



Scottish Information
Commissioner
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Decision Notice 245/2026

Pursuit of unpaid Low Emission Zone fines

Authority: Glasgow City Council
Case Ref: 202600575

Summary

The Applicant asked the Authority for information about the pursuit of unpaid fines relating to the Low Emission Zone (LEZ) scheme. The Authority refused to disclose the information as it considered it to be commercially sensitive. The Commissioner investigated and found that the Authority had not been entitled to refuse to make the information available to the Applicant. He required the Authority to disclose the information.

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”, “the Commissioner” and “environmental information”) (Interpretation); 5(1) and (2)(b) (Duty to make environmental information available on request); 10(1), (2), (5)(e) and (6) (Exceptions from duty to make environmental information available); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 15 January 2026, the Applicant made a request for information to the Authority. He asked:

“...since its launch, how many unpaid fines in relation to the Low Emissions Zone have been pursued or recouped by use of sheriff officers or enforcement notice/agency? Could this be broken down by fines successfully recouped, and those still outstanding, and the total amount of money in each category.”

2. The Authority responded on 12 February 2026. It withheld the information requested under regulation 10(5)(e) of the EIRs on the basis that disclosure would prejudice the Authority's commercial position in relation to debt recovery and it considered that the public interest favoured maintaining the exception.
3. On 13 February 2026, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he believed there was precedent for disclosure of this type of information and that the public interest favoured disclosure.
4. The Authority notified the Applicant of the outcome of its review on 13 March 2026, which upheld its original decision.
5. On 23 March 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 he was dissatisfied with the outcome of the Authority's review because he did not agree that regulation 10(5)(e) of the EIRs applied and that, in any event, the public interest favoured disclosure.

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 13 May 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 number of unpaid fines in relation to the LEZ scheme that had been pursued or recouped by use of sheriff officers or enforcement notices/agencies.
8. 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 the application and to answer specific questions related to its justification for applying regulation 10(5)(e) of the EIRs to withhold the information requested 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. As stated in previous decisions, in [Scottish Ministers v Scottish Information Commissioner \[2006\] CSIH 8](#)¹, at paragraph [18], the Court of Session recognised that:

¹ https://www.bailii.org/scot/cases/ScotCS/2008/CSIH_08.html

"... in giving reasons for his decision, [the Commissioner] is necessarily restrained by the need to avoid, deliberately or accidentally, disclosing information which ought not to be disclosed."

12. In this decision notice, the Commissioner has endeavoured to give as full an account of his reasoning as he can, but, by necessity, he is unable to set out the Authority's reasoning, or his own reasoning, in full as doing so could itself lead to disclosing information which ought not to be disclosed.

Handling in terms of the EIRs

13. Having considered the subject matter and the terms of the request, the Commissioner accepts the decision of the Authority to deal with the request under the EIRs rather than under FOISA.
14. The Commissioner is satisfied that the information covered by the request is environmental information, as defined in regulation 2(1) of the EIRs (principally paragraph (c) of that definition).
15. In his requirement for review, the Applicant argued that it was debatable whether the information requested was environmental information as the core of his question related to the Authority's finances.
16. The Commissioner understands the Applicant's position, but he is satisfied that the information requested is sufficiently related to the enforcement mechanism of the LEZ to make the information environmental information. He would also note that he can see no detriment to the Applicant in considering his request under the EIRs rather than FOISA.
17. In what follows, the Commissioner will consider this case solely in terms of the EIRs.

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

18. 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.
19. On receipt of a request for environmental information, therefore, the authority must ascertain what information it holds falling within the scope of the request. Having done so, regulation 5(1) of the EIRs requires the authority to provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
20. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 applies, but only if (in all the circumstances) the public interest in maintaining the exception or exceptions outweighs the public interest in making the information available.

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

21. Regulation 10(5)(e) of the EIRs 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.
22. As with all exceptions under regulation 10, a Scottish public authority applying this exception must interpret it in a restrictive way and apply a presumption in favour of disclosure (regulation 10(2)). Even where the exception applies, the information must be disclosed

unless, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception (regulation 10(1)(b)).

23. [The Aarhus Convention: an Implementation Guide²](#), 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 protects the confidentiality of the withheld information. The law must explicitly protect that type of information as commercial or industrial secrets. Secondly, the confidentiality must protect a “legitimate economic interest”.
24. 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 commercial or industrial in nature?
 - (iii) Does a legally binding duty of confidence exist in relation to the information?
 - (iv) Would disclosure of the information cause, or be likely to cause, substantial harm to a legitimate economic interest?
25. Regulation 10(6) of the EIRs states that a Scottish public authority is not entitled to refuse to make information available under a number of exceptions (including that in regulation 10(5)(e)) to the extent that it relates to information on emissions.
26. The Commissioner acknowledges that the information requested is related to the enforcement mechanism of the LEZ, a measure intended to reduce vehicle emissions. However, he is satisfied that the information requested does not itself provide information on those emissions. He therefore finds that the connection between the information requested and emissions is sufficiently remote that regulation 10(6) of the EIRs is not engaged.

Is the information publicly available?

27. The Authority stated that the withheld information was not publicly available.
28. Having considered the withheld information, the Commissioner accepts that it is not (and was not, at the time of the request) in the public domain.

Is the information commercial or industrial in nature?

29. The Authority stated that it implemented the LEZ scheme with the aim of tackling high levels of harmful nitrogen dioxide in Glasgow’s city centre. Fines or Penalty Charge Notices (PCNs) were levied on motor vehicle users for non-compliance with the scheme, “on a scale linked to type of vehicle, frequency of violation, etc”.
30. The Authority explained that revenue from PCN payments firstly covered the costs of administering and operating the LEZ scheme. Surplus revenue funded a variety of environmental and community projects across the city. By law, surplus revenue from fines for non-compliant vehicles must be spent by the Authority on projects to meet net zero and clean air targets.

² https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf

31. The Authority considered information concerning any debt owed, debt recovery and any associated financial figures to be commercial in nature. It stated that the information had a direct bearing on its “operations, financial standing, revenue collection, policy objectives and other commercial considerations”.
32. The Authority therefore considered that the information requested was commercial in nature and that confidentiality of the information must be maintained to protect the Authority’s commercial interests.
33. The Authority provided further submissions on why it considered the information requested was commercial in nature. As outlined above, in paragraphs 10 and 11, the Commissioner is unable to replicate the full submissions provided by the Authority. However, he has considered these submissions in full.
34. “Commercial interests” is not defined in the EIRs (or FOISA). However, they are not the same as financial interests. Commercial interests will usually relate to a commercial trading activity, e.g. the ongoing sale and purchase of goods and services, commonly for the purpose of revenue generation. Such activity will normally take place within a competitive environment.
35. Given the nature of the information requested, the Commissioner does not accept that the information relates to the Authority’s commercial interests as opposed to its financial interests. In his view, the revenue in question supports a measure that is primarily environmental in nature, gathered by the Authority in pursuit of a public function (such functions not, as a rule, being commercial in nature), and he cannot see any compelling basis for information relating to the recovery of that revenue becoming commercial at any point in the process.
36. While the Commissioner accepts that payment or non-payment of LEZ fines may have an impact on the Authority’s finances, this does not mean the information requested is commercial in nature.
37. In light of the above, the Commissioner is not satisfied that the information requested is commercial in nature for the purposes of regulation 10(5)(e) of the EIRs.
38. However, in the circumstances, the Commissioner will nevertheless go on to consider whether a legally binding duty of confidence exists in relation to the information requested.

Does a legally binding duty of confidence exist?

39. 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.
40. In response to this question, the Authority explained that it had taken guidance from the Commissioner’s discussion of this principle in [Decision 018/2019](https://www.foi.scot/decision-0182019)³ and [Decision 199/2011](https://www.foi.scot/decision-1992011)⁴. It confirmed that it wished to rely on there being a duty of confidentiality owed under the common law. For such a duty to be owed, it noted that it was necessary for certain criteria to be met:

³ <https://www.foi.scot/decision-0182019>

⁴ <https://www.foi.scot/decision-1992011>

- (i) the information must have the necessary quality of confidence about it and must not be generally accessible to the public already;
 - (ii) the information must have been communicated in circumstances importing an obligation of confidentiality. The obligation may be express (for example, in a contract or other agreement), or implied from the circumstances or the nature of the relationship between the parties;
 - (iii) unauthorised use or disclosure of the information would be to the detriment of the party communicating it.
41. Regarding point (i), the Authority confirmed that the information in question was not otherwise accessible to the public and that it considered it met the test for possessing the necessary quality of confidence.
42. Regarding point (ii), the Authority stated that there was no requirement, under the EIRs, for the information held to have been obtained from another person (unlike under the equivalent FOISA exemption), in order for it to attract confidentiality. The exception covered information created by the Authority, as was the case here.
43. The Authority acknowledged that the information requested could not be classified as “confidential” in the way a document could be, through confidential markings. However, the nature of the information must be considered in the round and it considered the information to be “implicitly confidential” as it had a clear expectation that it should remain confidential, as clearly implied by the Authority’s actions and the ongoing circumstances.
44. Regarding point (iii), the Authority commented that detriment may be potential rather than actual and need not be financial. It argued that the harm that could arise from disclosure of the information requested was considerable and that there was a considerable likelihood of the Authority experiencing such detriment were the information requested to be disclosed.
45. Having carefully considered the Authority’s submissions and the nature of the information requested, the Commissioner is not satisfied that the Authority has adequately evidenced any basis on which an obligation of confidence would arise at common law.
46. The information requested comprises figures generated in the course of the Authority’s administration and enforcement of the LEZ scheme. The Commissioner does not accept that this information, in itself, comprises information imparted in circumstances importing an obligation of confidentiality.
47. The Commissioner acknowledges that the Authority is concerned about the effect of disclosure of the information requested. While these consequences may be relevant in considering whether disclosure would cause the harm required for regulation 10(5)(e) to be engaged, they do not, without more, establish that a legally binding duty of confidence exists in relation to the information requested.
48. An obligation of confidentiality may be inferred from the circumstances, but that generally means it will be inherent in some established form of relationship between the person holding the information and some other person: it is not, as a general rule, to be inferred simply from an apprehension of harm and the Commissioner does not believe it falls to him (bearing in mind the obligations in regulation 10(2) of the EIRs, to interpret each exemption in a restrictive way and apply a presumption in favour of disclosure) to stretch the law of confidentiality, without far clearer authority than appears to have been offered here, to

anything that may appear particularly sensitive to a Scottish public authority in a given situation.

49. The Commissioner also acknowledges that there is no explicit requirement, in any of the EIRs exceptions relating to confidentiality, that the information in question must have been obtained from another person. That said, a duty of confidentiality must be owed to someone else, some other tangible individual or entity, capable of benefiting from that obligation – which does not appear to be the case here, on the basis of the submissions provided by the Authority.
50. In light of the above, the Commissioner is not satisfied that a legally binding duty of confidence exists in relation to the information requested.
51. Given that the Commissioner is not satisfied that the information requested is commercial in nature or that a legally binding duty of confidence exists in relation to the information, the Commissioner cannot accept that regulation 10(5)(e) of the EIRs applies. He will therefore not go on to consider whether disclosure of the information would cause, or be likely to cause, substantial harm to a legitimate economic interest.

The public interest test

52. The exception in regulation 10(5)(e) of the EIRs is a qualified exception, which means that its application is subject to the public interest test set out in regulation 10(1)(b).
53. Having concluded that regulation 10(5)(e) of the EIRs does not apply, the Commissioner is not required to consider the public interest test set out in regulation 10(1)(b). However, the Commissioner considers in this case that it would be helpful for him to set out his views on this test as if, contrary to his views, he had found that regulation 10(5)(e) of the EIRs did apply.

The Applicant's submissions on the public interest

54. The Applicant argued that it was “very much in the public interest” for the information to be disclosed for two main reasons.
55. Firstly, the Applicant noted that public bodies across Scotland routinely published information relating to finances. Almost on a daily basis, these organisations detailed how much had been spent on anything from infrastructure projects and fines, to staffing and compensation payments. He argued that the information in this case should be made available because it related to taxpayers’ money and, as such, disclosure would be in keeping with the very spirit of FOI legislation.
56. Secondly, the Applicant commented that Glasgow was Scotland’s largest city and the LEZ scheme affected every resident motorist in the city, motorists in neighbouring local authorities who drove in for work or leisure and anyone who chose to take their car into the impacted city parts.
57. Given the penalties involved for non-compliance, the Applicant considered it fair to the people of Glasgow to know what the Authority’s record was in terms of recouping PCN fines. He argued that the information requested was also relevant to residents in Glasgow paying Council Tax as any money not recouped in fines meant less money spent on local services.
58. The Applicant also noted that the Authority published details on how many motorists had breached the LEZ scheme and have therefore been fined. He submitted that this demonstrated that the Authority clearly accepted there was a public interest element to

publishing these statistics and he argued that disclosure of the information requested ought to be a “natural follow-on”.

The Authority's submissions on the public interest

59. The Authority acknowledged the significant public interest in accessibility of information and transparency around its operations and management of its finances, including the recovery of debts owed to it.
60. The Authority also acknowledged that openness and transparency improved accountability as decisions and courses of action taken by public authorities could effectively be scrutinised and authorities held to account.
61. The Authority noted that the introduction of the LEZ schemes by several local authorities across Scotland had been the subject of much comment and speculation. In this respect, it submitted that it had demonstrated a commitment to openness and transparency by making information on the operation and effectiveness of the scheme available to the public, through the publication of reports. It considered that this was a highly relevant consideration in its conclusion that the public interest favoured withholding the information requested.
62. The Authority stated that its ability as a public authority with regulatory responsibilities to adequately discharge its functions was of fundamental importance. It explained that revenue generated from LEZ fines supported scheme operating costs, with residual income allocated to facilitating the achievement of the scheme's mandatory and discretionary objectives.
63. The Authority considered that preserving its ability to effectively recover any fines due, particularly where such sums contributed to the operation of the LEZ scheme and fulfilment of scheme objectives (inclusive of mandatory air quality and climate change objectives), was of highly significant public interest and importance.
64. The Authority stated that there was considerable public interest in compliance with the scheme from an environmental and public health perspective, and air quality in Glasgow City Centre had improved since the implementation of the scheme. It argued that a reduction in higher polluting vehicles entering the city centre boundary would have been achieved through the deterrent effect of LEZ fines and drivers' liability to pay fines through non-compliance.
65. The Authority believed that compliance with the scheme was of paramount importance to its ongoing success and the continual environmental improvements across the city. It concluded that the public interest in the continued success of the scheme, and the positive impacts the scheme had delivered for public health and the environment of Glasgow, outweighed the public interest in the extent to which fines were passed to debt recovery.

The Commissioner's view on the public interest

66. Having considered all the public interest arguments put to him in this case (as if, contrary to his conclusions above, he had found that regulation 10(5)(e) of the EIRs applied), the Commissioner has concluded that the public interest in maintaining this exception (if it did apply) would be outweighed by the public interest in disclosure of the information.
67. Proceeding on that basis, the Commissioner recognises the public interest in avoiding causing substantial prejudice to the commercial interests of the Authority and in protecting its ability to adequately discharge its regulatory functions. He also accepts that compliance with the LEZ scheme is of paramount importance to the Authority's environmental and public health aims.

68. Nevertheless, the Commissioner considers there to be a clear and significant public interest in satisfying the wider public, particularly those residing in Glasgow or who travel to the area, that compliance with the LEZ scheme, given its importance and the level of debate and interest this environmental measure has attracted, is being enforced effectively by the Authority and that compliance is not simply being left to chance.
69. The Commissioner must be careful not to reveal the specific content of the withheld information. In general terms, the Commissioner acknowledges the scope for substantial prejudice to the LEZ scheme if, for example, people suspected that PCN fines were not being enforced to the full extent available. However, he is not persuaded that the present recovery rate would necessarily make future recovery more challenging.
70. To the extent that the Authority is concerned that disclosure of the information requested might lead to a reduction in compliance or an increase in failures to pay PCNs, it can choose to provide a commentary alongside the information, to place it in context or to expand on the nature of the Authority's enforcement mechanisms.
71. In the circumstances, even assuming, for the purposes of the public interest test, that disclosure would, or would be likely to, cause the substantial harm to a legitimate economic interest required for regulation 10(5)(e) of the EIRs to be engaged, the Commissioner considers that the public interest would favour disclosure of the information requested.
72. In summary, the Commissioner finds that the Authority was not entitled to withhold the information requested under regulation 10(5)(e) of the EIRs. He has also noted that, had he found that this exception applied, he would have concluded that the public interest in disclosure of the information requested in this case outweighed the public interest in maintaining the exception.
73. Having concluded that the Authority was not entitled to withhold the information requested under regulation 10(5)(e) of the EIRs, the Commissioner requires the Authority to disclose this information to the Applicant.

Decision

The Commissioner finds that the Authority failed to comply with the Environmental Information (Scotland) Regulations 2004 (the EIRs), specifically regulation 5(1), in responding to the information request made by the Applicant.

The Commissioner finds that the Authority was not entitled to refuse to make the information available under regulation 10(5)(e) of the EIRs.

The Commissioner requires the Authority to disclose the information to the Applicant 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.

Euan McCulloch
Head of Enforcement

21 September 2026