



Scottish Information
Commissioner
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Decision Notice 244/2026

Requirements to serve on Local Review Body

Authority: City of Edinburgh Council
Case Ref: 202502119

Summary

The Applicant asked the Authority for information relating to the requirements for a councillor to serve on its planning Local Review Body (LRB). The Authority considered the request under FOISA. It provided some information and withheld other information which it considered to be personal data.

The Commissioner investigated and found that the Authority had considered the request under the wrong legislation. The requested information was environmental information and the Authority should have considered the request under the EIRs. The Commissioner required the Authority to respond to the request under the EIRs.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 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) (definitions of “the Act”, “applicant” and “the Commissioner”) and paragraphs (a), (b) and (c) (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 21 September 2025, the Applicant made a request for information to the Authority.

Under the EIRs, he asked for information relating to the requirements for a councillor to serve on the Authority's planning Local Review Body (LRB), including eligibility/selection, training, and sign-off from 1 January 2023 to the date of the request (or the latest versions in force on 18 June 2025). The request stated:

Please provide:

i) Constitution & appointment

- a. The current governance documents setting out how LRB membership is constituted/appointed (e.g., Standing Orders extracts, Scheme of Delegation, LRB Protocols), including:
- b. eligibility criteria and any exclusions (e.g. executive roles, ward interests);
- c. how members are selected/allocated/rotated to panels;
- d. quorum and Convener/Vice-Convener arrangements;
- e. any substitution rules.

ii) Training/competency requirements

- a. The mandatory training required before a councillor may sit on the LRB (module titles, learning outcomes, delivery method, pass/attendance criteria, and refresher frequency).
- b. Any induction packs, guidance notes, or checklists issued to LRB members (especially on predetermination/bias, relevant vs irrelevant considerations, forming lawful reasons, and the use of planning/legal advice).

iii) Verification/sign-off

- a. Who is responsible for verifying that members have completed required training before sitting (e.g. Monitoring Officer/Committee Services) and the process used.
- b. Any requirement for formal sign-off or certification, and copies/templates of that sign-off.

iv) Compliance records (limited and factual)

- a. Completion/compliance records for [two named councillors]
- b. Any recorded exceptions/waivers since 1 January 2023 where a member sat before completing required training.

v) Changes & publication

- a. A note of any changes to LRB membership/training requirements since 1 January 2023 and the dates they took effect.
- b. Where these documents are published (links or document titles/paths), if public.

The Applicant asked for the documents to be provided to him electronically and he also specified that if redactions were applied, that dates, roles/titles, and module names were retained. The Applicant commented that if any of the information was considered to be non-environmental, the Authority should treat those parts under FOISA.

2. The Authority responded on 14 October 2025 solely under FOISA. It provided some information in relation to requests i)a and i)b, ii)a, and iii)a, and iii)b. It referred the Applicant to its Standing Orders in respect of requests i)c and i)d, and provided a weblink to its Governance documents. It gave the Applicant notice under section 17(1) of FOISA that it did not hold information in relation to requests ii)b, iv)b and v)a and v)b. In relation to request iv)a, the Authority withheld the information under section 38(1)(b) (Personal information) of FOISA.
3. On 19 October 2025, the Applicant wrote to the Authority requesting a review of its decision in relation to requests i), ii), iii) and iv). The Applicant stated that he was dissatisfied with the decision because he believed some information provided was inaccurate (request i)a), that some requests were unanswered (requests i)d and ii), that the Authority had not provided adequate signposting, contrary to sections 15 (Duty to provide advice and assistance) and 25 (Information otherwise accessible) of FOISA; and that the response to request iii) lacked the necessary context. The Applicant was also dissatisfied with the application of section 38(1)(b) of FOISA to request iv).
4. The Authority notified the Applicant of the outcome of its review on 17 November 2025. It provided further information to the Applicant in relation to requests i), ii), and iii)a. including copies of training materials and a Scottish Government circular provided to elected members, and it upheld its original decision in relation to request iv)a.
5. On 23 November 2025, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority's review because he believed further information was held in relation to request ii)a and ii)b (training requirements) and he was dissatisfied that the Authority had applied s38(1)(b) of FOISA in respect of request iv)a (training completion records for named councillors).

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 23 December 2025, 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 allocated to an investigating officer.
8. 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 whether the Authority considered some or all of the information requested might be environmental information.

Commissioner's analysis and findings

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

FOISA or the EIRs?

10. “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.
11. During the investigation, the Commissioner asked the Authority if it had considered whether any part of the request sought environmental information.
12. In its submissions, the Authority stated that upon further consideration of the information requested, it believed that the requested information was environmental information as defined under regulation 2(c) of the EIRs because it related to a measure which would affect an element of the environment.
13. Accordingly, the Authority considered that section 39(2) of FOISA should have been applied and the request should now be considered under the EIRs.
14. The Commissioner has considered the terms of the Applicant’s request, and he is satisfied that the request sought environmental information within the terms of the definition in [regulation 2\(1\) paragraphs \(a\), \(b\) and \(c\) of the EIRs](#)¹.
15. Paragraph (c) of the terms of the definition of environmental information includes “measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements”.
16. Paragraph (a) of the terms of the definition of environmental information includes “that state of elements of the environment, such as [...] land, landscape” and paragraph (b) includes “factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a)”.
17. The Commissioner considers that training in relation to planning matters is an activity affecting or likely to affect the elements referred to in paragraphs (a) and (b) and that the information requested therefore falls within the definition of paragraph (c).
18. Given that the information requested is 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).
19. The Commissioner notes that the Applicant made his request for information under the EIRs. Given this, he considers that the Authority should have taken more care to ascertain whether the information requested was environmental before it processed the request under FOISA.

Section 39(2) of FOISA – environmental information

20. 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.

¹ <https://www.legislation.gov.uk/ssi/2004/520/regulation/2/made>

21. In this case, as stated above, the Authority responded to the Applicant's request solely under FOISA.
22. The Commissioner finds that the Authority would have been entitled to apply the exemption in section 39(2) of FOISA to the request, given his conclusion that the information requested was properly classified as environmental information.
23. 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

24. 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)).
25. Although the Authority responded to the Applicant's requirement for review on 19 October 2025 this was only in terms of handling the request solely in terms of FOISA and not the EIRs.
26. It is apparent that the Authority failed to respond to the Applicant's request of 21 September 2025 in terms of the EIRs and therefore it 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.
27. The Commissioner therefore requires the Authority to provide a response to the Applicant's requirement for review of 19 October 2025, in terms of regulation 16 of the EIRs.

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 the request asked for environmental information, the Authority failed to comply with regulation 5(1) of the EIRs.

The Commissioner requires the Authority to provide a response to the Applicant's requirement for review, in terms of regulation 16 of the EIRs by **5 November 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

21 September 2026