



Scottish Information
Commissioner
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Decision Notice 42/2025

Transport consultation data

Authority: City of Edinburgh Council
Case Ref: 202401324

Summary

The Applicant asked the Authority for anonymised raw data for the consultation on the Greenbank to Meadows Quiet Route. The Authority responded under the EIRs and issued a fees notice. The Commissioner investigated and found that the fees notice issued by the Authority was not reasonable. He required the Authority to issue a revised review response.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 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” and “the Commissioner”) (Interpretation); 5(1) and (2)(b) (Duty to make environmental information available on request); 8(1) and (3) (Charging); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions)

Background

1. On 26 February 2024, the Applicant made a request for information to the Authority. He asked for the anonymised raw data for the consultation (which closed on 22 October 2023) on the Greenbank to Meadows Quiet Route.

2. The Authority responded on 25 March 2024 informing the Applicant that, in terms of regulation 8 of the EIRs, payment of a fee was reasonable in order to comply with the request. It issued a fees notice to the Applicant and advised him that it might be possible to provide some information without a charge and suggested how this could be achieved.
3. On 26 March 2024, the Applicant wrote to the Authority requesting a review of its decision. The Applicant contested the Authority's right to make a charge for the information requested.
4. The Authority notified the Applicant of the outcome of its review on 18 April 2024, confirming its original decision. It explained that it considered the information requested environmental information, as defined in regulation 2(1) of the EIRs (particularly paragraphs (a), (c) and (f)). It confirmed that it was satisfied that the proposed fee was reasonable.
5. On 6 May 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 he was dissatisfied with the outcome of the Authority's review because he did not consider that his request fell within the EIRs.
6. On 5 September 2024, the Commissioner issued [Decision 190/2024](#)¹ where he found that the Authority was correct to handle the request under the EIRs. He did not consider whether the fees notice issued by the Authority was reasonable as the Applicant did not challenge this in his application.
7. On 1 October 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 dated 18 April 2024 because he did not consider the fees notice issued by the Authority was reasonable.

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. While he had already issued Decision 190/2024 in respect of the same request, the Commissioner determined the application in this case was valid on the grounds that the Applicant's requirement for review could reasonably be read as challenging the reasonableness of the fee notice issued by the Authority and his application in this case (which was submitted to the Commissioner within six months of the review outcome) also challenged the reasonableness of the fees notice.
10. On 6 November 2024, the Authority was notified in writing that the Applicant had made a valid application. The case was subsequently allocated to an investigating officer.
11. 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 relating to the fee notice. The Authority was also asked to provide the spreadsheet containing the information requested, which it did.

¹ <https://www.foi.scot/sites/default/files/2024-09/Decision190-2024.pdf>

Commissioner's analysis and findings

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

Section 39(2) of FOISA – Environmental information

13. 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. In this case, the Commissioner accepts that the Authority was entitled to apply the exemption to the information withheld in this case, given his conclusion that it is properly classified as environmental information.
14. 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.
15. As stated above, the Commissioner found in Decision 190/2024 that the Authority was correct to consider the Applicant's information request wholly under the EIRs. In what follows, the Commissioner will therefore consider this case solely in terms of the EIRs.

Regulation 8 of the EIRs – charging

16. The Authority issued a fees notice in terms of regulation 8 of the EIRs. Under regulation 8(1), a Scottish public authority may charge a fee for making environmental information available under regulation 5(1).

Was the fees notice reasonable?

17. Regulation 8(3) of the EIRs makes it clear that the fee charged shall not exceed a reasonable amount and shall not exceed the costs to the authority of producing the information requested.
18. While regulation 8(1) of the EIRs allows a Scottish public authority to charge a fee for making environmental information available under regulation 5(1), the Commissioner's view is that charging for making environmental information available needs to be consistent with the fundamental purposes of the legislation, particularly allowing general access to environmental information and participation in environmental decision-making.
19. The Authority issued the Applicant with a fees notice of £75. This was based on the Authority identifying four columns in the spreadsheet of raw data that included third party data that required redaction. It noted that there were 1,879 respondents, and it estimated an average of ten seconds to redact personal data from the four columns identified as containing third party data for each respondent.

20. The Authority explained that it could redact one of the columns in its entirety but it would have to go “row by row and redact when appropriate” for the other three columns. It explained that this resulted in the following cost calculation:
- 1,879 x 10 seconds = 5 hours
- 5 hours at £15 per hour = £75.
21. As stated above, the Commissioner obtained the spreadsheet of raw data from the Authority during his investigation. He conducted a sampling exercise of the spreadsheet by considering the first 100 of the 1,879 respondents. Taking a liberal approach to what constituted personal data, the Commissioner identified only a small number of columns of the first 100 respondents as potentially containing personal data.
22. The Commissioner concluded that the Authority had therefore overestimated the extent to which personal data would be present in the four columns for each respondent, which resulted in an overestimation of the time required to redact personal data from the spreadsheet. Extrapolating the results of his sampling exercise to all 1,879 respondents produced a cost calculation with a nominal fee – very significantly lower than the fee notice issued by the Authority.
23. In view of this and given that the EIRs are fundamentally designed to promote access to environmental information and participation by everyone in environmental decision-making, the Commissioner does not consider that the fees notice issued by the Authority in this case was reasonable.
24. Consequently, the Commissioner requires the Authority to issue the Applicant with a revised review outcome under regulation 16 of the EIRs (which must not impose a fresh charge under regulation 8(1)).

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 is not satisfied that the fee charged was reasonable, in line with regulation 8 of the EIRs.

The Commissioner therefore requires the Authority to provide the Applicant with a revised review outcome under regulation 16 of the EIRs (which must not impose a fresh charge under regulation 8(1)), by 7 April 2025

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.

David Hamilton
Scottish Information Commissioner

20 February 2025