

Environmental Standards Scotland
Ìrean Àrainneachdail na h-Alba

ENVIRONMENTAL
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07 July 2026

Our ref: ESS.IR.038 Part 4

Your reference: EIR review request of ESS.IR.032 Part 4

Dear ██████████,

We note that you have formally requested an internal review of ESS's responses to your information request ESS.IR.032, received on 26 May 2026, in respect of Parts 1, 2, 3, and 4.

Because we responded separately to each part of your request, we will also respond separately to each part of your review request.

<https://erdm.scotland.gov.uk:8443/documents/fA0>

In Part 4 of your request, you sought:

“1. Any staff guidance, internal communications, or training materials issued within ESS regarding how staff should engage with, respond to, or treat members of the public, and/or third-sector organisations who raise environmental planning concerns, and, raise concerns about how these are handled by ESS.

2. Any equality impact assessments, complaints analyses, or internal reviews conducted by ESS in the period since March 2024 to the date of this request that address how ESS handles public complainants or third-sector referrals generally,

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and specifically in relation to the time taken to complete pre-investigation and investigation processes.”

We had responded to your initial request in terms of the Freedom of Information (Scotland) Act 2002 (“FOISA”). However, on review, we consider that the information you requested can properly be characterised as “environmental information” in terms of regulation 2(1) of the EIRs. We believe that the information covered by the request is information which relates to measures (including administrative measures as referred to in paragraph (c)) affecting or likely to affect the elements and factors referred to in paragraph (a) of that definition. Consequently, we consider the information to comprise in its entirety environmental information, as defined in regulation 2(1) of the EIRs (particularly paragraphs (a) and (c) of that definition).

We are therefore applying the exemption in section 39(2) of FOISA to allow your request to be considered solely under the EIRs. We recognise that this exemption is subject to the public interest test set out in section 2(2) of FOISA and have therefore applied the public interest test in this case. We consider that as there is a right of access to the information under the EIRs, the public interest in maintaining the exemption outweighs the interest in disclosing the information under FOISA.

In terms of regulation 6(1)(b) of the EIRs, we are not required to provide you with information which is already publicly available and easily accessible to you in another format. We have already provided you with a copy of our Investigation Operational Guidance. We also provided a link to our completed equality impact assessments as part of our response. We provided you with a copy of our internal complaints handling procedure (“CHP”).

As part of your review request, you have asked us to confirm “*whether further searches were conducted beyond the CHP document, and whether any board papers, performance reports, or management review records concerning caseload and delay were considered within scope*” as you consider it

“implausible” that we hold no relevant governance or performance review records in this area.

As detailed in the Part 1 review response the search was widened and an additional two related documents have been considered. These are detailed in the Schedule of Information included with the Part 1 response.

Regulation 10(4)(a) of the EIRs allows public authorities to refuse to make environmental information available if they do not hold the information when the request is received. In this case, we confirm that we hold no further information relating to how staff should engage with, respond to, or treat members of the public, and/or third-sector organisations who raise environmental planning concerns and therefore the exception in regulation 10(4)(a) applies.

The exception is subject to the public interest test. As we do not hold the information, we cannot see any public interest in making the information available. On balance, we therefore consider that the public interest in maintaining the exception outweighs the interest in disclosing the information.

Regulation 10(4)(e) allows public authorities to refuse to disclose internal communications and we have applied this exception to the documents listed in Schedule 1. The exception in Regulation 10(4)(e) is subject to the public interest test. We recognise that regulation 10(2)(b) of the EIRs 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. We also recognise the public interest in transparency and accountability in the decision-making processes of public authorities, and in understanding how particular decisions are reached. We acknowledge that disclosure of the information would assist such accountability and understanding. However, the release of draft reports into the public domain could result in officers being less willing to be full and frank with their internal communications. Officers and the planning authority rely on draft reports and internal communications to evaluate, communicate and make informed decisions,

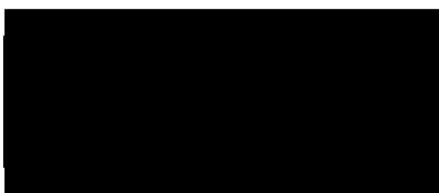
and releasing these to the general public would have a detrimental effect on the decision-making process. Internal discussions and drafts reports, when not finalised or agreed, do not represent the final view of either public authority and should not be released into the public domain.

On balance, we consider that the public interest in making this information available is outweighed by that in maintaining the exception in regulation 10(4)(e) of the EIRs.

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