



Scottish Information
Commissioner
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Decision Notice 230/2026

Costs of unauthorised encampments in West Lothian

Authority: West Lothian Council
Case Ref: 202502351

Summary

The Applicant asked the Authority for various information relating to unauthorised encampments in West Lothian. The Authority provided the Applicant with some information and informed him that it did not hold any other information within the scope of the request. Following an investigation, the Commissioner concluded that at least some of the information requested was environmental information, and that the Authority should have considered that information under the EIRs. The Commissioner also found that the Authority had failed to satisfy him that it had identified all relevant information falling within the scope of the request. He required the Authority to carry out fresh searches for the information requested and to provide the Applicant with a revised review outcome.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2), (4) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 17(1) (Notice that information is not held); 39(2) (Health, safety and environment); 21(1) (Review by Scottish public authority); 47(1) and (2) (Application for decision by Commissioner).

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of “the Act”, “applicant”, “the Commissioner” and “environmental information”) (Interpretation); 5(1) (Duty to make environmental information available on request); 16 (Review by a Scottish public authority); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 11 August 2025, the Applicant made a request for information to the Authority. He asked for:
 - (i) A detailed breakdown of all legal costs, including court fees, legal representation, and any other related expenses, incurred due to unauthorised encampments in West Lothian in 2025. Please include a list of all sites where these costs were incurred (e.g., Stewartfield Park, pathway to East Mains Industrial Estate, Xcite Linlithgow, etc.).
 - (ii) A detailed breakdown of all cleanup costs, including labour, equipment, waste disposal, and any other associated expenses, for all unauthorised encampments in West Lothian in 2025. Please specify the costs by site.
 - (iii) Any records or correspondence detailing the Authority's decisions regarding security measures (e.g., installation of bollards or other preventive measures) at access and egress points of public spaces affected by unauthorised encampments in West Lothian, from January 2023 to August 2025.
2. The Authority did not respond to the information request.
3. On 9 September 2025, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
4. On 10 October 2025, the Authority responded to the Applicant's requirement for review. It upheld its failure to respond to his initial request within the statutory timescale and informed the Applicant that it was not in a position to provide a substantive response but would do so by 31 October 2025.
5. The Authority subsequently notified the Applicant of the outcome of its review on 31 October 2025, in the following terms:
 - for part (i), it disclosed information relating to legal costs incurred in 2025 in relation to five named sites
 - for part (ii), it disclosed the total clean-up cost incurred in 2025 in relation to "unauthorised encampments"
 - for part (iii), it disclosed some information relating to the costs of securing two named sites, and it otherwise issued a notice, in terms of section 17(1) of FOISA, that it held no "formal records of minutes" given meetings had taken "place face-to-face during site visits".
6. On 19 December 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because he considered that the information provided by the Authority was incomplete and it had failed to respond to his requirement for review within statutory timescales.

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 10 February 2026, the Authority was notified in writing that the Applicant had made a valid application. 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 how the Authority interpreted the request, how it established what information it held falling within the scope of that request and its handling of the request under FOISA (as opposed to the EIRs).

Commissioner's analysis and findings

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

FOISA or EIRs?

11. The relationship between FOISA and the EIRs was considered at length in [Decision 218/2007](#)¹. Broadly, in the light of that decision, the Commissioner's general position is as follows:
 - (i) The definition of what constitutes environmental information should not be viewed narrowly.
 - (ii) There are two separate statutory frameworks for access to environmental information, and an authority is required to consider any request for environmental information under both FOISA and the EIRs.
 - (iii) Any request for environmental information therefore must be handled under the EIRs.
 - (iv) In responding to a request for environmental information under FOISA, an authority may claim the exemption in section 39(2).
 - (v) If the authority does not choose to claim the section 39(2) exemption, it must respond to the request fully under FOISA: by providing the information; withholding it under another exemption in Part 2; or claiming that it is not obliged to comply with the request by virtue of another provision in Part 1 (or a combination of these).
 - (vi) Where the Commissioner considers a request for environmental information has not been handled under the EIRs, he is entitled (and indeed obliged) to consider how it should have been handled under that regime.
12. Given the subject matter of the request, the Commissioner asked the Authority to consider whether the request, or any part of it, properly fell to be handled as a request for environmental information, and therefore be responded to under the EIRs.
13. The Authority did not respond to the Commissioner's request for submissions on this point.

¹ <https://www.foi.scot/decision-2182007>

14. The Commissioner accepts that information will not necessarily be environmental simply because it had a slight or tangential association with the state of the elements of the environment. On the other hand, he acknowledges that no types of information are excluded from the potential ambit of environmental information and that court cases have confirmed that environmental information, and the scope of the Directive, should be interpreted broadly.
15. Having considered the terms of the request and the information already disclosed to the Applicant, the Commissioner concludes that some of the information requested should properly be considered to be environmental information, particularly given the breadth of part (iii) of the request and the references to "clean-up" and "waste disposal" in part (ii).
16. Given the Commissioner's conclusion that at least some of the information requested is properly considered 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, the Authority failed to comply with regulation 5(1).
17. Where the information falling within the scope of a request comprises both "environmental" and "non-environmental" information, then the specific component information must be processed in accordance with the appropriate regime. Environmental information falling within the scope of the request, therefore, must be processed in accordance with both FOISA and the EIRs, while any non-environmental information should be processed in accordance with FOISA alone.

Section 39(2) of FOISA – environmental information

18. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined by regulation 2(1) of the EIRs) is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs.
19. In this case, as stated above, the Authority responded to the request for review solely under FOISA.
20. The Commissioner finds that the Authority would have been entitled to apply this exemption to some of the information requested, given his conclusion that some of the information requested would be properly classified as environmental information.
21. As there is a separate statutory right of access to environmental information available to the Applicant in this case, the Commissioner accepts, in all the circumstances, that the public interest in maintaining this exemption (and responding to parts of the request under the EIRs) outweighs any public interest in disclosing the information under FOISA.

Information falling within the scope of the request

22. In this case, the Applicant submitted that the Authority had not provided him with all of the information falling within the scope of his request.
23. In considering whether a Scottish public authority has complied with the requirements of FOISA or the EIRs in any given case, the Commissioner must be satisfied that the authority has carried out adequate, proportionate searches in the circumstances, taking account of the terms of the request and all other relevant circumstances.
24. The Commissioner will consider the scope, quality, thoroughness and results of those searches, applying the civil standard of proof (the balance of probabilities). Where appropriate, he will also consider any reasons offered by the public authority to explain why it does not, or could not reasonably be expected to, hold the information.

25. In all cases, it falls to the public authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold the information (or holds no more information than it has identified and located in response to the request). In this case, the Commissioner is not satisfied that the Authority has achieved this.
26. During the investigation, the Authority stated that it had not identified all information relevant to the request. Having undertaken a fresh consideration of the request, it explained that it was satisfied that there were more than five sites at which “encampments had been experienced” and that the information provided to the Applicant was, therefore, potentially incomplete.
27. The Authority stated that it was therefore seeking to progress further discussions and investigations with the relevant service areas regarding parts (i) to (iii) of the request. Given this, the Authority recognised that providing the Applicant with a revised review outcome and an apology would be appropriate.
28. In the circumstances, and in the absence of further submissions from the Authority describing the searches for relevant information undertaken at the time of responding to the request, the Commissioner cannot be satisfied that the Authority has identified all relevant information falling within the scope of the request.
29. The Commissioner therefore finds that the Authority provided an incomplete response to the Applicant’s request and in doing so failed to comply with section 1(1) of FOISA and regulation 5(1) of the EIRs.

Regulation 16 of the EIRs

30. Regulation 16 of the EIRs states that, on receipt of a requirement to conduct a review, the authority shall review the matter and decide whether it has complied with the EIRs, within 20 working days (regulations 16(3) and (4)). It also states that, where an authority has not complied with its duty under the EIRs, it shall immediately take steps to remedy the breach of duty (regulation 16(5)).
31. Although the Authority substantively responded to the Applicant’s requirement for review on 31 October 2025, this was solely in terms of FOISA and not, at least in part, under the EIRs.
32. It is apparent that the Authority failed to respond to the Applicant’s request of 11 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.
33. The Commissioner therefore requires the Authority to provide a revised review outcome to the Applicant’s requirement for review of 9 September 2025 in terms of regulation 16 of the EIRs (to the extent that the information requested is environmental information) and in terms of section 21 of FOISA (to the extent that the information requested is non-environmental information).
34. In providing the revised review outcome, the Commissioner requires the Authority to:
 - distinguish between environmental and non-environmental information and process the information in accordance with the principles set out in paragraphs 11 and 17 above
 - consider carefully the terms of the request and ensure that its interpretation of the request is reasonable and fully addresses the request. (If the Authority is unsure of the correct scope of this request, the Commissioner would remind it that it should, in line with

the requirements of the [Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the EIRs](#)², engage with the Applicant to clarify the precise scope of the request.)

- take adequate and proportionate steps to establish what information is held, using appropriate search terms and searching all locations and mediums where relevant information may be held
- retain evidence of those searches in the event of a further appeal to the Commissioner.

Statutory timescales

35. The Commissioner has already concluded that the Authority failed to respond to the Applicant's request and subsequent requirement for review in terms of the requirements of regulations 5(1) and 16 of the EIRs.
36. However, in this case, the Applicant expressed dissatisfaction that the Authority had failed to respond to his requirement for review within the statutory timescales set out in FOISA.
37. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. This is subject to qualifications which are not relevant in this case.
38. The Authority initially responded to the Applicant's requirement for review on 10 October 2025 and issued a further, substantive, response on 31 October 2025. Neither response was provided within the 20-working-day statutory timescale set out in FOISA.
39. It is therefore a matter of fact that the Authority did not provide a response to the Applicant's requirement for review within 20 working days. To the extent that the information falling within the scope of the Applicant's request fell to be handled under FOISA (as opposed to the EIRs), the Commissioner must find that the Authority failed to comply with section 21(1) of FOISA.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by the Applicant.

The Commissioner finds that the Authority failed to comply with FOISA and the EIRs in the following respects:

- By failing to recognise that some of the information requested was environmental information and consider that information under the EIRs, the Authority failed to comply with regulation 5(1) of the EIRs.
- By failing to satisfy the Commissioner that it does not hold any further information in addition to that identified already, the Authority failed to comply with section 1(1) of FOISA and regulation 5(1) of the EIRs.

² <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2026/03/foi-eir-section-60-code-practice/documents/foi-eir-section-60-code-practice/foi-eir-section-60-code-practice/govscot%3Adocument/foi-eir-section-60-code-practice.pdf>

- By failing to respond to the Applicant's requirement for review within the timescales laid down by section 21 of FOISA and regulation 16 of the EIRs.

The Commissioner therefore requires the Authority to carry out adequate, proportionate searches for the information requested, reach a decision on the basis of those searches and notify the Applicant of the outcome (in terms of section 21 of FOISA or regulation 16 of the EIRs, as appropriate), by **26 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.

Cal Richardson
Deputy Head of Enforcement

9 September 2026