Scottish Information Commissioner
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Decision Notice 284/2026

Place Based Investment Programme – Tolbooth, Lanark

Applicant: Anonymous
Authority: South Lanarkshire Council
Case Ref: 202501439

Summary

The Applicant asked the Authority for information relating to the Tolbooth public realm improvement project in Lanark. The Authority disclosed some information, withheld detailed pricing information on the grounds that it was confidential commercial information and stated that other information was not held.

The Commissioner investigated and found that the Authority was entitled to withhold information on the grounds that it was commercially sensitive. However, he found that the Authority had not provided him with sufficient evidence of searches to uphold its view that other information was not held. The Commissioner required the Authority to carry out further searches and issue a revised review outcome to the Applicant.

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); 10(1), (2), 4(a), 5(e) (Exceptions from duty to make environmental information available); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions).

Background

1. On 16 June 2025, the Applicant made a six-part request for information to the Authority. He asked for information regarding the public realm improvement project, at the bottom of the High Street in Lanark (Tolbooth Project). He specifically requested:

   (i) A complete breakdown of project costs, including:

      (a) Design and planning

      (b) Consultation

      (c) Materials and labour

      (d) Project management and external contractors

   (ii) The original business case or project justification documents, including any value-for-money assessments or cost-benefit analyses carried out.

   (iii) All records of the decision-making process, including:

      (a) Internal reports and briefing documents

      (b) Minutes from council committees or stakeholder groups

      (c) Rationale for prioritising this project over other competing needs in Lanark

   (iv) A summary of any alternative delivery options considered (e.g. simpler designs, scaled-back scope, different location), and reasons they were not pursued.

   (v) Documentation relating to any public consultation or community engagement, including:

      (a) How feedback was gathered and assessed

      (b) How this influenced the project design and scope.

   (vi) Any post-completion evaluation or review, especially related to community benefit, cost justification, or long-term impact.

2. The Authority responded on 15 July 2025. It considered the information to be environmental and responded under the EIRs. For some of the information sought in request (i) the Authority provided a web link to its planning website, and notified the Applicant it was holding information regarding project costs under regulation 10(5)(e) of the EIRs, as they believed it was commercially sensitive. In response to request (iii) the Authority provided a copy of a committee paper dated 30 May 2023. The Authority notified the Applicant, in terms of regulation 10(4)(a) of the EIRs, that it did not hold information falling within the scope of requests (ii), (iv), (v) and (vi), as the project was not developed by the Authority but was led by Discover Lanark BID (Lanark BID).

3. On 15 July 2026, the Applicant wrote to the Authority requesting a review of its response. The Applicant stated that he was dissatisfied with the response as he disagreed with the Authority's application of regulations 10(4)(a) and 10(5)(e) of the EIRs. Furthermore, the Applicant challenged the Authority's position that Lanark BID was a separate entity, and that pertinent information would be held by them, and not the Authority.

Additionally, the Applicant stated that the Authority had not provided him with reasonable advice and assistance as required by regulation 9 EIRs; he commented that the Authority should have made reasonable attempts to obtain relevant information from Discover Lanark.

4. The Authority notified the Applicant of the outcome of its review on 11 August 2025. The Authority upheld its previous application of exceptions. It continued to rely on regulation 10(4)(a) for requests (ii), (iv), (v) and (vi), and it upheld its previous application of regulation 10(5)(e) to some of the information captured by request (i). The Authority also confirmed that it had previously disclosed the committee report that fell within the scope of request (iii)(b) and that it did not hold any internal reports or briefing documents regarding the decision-making process, as the project was delivered by Lanark BID and not the Authority. The Authority went on to provide written background information and clarity as to how it had handled the request and its initial response to the Applicant, as well responding to specific points raised by the Applicant.

5. On 28 August 2025, the Applicant wrote to the Commissioner seeking a decision under section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs, subject to certain specified modifications. The Applicant expressed dissatisfaction with the Authority's response to his request, arguing that it had failed to identify and disclose key records, and that it had applied exceptions excessively. The Applicant argued that disclosure was in the public interest and he challenged the Authority's position that Lanark BID was the lead organisation for the project in question and, consequently, the custodian of any information falling within the scope of requests (ii), (iii)(a), (iv), (v) and (vi).

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 October 2025, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice 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 regarding its application of exceptions and how it established what information it held falling within the scope of the request.

Commissioner's analysis and findings

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

Handling in terms of the EIRs

10. 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.

11. Having considered the terms of the request and the nature of the information requested, the Commissioner accepts the decision of the Authority to deal with the request under the EIRs rather than under FOISA.

Section 39(2) – Environmental Information

12. 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.

13. As noted above, the Commissioner accepts that the Authority was entitled to apply this exemption to the information requested, given his finding that the Authority was entitled to classify the information requested as environmental information.

14. 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 dealing with the request 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, if held, should be more likely under FOISA than under the EIRs.

15. The Commissioner therefore concludes that the Authority would have been entitled to apply section 39(2) of FOISA and to consider the Applicant's information request under the EIRs. The Commissioner will consider the request in what follows solely in terms of the EIRs.

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

16. 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.

17. On receipt of a request for environmental information, 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 the information available, unless a qualification in regulation 6 to 12 applies (regulation 5(2)(b)).

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

Out of Scope information

19. During the investigation, the Authority provided the Commissioner with the information it was withholding under 10(5)(e) of the EIRs. This comprised information redacted from the Bill of quantities, and the contract award letter (withheld in full).

20. Having considered the contract award letter and the terms of the Applicant's request for information, the Commissioner is satisfied that the contract award letter does not fall within the scope of the request. Given this, he will not consider it any further in this decision.

Regulation 10(4)(a) – Information not held

21. The Authority submitted that it did not hold any information falling within the scope of requests (ii), (iii)(a), (iv), (v) and (vi).

22. Regulation 10(4)(a) of the EIRs states that a Scottish public authority may refuse to make information available to the extent that it does not hold that information when it receives the request.

23. The standard of proof to determine whether a Scottish public authority holds the 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.

24. The Commissioner also considers, where appropriate, any reasons 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 about what information the authority should hold, ultimately the Commissioner's role is to determine what relevant information is (or was, at the time the request was received) held by the public authority.

The Applicant's comments

25. In his application to the Commissioner, the Applicant noted that the Authority claimed not to hold business cases, value for money assessments or monitoring/evaluation records. Given the allocation of £376,500 (including £338,600 Placed Based Investment Programme (PBIP) grant), the Applicant argued that it was not credible that such records did not exist. He argued that if they did not exist, that raised a serious concern about whether public funds were committed without proper justification.

26. The Applicant challenged the Authority's position that much of the information he sought was not held, as the funded project was led by "Discover Lanark BID'", and therefore the information would be held by that body. He commented that, as grant recipient and custodian of PBIP funds, the Authority had responsibility for ensuring proper governance, oversight and value for money. He argued that deflecting accountability to a BID company left a governance vacuum.

27. In his requirement for review, the Applicant stated that he had obtained information from the Scottish Government which made clear that:

- The Tolbooth project was funded through PBIP and was administered directly by the Authority.
- The Authority was solely responsible for the assessment, selection, funding, procurement and monitoring of the project
- The Scottish Government did not assess this project or hold any justification or cost–benefit material because those decisions were delegated to the Authority.

28. The Applicant remarked that, given the information he had been provided with by the Scottish Government, it was implausible that the Authority did not hold any internal documentation relating to:

- Why the project was prioritised over others;
- What alternative designs or scopes (if any) were considered;
- Internal communications, briefings, reports, or committee minutes regarding the project;
- Oversight of the delivery partner (Discover Lanark BID) or the contractor;

- The cost-effectiveness of the project or how it was expected to meet PBIP objectives.

29. The Applicant submitted that he believed such information to be reasonably expected to exist given the Authority's statutory role as funder and contracting authority, and the public nature of the works.

The Authority's comments

30. The Authority explained that the Place Based Investment Programme (PBIP) related to funding which was part of the Scottish Government's Infrastructure Investment Plan (IIP), which was focussed on building resilient and sustainable places by providing funding to local authorities across Scotland.

31. It commented that the IIP supported opportunities in cities, towns, villages and neighbourhoods to bring together individual investments for greater impact, and that that this was a collaborative place-based approach driven by the needs of communities – collectively getting behind community led changes at the heart of an area.

32. The Authority explained that it administered the PBIP for the area of South Lanarkshire, and that it delivered projects directly and also through other funding organisations to deliver projects via a grant process.

33. In the case of the Tolbooth project, the Authority awarded a grant to Lanark BID to deliver their project, which involved environmental improvements to the Tolbooth area of Lanark. It stated that the design and development of this proposal was led by Lanark BID and that it was not delivered by Lanark BID on behalf of the Authority, rather it was delivered by Discover Lanark BID for the community.

34. The Authority explained that Lanark BID was a Business Improvement District (BID) established under Part 9 of the Planning etc. (Scotland) Act 2009. It referred to content on Discover Lanark BID's website which explained that it was a business-led and business-funded organisation created to improve a defined geographical area, namely the town of Lanark. Following a renewal ballot in February 2024, businesses voted in favour of renewing the BID for a second five-year term, running from 1 September 2024 until 31 August 2029.

35. The Authority referred to information published on Lanark BID's website, which stated that the current Board of Lanark BID consisted of owners and managers of local businesses, together with representatives from the public and third sectors. The Board included two Authority councillors, and the remaining directors were representatives of local businesses and organisations.

36. This website information also confirmed that BID was funded primarily through a mandatory levy on eligible ratepayers within the BID area. The levy was calculated by reference to the rateable value of each property and was used to deliver the BID's business plan. Once approved through a ballot of eligible businesses, payment of the levy became compulsory for all eligible ratepayers. The organisation's accounts indicate that the levy was collected on Lanark BID's behalf by the Authority.

37. The Authority stated that Lanark BID was a separate legal entity from the Authority, and that checks carried out on Companies House had confirmed it was a private company limited by guarantee.

38. The Authority did not provide the Commissioner with details of the searches it had undertaken for the information requested; however, it explained that it had consulted the officer who held the majority of the information in relation to the Tolbooth project. It noted that its Economic Development team was a small department and the relevant person was a Project Development Officer (PDO) who had been the officer liaising with the Lanark BID for the last seven years. The PDO advised that in his role he had monthly meetings with the Lanark BID group and when the Applicant's FOI request was received it was passed to him to deal with as he was aware of the background. The PDO noted that he was assisted by an experienced Information Officer, but the majority of the information was background that he was aware of.

39. The PDO explained that the request was very specific in relation to information relating to one project carried out by Lanark BID. The idea for the project came from the group who employed consultants to complete the design. He stated that there was no first-hand role for the Authority, rather the role of the PDO was to liaise with and support Lanark BID themselves.

40. The PDO stated that he knew from his own experience that Lanark BID was a separate legal entity from the Authority and that the majority of the information being requested was held by Lanark BID rather than by the Authority. The PDO was also aware that the Authority's Roads department were involved, as the project at Lanark Tolbooth involved the public realm i.e. the streetscape. The PDO commented that, apart from the Roads Information, he was the only other person who might hold relevant information, and he was also aware of a relevant committee report. The committee report went to the Community and Enterprise Resources Committee on 30 May 2023 and it was provided to the requester as meeting request (iii)(b).

The Commissioner's findings

41. The Commissioner has considered the Authority's submissions regarding the steps taken to identify information falling within the scope of the request. The Authority explained that the request was dealt with by a PDO who had acted as the Authority's principal liaison with Lanark BID for a number of years and was familiar with the background to the project and the Authority's level of involvement. The Commissioner accepts that this officer was well placed to understand what information the Authority might be expected to hold.

42. However, the Commissioner notes that the Authority has provided limited evidence of the searches actually undertaken. In particular, it has not provided details of the locations searched, the search terms used, the Authority services consulted, or any other evidence demonstrating how it established that no further relevant information was held. In these circumstances, the Commissioner is not satisfied that the Authority has demonstrated that adequate and proportionate steps were taken to identify all information falling within the scope of the request.

43. The Commissioner notes that the PDO has indicated that some information about the Tolbooth project (although not necessarily the information requested by the Applicant) was held in the Roads department as it affected a public road, but the Authority has not provided the Commissioner with evidence of any searches conducted by the Roads department.

44. The Commissioner accepts that Lanark BID is a separate legal entity from the Authority and that information relating to the development and delivery of the Tolbooth Project may well be held by Lanark BID rather than by the Authority.

However, the fact that relevant information may be held by a third party does not, of itself, establish that the Authority holds no further information within the scope of the request.

45. Given the Authority's role in administering PBIP funding and its acknowledged involvement in aspects of the project, the Commissioner considers that further enquiries and searches were required before reliance could properly be placed on regulation 10(4)(a) of the EIRs. As the Authority has not provided sufficient evidence to demonstrate that appropriate searches were carried out, the Commissioner is unable to conclude, on the balance of probabilities, that no further information was held at the time the request was received.

46. The Commissioner therefore finds that the Authority was not entitled to rely on regulation 10(4)(a) of the EIRs on the basis of the evidence currently before him. The Commissioner requires the Authority to carry out adequate and proportionate searches for information falling within the scope of requests (ii), (iii)(a), (iv), (v), (vi) and to issue the Applicant with a revised review outcome, setting out the searches undertaken and the outcome of those searches, in accordance with the requirements of the EIRs. He recommends that the Authority takes screen shots of the searches to evidence what was searched and what results were obtained.

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

47. The Authority withheld information falling with the scope of request (i) under regulation 10(5)(e) of the EIRs.

48. 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.

49. 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)).

50. The Aarhus Convention: an Implementation Guide[1], which offers guidance on the interpretation of 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".

51. 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 commercial or industrial in nature?

    (ii) Does a legally binding duty of confidence exist in relation to the information?

    (iii) Is the information publicly available?

[1] https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf

(iv) Would disclosure of the information cause, or be likely to cause, substantial harm to a legitimate economic interest?

Is the information commercial or industrial in nature?

52. The Commissioner has first considered whether the withheld information is commercial or industrial in nature. The withheld information comprises the rates and prices contained within the successful tenderer's Bill of Quantities.

53. The Commissioner has considered the withheld information, and he is satisfied that this information is commercial in nature. The information was created and submitted in the context of a competitive procurement exercise and records the prices charged by the successful contractor for individual elements of the works. The information relates directly to the contractor's commercial activities and forms part of the basis upon which it competes for public contracts.

54. The Commissioner therefore accepts that the withheld information is commercial information for the purposes of regulation 10(5)(e) of the EIRs.

Does a legally binding duty of confidence exist in relation to the information?

55. The Commissioner has gone on to consider whether the confidentiality of the information is protected by law. Regulation 10(5)(e) requires more than the information simply being treated as confidential by the parties. The confidentiality must be capable of being enforced by law.

56. The withheld information comprises detailed rates and pricing information submitted by the successful contractor during a competitive tender exercise. The Authority has submitted that irrespective of any specific contractual provision which existed between the parties to the contract that an implied obligation of confidentiality existed in relation to the pricing information. Given this, the Authority argued that disclosure of this commercial information would breach of the implied duty of confidence.

57. The Commissioner notes that the information was provided to the Authority in the context of a procurement process and consists of commercially sensitive pricing information generated by the contractor for the purpose of securing the contract. The Commissioner accepts that the contractor would have had a reasonable expectation that detailed pricing information of this nature would not subsequently be disclosed into the public domain.

58. The Commissioner is satisfied that disclosure of the information would constitute an unauthorised use of confidential commercial information and could give rise to an actionable claim for breach of confidence. In reaching this conclusion, the Commissioner has taken account of the nature of the information, the circumstances in which it was supplied and the absence of any evidence that the information has entered the public domain.

59. The Commissioner therefore accepts that the confidentiality of the withheld information is protected by law and that the second requirement of regulation 10(5)(e) has been met.

Is the information publicly available?

60. The Authority submitted that while the total costs were disclosed, the breakdown of the costs as per the tender submitted by the contractor was not released.

61. The Commissioner has examined the withheld information and accepts that it is not, and has not been, in the public domain.

Would disclosure of the information cause, or be likely to cause, substantial harm to a legitimate economic interest?

62. The Commissioner has considered whether disclosure of the withheld information would, or would be likely to, prejudice substantially a legitimate economic interest.

63. In his requirement for review, the Applicant stated that he was not seeking detailed tender pricing methodologies or other commercially sensitive information. Rather, he submitted that he was seeking a broad breakdown of expenditure, including costs associated with design and planning, consultation, labour, materials and project management. In his view, such information should be capable of being disclosed without causing commercial harm.

64. The Applicant noted that information relating to expenditure on the project had already been disclosed elsewhere, including information obtained from the Scottish Government relating to expenditure under PBIP. He argued that the disclosure of such information undermined the Authority's contention that disclosure of further cost information would cause substantial prejudice to commercial interests.

65. In his application to the Commissioner, the Applicant stated that the Authority's refusal notice had not adequately explained why disclosure would cause "substantial prejudice".

66. The Authority submitted that the withheld information comprised detailed rates and prices provided by the successful contractor as part of a competitive tender exercise. It argued that disclosure would provide competing contractors with valuable insight into the contractor's pricing structure and commercial approach to similar contracts.

67. The Commissioner accepts that the contractor has a legitimate economic interest in protecting information which reveals the rates and prices it has submitted in a competitive procurement process. Such information forms part of the contractor's commercial offering and may be used in future competitions for comparable work. It retains sufficient currency for that purpose.

68. Having examined the withheld information, the Commissioner is satisfied that it contains detailed pricing information rather than simply high-level project costs. Disclosure would reveal the prices attributed to individual elements of the works and would provide competitors with information which is not otherwise publicly available.

69. The Applicant submitted that the Scottish Government already disclosed the total spends on the project, but the Commissioner considers disclosure of the total to be quite different from the detailed pricing information withheld in this case. In the Commissioner's view, an overall cost would not help a future bidder to win a contract, but a breakdown of the elements of that bid would reveal the companies pricing structure and its disclosure would give a competitive advantage to rival future bidders.

70. The Commissioner therefore accepts that disclosure of this information would be likely to place the contractor at a competitive disadvantage in future tender exercises. Competitors could use the information to better understand the contractor's pricing practices and to inform their own bids for similar work. The Commissioner is satisfied that the resulting prejudice would be real, actual and of some significance and therefore be capable of meeting the substantial prejudice test required by regulation 10(5)(e).

71. The Commissioner also accepts that there is a wider economic interest in maintaining the integrity of public procurement exercises. Public authorities must be able to obtain

competitive bids from contractors and contractors must have confidence that commercially sensitive pricing information will not routinely be disclosed following the award of a contract.

72. While the Applicant argued that he was seeking transparency in relation to the expenditure of public funds, the Commissioner notes that information concerning the overall value of the contract and project funding had already been disclosed. The information remaining withheld is materially more detailed, comprising the contractor's individual rates and prices rather than broad expenditure figures.

73. In all the circumstances, the Commissioner is satisfied that disclosure of the withheld information would, or would be likely to, prejudice substantially the legitimate economic interests of the contractor. The Commissioner therefore finds that the Authority has met this element of the test in regulation 10(5)(e) of the EIRs

The public interest test

74. Having accepted that the exception in regulation 10(5)(e) applies to the withheld information, the Commissioner is required to consider the public interest test in regulation 10(1)(b) of the EIRs. This states that a Scottish public authority may only withhold information to which an exception applies where, in all the circumstances, the public interest in making the information available is outweighed by the public interest in maintaining the exception.

The Applicant's comments on the public interest

75. The Applicant argued that there was an overwhelming public interest in disclosure of the information.

76. In particular, he stated that the public interest required scrutiny of whether more than £300,000 of public funds were allocated responsibly. He submitted that the public interest lay in obtaining assurance that PBIP funds were subject to rigorous governance and that disclosure of the information would provide transparency for communities on whether promised regeneration benefits were being delivered.

The Authority's comments on the public interest

77. The Authority acknowledged that there was a general public interest in transparency and scrutinising the actions of public authorities, as well as ensuring that information was accessible. The Authority had also considered whether disclosure would contribute to the effective oversight of expenditure of public funds and the public obtaining value for money. In addition, the Authority recognised the strong public interest in ensuring that procurement processes were conducted fairly.

78. The Authority acknowledged there was a strong public interest in the total sums of public money spent on specific contracts being made available and noted that some information on total costs had been provided by the Scottish Government. The Authority submitted that it had provided the total value of the contract which it had managed as Roads Authority on behalf of Lanark BID.

79. However, the Authority did not consider that providing full details of tenders submitted was in the public interest. It argued that that this would make future tenders less competitive as details of recent submissions would become public information. The Authority also argued that this could discourage companies from seeking to do business with the Authority or Lanark BID for fear of information being disclosed. If this occurred, the Authority submitted that it would lead to reductions in service and increased prices as fewer companies would be competing for business, and this would not be in the public interest.

80. While the Authority recognised the factors in favour of release of the information, it considered that those interests did not outweigh the public interest in protecting the contractor against release of the commercially sensitive information and the potential impact on future procurement processes.

81. In addition, the Authority noted that the Applicant had received some information from the Scottish Government regarding the funding of the project and that he had details of the total costs of the part of the project being managed by the Roads Authority which would meet the interests of general accessibility of information and oversight of expenditure of public funds/value for money.

82. The Authority concluded, on balance, that the public interest in maintaining the exception in regulation of the EIRs outweighed the public interest in disclosure of the information requested.

The Commissioner's view of the public interest

83. The Commissioner has considered the public interest arguments advanced by both parties in relation to the withheld pricing information contained within the Bill of Quantities.

84. The Commissioner recognises the significant public interest in transparency and accountability concerning the expenditure of public funds. The works which are the subject of the request were funded through public funds and relate to a project undertaken in a public space. Disclosure of information relating to project costs would contribute to public understanding of how public money has been spent and assist scrutiny of the delivery of the project.

85. The Commissioner has taken account of the Applicant's submissions that there is a strong public interest in understanding whether the project represented value for money and in enabling public scrutiny of procurement and spending decisions. The Commissioner accepts that these are relevant and weighty public interest considerations.

86. The Commissioner has also considered the Authority's submissions that disclosure of the withheld information would undermine the confidentiality of commercially sensitive tender information and prejudice the legitimate commercial interests of the successful contractor.

87. In considering the competing public interests, the Commissioner notes that certain information relating to the project has already been disclosed. In particular, the Authority released information identifying the successful contractor and disclosed the overall value of the construction contract. The Commissioner also notes the Authority's submission that information concerning the project's funding arrangements was already available to the Applicant through information obtained from other sources.

88. The Commissioner acknowledges that disclosure of the withheld information would add to public understanding of the detailed composition of the contract price. However, he considers that the withheld information comprises detailed rates and pricing information rather than high-level expenditure figures.

89. The Commissioner accepts that there is a considerable public interest in protecting the integrity of competitive procurement exercises and in preventing commercially sensitive pricing information from being disclosed where that disclosure would be likely to prejudice the contractor's competitive position in future tendering exercises. The Commissioner also accepts that there is a public interest in ensuring that public authorities are able to secure effective competition and best value for money when procuring goods, services and works.

90. Having weighed the competing public interests, the Commissioner finds that, at the time the Authority dealt with the request and requirement for review, the public interest in maintaining the exception outweighed the public interest in disclosure of the withheld pricing information. While the Commissioner recognises the public interest in transparency regarding expenditure of public funds, he is satisfied that this interest was met to a significant extent by the information already disclosed and that disclosure of the remaining information would be likely to prejudice substantially the legitimate commercial interests identified above.

91. The Commissioner therefore finds that the Authority was entitled to withhold the pricing information contained within the Bill of Quantities under regulation 10(5)(e) of the EIRs.

Decision

The Commissioner finds that the Authority partially complied with the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by the Applicant.

The Commissioner finds that the Authority complied with the EIRs by correctly withholding information under regulation 10(5)(e) of the EIRs.

However, the Commissioner finds that the Authority was not entitled to rely on regulation 10(4)(a) of the EIRs in relation to the information said not to be held. The Authority did not provide sufficient evidence to demonstrate that adequate and proportionate searches had been undertaken to establish whether any further information falling within the scope of the request was held at the time of the request.

The Commissioner therefore requires the Authority to carry out further searches and enquiries, ensuring they take screen shots of the searches carried out, and to issue the Applicant with a revised review outcome in accordance with the EIRs by 08 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

18 November 2026