

Alasdair Dewar
Freedom of Information Officer
foi@environmentalstandards.scot
0808 1964000

██████████@parliament.scot

17 June 2025

Dear ██████████

Information request – partial disclosure

I am writing in response to your email of 22 May 2025, requesting information under the Freedom of Information (Scotland) Act 2002 (FOISA). The information you requested is as follows:

1. The number of alleged breaches of environmental law or standards that you are currently investigating the Scottish Government for
2. A breakdown of the laws/and regulations the Scottish Government are alleged to have breached
3. The number of alleged breaches per law/regulation

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

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exemption as 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.

Please find our response to your request below. Some of the information you asked for cannot be provided because Environmental Standards Scotland does not hold it. Further information is provided below.

Response

1. The number of alleged breaches of environmental law or standards that you are currently investigating the Scottish Government for

ESS currently has a total of **thirteen** open cases that are under our consideration where the Scottish Government (including its Directorates and agencies e.g. Marine Directorate and Transport Scotland) are the relevant public authority.

ESS' functions include both monitoring and investigating public authorities compliance with environmental law and the effectiveness of law, including how it is implemented and applied. To be clear, we have interpreted 'alleged breaches' within your request broadly to include both cases where there is alleged non-compliance and cases involving an alleged ineffectiveness associated with the environmental law in question.

In addition, please note that we have interpreted 'currently investigating' as including cases at both investigation and 'pre-investigation' stage. 'Pre-investigation' refers to a preliminary assessment phase, involving reviewing the concern, gathering further information and evidence before determining what, if any, action should be taken including moving to a formal investigation.

2. A breakdown of the laws/and regulations the Scottish Government are alleged to have breached

The relevant environmental laws for each are set out in the table below. Please note, given these cases are under active consideration, the relevant legislative provisions may change and develop as our investigations progress.

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Case Reference	Relevant environmental law(s)
IESS.21.011	The Conservation (Natural Habitats, &c.) Regulations 1994
IESS.22.029	Fisheries Act 2020 Marine Scotland Act 2010
IESS.23.024	The Conservation (Natural Habitats, &c.) Regulations 1994 Natural Environment and Rural Communities Act 2006
IESS.24.029	The Conservation (Natural Habitats, &c.) Regulations 1994
IESS.24.046	Pollution Prevention and Control (Scotland) Regulations 2012 Town and Country Planning (Scotland) Act 1997 Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2013
IESS.24.047	The Road Vehicles (Construction and Use) Regulations 1986 The Road Traffic (Vehicle Emissions) (Fixed Penalty) (Scotland) Regulations 2003
IESS.24.060	Environmental Assessment (Scotland) Act 2005
IESS.24.064	Fisheries Act 2020 Marine Strategy Regulations 2010 Marine Scotland Act 2010 Nature Conservation (Scotland) Act 2004
IESS.24.067	Water Environment and Water Services (Scotland) Act 2003
IESS.24.069	Pollution Prevention and Control (Scotland) Regulations 2012 Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017
IESS.24.073	Climate Change (Scotland) Act 2012

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IESS.24.033	Environmental Protection Act 1990
IESS.25.002	Urban Waste Water Treatment (Scotland) Regulations 1994

Further detail regarding pre-investigations, live investigations and completed investigations, where the Scottish Government (or its Directorates and agencies) are the relevant public authority can be found on our website: [Our investigation reports - Environmental Standards Scotland](#)

Information not held by ESS

ESS does not hold the following information you have asked for:

3. The number of alleged breaches per law/regulation

ESS is not an appeals body for individual regulatory decisions made by other organisations (for example, relating to planning decisions, environmental licences or permits or regulatory enforcement in specific cases) and often our work considers systemic or cumulative problems with compliance or with the effectiveness of environmental law as opposed to considering a single breach or number of breaches. Having considered the cases outlined above, we do not consider that we hold information relating to the number of breaches per law/regulation.

Accordingly, we are applying the exception in regulation 10(4)(a) (information not held) of the Environmental Information (Scotland) Regulations 2004 (the EIRs) to your request.

As with all of the exceptions in the EIRs, this exception is subject to the public interest in regulation 10(1)(b) of the EIRs. 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 the number of alleged breaches per law/regulation, we cannot provide information which we do not hold.

Right to seek a review

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If you are unhappy with this response to your request under the EIRs, you may ask us to carry out an internal review of the response by writing to:

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 date when you received this letter. We will complete the review and inform you of 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: <https://www.foi.scot/appeal>

Yours sincerely

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