



# Decision Notice 198/2024

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## Adopted roads information – INSPIRE (Scotland) Regulations 2009

**Authority: Aberdeen City Council**  
**Case Ref: 202400081**

### Summary

The Applicant asked the Authority for an interactive map showing adopted roads in a specified location. The Authority responded under the EIRs and refused to provide the information requested on the basis it was already publicly available and easily accessible. The Applicant considered the Authority should have responded under INSPIRE. The Commissioner investigated and found that the Authority was correct to respond under the EIRs.

### Relevant statutory provisions

The INSPIRE (Scotland) Regulations 2009 (INSPIRE) regulations 2(1) (Interpretation); 8(1), (2) and (4) (Network services); 9(1) and (3) (Linking to a network); 12(1) and (2) (Enforcement and appeals in relation to public access)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of “the Act”, “applicant” and “the Commissioner” and paragraphs (a) and (c) of definition of “environmental information”) (Interpretation); 5(1) (Duty to make available environmental information on request); 6(1)(b) (Form and format of information); 17(1), 2(a) and (b) (Enforcement and appeal provisions)

## Background

1. On 22 November 2023, the Applicant made a request for information to the Authority. They asked for an interactive, zoomable map showing adopted roads within a specified area of Aberdeen.
2. The Authority responded on 20 December 2023. The Authority stated that it did not hold an *interactive* map of adopted roads within Aberdeen. However, the Authority explained that areas of adopted roads can be obtained from a Road Adoption Plan for a fee. As such, the Authority considered that information was “otherwise accessible” and therefore excepted from disclosure under regulation 6(1)(b) of the EIRs.
3. On the same day, the Applicant wrote to the Authority requesting a review of its decision. The Applicant stated that they were dissatisfied with the decision because the Authority considered their request under the EIRs when it should have done so under INSPIRE. The Applicant explained that other public authorities published similar information, which was consistent with INSPIRE, and that they considered the Authority was required to publish the information requested under INSPIRE.
4. The Authority notified the Applicant of the outcome of its review on 22 January 2024. The Authority upheld its original decision but advised the Applicant that, contrary to its initial response, it did hold an interactive map of adopted roads within Aberdeen. However, the Authority explained that it was not available on its website but could be inspected free of charge by arrangement on its premises.
5. On 22 January 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 and regulation 12 of INSPIRE, Part 4 of FOISA applies to the enforcement of the EIRs and INSPIRE as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated they were dissatisfied with the outcome of the Authority’s review because it was in breach of INSPIRE by not making the information requested freely available.

## 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 21 February 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. These related to the Authority’s reasons for responding to the request under the EIRs and why it did not consider adopted roads information was required to be published under INSPIRE.
9. During the investigation, the Authority disclosed (without charge) a printed copy of the information requested by the Applicant. The Applicant confirmed that they still wished to receive a decision from the Commissioner in relation to their application.

## Commissioner's analysis and findings

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

### *Application of INSPIRE*

11. [The INSPIRE \(Scotland\) Regulations 2009](#)<sup>1</sup> implement [European Directive 2007/2/EC](#)<sup>2</sup> and the Directive's binding [Implementing Rules](#)<sup>3</sup> in Scotland. The regulations were amended in 2019 and remain in force despite the UK's exit from the European Union.
12. The purpose of INSPIRE is to create an electronic network of spatial information which is accessible to the public. "Spatial information" is information which has a geographical reference (e.g. postcodes and map data).
13. INSPIRE defines common technical standards for publishing spatial data sets which fall within [34 data themes](#)<sup>4</sup>. All spatial data which falls under INSPIRE must be published.

### *The Applicant's submissions*

14. As rehearsed earlier, the Applicant considered that the Authority was required to make an interactive map of adopted roads in Aberdeen publicly available online, without charge, under INSPIRE and, by not doing so, had failed to comply with INSPIRE.
15. In support of their position, the Applicant noted that a number of other Scottish public authorities had made adopted roads information freely available online.

### *The Authority's submissions*

16. The Authority accepted that INSPIRE requires authorities to publish spatial data sets corresponding to the 34 data themes listed in Annexes I-III of European Directive 2007/2/EC.
17. The Authority noted that the European Commission had provided detailed information about each theme and the data sets falling within each theme, including the mandatory attributes to be captured in mapping road transport networks falling within [transport networks \(theme 7\)](#)<sup>5</sup>. The Authority considered this to be the most relevant theme in this case.
18. The Authority explained that it, along with 31 other local authorities in Scotland, made use of the [Spatial Improvement Service](#)<sup>6</sup> (SIS) which is funded to help meet local government obligations under INSPIRE. The Authority submitted that it made a range of spatial data sets available via SIS' [Spatial Data Hub](#)<sup>7</sup>, which it considered fully satisfied the Authority's obligations under INSPIRE.
19. The Authority stated that "adoption" of a road, for the purposes of the Applicant's request, meant that the road was maintained by an authority, meaning that an authority may maintain a road that it did not own (e.g. a private road).

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<sup>1</sup> <https://www.legislation.gov.uk/ukxi/2009/3157#f00006>

<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32007L0002>

<sup>3</sup> [https://knowledge-base.inspire.ec.europa.eu/legislation/implementing-rules\\_en](https://knowledge-base.inspire.ec.europa.eu/legislation/implementing-rules_en)

<sup>4</sup> <https://inspire.ec.europa.eu/theme>

<sup>5</sup> <https://inspire.ec.europa.eu/theme/tn:4>

<sup>6</sup> <https://www.improvementservice.org.uk/products-and-services/data-intelligence-and-benchmarking/spatial-information-service>

<sup>7</sup> [https://maps.spatialhub.scot/data\\_preview\\_map/](https://maps.spatialhub.scot/data_preview_map/)

20. The Authority explained that it had reviewed the road transport network attributes specified within the [Implementing Rules](#)<sup>8</sup>. Having considered the mandatory attributes listed (e.g. road width, name, type and speed limit), the Authority did not consider roads adoption information to be a mandatory attribute for the purposes of its obligations under INSPIRE.
21. While the Authority stated it did not consider it was required to publish adopted roads information under INSPIRE, it explained that it intended to do so via the Spatial Improvement Service in the near future.
22. The Authority noted the Applicant had stated that other Scottish public authorities had published adopted roads information, but explained it considered they had done so in response to customer demand – not because they were required to publish the information under INSPIRE.

#### *The Commissioner's view*

23. The Commissioner is satisfied that the Implementing Rules which accompany EC Directive 2007/2/EC (and which are implemented by INSPIRE) are legally binding and make clear the spatial data (i.e. data attributes) that [must be made available](#)<sup>9</sup> under INSPIRE.
24. Having reviewed the mandatory spatial data sets listed in the Implementing Rules (in particular, those relating to road transport networks), the Commissioner accepts that the adoption status of a road is not a mandatory attribute. In other words, there is no requirement for the information requested by the Applicant to be published under INSPIRE.
25. However, the Commissioner agrees that the making available of information relating to adopted roads would be entirely consistent with the goals of INSPIRE. He therefore welcomes the Authority's intention to publish adopted roads information via the Spatial Improvement Service in the near future.
26. As the Applicant challenged the Authority's handling of their request under the EIRs, the Commissioner will now go on to consider whether the information requested was properly considered to be environmental information, as defined in regulation 2(1) of the EIRs.

#### ***Application of the EIRs***

27. "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.

#### *The Authority's submissions*

28. In its submissions, the Authority explained that it considered the information requested was environmental information, as defined in regulation 2(1) of the EIRs (in particular paragraph (c)). The Authority noted that the Applicant had requested information relating to the maintenance of public roads, which qualified as an administrative measure which affected the state of the land (which includes roads).
29. The Authority also referred to the Commissioner's guidance "[What is environmental information?](#)"<sup>10</sup> which is clear that no types of information are excluded from the potential

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<sup>8</sup> <https://inspire-mif.github.io/uml-models/approved/mapping/RoadTransportNetworkMappingTable.xls>

<sup>9</sup> [https://knowledge-base.inspire.ec.europa.eu/tools/inspire-data-models\\_en](https://knowledge-base.inspire.ec.europa.eu/tools/inspire-data-models_en)

<sup>10</sup> <https://www.foi.scot/sites/default/files/2022-03/EIRBriefingsDefinition.pdf>

ambit of environmental information and that court cases have confirmed that environmental information should be interpreted broadly.

#### *The Applicant's submissions*

30. As rehearsed earlier, the Applicant considered that the Authority was required to publish the information requested under INSPIRE and that it had erred in considering his request under the EIRs.

#### *The Commissioner's view*

31. The Commissioner has investigated a number of cases where individuals have requested information regarding roads, and he has generally found such information to be environmental information for the purposes of the EIRs. He has reached the same conclusion in this case.
32. Although adoption of roads is a measure relating to the legal status of the roads in relation to their maintenance, it also has implications in terms of the effect that elements of the environment will have, or have had, on the roads. The Commissioner would regard adoption of a road, therefore, as a "measure" which falls within part (c) of the definition of environmental information in regulation 2(1) of the EIRs.
33. The Commissioner therefore concludes that the Authority was correct to consider the Applicant's information request wholly under the EIRs.
34. The Commissioner will not go on to consider the extent to which the Authority's substantive response complied with the EIRs (i.e. its application of regulation 6(1)(b)) as the Applicant did not raise this in their application and instead only challenged the Authority's decision to consider their request under the EIRs rather than under INSPIRE.

## **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.

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

**11 September 2024**