Scottish Information Commissioner
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Decision Notice 265/2026

Formal decision to withdraw factoring services from certain properties

Authority: Stirling Council
Case Ref: 202600062

Summary

The Applicant asked the Authority for information about a formal decision to withdraw building management services from certain properties. The Authority withheld the information it identified as falling within scope under exceptions in the EIRs. The Commissioner investigated and found that the Authority had neither satisfied him that the withheld information fell within the scope of the relevant parts of the request nor that it held no information that fell within the scope of these parts of the request. He required the Authority to reconsider the relevant parts of the request and to issue the Applicant with a revised review outcome.

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) (Duty to make environmental information available on request); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. The Applicant made a request for information to the Authority on 11 October 2025. He asked for:

   (i) "Please provide minutes or internal communications that led to the formal decision of [the Authority] to withdraw building management services to [specified properties] […];

(ii) Please advise the specific date on which [the Authority] withdrew Factoring Management;

(iii) Please provide the formal communication that was issued to the owners to confirm this decision.

(iv) Please provide the exact legal basis that was used to make this decision to withdraw Factoring management support in contravention of the burdens which specifically contained a provision whereby the [Authority's] responsibilities are retained as long as [the Authority] has ownership of at least one property in the block.

2. The Authority responded on 10 November 2025 in the following terms:

- for parts (i) and (iv), it withheld the information under the exception in regulation 10(5)(d) of the EIRs;
- for part (ii), it stated that it was determined that the Authority was no longer a "Property Manager" or "Property Factor" as defined under the Property Factors (Scotland) Act 2011. Accordingly, the Authority's Housing Service "did not renew a registration Act after notifying the Scottish Government on 4 May 2021";
- for part (iii), it stated that it did not hold the information requested and applied the exception in regulation 10(4)(a) of the EIRs.

3. On 11 November 2025, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because he disagreed that the exception in regulation 10(5)(d) of the EIRs applied and, in any event, the public interest favoured disclosure.

4. The Authority notified the Applicant of the outcome of its review on 9 December 2025, which upheld its initial response and additionally relied on the exception in regulation 10(4)(e) of the EIRs to withhold the information requested.

5. On 11 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 he was dissatisfied with the outcome of the Authority's review because he disagreed that the Authority was entitled to withhold the information requested and he considered that 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 26 February 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.

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 related to its handling of the request and the information it withheld from the Applicant.

9. The right of application to the Commissioner under section 47(1) of FOISA depends on the applicant being dissatisfied with either the outcome of the public authority's review or its failure to carry one out when required to do so, and consequently he cannot consider matters not raised by the applicant in requiring a review.

10. In this case, the Applicant's requirement for review was limited to challenging the Authority's response to parts (i) and (iv) of his request. The Commissioner can therefore only consider these parts of the request in his decision notice.

Commissioner's analysis and findings

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

Handling in terms of the EIRs

12. Where information falls within the scope of regulation 2(1) of the EIRs, a person has a right to access it (and the public authority has a corresponding obligation to respond) under the EIRs, subject to the various restrictions and exceptions contained in the EIRs.

13. The Commissioner is satisfied that the information covered by the request is environmental information, as defined in regulation 2(1) of the EIRs. He therefore accepts the decision of the Authority to deal with the request under the EIRs rather than under FOISA.

14. The Commissioner would also note that he can see no detriment to the Applicant by considering his request under the EIRs rather than FOISA, nor has the Applicant disputed the Authority's decision to handle his request under the EIRs.

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

15. 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, as opposed to information an applicant believes the authority should hold, but which is not in fact held.

16. The standard of proof to determine whether a Scottish public authority holds information is the civil standard of the balance of probabilities. In determining where the balance lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.

17. The Commissioner also considers, where appropriate, any reason offered by the public authority to explain why it does not hold the information. While it may be relevant as part of this exercise to explore expectations as to what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is actually held by the public authority (or was held, at the time it received the request).

The Commissioner's view

18. As noted above, the Commissioner can only consider parts (i) and (iv) of the request in his decision notice.

19. The Commissioner has carefully considered the terms of these parts of the request, together with the withheld information the Authority provided to him. Having done so, he is not

satisfied that any of this information, in fact, relates to a formal decision to which these parts of the request referred.

20. The Commissioner therefore queried with the Authority whether any such decision existed. The Authority confirmed that it did not.

21. The Commissioner also asked the Authority to explain why it considered the withheld information fell within the scope of parts (i) and (iv) of the request. The Authority advised that it "felt" the material was relevant.

22. While a Scottish public authority may, in line with its duty to provide advice and assistance, choose to provide additional information that is not covered by the strict wording of the request, this does not relieve the authority of its duty to provide the requested information, withhold it under an exception or inform the requester that this information is not held.

23. In the absence of any explanation as to why the withheld information in this case fell within the scope of parts (i) and (iv) of the request – as opposed to merely appearing connected to the subject matter of the request – the Commissioner cannot be satisfied that the Authority correctly interpreted these parts of the request or identified the information it holds, if any, falling within scope.

24. In light of the Authority's apparent confirmation that no decision existed, the Commissioner has considered whether any information falling within the scope of parts (i) and (iv) of the request could exist.

25. The Commissioner notes that the Authority's confirmation to him that no such formal decision was taken was brief and lacking in detail. He also notes that the Authority went on to refer to decisions it made. The Authority did not fully detail or explain the relevance or formality of these other decisions.

26. In all of the circumstances and on balance, the Commissioner cannot, on the basis of the submissions made to him, be satisfied that the Authority does not hold information falling within the scope of parts (i) and (iv) of the request.

27. The Commissioner therefore requires the Authority to reconsider fully parts (i) and (iv) of the request and notify the Applicant of the outcome (all in terms of regulation 16 of the EIRs). In doing so, the Authority must:

- consider carefully the terms of these parts of the request and ensure that its interpretation of the request is reasonable and fully addresses them
- take adequate and proportionate steps to establish what information is held; where further searches are required, appropriate search terms should be used and all locations and mediums where relevant information may be held should be searched
- retain evidence of any further searches in the event of a further appeal to the Commissioner

28. The Commissioner recognises that this outcome may appear somewhat unintuitive to the Applicant who is only now, at this late stage, being informed that his request, as currently framed, may capture less information than he anticipated or no information at all.

29. It remains open to the Applicant to make a fresh request to the Authority to seek information of interest to him that does not, strictly, fall within the scope of parts (i) and (iv) of his request. If the Applicant wishes to go down this route the Commissioner would remind the Applicant

that he may, in terms of regulation 9 of the EIRs, seek advice and assistance from the Authority on how he can frame such a request.

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.

In particular, the Commissioner finds that the Authority failed to comply with regulation 5(1) of the EIRs because:

- the information it withheld under the exceptions in regulations 10(4)(e) and 10(5)(d) of the EIRs did not fall within the scope of parts (i) and (iv) of the request
- it failed to satisfy him that correctly interpreted the scope of parts (i) and (iv) of the request or, consequently, that it established whether it held any information falling within the scope of these parts of the request

The Commissioner therefore requires the Authority to fully reconsider parts (i) and (iv) of the request, reach a decision on the basis of the terms of the Applicant's request (in terms of regulation 16 of the EIRs), by **4 January 2027.**

In doing so, the Authority must have regard to the requirements set out in paragraph 27 above.

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

09 November 2026