



Scottish Information  
Commissioner  
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# Decision Notice 038/2025

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## Information relating to the factoring of a specified building

Authority: Clackmannanshire Council  
Case Ref: 202401594

### Summary

The Applicant asked the Authority for information relating to the factoring of a specified building. The Authority provided the Applicant with some information. The Commissioner investigated and during his investigation the Authority identified a significant amount of further information falling within the scope of the request, some of which it considered excepted from disclosure. He required the Authority to issue the Applicant with a revised review outcome.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement) and 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” and “the Commissioner” and the definition of “environmental information”) (Interpretation); 5(1) (Duty to make environmental information available on request); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions)

### Background

1. On the 28 October 2023, the Applicant made a request for information to the Authority. The Applicant asked for information about the factoring of a specified building, including:
  - a) when the Authority became the factor of the building, and a copy of the postal letter sent to owners informing them of this
  - b) when the Authority ceased to be the factor of the building

- c) why owners in the specified building were not informed of this change in factoring responsibility
  - d) why the Authority ceased to be the factor despite remaining the majority owner of the specified building
  - e) copies of (or links to) minutes of all meetings, and other information, discussing the factoring of shared ownership blocks (unless these only applied to other blocks than the specified building).
2. The Authority did not respond to the information request.
  3. On 15 and 17 December 2023, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
  4. The Applicant did not receive a response to his requirement for review.
  5. The Applicant wrote to the Commissioner on 20 January 2024, stating that he was dissatisfied with the Authority's failure to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA.
  6. In [Decision 025/2024](#)<sup>1</sup>, the Commissioner found that the Authority had failed to respond to the Applicant's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA.
  7. The Authority notified the Applicant of the outcome of its review on 12 February 2024. The Authority provided information for parts (a), (b) and (d) of the request and issued the Applicant with a notice, under section 17(1) of FOISA, that it did not hold the information requested for parts (c) and (e) of the request.
  8. On 20 February 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, for the following reasons:
    - for part (a) of the request, the Authority had failed to provide the letter requested, despite stating it was attached to its response
    - for parts (b) and (d), they expected that the Authority held further information (particularly emails, correspondence and minutes of meetings)
    - for parts (c) and (e), they expected that the Authority held information (particularly emails, correspondence and minutes of meetings)
    - for part (e), they considered the Authority had misinterpreted the request by responding in terms of information that only referred to the specified building, when they had asked for all information unless it referred only to blocks other than the specified building.
  9. In [Decision 213/2024](#)<sup>2</sup>, the Commissioner required the Authority to issue a revised review outcome regarding parts (c), (d) and (e) of the request.
  10. The Authority notified the Applicant of the outcome of its review on 15 November 2024, in which it informed him that:

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<sup>1</sup> <https://www.foi.scot/sites/default/files/2024-04/Decision025-2024.pdf>

<sup>2</sup> <https://www.foi.scot/sites/default/files/2024-10/Decision213-2024.pdf>

- regarding part (c), it could locate no “formal record” of this decision but provided an email chain discussing this issue and signposted the Applicant to a relevant section of its website.
  - regarding part (d), it could locate no “formal records” of this decision. However, it provided an email chain discussing this issue and signposted the Applicant to a relevant section of its website.
  - regarding part (e), the email chain, provided under parts (c) and (d), was the only information in scope.
  - it had withheld a small amount of information under the exception in regulation 11(2) of the EIRs.
11. On 5 December 2024, 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 did not consider that all of the information relevant to his request had been identified.

## **Investigation**

12. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
13. On 6 December 2024, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
14. 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 the searches it had undertaken for the information requested.

## **Commissioner’s analysis and findings**

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

### ***Handling in terms of the EIRs***

16. 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).
17. Where information falls within the scope of this definition, 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.
18. The information requested appears to fall within the definition of environmental information contained in regulation 2(1) of the EIRs. The Commissioner will therefore consider the request in what follows solely in terms of the EIRs.

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

19. 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 the authority when it receives a request.
20. 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 provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
21. As stated above, the Applicant was dissatisfied with the Authority's revised review outcome because he believed it had not identified and provided all of the information relevant to his request.
22. During the investigation, the Authority advised the Commissioner that it considered that it had interpreted the Applicant's request too narrowly. It explained that it now understood the request as seeking information about factoring more generally, including information on how it made the decision to cease being the factor for the specified building, rather than only information relating to the decision itself.
23. In view of its revised interpretation of the scope of the request, the Authority identified a significant amount of further information relevant to the request – some of which it considered would be excepted from disclosure.
24. In the circumstances, the Commissioner considers the Authority's revised review outcome failed to fully address the Applicant's request. He therefore finds that the Authority failed to comply with regulation 5(1) of the EIRs and, in doing so, provided an incomplete response to the Applicant's request.
25. Consequently, the Commissioner requires the Authority to provide the Applicant with a revised review outcome (in terms of regulation 16 of the EIRs), which lists all of the exceptions that the Authority is now seeking to apply, and which explains, in detail, why the Authority considers these exceptions to be relevant. This will enable the Applicant to make a new application in which he can fully challenge the Authority's reasons for withholding information from him. (He also requires the Authority to disclose all information to the Applicant to which it considers no exception applies.)
26. In providing the revised review outcome, the Authority should ensure that it has correctly understood the scope of the Applicant's request. If the Authority is unsure of the correct scope of this request, the Commissioner would remind it that it should, in line with the requirements of the [Scottish Ministers' Code of Practice on the Discharge of Functions by Scottish Public Authorities under FOISA and the EIRs](https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf#:~:text=Under%20section%2060%20of%20FOISA%20and%20regulation%2018,of%20their%20functions%20under%20FOISA%20and%20the%20EIRs)<sup>3</sup>, engage with the Applicant to clarify the precise scope.
27. The Commissioner is concerned that the Authority identified further information following the revised review outcome it issued as required by Decision 213/2024. This further information

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<sup>3</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2016/12/foi-eir-section-60-code-of-practice/documents/foi-section-60-code-practice-pdf/foi-section-60-code-practice-pdf/govscot%3Adocument/FOI%2B-%2Bsection%2B60%2Bcode%2Bof%2Bpractice.pdf#:~:text=Under%20section%2060%20of%20FOISA%20and%20regulation%2018,of%20their%20functions%20under%20FOISA%20and%20the%20EIRs>.

was identified despite him specifically requiring the Authority to carry out adequate and proportionate searches in that decision.

28. In all cases, it is essential that public authorities take adequate and proportionate steps to establish what information is held. Failure to do so – particularly where that failure is repeated, despite the involvement of the Commissioner – undermines FOI law and the confidence of the public in its utility.
29. When providing the Applicant with a revised review outcome, the Commissioner therefore requires the Authority to ensure that it has undertaken adequate and proportionate searches and that it can provide evidence of those searches in the event of a further appeal to the Commissioner.

## **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, in failing to provide a full response to the Applicant's request, the Commissioner finds that the Authority failed to comply with regulation 5(1) of the EIRs.

The Commissioner therefore requires the Authority to reconsider the Applicant's request, carry out adequate, proportionate searches for the information, reach a decision on the basis of those searches and notify the Applicant of the outcome, and the searches it carried out (in terms of regulation 16 of the EIRs), by **Monday 7 April**.

## **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 February 2025**