

By email only: [REDACTED]@erbs.scot

12 January 2026

Our ref: ESS.IR.024

Your reference: FOI review request of ESS.IR.019

Dear [REDACTED],

I refer to your review request received by us on 11 December 2025. In your original request, you asked for the following information:

'A copy of the Scottish Government's Rural Payments and Inspections Division's Staff Guidance on Environmental Impact Assessments'.

You were provided with a copy of the requested guidance with one redaction applied. You have expressed dissatisfaction in the following terms with the response to your information request:

1. The redacted information is not an internal communication.
2. Disclosing the redacted information would not breach legal privilege.
3. We failed to justify the use of the exception set out in Regulation 10(5)(b)
4. We failed to apply the public interest test

To enable your review request to be considered afresh and impartially by someone who has not responded to your original request, I have been appointed to undertake the internal review on behalf of Environmental Standards Scotland (ESS).

In considering your review request, I have also considered carefully the information you have requested, and our response to your initial request, in accordance with ESS's duties under the Environmental Information (Scotland) Regulations 2004 ("EIRs").

I have decided that the original decision to apply redactions to the disclosure of the information relating to the guidance should be upheld. I have set out the reasons below, including explanations as to what I considered at review stage and having given careful consideration to the public interest in disclosure, balanced against the public interest in maintaining the exception that applies.

Regulation 10(4)(e) allows authorities to refuse to disclose internal communications. This is a class-based exception, meaning that there is no need to consider whether disclosure of the communication would cause harm before applying the exception. For information to fall within the scope of the exception in regulation 10(4)(e) of the EIRs it need only be established that the information is an internal communication.

It was made clear to ESS that the requested guidance is an internal working document, which is intended to be used by staff within the Scottish Government's Rural Payments and Inspections Division (RPID). It was shared with ESS as part of their regulatory function in terms of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (the "Continuity Act").

ESS recognises that information shared by it with external bodies will normally lose the status of being an internal communication. However, in this case, the document was shared with us as part of our regulatory function and was provided to us in terms of section 23 of the Continuity Act.

Considering all the circumstances, including the nature and context of the relationship of regulator and public authority, and the related statutory obligation to

provide assistance, we concluded that the information that was shared with us for these purposes could still be treated as an internal communication for the purposes of applying the exemption from disclosure under regulation 10(4) of EIRs. The Scottish Information Commissioner agreed with our analysis in similar circumstances in Decision 284/2024.

Having concluded that the guidance is an internal communication and is subject to the exception in regulation 10(4)(e) of the EIRs, I have gone on to consider whether, in all of the circumstances of this case, the public interest in disclosing the information is outweighed by the public interest in maintaining the exception.

We recognise that regulation 10(2)(b) builds in an explicit presumption in favour of disclosure, which makes it clear that where arguments are evenly balanced for withholding and disclosing the information, the information must be disclosed.

In this case, we recognise that there is a clear public interest in the implementation of The Agriculture, Land Drainage and Irrigation Projects (Environmental Impact Assessment) (Scotland) Regulations 2017 and the work of RPID. The guidance document provides information in relation to that work.

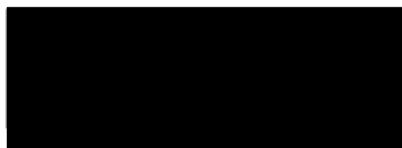
However, we consider that there is public interest in authorities being able to retain privacy in relation to certain elements of internal documents, particularly where these have been drafted based on confidential legal advice. There is considerable public interest in authorities being able to obtain legal advice privately and to base internal guidance on that advice without having to disclose the advice to the public at large.

Therefore, on balance, to the extent that the document contains a summary of legal advice which has been provided to RPID, we consider that the public interest in making the redacted section of the guidance is outweighed by that in maintaining the exception, given the adverse effect disclosure could have on RPID's ability to obtain appropriate legal advice in relation to its functions.

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,



Mark Roberts
Chief Executive