Scottish Information Commissioner
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Decision Notice 281/2026

Communications relating to a specified planning application

Authority: Dumfries and Galloway Council
Case Ref: 202600201

Summary

The Applicant asked the Authority for particular communications relating to a specified planning application. The Authority withheld the information requested on the grounds that it comprised internal communications and that the public interest favoured withholding it. The Commissioner investigated and found that the Authority had failed to provide adequate submissions to justify its position that the public interest favoured maintaining the exception relating to internal communications. He required the Authority to disclose the information to the Applicant.

Background

1. On 21 November 2025, the Applicant made a request for information to the Authority in relation to a specified planning application. Among other things, he asked for:

   "Correspondence between the case officer and team leaders/management and/or legal services - particularly relating to classing [a specific communication] being treated as a petition."

2. The Applicant also stated that he was not seeking information currently available on the Authority's public planning portal.

3. The Authority responded on 17 December 2025 in terms of the EIRs. It informed the Applicant that it was withholding the information requested under the exception in regulation 10(4)(e) of the EIRs.

4. On 22 December 2025, 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 public interest favoured disclosure of the withheld information.

5. The Authority notified the Applicant of the outcome of its review on 23 January 2026, which upheld its original decision.

6. On 30 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 for the reason set out in his requirement for review.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

8. On 27 March 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.

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 this application and to answer specific questions, related to its application of the exception in regulation 10(4)(e) of the EIRs and its consideration of the public interest test.

10. The Authority did not provide any comments.

Commissioner's analysis and findings

11. As the Commissioner did not receive any submissions from the Authority in relation to this application, his decision in what follows is based on the arguments and justifications made by the Authority in its response to the Applicant's request and requirement for review. These, together with the submissions from the Applicant, have been fully considered by the Commissioner.

FOISA or EIRs?

12. The Authority considered the Applicant's request under the EIRs, having concluded that the information requested was environmental information as defined in regulation 2(1) of the EIRs.

13. The Commissioner is satisfied that the information covered by this request is environmental information, as defined in regulation 2(1) of the EIRs.

14. The Applicant has not disputed the Authority's handling of the request under the EIRs, and the Commissioner will consider the information solely in terms of the EIRs in what follows.

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 an authority when it receives a request.

16. 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 make that information available, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).

17. Under the EIRs, a Scottish 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 making the information available is outweighed by that in maintaining the exception.

Regulation 10(4)(e) – Internal communications

18. The Authority withheld the information requested under the exception in regulation 10(4)(e) of the EIRs.

19. Regulation 10(4)(e) of the EIRs provides that a Scottish public authority may refuse to make environmental information available to the extent that the request involves making available internal communications.

20. As with all of the exceptions contained within regulation 10 of the EIRs, a Scottish public authority applying this exception must interpret it in a restrictive way (regulation 10(2)(a)) and apply a presumption in favour of disclosure (regulation 10(2)(b)). 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) of the EIRs).

21. For information to fall within the scope of the exception in regulation 10(4)(e) of the EIRs, it need only be established that the information is an internal communication.

22. It is apparent from the terms of the request that any information in scope must be an internal communication. Having reviewed the withheld information, the Commissioner notes that some of the information originated outwith the Authority. However, as this information only falls within the scope of the request by virtue of being subsequently forwarded within the Authority, the Commissioner accepts, in the circumstances, that all of the withheld information constitutes internal communications and therefore the exception in regulation 10(4)(e) of the EIRs is engaged in respect of this information.

23. As the exception in regulation 10(4)(e) of the EIRs is subject to the public interest test in regulation 10(1)(b), the Commissioner must, therefore, go on to consider whether, in all of the circumstances of this case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exception.

The public interest test

24. Regulation 10(2)(b) of the EIRs builds in an explicit presumption in favour of disclosure, which makes it clear that where arguments are evenly balanced for withholding and disclosing the information, the information must be disclosed.

25. The starting position is, therefore, that there is a public interest in disclosure of environmental information (as expressed in the EIRs and associated EU Directive) and that only if there is a stronger competing public interest in withholding the information should exceptions be applied.

The Applicant's submissions on the public interest

26. The Applicant submitted that the public interest test undertaken by the Authority was generic and relied on broad assertions that disclosure "could inhibit candid advice and discussion among officers in future". He commented that the Authority had provided no clear explanation of the specific harm anticipated from disclosure of the information in question, or why such harm outweighed the public interest in transparency.

27. The Applicant also stated that the withheld information was relevant to a procedural decision within a planning case, specifically the classification of objections submitted on behalf of 14 named individuals as a "petition", rather than as separate individual objections. He argued that this had direct relevance to transparency, accountability and the correct application of the planning authority's scheme of delegation (including whether the correct determination route was followed).

The Authority's submissions on the public interest

28. In its initial response and review outcome, the Authority explained that, taking account of all of the circumstances of the case, it considered that the public interest favoured maintaining the exception in regulation 10(4)(e) of the EIRs.

29. While it recognised the general public interest in being open and transparent, the Authority concluded that there was a greater public interest in the Authority having free and frank discussions and that "disclosure of internal communications could inhibit candid advice and discussion among officers in future, reducing the quality of decision-making".

The Commissioner's view on the public interest

30. For any exception in the EIRs to be upheld, the Commissioner must have sufficient arguments from the Authority to satisfy him that the public interest in maintaining the exception outweighs that in making the information available. These arguments must be adequate in terms of substance and specific (as appropriate) to the information requested, the impact of disclosure and the circumstances in which it would be disclosed.

31. In this case, notwithstanding the opportunity given to provide comments, the Commissioner is not satisfied that the Authority has met the above requirements in relation to the withheld information. Instead, the Authority has made only a generic argument, without further detail, that disclosure of the withheld information could inhibit candid advice.

32. As noted above, the starting position is that there is a public interest in disclosure of environmental information (as expressed in the EIRs and associated EU Directive) and that only if there is a stronger competing public interest in withholding the information should exceptions be applied.

33. In the absence of any submissions of greater specificity and having carefully considered the content of the withheld information, the Commissioner cannot accept that the Authority has demonstrated a stronger competing public interest in withholding the information under consideration than that identified by the Applicant.

34. In the circumstances, the Commissioner therefore finds, on the basis of the submissions made to him, that the public interest in the disclosure of the withheld information outweighs the public interest in maintaining the exception in regulation 10(4)(e) of the EIRs.

35. The Commissioner requires the Authority to disclose the withheld information to the Applicant, subject to the exception described below.

36. The Commissioner notes that the withheld information includes certain third-party personal data which appears, on its face, capable of being withheld under the exception in regulation 11(2) of the EIRs (i.e. names, addresses and contact details of members of the public). In the circumstances, the Commissioner permits the Authority to redact this information from the information to be disclosed to the Applicant.

37. While, in this case, the Commissioner accepts that certain third-party personal data may be withheld under regulation 11(2) of the EIRs, notwithstanding the fact that the Authority did not rely on that exception, responsibility rests with public authorities to identify and justify any exception relied upon. The Commissioner reserves the right to require disclosure where no applicable exception in the EIRs has been properly applied.

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.

Specifically, the Commissioner finds that the Authority failed to justify its position that the public interest favoured maintaining the exception in regulation 10(4)(e) of the EIRs and so failed to comply with regulation 5(1) of the EIRs in that respect.

The Commissioner therefore requires the Authority to disclose to the Applicant the information that it wrongly withheld under the exception in regulation 10(4)(e) of the EIRs (other than the names, contact details and addresses of members of the public), by 4 January 2027.

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

17 November 2026