

Environmental Standards Scotland
Ìrean Àrainneachdail na h-Alba

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0808 1964000

By email only: [REDACTED]

24/07/2024

Our ref: ESS.EIR.003
Your reference: 01.0624

Dear [REDACTED],

I refer to your request dated 18 July 2024 for a review following the failure to respond to a request for information in relation to case IESS.24.021 within the statutory 20 days from your original email dated 19 June 2024.

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.

Environmental Standards Scotland
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Review request

Regulation 16 of the EIRs provides applicants with the right to request a review if it appears to the applicant that a public authority has not complied with any requirement of the EIRs in relation to the applicant's request. On receipt of such a request, the public authority must review the matter and decide whether it has complied with the EIRs.

We have considered your review request dated 18 July 2024 and have determined that we have not complied with our duty under the EIRs to respond to your request within 20 working days. On receipt of your email dated 19 June 2024, it was determined that it could be processed as a 'business as usual' (BAU) request on the basis we believed it could be answered easily and routinely. When treating a request for information as a BAU request, we aim to respond within 5 working days, but no longer than 20 working days after the request is received. We acknowledge that we did not do that on this occasion.

In terms of Regulation 16(5), where it is determined that we have not complied with our duty under the EIRs, we must immediately take steps to remedy this and are therefore providing you with a response below. In line with guidance from the Scottish Information Commissioner, we have given priority to this response and provided the information as soon as possible, while noting the subsequent request for a review.

Response

(1) What steps have been taken by ESS in relation to this representation to date.

ESS has assessed the representation as falling within its remit, moved the case to pre-investigation and requested information from the public authority concerned. ESS has recently received a response to our request for information from the public authority concerned, which it is currently assessing.

(2) What stage ESS' investigation of this representation has reached as of today.

The representation is at the pre-investigation stage of our process. It has not yet been deemed suitable for investigation.

Any representation that comes to ESS goes through an initial screening assessment, to make sure it is within remit under the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021. Once this assessment has been made, ESS will

either continue with the case into a pre-investigation phase where further assessment will be undertaken or, where ESS cannot assist and where possible, direct the person making the representation to a different authority or organisation to assist.

As noted above, the representation is at the pre-investigation phase. ESS has recently received a response to our request for information from the public authority concerned, which it is currently assessing.

At the end of the pre-investigation stage, possible outcomes are that the case is:

- deemed suitable for informal resolution
- deemed suitable for investigation
- closed with no further action taken by ESS
- closed with ongoing monitoring

(3) Which legal issue (or issues) ESS is investigating in relation to this representation.

Information not held – (regulation 10(4)(a)).

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. The representation is at the pre-investigation stage of our process. This involves a determination of the legal issue(s) and relevant legislation and whether a representation is suitable for investigation.

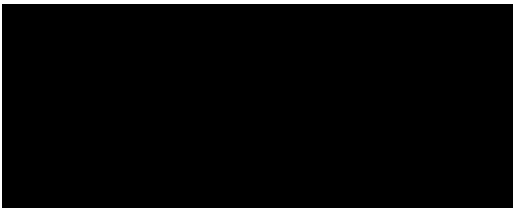
This exception is subject to the ‘public interest test’. Taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. While we recognise that there may be some public interest in information about which legal issue (or issues) ESS is investigating in relation to this representation, we cannot provide information which we do not hold.

We can however advise that, at the initial screening stage, it was identified that the representation may raise issues relating to the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. This may develop or change by the end of the pre-investigation phase.

If you are dissatisfied with this response to your review request, you have a right of appeal to the Scottish Information Commissioner within six months of this review response. The Scottish Information Commissioner's guidance on making an appeal describes the process, including the application form. Further information, including relevant contact details is available on the website. www.itspublicknowledge.info/Appeal

If you are dissatisfied with the decision of the Scottish Information Commissioner, following an appeal to the Scottish Information Commissioner, you have a right of appeal to the Court of Session on a point of law.

Yours sincerely,



Rebecca Peppiette
Head of Corporate Services and Communications
For and on behalf of Mark Roberts, Chief Executive Officer
Environmental Standards Scotland