Scottish Information Commissioner
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Decision Notice 278/2026

Housing Standard Compliance Status of a specified property and minutes referencing the Scottish Housing Quality Standard

Authority: Govan Housing Association Ltd
Case Ref: 202300799

Summary

The Applicant asked the Authority for information over a specified period relating to the Housing Standard Compliance Status of a specified property and Management Committee minutes referencing the Scottish Housing Quality Standard. The Authority disclosed some information in response to the request. Following an investigation, the Commissioner concluded that at least some of the information requested was environmental information (and therefore subject to the EIRs) and that the Authority had failed to properly interpret the request and to satisfy him that it had identified all relevant information falling within the scope of the request. He required the Authority to issue 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); 21 (Review by Scottish public authority); 39(2) (Health, safety and the 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); 16 (Review by a Scottish public authority); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 9 February 2023, the Applicant made a request for information. He asked for:

   (i) The reported Housing Standard Compliance Status (SHQS CS) for each year commencing 2004 of a specified property.

   (ii) All of the Authority's Management Committee minutes which referenced Scottish Housing Quality Standard (SHQS), from 2002 to the present.

2. The Authority did not respond to the information request.

3. On 12 March 2023, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.

4. Following intervening correspondence, the Authority notified the Applicant of the outcome of its review on 6 April 2023, in the following terms:

   - For part (i), the Authority disclosed a "stock condition survey data sheet appertaining to a survey undertaken against [the specified] property circa 2019". It informed the Applicant that this was the only stock condition survey data it held.

   - For part (ii), the Authority disclosed copies of Management Committee minutes for each of the specified years it held. It informed the Applicant that it held no further information falling within the scope of this part of his request.

5. On 26 June 2023, 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 it had failed to disclose the information he had requested.

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 27 September 2023, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to provide comments on the Application.

8. The Authority provided comments to the Commissioner. The case was subsequently allocated to an investigating officer.

9. During the investigation, the Commissioner invited the Authority to comment further on this application and to answer specific questions related to its handling of the Applicant's request, including whether it considered any of the information requested was environmental information in terms of the EIRs and the searches it carried out for information falling within the scope of the request.

Commissioner's analysis and findings

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

Validity of application

11. During the investigation, the Authority indicated that it had not received a requirement for review from the Applicant.

12. As noted above, the Authority failed to respond to the Applicant's request of 9 February 2023. This resulted in the Applicant writing to the Authority on 12 March 2023 requiring a review in respect of its failure to respond.

13. While the Authority's response of 6 April 2023 was not framed as a review outcome, the Commissioner is satisfied that it is properly considered as such given that, by that time, the Applicant had already requested a review of the Authority's failure to respond to his request of 9 February 2023.

14. Consequently, when the Applicant submitted his requirement for review on 12 March 2023, it meant that the Authority no longer had an opportunity to provide him with an initial response to his request. Instead, the Authority was required to respond to his requirement for review within 20 working days.

15. Section 20(5)(a) of FOISA clearly envisages a requirement for review in such circumstances, and FOISA makes no provision for a further review being sought after the failure to respond has been dealt with.

16. As such, there was no opportunity for the Authority to invite a further requirement for review from the Applicant. Having received the Authority's response of 6 April 2023 (i.e. the review outcome), the Applicant was entitled at that stage to apply to the Commissioner for a decision in terms of section 47(1) of FOISA.

EIRs or FOISA

17. 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 various restrictions and exceptions contained in the EIRs.

18. The relationship between FOISA and the EIRs was considered at length in Decision 218/2007[1]. Broadly, in light of that Decision, the Commissioner's general position is as follows:

    (i) The definition of what constitutes environmental information should not be viewed too 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

    (v) claim the exemption in section 39(2).

[1] https://www.foi.scot/decision-2182007

(vi) 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).

(vii) 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.

19. Given the subject matter of parts of the request and having reviewed the withheld information, the Commissioner asked the Authority to consider whether any of the information requested was environmental information as defined by regulation 2(1) of the EIRs and therefore fell to be considered under the EIRs.

20. The Authority responded that housing stock condition reports were a requirement under the Housing Regulator. It stated that these were not environmental reports, and so the EIRs did not apply. It submitted that, "The Code makes it clear that we can answer as FOISA, even if we did consider EIR(s) applied, which it does not in this case."

21. Part (i) of the request sought the reported SHQS compliance status of a specified property for each year commencing in 2004.

22. In Decision 118/2014[2], the Commissioner found (at paragraph 36) that the criteria of the SHQS fall within the definitions of "environmental information" in regulation 2(1)(b), (c) and (f) of the EIRs, being factors and measures affecting, or likely to affect the elements of the environment or the state of human health and safety inasmuch as they may be affected by the state of the elements of the environment.

23. In the circumstances of this case, the Commissioner sees no reason to depart from his conclusion in Decision 118/2014. He is therefore satisfied that the information falling within the scope of part (i) of the request is environmental information as defined in regulation 2(1) of the EIRs and therefore fell to be considered under the EIRs.

24. Part (ii) of the request sought copies of all of the Authority's Management Committee minutes (the minutes) which referenced the SHQS between 2002 and the date of the request. The Commissioner will set out what he considers to be the proper interpretation of part (ii) of the request later in his decision notice.

25. At this stage, the Commissioner is satisfied that part (ii) of the request encompasses environmental information as defined in regulation 2(1) of the EIRs. At a minimum, the information within the relevant minutes referring to the SHQS constitutes environmental information for the purposes of this definition.

26. However, the Commissioner acknowledges that, if part (ii) of the request is found to encompass the information in each relevant minute rather than solely the information referring to SHQS within each relevant minute, the information in each relevant minute will comprise a mixture of environmental information and non-environmental information.

27. In responding to the Applicant's request solely in terms of FOISA, therefore, the Commissioner must find that the Authority failed to comply with regulation 5(1) of the EIRs.

Section 39(2) of FOISA – Environmental information

[2] https://www.foi.scot/decision-1182014

28. 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

29. In this case, as stated above, the Authority responded to the Applicant's request solely under FOISA.

30. The Commissioner finds that the Authority would have been entitled to apply the exemption in section 39(2) of FOISA to the information he has concluded was properly classified as environmental information.

31. 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 most of the request under the EIRs) outweighs any public interest in disclosing the information under FOISA.

32. It is not open to public authorities to, as claimed by the Authority, choose to respond solely in terms of FOISA in relation to information that is properly classified as environmental information as defined in regulation 2(1) of the EIRs.

Part (i) of the request

33. As the Commissioner has concluded that part (i) of the request sought information properly classified as environmental information as defined in regulation 2(1) of the EIRs, he will consider the Authority's handling of this part of the request solely in terms of the EIRs.

34. Regulation 5(1) of the EIRs (subject to the various qualifications contained in regulations 6 to 12) requires a Scottish public authority which holds environmental information to make it available when requested to do so. This obligation relates to information that is held by the authority when it receives a request.

35. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 applies.

36. 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 of probabilities lies, the Commissioner considers the scope, quality, thoroughness and results of the searches carried out by the public authority.

37. 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.

The Applicant's submissions

38. The Applicant stated that he was dissatisfied that the Authority had not provided him with the information he had requested.

The Authority's submissions

39. In its review outcome of 6 April 2023, the Authority disclosed to the Applicant a single "stock condition survey data sheet appertaining to a survey undertaken against [the specified] property circa 2019" and informed him that was the only stock condition survey data it held.

40. During the investigation, the Authority explained that housing stock condition reports were a requirement under the Housing Regulator and normally came under the annual reporting to the Housing Regulator.

41. The Authority stated that it had provided in full the housing stock condition report it held for the property specified in part (i) of the request.

42. In response to the Commissioner's question regarding the searches undertaken in response to the request, the Authority stated that the search required was "simple and noncomplex" and regarded what specific stock condition report it held.

43. The Authority stated that the stock condition report for the specified property was provided by its Assets team and it was more than satisfied that this was the only record it held falling within the scope of part (i) of the request.

44. The Authority submitted that there was no further need to ask colleagues to search their own emails or One Drives, as all of the information relevant to the request was held centrally and it was "impossible" for further information to be held by individuals. It stated that it was "more than satisfied" that it held no further information falling within the scope of the request.

The Commissioner's view

45. The Commissioner has carefully considered the Authority's submissions, the information disclosed to the Applicant by the Authority in response to part (i) of his request and the terms of that part of the request.

46. As noted above, the Authority's review outcome of 6 April 2023 stated that it disclosed a single "stock condition survey data sheet appertaining to a survey undertaken against [the specified] property circa 2019" and informed him that was the only stock condition survey data it held.

47. On a plain and objective reading of part (i) of the request, the Commissioner does not accept that it sought the stock condition survey data sheet that the Authority disclosed to the Applicant. In his view, part (i) of the request is most reasonably read as asking for the SHQS status recorded for the specified property for each year since 2004, not the underlying stock condition data or survey sheets.

48. However, the Commissioner notes that the stock condition survey sheet disclosed by the Authority records data under a column entitled "SHQS Overall". He is satisfied that the data recorded against this column satisfied part (i) of the request.

49. The Commissioner agrees with the Authority that the information requested should be capable of being readily identified. In very limited circumstances, he may be prepared to accept an assurance from a public authority that information is not held (e.g. where there was no reasonable expectation that the authority would hold the information requested).

50. The Commissioner has no locus, in this context, to determine what information an authority ought to record, or how: he is concerned with what information the authority actually holds. However, given the timeframe specified+-+ he considers it plausible that further information falling within the scope of part (i) of the request may be held by the Authority and may be capable of being identified through further adequate and proportionate searches.

51. The Commissioner notes that the steps taken by the Authority appeared to have focused on whether it held specific stock condition reports. As noted above, the Commissioner accepts that the stock condition report it disclosed to the Applicant contained information satisfying

part (i) of the request. However, he is not persuaded, based on the submissions received, that information satisfying part (i) of the request could only be held within a stock condition report.

52. In all cases where an Applicant disputes whether an authority has identified all relevant information falling within the scope of their request, it falls to the authority to persuade the Commissioner, with reference to adequate, relevant descriptions and evidence, that it does not hold any further information. In this case, notwithstanding the opportunity given to provide comments, the Commissioner is not satisfied that the Authority has achieved this.

53. In determining whether an authority holds any further recorded information than that already identified, evidence of the authority's searches will usually be a key consideration during the Commissioner's investigation. As a minimum, authorities should be able to provide the Commissioner with the following information:

    (i) details of the records or locations which were searched;

    (ii) why these were the relevant records and locations;

    (iii) the keywords used;

    (iv) which staff were involved and why they were considered relevant;

    (v) evidence that the searches have been carried out, including the outcome(s) of the searches.

54. In this case, the Authority has not provided the Commissioner with adequate evidence of the searches it undertook in response to part (i) of the request. Instead, it simply(and briefly) described the steps taken to ascertain what information it held falling within the scope of that part of the request and submitted that those tasked (i.e. the Assets team) with identifying the information knew the extent of the information held and that no further information was held.

55. In the circumstances, the Commissioner cannot uphold the Authority's claim, based on the submissions it has provided, that it holds no further information falling within the scope of part (i) of the request.

56. The Commissioner therefore requires the Authority to reconsider the Applicant's request, 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 (all in terms of regulation 16 of the EIRs).

Part (ii) of the request

57. As noted above, the extent to which part (ii) of the request sought environmental information as defined in regulation 2(1) of the EIRs depends on what the Commissioner finds to be the proper interpretation of this part of the request.

The Applicant's submissions

58. The Applicant stated that he was dissatisfied that the Authority had not provided him with the information he had requested.

59. During the investigation, the Applicant clarified that he was dissatisfied with the redactions applied by the Authority to the information disclosed to him.

The Authority's submissions

60. The Authority disagreed with the Applicant's position that it had not disclosed all of the information he had requested. It stated that it had provided the information he had requested but had "eliminated information not relevant to the request".

61. More specifically, the Authority explained that it had disclosed the relevant parts of the minutes relating to the housing stock condition but redacted the other parts as they were not relevant to the request. It considered that this information fell outwith the scope of the request as it related to other agenda items considered by the Authority.

62. The Authority stated that it did not hold minutes further back than 2011. It noted that the minutes were stored within a single repository and that no further search was required to identify the minutes.

63. The Authority also noted that the minutes were published, subject to some redactions, on its website for up to seven years. It commented that it could therefore have informed the Applicant that the minutes were publicly available and applied the exemption in section 25(1) of FOISA. However, it instead identified the relevant minutes and provided these to the Applicant.

The Commissioner's view

64. The Commissioner has carefully considered the Authority's submissions, together with the terms of part (ii) of the request.

65. Having done so, the Commissioner is not satisfied that the Authority's interpretation of part (ii) of the request was reasonable. In his view, the reference to SHQS in part (ii) of the request is an identifier for the class of minutes requested (i.e. any Management Committee minutes containing a reference to SHQS). It does not, on a natural and objective reading, restrict the information requested to only the specific references to the SHQS contained within the relevant minutes.

66. Had the Applicant intended to request only the references to the SHQS contained within the relevant minutes, his request could readily have been expressed in those terms.

67. Given his conclusion regarding the proper interpretation of part (ii) of the request, the Commissioner acknowledges that the information in each relevant minute will comprise a mixture of environmental information and non-environmental information.

68. Overall, the Commissioner is not satisfied that the Authority has interpreted part (ii) of request reasonably. For this reason, he finds that the Authority failed to comply with regulation 5(1) of the EIRs (to the extent the information within the relevant minutes comprise environmental information) and Part 1 of FOISA (to the extent the information within the relevant minutes comprise non-environmental information), by providing the Applicant with an incomplete response.

69. The Commissioner requires the Authority to reconsider part (ii) of the request, in line with the proper interpretation described above, and consider the information within each relevant minute for disclosure, and issue the Applicant with a revised review outcome in accordance with section 21 of FOISA/regulation 16 of the EIRs.

Next steps

70. As noted above, the Commissioner is not satisfied that the Authority has demonstrated that it carried out adequate and proportionate searches in response to part (i) of the request, or that it interpreted part (ii) of the request reasonably.

71. The Commissioner therefore requires the Authority to issue a revised review outcome in accordance with section 21 of FOISA/regulation 16 of the EIRs. In doing so, the Authority must:

- distinguish between environmental and non-environmental information and process the information in accordance with the principles set out in paragraph 18 above;
- consider carefully the terms of part (ii) of the request and the Commissioner's view on its proper interpretation and ensure that it fully addresses this part of the request;
- take adequate and proportionate steps to establish what information is held for parts (i) and (ii) of the request, using appropriate search terms and searching all locations and media where relevant information may be held;
- retain evidence of those searches in the event of a further appeal to the Commissioner;
- identify any of the information requested that is not held and explain, in line with the duty to provide advice and assistance, why that information is not held (or is no longer held);
- ensure it clearly identifies any information that is being withheld and justifies and explains why that information is being withheld. (A minute that has been published in redacted form cannot be said to be fully exempt or excepted from disclosure under section 25(1) of FOISA or regulation 6(1)(b) of the EIRs. The Authority's review outcome must separately address the information redacted from the relevant minutes and either disclose that information or apply, and justify, an exemption/exception to withhold it.)

72. As part of its revised review outcome, the Commissioner would also urge the Authority to consider providing the Applicant with evidence of the searches it has undertaken, in order to assure him that they were adequate and proportionate. Doing so may obviate the need for a further appeal to the Commissioner, particularly if the Authority maintains (following further searches) that it does not hold any further information falling within the scope of the Applicant's request.

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.

To the extent that some of the information requested is environmental information, as defined by regulation 2(1) of the EIRs, the Commissioner finds that the Authority failed to comply with the requirements of regulation 5(1) in responding to the request.

In failing to interpret part (ii) of the request accurately and to satisfy the Commissioner that it held no further information beyond that already identified in response to parts (i) and (ii) of the request, the Commissioner also finds that the Authority failed to comply with Part 1 of FOISA (in particular section 1(1)) and regulation 5(1) of the EIRs.

The Commissioner therefore requires the Authority to reconsider parts (i) and (ii) of the request, carry out adequate and proportionate searches for both parts, reach a decision on the basis of those searches and notify the Applicant of the outcome (all in terms of section 21 of FOISA or regulation 16 of the EIRs), **by 5 January 2027**.

In doing so, the Authority must have regard to the requirements set out in paragraph 71 above.

The Commissioner would also urge the Authority to have regard to the steps suggested in paragraph 72.

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

19 November 2026