



# Decision Notice 190/2024

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## Transport consultation data

**Authority: City of Edinburgh Council**  
**Case Ref: 202400638**

### 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 Applicant did not agree the information was environmental information. The Commissioner investigated and found that the information requested was environmental, and so fell within 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), (c) and (f) of definition of “environmental information) (Interpretation); 5(1) (Duty to make environmental information available on request); 8(1) and (3) (Charging); 17(1), (2)(a) and (b) (Enforcement and appeal provisions)

### Background

1. On 26 February 2024, the Applicant made a request for information to the Authority. The Applicant 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. The Authority 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. The Authority explained that it considered the information requested environmental information, as defined in regulation 2(1) of the EIRs (particularly paragraphs (a), (c) and (f)).
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, and
  - it was in the public interest for the information to be made public.

## 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 31 May 2024, and in line with section 49(3)(a) of FOISA, the Commissioner gave the Authority notice in writing of the application and the case was subsequently allocated to an investigating officer.
8. The Authority was invited to comment on the application and to answer specific questions. The Authority stated that it had nothing further to add to the review outcome it issued to the Applicant's requirement for review.

## Commissioner's analysis and findings

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

### **FOISA or 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 218/2007](#)<sup>1</sup>. Broadly, in the light of that decision, the Commissioner's general position is as follows:

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

- (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.
  - (iv) In responding to a request for environmental information under FOISA, an authority may claim the exemption in section 39(2).
12. The Authority considered that the information requested was environmental information, as defined by regulation 2(1) of the EIRs, for the following reasons:
- a road, as a built structure, met the definition of an element of the environment (which includes “land, landscapes and natural sites”) under regulation 2(1)(a) of the EIRs
  - the public consultation and its results would qualify as being an administrative measure affecting the environment under regulation 2(1)(c) of the EIRs
  - the public consultation was an administrative measure, the results of which would likely have an effect on the condition and use of a built structure under regulation 2(1)(f) of the EIRs.
13. The Applicant submitted that did not agree that the information requested was environmental information, as defined in regulation 2(1) of the EIRs. The Applicant explained that he was “astonished” that the Authority regarded the information requested as environmental, given it relates to a consultation regarding roadways.
14. The Applicant also explained that he considered disclosure of the information requested was in the public interest.

#### *The Commissioner’s view*

15. Having considered submissions from both the Applicant and the Authority, the Commissioner agrees with the Authority that the information sought by the Applicant is properly considered to be environmental information, as defined in regulation 2(1) of the EIRs.
16. The information requested relates to proposals to make changes to the use of specific roads in the Authority’s area and, given the relationship between these matters and the elements of the environment and related factors and measures, the Commissioner is satisfied that it falls within paragraphs (a), (c) and/or (f) of the definition in regulation 2(1) of the EIRs.
17. The Commissioner recognises that the Applicant does not believe the information requested is environmental information. However, the [Commissioner’s guidance on the matter](https://www.foi.scot/sites/default/files/2022-03/EIRBriefingsDefinition.pdf)<sup>2</sup> is clear that the definition of environmental information should be interpreted broadly, and he has issued a number of decisions where he has generally found information relating to changes to the use of roads is environmental information (e.g. [Decision 064/2023](https://www.foi.scot/decision-0642023)<sup>3</sup>, which relates to comments received from residents relating to proposed changes to specified roads).

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<sup>2</sup> <https://www.foi.scot/sites/default/files/2022-03/EIRBriefingsDefinition.pdf>

<sup>3</sup> <https://www.foi.scot/decision-0642023>

18. In summary, the Commissioner finds that the information falling within the scope of the request is environmental and, as such, the Authority was correct to respond to the request solely in terms of the EIRs.

### ***Regulation 8 of the EIRs – Charging***

19. In this case, the Authority issued a fees notice in terms of regulation 8(1) of the EIRs. This allows a Scottish public authority to charge a fee for making environmental information available. Under regulation 8(3), any fee charged must not exceed a reasonable amount.
20. Having found that the information requested by the Applicant was environmental information, the Commissioner finds that the Authority was entitled to charge a reasonable fee for producing the information available.
21. In his application to the Commissioner, the Applicant did not question whether the fee was reasonable. Consequently, this is not a matter which can be considered by the Commissioner. However, the Commissioner would suggest the authority carefully considers the ethos and spirit of the EIRs, to ensure that charging is considered on a case by case basis, is reasonable in every given case and does not have the effect of being a deterrent to applicants.

## **Decision**

The Commissioner finds that the Authority complied with 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.

**David Hamilton**  
**Scottish Information Commissioner**

**05 September 2024**