inchgreen project. In his view, neither the information already in the public domain, nor the existing oversight and scrutiny measures, meaningfully reduce the public interest in the disclosure of the withheld information.
79. However, the Commissioner has already concluded that disclosure of this confidential information would be likely to cause substantial prejudice to the legitimate economic interests of the Authority, Clydeport Operations Ltd and the third-party contractors. Such harm would be contrary to the public interest.
80. In the Commissioner's view, it is in the public interest for organisations operating in a commercial environment to be able to trade fairly and compete effectively in a competitive market. He considers that it is in the public interest that Clydeport Operations Ltd and the third-party contractors are not disadvantaged as a result of having entered into contractual arrangements with the Authority, with a consequential adverse impact on their ability to negotiate and compete effectively in the wider market and participate effectively in future competitive exercises.
81. The Commissioner also accepts that organisations may be discouraged from seeking to do business with the Authority for fear of commercially sensitive information, such as information giving competitors a potentially exploitable insight into rates and pricing, being disclosed to the world at large (which, as stated above, is the effect of disclosure under FOI law). This would not be in the public interest.
82. Having carefully considered the public interest arguments put forward by both parties, the Commissioner has concluded, on balance, that the public interest in making the information available is outweighed by the public interest in maintaining the exception in regulation 10(5)(e) of the EIRs.

83. The Commissioner is therefore satisfied that the Authority was entitled to withhold the information requested under the exception in regulation 10(5)(e) of the EIRs.

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

9 September 2026