



Scottish Information
Commissioner
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Decision Notice 067/2025

Whether requests were manifestly unreasonable

Authority: Scottish Ministers

Case Ref: 202401385, 202401386 and 202401387

Summary

The Applicant asked the Authority, in thirteen separate requests, for correspondence and documents held by the Rural Payments and Inspections Division (RPID) regarding named individuals and a named farm over a specified period. The Authority considered that responding to the requests would be manifestly unreasonable. The Commissioner investigated and agreed that the requests were manifestly unreasonable, and so the Authority was not obliged to respond.

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) (definition of “the Act”, “the applicant” and “the Commissioner” and the definition of “environmental information”) (Interpretation); 5(1) and (2)(b) (Duty to make environmental information available on request); 10(1), (2) and (4)(b) (Exceptions from duty to make environmental information available); 17(1), (2)(a), (b) and (f) (Enforcement and appeal provisions)

Background

1. Between 9 and 18 July 2024, the Applicant made 13 separate requests for information to the Authority. Each request asked for all correspondence and documentation held by the RPID (Rural Payments and Inspections Division) regarding a named farm and/or named

individuals. In aggregate, the requests covered the period from June 2023 and June 2024, inclusive (a period of 13 months).

2. By way of background, the Applicant previously made a single request for information on 11 May 2024 for the same information but over a period of three years. This request was refused on the basis that to comply with it would be manifestly unreasonable in terms of regulation 10(4)(b) of the EIRs.
3. The Authority responded on 26 July 2024. It informed the Applicant that it was applying regulation 6(1)(b) of the EIRs to five of her requests (as information already available and easily accessible to her) and that the remaining eight requests were manifestly unreasonable in terms of regulation 10(4)(b).
4. On 29 July 2024, the Applicant wrote to the Authority requesting a review of its decisions. She stated that she was dissatisfied with the decisions because she disagreed that the Authority was entitled to refuse to comply with her requests. She noted that she had followed advice from the Authority to narrow the scope of her previous request and submitted that it was not possible to narrow her requests any further.
5. The Authority notified the Applicant of the outcome of its review on 26 August 2024. For the five requests originally refused under regulation 6(1)(b) of the EIRs, it stated that it now considered these requests were manifestly unreasonable. It also confirmed that it still considered the remaining eight requests were manifestly unreasonable.
6. The Authority acknowledged the Applicant had reduced the period covered by her previous request and that she had split the narrower period over a number of separate requests in an attempt to make it more manageable. However, it noted [guidance on regulation 10\(4\)\(b\) of the EIRs](#)¹ from the Commissioner that a large number of requests submitted at the same time or in close succession can be considered collectively when assessing the burden they impose.
7. On 16 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 she was dissatisfied with the outcome of the Authority's review because she did not agree that her requests were manifestly unreasonable.

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. On 28 and 29 November 2024, the Authority was notified in writing that the Applicant had made three valid applications in total covering all 13 requests. The three cases were allocated to the same investigating officer.
10. 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

¹ <https://www.foi.scot/sites/default/files/2023-07/BriefingRegulation104bManifestlyUnreasonableRequests.pdf>

on all three applications and to answer specific questions related to why it considered the requests manifestly unreasonable.

Commissioner's analysis and findings

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

Handling in terms of the EIRs

12. Having considered the subject matter and the terms of the request, the Commissioner accepts the decision of the Authority to deal with the request under the EIRs rather than under FOISA.
13. The Commissioner is satisfied that the information covered by the request is environmental information, as defined in regulation 2(1) of the EIRs. He would also note that he can see no detriment to the Applicant by considering his request under the EIRs rather than FOISA, nor has the Applicant disputed the Authority's decision to handle his request under the EIRs

Section 39(2) of FOISA – Environmental information

14. 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.
15. In this case, the Commissioner accepts that the Authority was entitled to apply this exemption to the information requested, given his conclusion that it is properly classified as environmental information.
16. 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 requests under the EIRs) outweighs any public interest in disclosing the information under FOISA.
17. The Commissioner therefore concludes that the Authority was correct to apply section 39(2) of FOISA and consider the Applicant's information requests under the EIRs. He will therefore consider this case, in what follows, solely in terms of the EIRs.

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

18. Regulation 5(1) of the EIRs (subject to the various qualifications contained in regulations 6 to 12) requires a Scottish public authority which holds environmental information to make it available when requested to do so.
19. Under the EIRs, a public authority may refuse to make environmental information available if one or more of the exceptions in regulation 10 applies.

Regulation 10(4)(b) of the EIRs – Manifestly unreasonable

20. Regulation 10(4)(b) of the EIRs provides that a Scottish public authority may refuse to make environmental information available to the extent that the request for information is manifestly unreasonable. In considering whether the exception applies, the authority must interpret it in a restrictive way and apply a presumption in favour of disclosure. Even if it finds that the request is manifestly unreasonable, it is still required to make the information available

unless, in all the circumstances, the public interest in doing so is outweighed by that in maintaining the exception.

21. The Commissioner's general approach is that the following factors are relevant when considering whether a request is manifestly unreasonable. These are that the request:
 - (i) would impose a significant burden on the public body;
 - (ii) does not have a serious purpose or value;
 - (iii) is designed to cause disruption or annoyance to the public authority;
 - (iv) has the effect of harassing the public authority; or
 - (v) would otherwise, in the opinion of a reasonable person, be considered manifestly unreasonable or disproportionate.
22. This is not an exhaustive list. Depending on the circumstances, other factors may be relevant, provided the impact on the authority can be supported by evidence. The Commissioner recognises that each case must be considered on its merits, taking all the circumstances into account.

The Authority's submissions

23. The Authority provided some background information relating to the request. It explained that a Cattle Identification Inspection, carried out under the Cattle Identification (Scotland) Regulations 2007, was started at the named farm on 23 November 2022, with the "on farm" part of the inspection completed on 5 June 2023. The inspection outcome was notified to the customer on 14 December 2023.
24. The inspection outcome has been through the Authority's legislative review process and is currently subject to proceedings in the Scottish Land Court. The inspection process has also been subject to stage 1 and stage 2 of the Scottish Government's complaint procedures and a submission was made to the Scottish Public Services Ombudsman, which was rejected on the basis that there are legal proceedings outstanding.
25. The Authority explained that the 13 requests in question followed a single request made on 11 May 2024 for the same information over a period of three years. It noted that these requests represented the continuation of a large volume of correspondence on the inspection outcome, which included eight previous requests – making a total of 21 such requests. It explained that this correspondence continued to express dissatisfaction with the service provided and the legislative outcome of the inspection. This resulted in a high volume of correspondence on the topic, which added to the volume of information falling within the scope of the requests in question.
26. The Authority acknowledged that the Applicant had reduced the collective period covered by the requests, but determined at review stage that it was appropriate to issue a single review response for all 13 requests because of the collective burden of these requests being submitted at the same time (or in close succession), which ultimately meant it would be manifestly unreasonable, in terms of regulation 10(4)(b) of the EIRs, to comply with them.
27. The Authority explained that it had carried out searches and estimated the work that would be involved in responding to the requests as it acknowledged that the exception in regulation 10(4)(b) of the EIRs should not be applied lightly.

28. The Authority explained that due to the sensitivity of the topic, correspondence on the matter during the period covered by the requests was handled by a small number of officials. It identified six officials it considered likely to hold information relevant to the request but noted that only four of these officials had responded with search results and that the searches had been limited to eight of the 13 months covered by the request. However, based on this incomplete search, it identified 734 documents potentially falling within the scope of the requests.
29. Based on these returns, the Authority provided the following estimate to comply with the request:
- 6 officials asked to search inboxes – 30 minutes each = 180 minutes
 - Average of 1 minute per document to review for relevance = 734 minutes
 - 90% of documents would likely be in scope = 661 documents
 - 90% of 661 documents would likely require redaction = 595 documents
 - Average of 5 minutes per 595 documents to redact = 2,975 minutes
 - 180 minutes + 734 minutes + 2,975 minutes = 3,889 minutes (approximately 65 hours).
30. When this time is converted to a cost, the Authority estimated it would cost £975 to comply with the request (i.e. 65 hours multiplied by £15 per hour). This significantly exceeded the upper cost limit of £600 under FOISA. It reiterated that this estimate was based on incomplete searches and that many of the 734 documents identified to date contained attachments, which meant the true cost to comply with the request would be even higher.
31. Given the nature of the information requested, some of which is technical and specialist, the Authority submitted that there were a limited number of staff able to carry out the work required to comply with the request. In performing this work, these staff would be diverted from other core or statutory duties which would cause delays to work in other areas, such as payment delivery, inspection verification and capital application and claim processing.
32. The Authority also explained that it believed the requests were a continuation of a grievance that the Applicant had with it over the inspection outcome. It stated that the Applicant had been through the relevant appeals and complaints processes in relation to the inspection outcome and that it was currently the subject of live proceedings in the Scottish Land Court. It considered these were the appropriate routes by which the Applicant might challenge the inspection outcome.
33. The Authority therefore considered that responding to the requests would be manifestly unreasonable and would impose a significant burden on it. It acknowledged that it could extend the deadline to comply with the request under the EIRs but stated it did not believe that this extension would make the request one that it could reasonably handle. It also confirmed that it had a policy of not charging requesters for information, so it did not consider charging the Applicant in this case.

The Applicant's submissions

34. The Applicant explained that she had been advised by RPID that the only way to access information relating to the inspection outcome would be to submit an information request under FOI law to the Authority.

35. The Applicant originally made a request for information on 11 May 2024, which was refused on the basis that to comply with it would be manifestly unreasonable. She telephoned the Authority's contact centre on 9 July 2024 and said she was advised that if she broke her information requested down into single months then this would be acceptable and there should be no reason why these requests would not be responded to. She subsequently submitted the 13 requests under consideration in this decision.
36. The Applicant felt it would be difficult to narrow her requests any further, as inspectors had discussed inspection information with the agent of the business and with her neighbours. She said she wanted to understand everything that happened as part of the inspection, as she considered actions and decisions had been taken without the consent or knowledge of her and the business owner. She wanted to know exactly what information inspectors had released to third parties without their permission.
37. The Applicant explained that a previous FOI request had resulted in her being provided with information that shed some light on what had taken place during the inspection. Among other things, she considered this information showed that facts surrounding the inspection were not recorded or documented correctly, which misled decision makers and otherwise showed that the inspection had not been carried out in accordance with the relevant guidance and procedures.
38. The Applicant stated that she was therefore attempting to obtain the remaining information held by the Authority regarding the inspection. She explained that she required this information to get a full understanding of what had taken place during the inspection, finding out what had been discussed or agreed with third parties, how information had (or had not) been documented) and to obtain information that ultimately should have been available directly through the RPID office without having to make a request under FOI law.
39. In summary, the Applicant did not agree that her requests were manifestly unreasonable.

The Commissioner's view

40. The Commissioner has taken account of all the relevant submissions and supporting evidence from the Applicant and the Authority, as well as the terms of the requests.
41. The Commissioner recognises that the Applicant reduced the period covered by her previous request (three years) to a period of 13 months and that she submitted separate requests covering each of these months. In the circumstances, given the nature of the information requested in these requests and that they were submitted in close succession, the Commissioner agrees that the Authority was entitled to consider them collectively when assessing the burden that complying with them would impose.
42. There is no cost limit for determining what is deemed to be an excessive cost of compliance under the EIRs, as there is in FOISA. Under FOISA, public authorities do not have to comply with a request if the cost of compliance exceeds £600. Even so, the Commissioner recognises that there may be cases where the time and expense involved in complying with a request for environmental information means that any reasonable person would regard them as excessive.
43. Despite the Applicant reducing the period covered by her requests, the Commissioner accepts, having considered the terms of the requests and the submissions provided by the Authority, that there is a significant volume of information falling within the scope of the requests. Complying with the requests would therefore impose a significant burden on the Authority, given the time, cost and diversion of resources that would be involved.

44. While the Commissioner accepts that a significant burden would be imposed on the Authority, he takes issue with some of the cost estimate provided by the Authority. For example, it stated that it would take five minutes on average to apply redactions to each of the documents falling within the scope of the request. He is not persuaded that this estimate is wholly accurate, and he would urge authorities to ensure their estimates are accurate and robust.
45. However, given the Authority's estimate related to calculations for four of the six staff members and eight of the 13 months covered by the request, he is satisfied that the true cost of complying with the request would still exceed the upper cost limit at which a request considered under FOISA could be refused.
46. In the circumstances, despite his reservations over the accuracy of some of the Authority's estimated costs, the Commissioner is satisfied, on balance, that responding to the requests, would impose a significant burden on the Authority, which would, in the circumstances, be manifestly unreasonable.
47. As it currently stands, the Commissioner cannot see any other way in which the Authority could satisfy the requests, and accepts that responding would, in the view of a reasonable person, be considered manifestly unreasonable or disproportionate.
48. The Commissioner's guidance on the regulation 10(4)(b) of the EIRs states that a request may be manifestly unreasonable if it is unlikely that the additional information would shed light on, or alter, the requester's situation (because the subject in question has already been thoroughly addressed through the relevant complaints or appeal procedure).
49. As noted above, the Authority has stated that the Applicant currently has an appeal pending with the Scottish Land Court, where it said she has asked the Court to order the Authority to release all of the documents covered by the requests in this case. This appeal is the latest stage in a proper, judicially supervised process for addressing the Applicant's concerns with the inspection outcome. Disclosure within that context, with the appropriate judicial and procedural safeguards, would appear more appropriate than disclosure under the EIRs – notwithstanding the significant burden that complying with the requests would impose on the Authority.
50. In all of the circumstances, therefore, the Commissioner accepts that the requests were manifestly unreasonable. As such, he finds that the Authority correctly applied the exception in regulation 10(4)(b) of the EIRs in this case.

The public interest test

51. The exception in regulation 10(4)(b) is subject to the public interest test in regulation 10(1)(b) of the EIRs. This means that, although the Commissioner is satisfied that the Applicant's request is manifestly unreasonable, he must still require the Authority to respond to that request if the public interest in making the information available outweighs that in maintaining the exception.

The Authority's submissions on the public interest

52. While the Authority recognised that there is some public interest in information about inspections of farms in Scotland, it considered that this was outweighed by the public interest in ensuring the effective and efficient use of public resources by not incurring excessive costs when complying with information requests.

53. In all the circumstances, the Authority concluded that the balance of the public interest favoured upholding the exception in regulation 10(4)(b) of the EIRs.

The Applicant's submissions on the public interest

54. The Applicant did not make submissions about the public interest. However, the Commissioner has had regard to the other submissions provided by the Applicant (as set out above) to the extent that they are relevant.

The Commissioner's view on the public interest

55. In the Commissioner's view, there is an inherent public interest in the disclosure of information to ensure that an authority is transparent and accountable, to allow its decisions and actions to be scrutinised.
56. Against this, the Commissioner has considered the strong public interest in ensuring that an authority can carry out its statutory functions without unreasonable or disproportionate disruption. There is also a public interest in ensuring that the EIRs are used responsibly.
57. As stated above, the Commissioner has already accepted that complying with the requests in this case would impose a significant burden on the Authority and, to a certain extent, divert resources away from core functions. He has also acknowledged that the Applicant is presently engaged in a proper, judicially supervised process for addressing her concerns with the inspection outcome.
58. The Commissioner considers there is a public interest in ensuring the EIRs are used responsibly. While public authorities are encouraged to act in a transparent and accountable way, which benefits the public as a whole, the Commissioner also recognises that responding to requests which require them to devote excessive or disproportionate amounts of time can only be at the expense of other areas of work.
59. The Commissioner recognises that there is a public interest in protecting the integrity of the EIRs, but it is not the intention of the legislation to require public authorities to devote excessive or disproportionate amounts of resource to a particular request. In fact, one aspect of protecting the integrity of the regime is ensuring that it can function effectively, without being disrupted by excessive or disproportionate requests.
60. On balance, therefore, the Commissioner accepts that, in all the circumstances of this case, the public interest arguments in favour of making the information captured by this request available are outweighed by the public interest in maintaining the exception in regulation 10(4)(b) of the EIRs.

Decision

The Commissioner finds that the Authority complied the Environmental Information (Scotland) Regulations 2004 in responding to the information request made by the Applicant.

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
Head of Enforcement
19 March 2025