

██████████
Business and Finance Manager
foi@environmentalstandards.scot
0808 1964000

██████████@gmail.com

26 May 2026

Dear ██████████,

Information request – partial disclosure

ESS Reference: ESS.IR.032 (Part 3)

I am writing in response to your email of 2 April 2026, requesting information under the the Environmental Information (Scotland) Regulations 2004 (EIRs).

Environmental Standards Scotland (ESS) sought clarification for your request. After receipt, ESS confirmed that it would treat each part as a separate request.

The information you requested in part 3 is as follows:

‘Part 3: Decision-Making and Governance

1. All records of any meetings, discussions, or decisions at management or senior level within ESS that touch on the investigation described in Part 1 above, including any records of escalation, de-escalation, or specific direction given to caseworkers or investigators.
2. Any Ministerial correspondence, Parliamentary correspondence, or correspondence with the Scottish Government concerning the investigation described in Part 1 or concerning ERCS, during the relevant period.
3. Any complaints received by ESS (whether from the public, ERCS, or any other party) concerning ESS’s handling of environmental planning breach investigations, during the

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period March 2024 to the date of this request, including ESS's responses to any such complaints.

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.

I can confirm that Environmental Standards Scotland holds some of the requested information, but that the organisation has chosen not to disclose some of that that information at this stage. I enclose the information listed in the attached Schedule of Information.

The Environmental Information (Scotland) Regulations 2004 (the EIRs) allow(s) a Scottish public authority to withhold information in response to a request, where one or more exemptions/exceptions listed in the EIRs apply(ies). In this case, ESS believes the following exemption(s)/ exception(s) apply/applies:

Reasons for not providing information

Point 1 of your request concerns records of meetings, discussions or decisions at management level made in relation to ESS Investigation IESS.24.021.

Regulation 10(4)(e) of the EIR – internal communications

Under the terms of the exception at 10(4)(e) of the EIRs, ESS is may choose not to disclose internal communications where that is in the public interest.

When undertaking investigatory work, ESS' priority is achieving an effective investigation and a successful outcome This means that the organisation must be able to consider all

Environmental Standards Scotland Enquiries

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available options and to debate those rigorously, to fully understand their possible implications. The ability to do so will be affected by the assessment of the law and actions of public authority. Disclosure of those assessments soon may undermine or constraint the organisation's view of those actions while they are still under discussion and analysis. In order for an effective investigation to occur, ESS must be able to communicate freely internally. Information and findings from investigations are made publicly available via investigation reports, and ESS has open and transparent processes for complaints regarding the conduct of investigations, should individuals have concerns. As such, ESS has applied this exception to this part of your request.

Public interest test

The exception in 10(4)(e) is subject to the public interest test in regulation 10(1)(b) of the EIRs. This means that ESS can only withhold the information if the public interest in maintaining the exception outweighs the public interest in giving you the information. Taking account of all the circumstances of this case, we have considered if the public interest in disclosing each item of 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 for some of the information. We recognise that there is a public interest in disclosing information as part of an open, transparent and accountable public sector, and to inform public debate. However, this is outweighed by the strong public interest in maintaining the ability of proposals to be discussed confidentially as investigations are carried out.

ESS will publish the outcome of the investigation IESS.24.021 upon conclusion. Any individuals with concerns regarding the conduct of the investigation can complain to ESS via its published complaint procedures.

Regulation 10(5)(d) of the EIR - confidentiality

Under the terms of the exception at 10(5)(d) of the EIRs, ESS is not required to disclose information where disclosure would harm the confidentiality of proceedings and that is in the public interest.

The UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 imposes a broad confidentiality on ESS' communications with public authorities. Full information relating to completed investigations is published by ESS via investigation reports at the conclusion of

Environmental Standards Scotland Enquiries

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the investigation. ESS.IR.024 is an ongoing investigation, therefore this information is withheld.

Public interest test

The exception in 10(5)(d) is subject to the public interest test in regulation 10(1)(b) of the EIRs. This means that ESS can only withhold the information if the public interest in maintaining the exception outweighs the public interest in giving you the information. Taking account of all the circumstances of this case, we have considered if the public interest in disclosing each item of 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 for the items listed in the schedule, as public disclosure of confidential information could affect the outcome of the investigation and the cooperation of public authorities going forward. In the opinion of ESS, the public benefit of an effective investigation outweighs the benefit of publishing this information at present.

It should be noted that the confidentiality imposed by the 2021 Act ceases to have effect after an investigation has closed. ESS will publish the outcome of its investigation upon conclusion, and at that stage the information can be made publicly available.

Regulation 10(4)(a) of the EIR – information not held

Point 2 of your request concerns any Ministerial correspondence, Parliamentary correspondence, or correspondence with the Scottish Government relating to case ESS.IR.024, or concerning ERCS, during the period March 2024 to the date of your request.

ESS does not hold the information you have asked for. 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.

I am sorry we cannot provide the information you asked for.

Regulation 11(2) of the EIR – personal data

Point 3 of your request concerns any complaints received by ESS concerning its handling of environmental planning breach investigations between March 2024 and the date of your request.

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An exception under regulation 11(2) of the EIRs (personal information) applies to some of the information requested because it is personal data of a third party and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exception is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exception.

Public interest test

The exception in regulation 11 is subject to the public interest test in 10(1)(b) of the EIRs. This means that ESS can only withhold the information if the public interest in maintaining the exemption/exception outweighs the public interest in giving you the information. 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 because there is little public interest in identifying the individuals concerned.

This information is included under items 142-144 of the schedule of information provided in response to part 1 of your request.

To provide you with as much information as possible, the documents enclosed have been redacted to remove exempt information, while leaving the rest of the information in place. Wherever information has been removed, this is marked in the text, along with reference to the exemption/exception we are applying.

Right to seek a review

If you are unhappy with this response to your request under [FOISA/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

Environmental Standards Scotland Enquiries

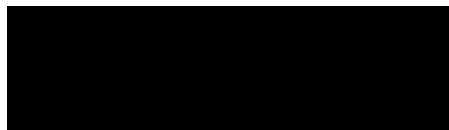
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Your review request should explain why you are dissatisfied with this response and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result within 20 working days from the 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: <https://www.foi.scot/appeal>

Yours sincerely

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Business and Finance Manager
Environmental Standards Scotland

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