Scottish Information Commissioner
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Decision Notice 270/2026

Planning correspondence related to a specified address

Applicant: The Applicant
Authority: City of Edinburgh Council
Case Ref: 202600457

Summary

The Applicant asked the Authority for information related to planning and planning enforcement at a specified address. The Authority disclosed information to the Applicant and informed him that it did not hold any further relevant information. The Commissioner investigated and found that the Authority did not hold any further relevant information falling within the scope of the request.

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) (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. On 31 December 2025, the Applicant made a request for information to the Authority. He asked for information relating to a specified property. In particular:

   (i) Any approaches made to the Authority about permissions required (building or planning) during the course of 2024 or 2025 in relation to the above property? This would include by telephone, email, letter, WhatsApp or other means.

(ii) Any correspondence, internal or external – including letter, email, text, teams, WhatsApp or other means – concerning either building regulations or planning permissions in relation to the above property during the course of 2024 or 2025.

(iii) Any correspondence or exchanges during the course of 2024 or 2025, internal or external – including by letter, text, WhatsApp, Teams, email or other means in relation to alleged unauthorised erection of a fence at the above property and any resultant investigation or assessment of such allegations – planning enforcement enquiry received 5 November 2025.

(iv) Any correspondence or exchanges during the course of 2024 or 2025 – including by letter, text, WhatsApp, Teams, email or other means in relation to any alleged unauthorised works at the above property and any resultant investigation or assessment of such allegations. Specifically in relation to [specified case], in relation to a query made by [the Applicant] about alleged erection of a fence at the above property.

(v) Correspondence – internal and external – in relation to this query by [the Applicant], including letters, emails, texts, photographs, WhatsApp, Teams or communication of other means.

(vi) Specifically in relation to the above case, the date of any visit(s) to the site in Greenbank and the write-up of findings and any other correspondence in relation to the visit/assessment including letters, emails, texts, WhatsApp, Teams messages or other means.

(vii) Specifically in relation to the above case, the nature and means of making the decision in relation to the alleged unauthorised erection of a fence including any report or assessment made by the Authority (for decision) and any correspondence, internal and external - in relation to this query by [the Applicant], including letters, emails, texts, WhatsApp, Teams or communication of other means? This should include the name, date and description of the decision-making forum making the decision please.

(viii) Specifically in relation to the above case, the number and grades of officials involved in the assessment of the allegation of unauthorised erection of a fence at the property.

(ix) Specifically in relation to the above case, the number of officials (including grades) and/or Council members involved in the decision not to pursue matters further in relation to the allegation of unauthorised erection of a fence at the property.

2. The Authority responded on 30 January 2026 in terms of the EIRs. It disclosed information to the Applicant, subject to certain redactions under regulation 11 of the EIRs and informed him that it held no further relevant information.

3. On 2 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 considered that the Authority held further information than that identified and disclosed to him, particularly internal correspondence.

4. The Authority notified the Applicant of the outcome of its review on 26 February 2026. It advised the Applicant that it had undertaken further searches but had identified no further information relevant to his request.

5. On 9 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 considered that the Authority held further information than that identified and disclosed to him, particularly internal correspondence.

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 April 2026, the Authority was notified in writing that the Applicant had made a valid application. 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 why it responded to the request in terms of the EIRs and what steps it took to identify the information it held falling within the scope of the request.

9. The Commissioner's remit is limited to considering whether the Authority complied with FOI law (particularly the EIRs) in responding to the Applicant's request: he has no locus to comment on the Authority's obligations under, or compliance with, planning law.

Commissioner's analysis and findings

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

Application of the EIRs

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

12. Having considered the subject matter of the request, together with the information falling within the scope of the request, the Commissioner is satisfied that the information requested is "environmental information" as defined in regulation 2(1) of the EIRs. In particular, he accepts that the information covered by the request is information which relates to measures (including administrative measures as referred to in paragraph (c)) affecting or likely to affect the elements and factors referred to in paragraph (a) of that definition.

13. In the circumstances, the Commissioner will consider the case, in what follows, solely in terms of the EIRs.

Section 39(2) of FOISA – Environmental information

14. 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.

15. As there is a 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 the request under the EIRs) outweighs any public interest in disclosing the information under FOISA. Both regimes are intended to promote public access to information and there would appear to be no reason why (in this particular case) disclosure of the information should be more likely under FOISA than under the EIRs.

16. The Commissioner therefore concludes that the Authority would have been entitled to apply section 39(2) of FOISA and consider the Applicant's information request under the EIRs.

17. Given that the Authority responded solely in terms of the EIRs, the Authority technically should have applied the exemption in section 39(2) of FOISA. The Commissioner does not require the Authority to take any action in response to this failure, as he is satisfied that the Authority would have been entitled to apply the exemption to the request.

18. The Commissioner has consistently found that, in the absence of a specific reason to consider disclosure of information under FOISA to be more likely, the public interest favours upholding this exemption instead of requiring a substantive response under both regimes. However, he would urge the Authority to ensure that it applies the exemption in section 39(2) of FOISA whenever it responds to a request for environmental information solely in terms of the EIRs.

19. In the circumstances, therefore, the Commissioner will consider this case, in what follows, solely in terms of the EIRs.

20. In his requirement for review and application to the Commissioner, the Applicant queried why the Authority had responded in terms of the EIRs when he had made a request under FOISA. The Commissioner considers that it would have assisted the Applicant if the Authority had provided some explanation as to why it had responded in terms of the EIRs.

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

21. Regulation 5(1) of the EIRs requires a Scottish public authority which holds the 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.

22. 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.

23. 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 Applicant's submissions

24. By way of background, the Applicant explained that he contacted the Authority in late 2025 about the erection of a fence in a conservation area. He submitted that the fence required planning permission but did not have it. In response to his contact, the Authority said that, following an inspection, it did not deem it necessary to apply for permission retrospectively.

25. The Applicant stated that he was concerned with the decision-making process of the Authority that appeared to have determined, through the judgement of a relatively junior Planning Officer, why one person was not required to have planning permission while others were required, often at considerable expense.

26. The Applicant noted that, in response to the substance of his request, the Authority had disclosed a single report on the breach of planning permission and a recommendation which had the name of the Chief Planning Officer at the bottom.

27. The Applicant commented that his request sought all correspondence by whatever means. He therefore found it very surprising that, other than the clarification of an address, the Authority had provided him with no other internal correspondence or communication between officials involved in decision making. He noted that he had been told that two planning officers were involved, yet the Authority had not disclosed any communication between the relatively junior Planning Officer and the more senior Planning Officer.

28. The Applicant considered that the Authority held further information in relation to the decision-making trail, which he described as vague and lacking in transparency.

The Authority's submissions

29. The Authority explained that it had carried out searches of its electronic records management system for documents and correspondence relating to the applications within the scope of the request: namely, the relevant planning application, the relevant building warrant application and the relevant planning enforcement enquiry.

30. The Authority also undertook keyword searches of the Planning Enforcement Officer's email and planning helpdesk email using terms relevant to the location of the fence and for the term "fence" itself. It carried out similar keyword searches of Microsoft Teams chat function and the channel for Enforcement.

31. The Authority explained that text messages and WhatsApp messages were either not used or not available for casework, so no searches were carried out, nor were there any paper files to review.

32. The Authority provided copies of email correspondence between the Planning Officer for the relevant planning application and the Building Standards Surveyor for the relevant building warrant application, which confirmed that they held no correspondence which was not on its electronic records management system. It considered these officers were relevant as they were the appointed officers for the applications that fell within the scope of the request.

33. By way of background, the Authority explained that planning and building warrant applications and enforcement enquiries were often determined without the need for additional internal or external correspondence. Regarding the enforcement case, it stated that this was a "straightforward enquiry" which did not require any further correspondence or consultation as part of the planning assessment or decision-making process. It considered that this explained why there was no record of any additional correspondence on the matter: any informal verbal discussion would not be recorded.

34. The Authority further explained that enforcement enquiries were normally allocated to an officer for investigation and the enquiry uploaded onto its electronic records management system. The allocated case officer would receive an email notification of the case and then carry out a proportionate investigation which could include a review of planning records and

a site visit. It reiterated that a straightforward investigation would not ordinarily require additional internal correspondence but may be discussed verbally/informally.

35. Regarding the enquiry referred to in the request, the Authority stated that a Grade 7 Planning Officer completed their investigation and submitted an investigation report on its electronic records management system with a recommended decision, which was then reviewed and accepted by the Grade 9 Planning Officer.

36. The Authority provided screenshots to the Commissioner to evidence the searches it had carried out.

The Commissioner's view

37. The Commissioner has carefully considered the submissions from both the Authority and the Applicant.

38. As stated above, the Commissioner's remit is limited to considering whether the Authority complied with the EIRs in responding to the Applicant's request. In this case, this means establishing what records exist and the extent to which the information requested is actually held by the Authority: he has no locus to comment on the Authority's obligations under, or compliance with, planning law.

39. Having considered all relevant submissions and the terms of the request, the Commissioner is satisfied that the Authority carried out adequate and proportionate searches in the circumstances to establish whether it held any further relevant information falling within the scope of the request.

40. The Commissioner considers that the Authority's searches were reasonable, in terms of the staff and departments consulted, the search terms used and the locations searched; he finds that they would be capable of locating any further information relevant to the request, if it were held.

41. In the circumstances, the Commissioner is therefore satisfied, on the balance of probabilities, that the Authority does not (and did not, on receipt of the request) hold any further relevant information falling within the scope of the Applicant's request.

42. While the Applicant believed and expected further relevant information to be held by the Authority, the Commissioner is satisfied, on balance, that this was not the case. Whether a public authority should hold information which it does not hold is not a matter for the Commissioner to decide.

43. The Commissioner therefore finds that the Authority complied with regulation 5(1) of the EIRs in responding to the request.

Decision

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

The Commissioner is satisfied, on balance, that the Authority does not (and did not, on receipt of the request) hold further information falling within the scope of the request. He therefore finds that the Authority complied with regulation 5(1) of the EIRs in responding to the request.

However, the Authority failed to apply the exemption in section 39(2) of FOISA, to allow it to respond to the Applicant's request solely in terms of the EIRs or follow the appropriate alternative of dealing with the request under both regimes.

As the Commissioner is satisfied that the information requested was environmental information and that the Authority would have been entitled to apply the exemption in section 39(2) of FOISA, he does not require the Authority to take any action in response to this failure in response to the Applicant's application.

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.

Cal Richardson
Deputy Head of Enforcement

6 November 2026