

Freedom of Information Officer
foi@environmentalstandards.scot
0808 1964000

[\[REDACTED\]@gmail.com](mailto: [REDACTED]@gmail.com)

13 July 2026

Dear [REDACTED]

Information request – refusal notice – ESS.IR.039

Thank you for your email of 12 June 2026, requesting information under the Environmental Information (Scotland) Regulations 2004 (EIRs). The information you requested is as follows:

‘ESS recently said it undertook ‘pre-investigation’ work to better understand how contaminated land duties are currently being delivered across Scotland. It said that this included reviewing published inspection strategies and contaminated land registers, issuing a formal questionnaire to all 32 Scottish local authorities, and seeking comments from the Scottish Government and the Scottish Environment Protection Agency (SEPA).

<https://environmentalstandards.scot/our-work/our-investigation-reports/contaminated-land-duties-case-information/>

- Please can I have a copy of the final review of the published inspection strategies
- Copies of the responses to the questionnaires from the 32 local authorities
- Copies of the comments from the Scottish Government and SEPA.’

Environmental Standards Scotland Enquiries

enquiries@environmentalstandards.scot

Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD
0808 1964000

Our response

Whilst ESS always aims to release information wherever possible, unfortunately in this case we are unable to release the information requested due to the exceptions set out below.

Copy of the final review of the published inspection strategies

Your request to have a copy of the final review of the published inspection strategies is refused under Regulation 10(4)(e). Regulation 10(4)(e) allows public authorities to refuse to disclose internal communications and we have applied this exception to the information requested to this point.

The exception set out 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 records of meetings and discussions into the public domain could result in officers being less willing to be full and frank with their internal communications. Officers rely on meetings and internal communications to evaluate, communicate and make informed decisions, and releasing these publicly would have a detrimental effect on the decision-making process. Internal discussions do not represent the final view of a public authority, therefore should not be released into the public domain while an investigation is ongoing.

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.

Copies of the responses to the questionnaires from the 32 local authorities

Copies of the comments from the Scottish Government and SEPA

Your request for local authority questionnaire responses and comments from Scottish Government and SEPA are both refused under Regulation 10(5)(d).

Environmental Standards Scotland Enquiries

enquiries@environmentalstandards.scot

Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD
0808 1964000

The exception set out in Regulation 10(5)(d) of the EIRs allows information to be withheld where disclosure would harm the confidentiality of the proceedings of any public authority where such confidentiality is provided for by law. It may also apply to information about the proceedings of a public authority where these are considered to be confidential. The proceedings may be those of the public authority receiving the request, in this case ESS, or those of any other public authority.

Section 40 of the UK Withdrawal from the European Union (Continuity)(Scotland) Act 2021 (the “2021 Act”) imposes obligations of confidentiality upon ESS. While it is recognised that there is an inherent need to protect the confidentiality of communications between public authorities in order to encourage co-operation between them, it also recognises that there is public interest in transparency in relation to investigations by public authorities. We consider that breaching the obligations set out in the 2021 Act would be likely to harm the confidentiality of proceedings of both ESS and any public authority which is co-operating with us.

The exception in Regulation 10(5)(d) 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, we consider that there is a greater public interest in maintaining confidential co-operation between public authorities in terms of the 2021 Act. It should be noted that the confidentiality imposed by the 2021 Act ceases to have effect after an investigation has closed. We will publish the outcome of our investigation upon conclusion, and at that stage the information may be made publicly available.

We therefore consider that, on balance the public interest in making this information available is outweighed by that in maintaining the exception in regulation 10(5)(d) of the EIRs.

Environmental Standards Scotland Enquiries

enquiries@environmentalstandards.scot

Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD
0808 1964000

Right to seek a review

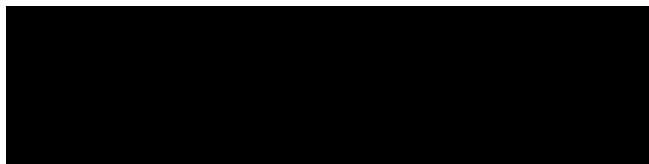
If you are unhappy with this response to your request under EIRs you may ask us to carry out an internal review of the response by writing to:

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 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



Freedom of Information Officer
Environmental Standards Scotland

Environmental Standards Scotland Enquiries

enquiries@environmentalstandards.scot

Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HD
0808 1964000