



Scottish Information
Commissioner
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Decision Notice 044/2025

School transport consultation

Authority: North Lanarkshire Council
Case Ref: 202401194

Summary

The Applicant asked the Authority for information relating to new school travel arrangements. The Authority stated that it did not hold the information. The Commissioner investigated and found that the Authority had considered the request under the wrong legislation. The requested information was environmental information and the Authority should have considered the request under the EIRs. The Commissioner required the Authority to respond to the request under the EIRs.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 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 paragraphs (a), (b), and (f) of definition of “environmental information” (Interpretation); 5(1) (Duty to make environmental information available on request); 16 (Review by Scottish public authority); 17(1), (2)(a) and (b) (Enforcement and appeal provisions).

Background

1. On 26 June 2024, the Applicant made a request for information to the Authority. He asked for:

- (i) Copies of communications and records of meetings where officers discussed the concerns of parents and carers living in Stepps, with children attending Stepps Primary School about the new travel arrangements between January 2023 and June 2024.
 - (ii) All evidence of the work of Council officers 'working closely' with parents to address their concerns that the walking route from Stepps, Millerston to Chryston is dangerous and unsafe between January 2023 and June 2024.
 - (iii) The assessment report that resulted in the assessment of the Stepps/Millerston walking route changed from unacceptable to acceptable. Outlining the reasons:
 - (a) Why it was originally unacceptable
 - (b) Why it changed to acceptable
 - (iv) Correspondence and agreements with Police Scotland regarding responsibility for public safety on these routes between January 2023 and June 2024.
 - (v) Details of collaboration with any bus companies serving the Stepps, Millerston and Chryston areas concerning public transport management
 - (vi) Studies or assessments or any communication or report predicting the impact of
 - (a) the removal of school buses and the increased use of road traffic/vehicles escorting children to and from school between January 2023 and June 2024.
 - (b) Focusing on volume of traffic around Chryston High School
 - (c) Increased traffic on Cumbernauld Road from Millerston to Chryston High School
 - (vii) The number of formal complaints submitted by parents and carers about the change to school transport provisions specifically for the Millerston, Stepps to Chryston route between January 2023 and June 2024.
 - (viii) The number of formal complaints submitted by children and young people about the change to school transport provisions specifically for the Millerston, Stepps to Chryston route between January 2023 and June 2024.
 - (ix) The number of appeals to the decision to remove the school transport for families living in Millerston and Stepps with children who will access Chryston High School between January 2023 and June 2024.
 - (x) How many decisions have been overturned overall in the assessment of acceptable walking routes for all children accessing secondary school in North Lanarkshire where the school bus has been removed between January 2023 and June 2024.
2. The Authority responded on 19 July 2024. It provided some information and stated that other information was either already publicly available, had already been provided, or was not held.
 3. On 2 August 2024, the Applicant wrote to the Authority requesting a review of its decision in relation to requests (i), (ii) and (iii). The Applicant stated that he was dissatisfied with the Authority's response because it had not answered his questions, i.e. it had not provided the information he had asked for.

4. The Authority notified the Applicant of the outcome of its review on 2 September 2024. It notified the Applicant that it did not hold information in relation to requests (i) and (iii) and it provided him with some information falling within the scope of request (ii).
5. On 3 September 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated that he was dissatisfied with the outcome of the Authority's review because he did not accept that it held no information falling within the scope of requests (i) and (iii). The Applicant also challenged its response to request (ii) arguing that the Authority had not provided the information he had requested.

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 2 October 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.
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.

Commissioner's analysis and findings

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

FOISA or the EIRs

10. "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.
11. The relationship between FOISA and the EIRs was considered at length in [Decision 218/2007¹](https://www.foi.scot/decision-2182007). 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. In responding to a request for environmental information under FOISA, an authority may claim the exemption in section 39(2).
12. The Commissioner notes that the Authority handled the original request and requirement for review under FOISA.

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

13. Given the subject matter of the request, the Commissioner found it appropriate to consider whether the information requested by the Applicant should properly be regarded as environmental information and therefore subject to the EIRs.
14. In response to a request for comments on this point, the Authority submitted that it had considered whether the request fell under the scope of the EIRs but it had concluded that it did not, and that it should be handled under FOISA.
15. The Authority submitted that the requests concerned its decision to change the mileage limits for mainstream home to school transport. It explained that the decision meant that some pupils were no longer entitled to free school transport and the Authority carried out walking route assessments for those who may then wish to walk to school. The Authority did not consider that the requests met the definition of environmental information as outlined in the legislation. It argued that it was not proposing measures and activities that would affect the elements and factors of the environment. It submitted that the walking route assessments merely assessed the routes in place and that it was not proposing any changes to the built environment.
16. The Authority stated that while it hoped that the change to mileage limits would reduce carbon emissions by reducing the number of large vehicles on the road this was an aspiration, and it was not certain that changes to the mileage limit would affect, or be likely to affect, carbon emissions. In addition, the Authority argued that the focus of the request related to information on communications/work with parents and the route assessment, rather than carbon emissions or wider environmental issues.
17. The Authority said that in coming to that conclusion, it had made reference to the Commissioner's decision [098/2008](#)². It stated that, while it considered that the request fell under FOISA, the response (that information was not held) would be the same if it were processed under the EIRs.
18. Paragraph 6 of the Commissioner's briefing entitled "[What is environmental information?](#)"³ 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."
19. The Commissioner has considered all of the Authority's submissions on this matter and the previous decision referenced. He has also considered the subject matter of the request.
20. The themes raised in the consultation, which were detailed in a [report](#)⁴ entitled "Changes to mileage limits for mainstream home to school transport" by the Authority, included concerns over health and safety, traffic congestion and travelling in winter/adverse weather.
21. The Commissioner notes the Authority's definition of environment is concerned solely with the potential impact of action by the Authority on the environment. While the Commissioner considers this to be part of what constitutes environmental information, he does not consider the definition to be limited to the Authority's interpretation.

² <https://www.foi.scot/decision-0982008>

³ <https://www.foi.scot/sites/default/files/2022-03/EIRBriefingsDefinition.pdf>

⁴ <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.northlanarkshire.gov.uk%2Fsites%2Fdefault%2Ffiles%2F2023-05%2FNLC%2520School%2520Transport%20Consultation%2520Report%20May23.docx&wdOrigin=BROWSELINK>

His view, as referenced above, is that environmental information is broader than just that which relates to situations where an Authority is actively affecting the environment in some way (e.g. in terms of an alteration to the built environment).

22. The Commissioner considers that in Decision 098/2008, referenced by the Authority, the information which was requested comprised documents relating to a decision on charging. The Commissioner considers that the subject of this request differs from that decision in that it relates in large part to the perceived levels of safety of those walking a particular route (rather than a matter of finance, as in the decision referenced).
23. The Commissioner has dealt with a number of decisions relating to road safety where he considered the information to be environmental, including [Decision 045/2020](#)⁵, [Decision 182/2024](#)⁶ and [Decision 234/2024](#)⁷.
24. While the specific detail of the above decisions referenced may differ from this appeal, the Commissioner considers that the broader subject matter – human safety within the built environment – is similar.
25. Having reviewed the subject matter of requests (i), (ii) and (iii), the Commissioner is satisfied that it encompasses at least some environmental information as defined in regulation 2(1)(a), (b) and (f) of the EIRs because it relates to the state of the elements of the environment (the land and landscape), factors such as emissions into the environment, and the state of human health and safety.
26. The Commissioner notes the Authority's comments that, in the case of requests (i) and (iii) the information is not held. However, as he has noted above, environmental information must be handled under the EIRs.
27. Given that the Commissioner has concluded that some, if not all, of the information requested is environmental information, the Authority had a duty to consider it in terms of regulation 5(1) of the EIRs. In failing to do so, it failed to comply with regulations 5(1) and 16 of the EIRs.

Decision

The Commissioner finds that the Authority failed to comply with the requirements of regulations 5(1) and 16 of the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the Applicant's information request and requirement for review.

The Commissioner requires the Authority to provide a response to the Applicant's requirement for review, in terms of regulation 16 of the EIRs, by **7 April 2025**.

⁵ <https://www.foi.scot/decision-0452020>

⁶ <https://www.foi.scot/decision-1822024>

⁷ <https://www.foi.scot/decision-2342024>

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.

Jennifer Ross
Deputy Head of Enforcement

21 February 2025