



Scottish Information  
Commissioner  
[www.foi.scot](http://www.foi.scot)

# Decision Notice 045/2025

---

## Pothole report – Great Western Road, Glasgow

Applicants: The Applicant  
Authority: Glasgow City Council  
Case Ref: 202401047

### Summary

The Applicant asked the Authority for information relating to the inspection and repair of a specific pothole in a defined time frame. The Authority provided the Applicant with the information it held falling within scope of his request. The Commissioner investigated and found that although the Authority had provided him with all of the information falling within scope of his request, it had failed to provide the Applicant with sufficient advice and assistance to enable him to understand the information in the context of his request.

### 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)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (Interpretation), (definition of “The Act”, “applicant” and “the Commissioner” and paragraphs (a), (b) and (c) of definition of “environmental information”); 5(1) and (2) (Duty to make environmental information available on request); 9(1) and (3) (Duty to provide advice and assistance); 17(1), (2)(a) and (b) (Enforcement and appeal provisions)

## Background

1. On 17 June 2024, the Applicant made a request for information to the Authority regarding damage he sustained to his motor vehicle as a consequence of a pothole on Great Western Road in Glasgow. He asked:
  - (ii) Please provide the detailed report of the inspection carried out on 17 November 2023
  - (iii) Please provide details, including the date, of the last repair carried out on the periphery of this "pothole"
  - (iv) Please advise, from the photo attached, why debris was not removed from the area during the reported inspection
  - (v) Please advise, given the location of this severe defect, why there were no warning signs or cones in place as this hole is within the normal driving area of the road
2. The Authority responded in terms of the EIRs on 8 July 2024. The Authority provided information in response to parts (ii) and (iii), with some information withheld as the Authority considered it to be personal information, exempt from disclosure in line with regulations 11(2) and (3). It answered the questions in parts (iv) and (v) of the Applicant's request.
3. On 8 July 2024, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that he was dissatisfied with the decision because:
  - (i) The nomenclature used in the History of Tablet Inspection Report did not bear much relation to the Safety Inspection Report, and as such he was unable to find either the description or any of the numbers within the Inspection Report summary.
  - (ii) He was unable to find anything in the Safety Inspection Report of any relevance to the pothole in question.
  - (iii) Having reviewed the Completed Jobs Report, whilst the Applicant could see a few repairs, none of those reported on or around 17 November appeared to be connected to the pothole in question.
4. The Authority notified the Applicant of the outcome of its review on 2 August 2024. It upheld its initial response to part (ii) of the Applicant's request, as well as upholding its response in relation to part (iii) subject to modification. The Authority informed the Applicant that it was not upholding its application of regulations 11(2) and 11(3) of the EIRs for information contained in the "List of completed Jobs Report" and provided an unredacted copy of this to him.
5. On the same date, 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 his initial query had been answered.

## 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 12 September 2024, the Authority was notified in writing that the Applicant had made a valid application. The case was 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. These related to how the information provided to the Applicant answered his request.
9. The Applicant was also given the opportunity to provide his comments to the Commissioner, which he did.

## **Commissioner's analysis and findings**

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

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

11. 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.
12. Where information falls within the scope of this definition, a person has a right to access it (and the public authority has a corresponding duty to respond) under the EIRs, subject to various restrictions and exceptions contained in the EIRs.
13. The information requested appears to fall clearly within the scope of the definition of environmental information contained in regulation 2(1) of the EIRs (specifically paragraphs (a), (b) and (c) and of that definition).
14. The Applicant has not disputed the Authority's decision to handle the request under the EIRs.

### ***Section 39(2) of FOISA – Environmental information***

15. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined in 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.
16. In this case, the Commissioner accepts that the Authority was entitled to apply the exemption to the information falling within the scope of the Applicant's request, given that it is properly classified as environmental information.
17. 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. 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 should be more likely under FOISA than under the EIRs.
18. The Commissioner therefore concludes that the Authority was correct to apply section 39(2) of FOISA and consider the Applicant's information request under the EIRs.
19. In the circumstances, the Commissioner will consider this case, in what follows, solely in terms of the EIRs.

### ***Information provided to the Applicant***

20. In its response to the Applicant the Authority provided him with four documents:
- Safety Inspection Report from 17 November 2023
  - History of Tablet Inspection Report from 17 November 2023
  - List of Completed Jobs Report covering the time period 26 June 2023 to 26 June 2024
  - Road Safety Inspection and Repair Manual

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

21. 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 the information that is held by the authority when it receives a request.
22. On receipt of a request for environmental information, therefore, the authority must ascertain what information it holds falling within scope of the request. Having done so, regulation 5(1) requires the authority to provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).
23. Under the EIRs a public authority may refuse to make environmental information available if one or more of the exceptions in regulations 10 to 12 apply and, in all of the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.
24. The standard of proof to determine whether a Scottish public authority holds 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.
25. 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 the exercise to explore expectations as to what information an authority should hold, ultimately the Commissioner's role is to determine what relevant information is actually held by the authority (or was, at the time it received the request).

### ***Background to request***

26. The Authority and the Applicant provided the Commissioner with some background information relating to the circumstances leading up to the request, which assists with the context of the information provided by the Authority and the reasons why the Applicant is unhappy with it.
27. The Applicant submitted a claim in relation to damage he had sustained to his vehicle on 4 December 2023 as a result of a road defect on Great Western Road in Glasgow. After an investigation, the Authority's Claims Team informed the Applicant that the defect in question had been inspected on 17 November 2023 and, at that time, any actionable defects recorded were scheduled for repair, but that the Applicant's incident occurred prior to the repairs being carried out. The Applicant was advised that whilst the defect was known to the Authority, there was no obligation on it to carry out immediate repairs and the duty was to do so within a reasonable timescale. The Authority advised the Applicant that the timescale between

discovery and the Applicant's incident was not unreasonable, and therefore no fault was attributable to the Authority.

28. The Applicant explained that he had made his request after sustaining damage to his car caused by a particular pothole. He stated that his claim for compensation for this damage had been rejected due to the Authority's rule pertaining to inspection time versus repair time and that the incident concerning his vehicle had occurred within this time period (that period being three weeks per the guidelines).

#### *Public authority's submissions*

29. The Authority provided the Commissioner with some explanation on what each of the documents provided to the Applicant in response to his request showed:
- (i) Inspection History – details the dates, times and weather conditions of the road inspection and the means by which the road inspection was undertaken by the Authority's safety inspector on Great Western Road on 17 November 2023.
  - (ii) Safety Inspection Report – details the locations and risk categorisations of the defects identified on the road inspection carried out by the Authority's safety inspector on Great Western Road on 17 November 2023.
  - (iii) List of Completed Jobs Report – details the locations and dates of repairs undertaken by the Authority's Neighbourhoods, Regeneration and Sustainability (NRS) team on Great Western Road between 26 June 2023 and 26 June 2024.
  - (iv) Road Safety Inspection and Repair Manual – which is the operational guidance for the Authority's officers responsible for carrying out road inspections and repairs.
30. In its review outcome, the Authority confirmed that the information provided was accurate and related to the information requested. It explained that the apparent inconsistency in nomenclature and reporting differences was due to the different recording tools used to generate the reports. It advised the Applicant that it was unable to confirm which (if any) of the defects recorded in the Safety Inspection Report and which, if any, of the repairs recorded in the List of Completed Jobs Report related to the defect identified in the Applicant's claim. It did, however, identify to the Applicant a number of entries contained within both of these reports that appeared to be near the locus of the incident.

#### *The Applicant's submissions*

31. On receipt of the response, the Applicant did not think the information he had received reflected what the Authority claimed. He had difficulty with the nomenclature used in the History of Tablet Inspections Report as it did not bear much relation to that used in the Safety Inspection Report, and as such he was unable to find either the description or any of the numbers within the Inspection Report Summary. He was unable to find anything within the Safety Inspection Report of any relevance to the pothole in question. In relation to the Completed Jobs Report, it initially appeared to him that nothing was connected to the road defect in question but on further examination he thought that a defect recorded on 3 December 2023 and repaired on 8 December 2023 fitted perfectly.
32. On querying the above in his requirement for review and on receiving the Authority's response, the Applicant was confused to be told by the Authority that it could not say that the road defect the Applicant identified (recorded on 3 December 2023) was necessarily the

same one that caused the damage to his car. He highlighted that the Authority could not seem to identify the defect of concern.

#### *Provision of a new review response*

33. During the investigation, the Authority in its submissions highlighted to the Commissioner that it recognised some of the information it had provided by way of advice and assistance (in relation to aiding the Applicant to identify the defect that was the subject of his claim) may unintentionally have confused him. It acknowledged that the review outcome advised that it was not able to confirm which, if any, defects recorded in the Safety Inspection Report were the same as in the Applicant's claim. It stated that on carrying out further investigation, a senior manager in the NRS team reviewed the Safety Inspection Report with a greater degree of scrutiny and expertise, and was able to identify the reference number that matched the defect identified in the Applicant's claim.
34. On 22 November 2024 the Authority provided the Applicant with a revised response to his requirement for review, to inform him of this.
35. The Authority apologised in its revised response for the inaccuracies in the advice and assistance provided in its previous responses.
36. The Authority also provided the Applicant with a summary of the information contained in each document (as provided in its submissions to the Commissioner). The Authority explained that following further investigations by its NRS team, it was able to confirm which of the defects recorded in the Safety Inspection Report was the same as the one identified by the Applicant in his claim. It also commented that as a consequence of the further investigations carried out it had identified the reference number of the repair in the List of Completed Jobs Report that was the repair carried out to the defect identified in the Applicant's claim. It provided these numbers to the Applicant.
37. The Applicant did not consider the new review outcome issued by the Authority provided clarity on the matter and questioned the Authority's identification of the pothole in question.
38. The Commissioner queried the information provided in the new review response as it appeared that the road defect identified by the Authority in the Safety Inspection Report as the one in the Applicant's claim (identified on 17 November 2023 and categorised meaning repair had to be completed by 12 January 2024) was then identified by the Authority in the List of Completed Jobs as having been repaired on 1 December 2023 (prior to the incident on 4 December 2023).
39. The Authority explained that it was unable to provide any further information, and that what had been provided was based on the information held in its records and the location description that was provided by the Applicant. It further stated that based on the records held the defect identified by the Applicant was repaired on 1 December 2023. It explained, however, it may have been a temporary repair and that weather conditions, such as frost or driving rain, can cause previously temporarily repaired potholes to reappear, and that in some cases this can occur within a few days. The Authority believed that this may have been what occurred in relation to this particular defect.

#### *The Commissioner's view*

40. The Applicant asked for information about inspections carried out on a specific date and repairs in relation to a specific road defect, which the Authority, in response to his claim, had indicated was detected by it on 17 November 2023. The information provided to the

Applicant contained information relating to many defects on Great Western Road but failed to identify the particular one the Applicant was interested in. At the time of its response, the Authority did not provide him with any advice on how to identify this defect in any of the three relevant documents. Then, in its review outcome, it informed the Applicant that it was not able to confirm which, if any, of the defects or repairs identified married up with the one of interest to him.

41. The Commissioner can understand the Applicant's confusion as, on the one hand, the Authority had informed him that the defect that caused the damage to his vehicle was identified on 17 November 2023, but then on providing him with information relating to many defects in response to his request, it explained that it could not identify the specific defect.
42. In its revised review outcome, the Authority was able to identify the defect it considered matched that described by the Applicant, both in the inspection list and list of completed jobs. However, that defect appeared to have been repaired before the incident described by the Applicant occurred, without any explanation being provided for this apparent disparity.
43. The EIRs require the Authority to provide the Applicant with the information that it holds (and which falls within scope of his request) at the time of the request being received. If it does not hold the information, or cannot identify it, then it should inform the Applicant of this fact.
44. The Commissioner has carefully considered the submissions from the Applicant and Authority, as well as the information itself. With regard to part (ii) of the request that asked for the detailed inspection report from 17 November 2023, the Commissioner considers that the Authority has provided the Applicant with the information it holds (and held at the time of the request).
45. The Commissioner found it more difficult to reach a view on part (iii) of the request as the Applicant asked for information about the last repair to a specific road defect and was provided with information covering a 12-month period. However, the Commissioner acknowledges that information falling within this part of the Applicant's request was contained in the information provided to him within the List of Completed Jobs Report.
46. Consequently, the Commissioner must find that the Authority complied with regulation 5(1) of the EIRs.

### ***Regulation 9 – Duty to provide advice and assistance***

47. Regulation 9 of the EIRs requires a Scottish public authority to provide advice and assistance to applicants, so far as it would be reasonable to expect them to do so.
48. Regulation 9(3) of the EIRs provides that a Scottish public authority shall be taken to have complied with this duty if it conforms with the relevant Code of Practice (in relation to the provision of advice and assistance).
49. The Scottish Ministers' Code of Practice on the discharge of functions by Scottish public authorities under FOISA and the EIRs ([the Section 60 Code](#)<sup>1</sup>) states (at paragraph 5.1 in Part 2):

#### ***Authorities should offer advice and assistance at all stages of a request***

*Authorities have a duty to provide advice and assistance at all stages of a request. It can be given either before a request is made, or to clarify what information an Applicant wants after*

---

<sup>1</sup> [Code of Practice under section 60 of FOISA](#)

*a request has been made, whilst the authority is handling the request, or after it has responded.*

50. The Authority acknowledged in its submissions to the Commissioner that it may have confused the Applicant in its review outcome.
51. The Applicant highlighted the problems he had in understanding the reference numbers and in trying to marry up the information in the different reports.
52. As mentioned above, the Commissioner has concluded that the information the Applicant requested was provided to him by the Authority. But without adequate and understandable explanations by way of advice and assistance, to help the Applicant identify the road defect that he was clearly interested in, the information was meaningless.
53. The Commissioner considers the Applicant's interest in the particular road defect was clear, and his request was based on information the Authority itself had provided to him previously. The Commissioner can understand why the information, and some of the advice and assistance given by the Authority, led to further confusion rather than clarity. The Authority failed to help the Applicant identify the entry for the repair to the particular road defect he had asked about and did not explain how the entries in the three reports it had provided related to each other. The revised review outcome raised more questions and again the relevant advice and assistance was not provided to the Applicant, to explain any apparent disparity in the dates when looking at the entries the Authority had identified to him as being the road defect of interest.
54. As such, the Commissioner finds that the Authority failed to adequately discharge its duty to provide advice and assistance as required by regulation 9(1) of the EIRs.
55. That said, as the Commissioner is satisfied that the Authority provided the Applicant with all of the information it held falling within the scope of his request and that it did, during the investigation, provide an adequate explanation regarding the information (as detailed in paragraph 39) he does not require any further action from the Authority.

## **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 by providing the Applicant with the information it held, the Authority complied with regulation 5(1) of the EIRs.

However, the Commissioner also finds that by failing to clearly identify the information the Applicant had requested and provide an adequate explanation of the information, the Authority failed to comply with the duty in regulation 9(1) of the EIRs.

Given that the Authority provided further explanation of the information during the investigation, the Commissioner does not require the Authority to take any action in respect of this failure, in response to the Applicant's application.

## **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.

**Euan McCulloch**  
**Deputy Head of Enforcement**

**21 February 2025**