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Commissioner  
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# Decision Notice 251/2024

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## Handling of a request about the Christie Clock demolition

Authority: Stirling Council  
Case Ref: 202400077

### Summary

The Applicant asked the Authority for all emails between itself and the firm which demolished the Christie Clock. The Authority informed the Applicant that it was handling the request under the EIRs and that it was extending the timeframe for responding to the request, by an additional 20 working days.

The Commissioner investigated and found that the Authority was correct to respond to the request under the EIRs, but that it was not entitled to extend the response time by a further 20 working days.

### 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 the environment); 47(1) and (2) (Application for decision by Commissioner)

Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of “the Act”, “applicant” and “the Commissioner”) and paragraphs (a) and (f) of definition of environmental information (Interpretation); 5(1) (Duty to make environmental information available on request); 7(1) and (2); 16(4) (Review by Scottish public authority); 17(1), (2)(a) and (b) (Enforcement and appeal provisions)

## Background

1. On 2 September 2023, the Applicant made a request for information to the Authority. He asked for all emails between the Authority and the firm which demolished the Christie Clock, Port Street, Stirling on 1 September 2023.
2. On 4 September 2023, the Authority asked the Applicant to state his full name in order for his request to be valid. The Applicant provided the Authority with this information the same day.
3. The Authority responded on 29 September 2023. It notified the Applicant that as it considered the information to be environmental information, it was withholding it under section 39(2) of FOISA, and was dealing with his request under the EIRs. The Authority advised the Applicant that it would require an additional 20 working days to respond to his request, as permitted by regulation 7(1) of the EIRs. The Authority explained that preparing a response to his request had proven to be a complex task. The Authority reassured the Applicant that it would provide him with a response before the extended response deadline of 30 October 2023.
4. The Authority responded on 25 October 2023 and provided the Applicant with two emails.
5. On 27 October 2023, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because:
  - he had not been sent all of the email correspondence,
  - he was told the request was complex and time consuming yet the response contained only two emails,
  - the Authority said on 29 September 2023, that the response was “a long way through the process” but it took until 25 October 2023 to issue it. The Applicant questioned how far down the process of putting two emails together the Authority had been when it contacted him on 29 September 2023.
6. The Authority notified the Applicant of the outcome of its review on 8 December 2023. It apologised for the delay in responding to the Applicant’s requirement for review and provided him with two email attachments which it had failed to provide originally, with some personal data redacted under regulation 11(2) of the EIRs. The Authority upheld its decision to extend the response period under regulation 7(1) of the EIRs.
7. On 22 January 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority’s review because his request had been handled under the EIRs, rather than FOISA, and the Authority had chosen to extend the response time by 20 working days. The Applicant also expressed dissatisfaction with the Authority’s failure to respond to his requirement for review within 20 working days.

## Investigation

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

9. On 28 February 2024, the Authority was notified in writing that the Applicant had made a valid application, and the case was subsequently allocated to an investigating officer.
10. 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 about its reasons for treating the request under the EIRs, and extending the response deadline by 20 working days.

## Commissioner's analysis and findings

11. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.
12. During the investigation the Authority was asked to address the question of whether the request should have been handled under the EIRs.

## FOISA or the EIRs

13. "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 the information under the EIRs, subject to qualifications and exceptions in the EIRs.
14. The request sought information regarding the demolishing of a built structure (the Christie Clock). The Authority handled the Applicant's request under the EIRs and submitted that the information sought was environmental. It withheld the information under section 39(2) of FOISA (Health, safety and environment).
15. The relationship between FOISA and the EIRs was considered at length in [Decision 218/20071](#)<sup>1</sup>. In light of that decision, the Commissioner's general position includes the following:
  - (i) The definition of what constitutes environmental information should not be viewed 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 claim the exemption in section 39(2).
16. Paragraph 6 of the Commissioner's briefing entitled "[What is environmental information?](#)"<sup>2</sup> states: "No types of information are excluded from the potential ambit of environmental information. Environmental information may be found in or extend beyond what is not specifically an environmental topic. Court cases have confirmed that environmental information, and the scope of the Directive, should be interpreted broadly."

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<sup>1</sup> <https://www.foi.scot/decision-2182007>

<sup>2</sup> <https://www.foi.scot/sites/default/files/2022-03/EIRBriefingsDefinition.pdf>

### **The Authority's comments on the EIRs.**

17. The Authority explained that it considered the request to be seeking environmental information because it related to environmental changes to a built structure, specifically an unstable public monument sited in a public area.
18. It noted that the information related to both temporary and permanent changes to the Christie Clock tower, a built structure, and to the landscape. It explained that due to the risk of the potential collapse of the Christie Clock, temporary protective measures and changes were required relating to pedestrian access and traffic management in a public area. These measures involved road closures, changes to pedestrian walkways and the erection of perimeter fencing.
19. The Authority submitted that the requested information fell under the scope of environmental information as defined in the EIRs, specifically paragraphs (a), (b), (c) and (f) of regulation 2(1) of the EIRs. The Authority explained that the inspection and removal of the clock tower and the associated reports and procedures were measures for the purposes of paragraphs (b), (c) and (f) of regulation 2(1) of the EIRs, which were likely to affect the "state of the elements" of the environment as defined in paragraph (a) of regulation 2(1) of the EIRs.
20. The Authority submitted that these measures and activities were likely to affect the land, landscape, soil and air as the built structure was demolished. It argued that the details of the findings of inspections and the actions deemed necessary for removal of the Christie Clock, fell within the definition of environmental information set out in regulation 2(1) of the EIRs.

### **The Applicant's comments on the EIRs**

21. The Applicant stated that his request concerned the destruction of a public monument within Stirling, that the request served the public interest and that he did not understand why it was treated under the EIRs.

### **The Commissioner's view on whether the information requested is environmental**

22. Regulation 2(1)(a) defines environmental information as including the state of the elements of the environment, such as land, a term which is interpreted broadly. The Commissioner's guidance on the EIRs states that the definition of "land" includes built structures.
23. Regulation 2(1)(c) of the EIRs defines environmental information as "measures (including administrative measures), such as...programmes...and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements." The Commissioner is satisfied that the pedestrian and traffic management policies that were put in place as a result of the work on the Christie Clock tower, comprise "measures" as defined in the EIRs, and that the measures clearly impacted on the elements described in paragraph 2(1)(a) of the EIRs.
24. Regulation 2(1)(f) of the EIRs states that environmental information includes "the state of human health and safety, including...conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any of the matters referred to in paragraphs (b) and (c)."
25. The Commissioner has recognised in previous decisions that environmental information does encompass built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in paragraph (a) or, through those elements, by any

of the matters referred to in paragraphs (b) and (c). It should be noted too that [The Aarhus Convention: An Implementation Guide](#)<sup>3</sup>, which describes "built structures" as man-made constructions, indicates that the definition is not limited to large buildings and objects such as dams or bridges, but also covers small constructions (page 55).

26. The Christie Clock was a built structure and at the time of its demolition, it had been deemed a risk to human health and safety. The Commissioner therefore finds the Authority was correct to refer to definition (f) of environmental information in regulation 2(1) of the EIRs.
27. The Commissioner is satisfied that such information is environmental information as defined by regulation 2(1) of the EIRs, and falls within paragraph (f) of the definition of environmental information ("conditions of built structures") in as much as such structures are, or may be affected by, the state of the elements of the environment referred to in paragraph (a) of regulation 2(1) of the EIRs, or, through those elements, by matters referred to in paragraphs (b) and (c) of the regulation.
28. He is satisfied that the Authority was correct to exempt the information under section 39(2) of FOISA.
29. The exemption in section 39(2) is subject to the public interest test in section 2(1)(b) of FOISA. 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.
30. The Commissioner therefore concludes that the Authority was correct to apply section 39(2) of FOISA, and consider the Applicant's information request wholly under the EIRs.
31. Given that the Commissioner is satisfied that the Authority was entitled to respond under the EIRs, he will now consider whether it was also entitled to apply regulation 7(1) of the EIRs to extend the timescale allowed to respond to the Applicant.

## **Regulation 7(1) of the EIRs**

32. Regulation 7(1) of the EIRs says the period of 20 working days to respond to a request for environmental information as set out under the EIRs may be extended by another 20 working days if the "volume and complexity of the information requested makes it impracticable for the authority" to comply with the request.
33. The Applicant was dissatisfied with the Authority's decision to extend the time for responding. He submitted that when the Authority informed him that it was extending the time for responding, it assured him it would not take an additional four weeks to respond. However, the Applicant submitted that the Authority did not provide him with the information covered by the request, until three days before the extended deadline (using up almost all of the four additional weeks it claimed it would not need).
34. The Applicant also noted that the Authority had told him that the volume and complexity of the information he requested meant that the response time had to be extended.

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<sup>3</sup> [https://unece.org/DAM/env/pp/Publications/Aarhus\\_Implementation\\_Guide\\_interactive\\_eng.pdf](https://unece.org/DAM/env/pp/Publications/Aarhus_Implementation_Guide_interactive_eng.pdf)

The Applicant stated that he did not understand what was so complex or time consuming about the two emails that were disclosed, and he challenged the Authority's arguments on this point.

35. During the investigation, the investigating officer asked the Authority questions about its decision to extend the time for responding to the request. The original response deadline under FOISA was 2 October 2023. The Authority informed the Applicant by email on 29 September 2023, that it would be considering the request under the EIRs and that it was extending the time for responding. It notified the Applicant that the new deadline for response under the EIRs was 30 October 2023.
36. The Authority explained that it had first considered whether the information was environmental information on 28 September 2023, and it concluded that it was environmental information, later that same day.
37. The Authority commented that meeting the original 20-working day deadline was impracticable because at the time the request was being processed, the Authority was also carrying out an internal review into the full circumstances behind the removal of the Christie Clock. It explained that at a meeting on 5 October 2023, the Authority agreed to:

“...note and take assurance that a review was being undertaken into the circumstances which led to the demolition of the Christie Clock and that the outcomes and associated recommendations of that review will be reported to a special meeting of the Council's Audit Committee to be held in November. “
38. It also referred to paragraph 1.10 of the minute of that meeting, which stated:

“The Chief Executive instructed that a review be undertaken led by the Council's Internal Audit Manager. The purpose of the review is to ascertain the facts and circumstances in relation to the condition of the clock and the circumstances that led to its demolition. That review is ongoing.”
39. The Authority submitted that at the time it received the request, the Audit Manager's review was ongoing, a large number of witnesses were being interviewed (25 interviews took place between 4 September and 19 October 2023) and information was being ingathered. It argued that it was not possible to immediately identify all of the relevant information within the scope of the request and determine whether any exceptions should be applied to the information.
40. Furthermore, the Authority explained that at the same time (that the request was made) there was media interest and a large amount of social media activity, which was aggressive in nature and sought redress from the Authority, its members and officers. The Authority submitted that it received 19 requests for information between 1 and 8 September 2023, inclusive, relating to the removal of the Christie Clock. The Authority argued that all of these factors made the handling of requests very sensitive and complex.
41. The Authority provided the Commissioner with copies of internal correspondence relating to its handling of this and other requests.

#### **The Commissioner's view**

42. The Commissioner has considered all the submissions in relation to the extended timescale together with the nature of the information requested and provided.

43. He notes that the provision in regulation 7(1) of the EIRs, states:
- “The period of 20 working days referred to ... may be extended by a Scottish public authority by a further period of up to 20 working days if the volume and complexity of the information requested makes it impracticable for the authority either to comply with the request within the earlier period or to make a decision to refuse to do so”.
44. The Commissioner would highlight that regulation 7(1) of the EIRs can only be applied if the “volume AND complexity” of the information requested makes it impracticable. Therefore, in order for an authority to rely on this provision it must demonstrate that not only was the information request complex, but the volume of information captured by the request was extensive.
45. In this case, there were only two emails that were identified as falling within the scope of the request. Both emails are short and simple, with a small amount of information redacted. There were also two attachments which were disclosed to the Applicant in the Authority’s review outcome. One attachment is a 12-page risk assessment with personal data redacted, the other attachment is 23 pages long with personal data withheld.
46. The Commissioner does not consider the amount of information captured by the request, to be complex, nor does he accept that it was, in any way, voluminous.
47. The Authority has argued that the situation it faced in the days and weeks following the demolition, was complex. The Authority has detailed the various, external and internal competing demands it was facing at the time it received this request, and while the Commissioner acknowledges that a request may stretch an Authority’s resources, he does not accept that this negates the Authority’s legal obligations to an Applicant under FOISA or the EIRs.
48. The Commissioner would reiterate that it is the volume and complexity of the information request which must be considered if an Authority is seeking to rely on regulation 7(1), not the additional pressures caused by unwelcome news coverage or internal investigations.
49. The Commissioner does not consider that either the volume or the nature of the information that was requested, justified extending the time frame for responding. He believes that the ongoing review into the circumstances of the demolition of the Christie Clock, should not have interfered with its searches in relation to this request, which only concerned correspondence with a single named firm.
50. The Commissioner finds that the Authority did not comply with regulation 7(1) of the EIRS, and that it was not entitled to extend the response time by a further 20 working days.

## **Regulation 7(2) of the EIRs**

51. Regulation 7(2) of the EIRs says that in a situation where the time for response is extended, the public authority shall notify the applicant of this “as soon as possible” and at any rate no longer than 20 working days after the request was received.
52. The Authority submitted that it aimed to respond to all requests for information as promptly as possible but, in this case, the challenge of identifying the relevant information and ensuring consistency across the different requests made it impossible for the Authority to respond any earlier.

53. The Authority reiterated its previous comments regarding the number of FOI requests it received that month and how the matter was complex. It submitted that a response was provided to the Applicant, as soon as it had identified the relevant information.
54. The Authority provided the Commissioner with internal email chains relating to this request which detailed how it responded.

### **The Commissioner's view**

55. The Commissioner notes that one of the emails provided by the Authority, dated 25 September 2023, shows that it had originally prepared a draft response to the Applicant which responded under FOISA, not the EIRs. A subsequent email, dated 28 September 2023, commented that the request needed to be dealt with under the EIRs.
56. In the Commissioner's view, these emails demonstrate that the Authority did not consider that the information request was seeking environmental information until 28 September 2023, and it did not notify the Applicant it was handling the request under the EIRs, and required 20 additional working days to respond, until 29 September 2023. Given the request was first made on 2 September 2023, and the Applicant provided his full name on 4 September 2023, the Commissioner cannot accept that the Authority notified the Applicant "as soon as possible" that it required further time to comply with the request.
57. The Commissioner has already concluded that the information request was not complex and voluminous, and the Authority was not entitled to extend the response time by a further 20 working days, and he also finds that, even if regulation 7(1) did apply, the Authority still failed to comply with regulation 7(2) of the EIRs by not notifying the Applicant "as soon as possible" that the timeframe for responding to the request was being extended.

### **Handling of request**

58. Regulation 16 of the EIRs states that, on receipt of a requirement to conduct a review, the authority shall review the matter and decide whether it has complied with the EIRs, within 20 working days (regulations 16(3) and (4)).
59. It is a matter of fact that the Authority's review response was late.
60. The Commissioner must therefore find that, in failing to respond to the requirement for review within the time allowed, the Authority failed to meet the requirements of section 16(4) of the EIRs.

### **Decision**

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

He finds that the Authority correctly applied regulation 2(1)(a) and (f) in finding that the information was environmental.

However, the Commissioner finds that the Authority failed to comply with the EIRs when it applied regulation 7(1) to extend the deadline for response and that it failed to comply with regulation 7(2) by not notifying the Applicant as soon as possible that it was applying regulation 7(1).



The Commissioner also finds that the Authority breached regulation 16(4) of the ERIs, by failing to respond to the Applicant's requirement for review within 20 working days.

The Commissioner does not require the Authority to take any action in response to these failures.

## **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.

**Jennifer Ross**  
**Deputy Head of Enforcement**

**08 November 2024**