



Scottish Information
Commissioner
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Decision Notice 057/2025

Fred the Eagle

Applicant: The Applicant

Authority: Chief Constable of the Police Service of Scotland

Case Ref: 202400433

Summary

The Applicant asked the Authority for information related to the case involving Fred the Eagle. The Authority considered the request under FOISA and refused to disclose 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); 39(2) (Health, safety and environment); 47(1) and (2) (Application for decision by Commissioner)

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

Background

1. On 3 October 2023, the Applicant made a request for information to the Authority. They asked for all evidence and correspondence relating to the case involving Fred the Eagle as they understood that this case was now closed and was no longer time barred.
2. The Authority responded on 31 October 2023. It advised the Applicant that the information requested was exempt from disclosure under the exemptions in sections 34(1)(a)(i) and (b) and 35(1)(a) and (b) of FOISA.
3. On 7 December 2023, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that they were dissatisfied with the decision because they did not agree that the public interest favoured withholding the information. They asked whether, due to impending political changes, would it not be in the public interest to show the actual circumstances of this case.
4. The Authority notified the Applicant of the outcome of its review on 8 January 2024. It repeated its earlier response, relying on the same exemptions to withhold the information falling within the scope of the Applicant's request.
5. On 21 March 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated they were dissatisfied with the outcome of the Authority's review because they believed the public interest favoured disclosure.

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 4 April 2024, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information, along with a schedule showing the exemptions being relied upon, and the case was allocated to an investigating officer.
8. It was noted that in the schedule accompanying the withheld information, the Authority was relying on exemptions in sections 30(b)(i) and (ii), 30(c), 34(1)(a) and (b) and 38(1)(b) of FOISA.
9. 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. Initially, these related to its reasons for relying on the exemptions to withhold the information falling within the scope of the Applicant's request, and to confirm whether it was still relying on section 35(1)(a) and (b), as these were not listed in the schedule provided to the Commissioner.
10. The Commissioner invited the Applicant to provide their comments on the original and additional exemptions being relied upon by the Authority, which it did. The Applicant informed the Commissioner that they did not require any personal data as they were only interested in the facts of the matter.

11. During the investigation, the Commissioner considered whether the request should have fallen under the EIRs and invited the Authority to comment on whether it believed the information requested was environmental information.
12. The Authority provided its comments in relation to FOISA and confirmed that it was still relying on section 35(1)(a) and (b) to withhold some of the information falling within the Applicant's request. It also provided its view on whether it considered the information requested to be environmental information.
13. The Authority identified 27 documents falling within the scope of the Applicant's request.

Commissioner's analysis and findings

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

Context and background to the request

15. This request concerns the investigation into the disappearance of a young golden eagle who had been named Fred. He had been fitted with a GPS satellite tag in the summer of 2017 and the conservation group, Raptors Persecution UK, had been monitoring his movements since. In January 2018, his tag stopped transmitting, then a few days later started transmitting again before stopping altogether. The RSPB notified the Authority and an investigation was begun.
16. Golden eagles are protected against killing and intentional or reckless disturbance by their listing on [Schedule 1 of the Wildlife and Countryside Act 1981 \(as amended\)](#).¹

FOISA or EIRs?

17. The relationship between FOISA and the EIRs was considered at length in [Decision 218/2007](#)². Broadly, in light of this decision, the Commissioner's general position is as follows:
 - (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 the 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).
 - (v) If the authority does not choose to claim the section 39(2) exemption, it must, as well as dealing with the request under the EIRS, deal with the request fully under FOISA, by providing the information, withholding it under another exemption in Part 2, or

¹ [Wildlife and Countryside Act 1981](#)

² [Decision 218/2007 | Scottish Information Commissioner](#)

claiming that it is not obliged to comply with the request by virtue of another provision in Part 1 of FOISA (or a combination of these).

- (vi) The Commissioner is entitled (and indeed obliged), where he considers a request for environmental information has not been dealt with under the EIRs, to consider how it should have been dealt with under that regime.

18. Firstly, therefore, the Commissioner must determine whether all or part of the information withheld from the Applicant is environmental information.
19. The Authority considered that although the request concerned the disappearance of a bird, and some discussion of the habitat of that bird, the request was better dealt with under FOISA. As it related to a criminal investigation about a bird, the FOISA exemptions already appeared to suit better.
20. “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 it under the EIRs, subject to regulations 10 and 11 of the EIRs.
21. The Commissioner has considered the subject matter of the request, together with the withheld information and is of the view that the definitions in regulation 2(1)(a) (elements of the environment) and (c) (measures and activities) are relevant.
22. As the focus of the request, and information, is the disappearance of a member of a protected species of bird from the environment in which it lived, the Commissioner considers the information to fall within paragraph (a) of the definition as it relates to biological diversity and its components. The Commissioner is also satisfied that the withheld information regarding the Authority’s investigation into the disappearance of the bird would be covered by part (c) of the definition, in relating to a measure or activity designed to protect biodiversity and its components.
23. The Commissioner notes the Authority’s view that FOISA was the more appropriate regime, on the basis that the information related to a criminal investigation and the FOISA exemptions applied appeared more suitable. He cannot accept these as the governing factors. Criminal investigations may be about a wide range of matters, including (as here) matters relating to or affecting the elements of the environment. They cannot, as a category of activity, be excluded from the ambit of the EIRs, and it certainly is not relevant that exemptions in the other regime appear to “fit” them better.
24. Given that the Commissioner is satisfied that 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 regulation 5(1).

Section 39(2) of FOISA – environmental information

25. 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.
26. In this case, the Authority did not consider the information to be environmental and responded solely under FOISA.
27. The Commissioner finds that the Authority would have been entitled to apply this exemption to the request, given his conclusion that the information requested was properly classified as environmental information.

28. As there is a separate statutory right of access to environmental information available to the Applicant, the Commissioner also accepts that, in this case, the public interest in maintaining this exemption and in handling the request in line with the requirements of the EIRs outweighs any public interest in disclosing the information under FOISA.

Regulation 16 of the EIRs

29. 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 (regulation 16(3) and (4)). It also states that, where an authority has not complied with its duty under the EIRs, it shall immediately take steps to remedy the breach of duty (regulation 16(5)).
30. Although the Authority responded to the Applicant's requirement for review on 7 December 2023, as explained above, this was a result of the Authority's considering the request solely in terms of FOISA and not under the EIRs.
31. It is apparent that the Authority failed to respond to the Applicant's request of 3 October 2023 in terms of the EIRs and therefore failed to comply with regulation 5(1) of the EIRs. It is also apparent that the Authority failed to carry out a review meeting the requirements of regulation 16 of the EIRs.
32. The Commissioner therefore requires the Authority to provide a response to the Applicant's requirement for review of 7 December 2023, in terms of regulation 16 of the EIRs.
33. The Commissioner's decision below states a compliance date of 17 April 2025, in line with the timescale he is required to follow. This is the latest date on which the Authority must issue a response; the deadline does not prevent the Authority from issuing one sooner.

General comment

34. The Commissioner is aware that the Authority deals with relatively few requests for information under the EIRs. While he acknowledges that the Authority's functions are relatively narrowly defined – in that they relate, broadly speaking, to the prevention and detection of crime – he does not (see paragraph 23 above) believe that precludes elements of its core activity from being environmental in nature. He would also suggest that the Authority has, to support that core activity, resources and activities of a similar nature to those of any other large corporate body – which are likely, from time to time, to involve it in dealing with information falling within the definition of “environmental information” in regulation 2(1) of the EIRs. Bearing all of that in mind, and taking account of the relevant guidance in the [Aarhus Convention Implementation Guide](#)³ and on the [Commissioner's own website](#)⁴, he would urge the Authority to review the extent to which it holds sets of information falling within that definition, and to apply that knowledge in addressing future requests.

³ [Aarhus Implementation Guide interactive eng.pdf](#)

⁴ [EIRBriefingsDefinition.pdf](#)

Decision

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

The Commissioner requires the Authority to provide a response to the Applicant's requirement for review, in terms of the regulation 16 of the EIRs, by **17 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.

Euan McCulloch
Head of Enforcement

3 March 2025