

Environmental Standards Scotland
Ìrean Àrainneachdail na h-Alba

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Freedom of Information Officer
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0808 1964000

ENVIRONMENTAL
Standards Scotland
Ìrean Àrainneachdail na h-Alba

[REDACTED]

12 July 2024

Our ref: ESS.EIR.002

Dear [REDACTED],

Thank you for your email of 18 June 2024 to Environmental Standards Scotland (ESS) requesting information under the Freedom of Information (Scotland) Act 2002. The information which you request is as follows, we have included point 5 for completeness:

“In order to help us understand what ESS has done to monitor SEPA’s performance, could you please confirm:

1. What monitoring of the above quoted steps from paragraph 5.3 of ESS’ report has ESS carried out? Please provide an itemised list of all monitoring with relevant dates when the monitoring was carried out.
2. What are the results of any monitoring done by ESS?
3. Is ESS of the opinion that SEPA is acting consistently with the publication timeline which is listed in paragraph 5.3 of ESS’ report?

Environmental Standards Scotland
enquiries@environmentalstandards.scot
Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD
0808 1964000

4. Will ESS be taking any further action against SEPA in light of its monitoring results?
5. On what date will ESS publish its first six monthly progress report (as referred to in paragraph 6.5 of ESS' report)?”

Environmental Information (Scotland) Regulations 2004

As the information you have requested is 'environmental information' for the purposes of the Environmental Information (Scotland) Regulations 2004 (EIRs), we are required to deal with your request under those Regulations. We are applying the exemption at section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA), so that we do not also have to deal with your request under FOISA.

This exemption is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption, because there is no public interest in dealing with the same request under two different regimes. This is essentially a technical point and has no material effect on the outcome of your request.

1. **Response:** ESS has taken the following steps during our monitoring of the Scottish Environment Protection Agency (SEPA) implementation of the agreed action plan:
 - a. 7 February 2024 - clarification and update sought from SEPA
 - b. 28 March 2024 - meeting with SEPA to discuss ongoing work
 - c. 16 April 2024 - letter to SEPA seeking update on progress against action plan
 - d. 17 June 2024 - letter to SEPA seeking update on progress and reminder of our intention to publish our six monthly update report at end of July 2024

2. **Response:** SEPA provided a response to each of our update requests on 12 February 2024, 6 May 2024 and 8 July 2024 respectively. We are currently considering these responses and will set out our position on them in our first six monthly progress report, which we will publish on our website.

3. **Response:** Information not held - (regulation 10(4)(a)). ESS is yet to take a view on whether SEPA is acting consistently with the publication timeline. Our position on this will be included in our first six monthly progress report, which we will publish on our website.

Exception: Under the terms of the exception at regulation 10(4)(a) of the EIRs (information not held), ESS is not required to provide information which it does not hold. ESS does not hold the information you have requested. ESS is yet to take a view on whether SEPA is acting consistently with the publication timeline. Our position on this will be included in our first six monthly progress report, which we will publish on our website.

Public interest test: This exception is subject to the 'public interest test'. Taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. While we recognise that there may be some public interest in information about ESS' views on whether SEPA is acting consistently with the publication timeline, we cannot provide information which we do not hold.

4. **Response:** Information not held - (regulation 10(4)(a)). The responses received from SEPA are currently being assessed with a view to deciding what action will be taken by ESS.

Exception: Under the terms of the exception at regulation 10(4)(a) of the EIRs (information not held), ESS is not required to provide information which it does not hold. ESS does not hold the information you have requested. ESS is yet to take a view on whether SEPA is acting consistently with the publication timeline. Our position on this will be included in our first six monthly progress report, which we will publish on our website.

Public interest test: This exception is subject to the 'public interest test'. Taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. While we recognise that there may be some public interest in information about ESS' views on whether SEPA is acting consistently with the publication timeline, we cannot provide information which we do not hold.

5. **Response:** ESS intends publishing its first six monthly progress report on 31 July 2024.

If you are unhappy with this response to your request under the Environmental Information (Scotland) Regulations 2004, you may ask us to carry out an internal review of the response by writing to:

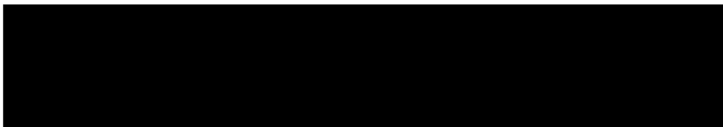
Mark Roberts
Chief Executive Officer
Environmental Standards Scotland
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HD
Email foi@environmentalstandards.scot

Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the due date when you received this letter. We will complete the review and tell you the result within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website at:

[Appeal to the Commissioner | Scottish Information Commissioner
\(itspublicknowledge.info\)](https://www.scot.nhs.uk/itspublicknowledge/info)

Yours sincerely,



Freedom of Information Officer
Environmental Standards Scotland