

[REDACTED]
Freedom of Information Officer
foi@environmentalstandards.scot
0808 1964000

[REDACTED]
25 August 2026

Dear [REDACTED],

Response to information request – refusal - ESS.IR.041

I refer to your emails dated 14 July and 28 July 2026 in which you provided a revised scope of your request for information. You have confirmed that you are seeking:

- “all internal communications, notes, briefings, meeting minutes, memoranda, or assessments in which ERCS is mentioned or discussed by any ESS staff member, from March 2024 to the date of this request, including any comments or characterisations of ERCS’s role, remit, credibility, involvement, or effect on the handling of representations or complaints
- all correspondence sent, or received by ESS, to or from ERCS during the same period
- any internal assessments, opinions, briefings, case reviews, or management discussions concerning: ESS’ relationship with ERCS as an organisation; ERCS’s involvement in representations or complaints; the impact of ERCS’s involvement on how ESS handled or responded to those matters
- any concerns, criticisms, or observations recorded by ESS about ERCS in that context

- any records referring to representations or complaints involving ERCS, including records discussing communication style, escalation, delay, service standards, or the handling of those matters”

You do not want the request limited only to:

- “material that may show how ESS staff discussed ERCS’s role, remit, credibility, involvement, or effect on the handling of representations or complaints, and any related assessment of how those matters were handled”

For clarity, the revised scope therefore also includes:

- “all internal communications, notes, briefings, meeting minutes, memoranda, or assessments mentioning or discussing ERCS
- any internal assessments, opinions, briefings, case reviews, or management discussions concerning ESS’ relationship with ERCS, ERCS’s involvement in representations or complaints and the impact of that involvement
- any records referring to representations or complaints involving ERCS, including records discussing communication style, escalation, delay, service standards, and handling”

In terms of section 39(2) of the Freedom of Information (Scotland) Act 2002 (“FOISA”), environmental information (as defined in regulation 2(1) of the Environmental Information (Scotland) Regulations 2004 (“EIRs”)) is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs.

We consider that the information requested by you constitutes “environmental information” and we have therefore applied the exemption in section 39(2) of FOISA to your request. We have also considered the public interest test. As you have a statutory right of access to environmental information under the EIRs, we do not consider that there is any public

interest in disclosing the information under FOISA. We therefore consider that the public interest in maintaining the exemption and considering the request under the EIRs outweighs the public interest in disclosing the information under FOISA.

We recognise that regulation 5(1) of the EIRs requires a Scottish public authority which holds environmental information to make it available when requested to do so by any applicant. This obligation relates to information that is held by the authority when it receives a request. However, regulation 10(4)(b) provides that a Scottish public authority may refuse to make environmental information available to the extent that the request for information is manifestly unreasonable. In considering whether the exception applies, the authority must interpret it in a restrictive way and apply a presumption in favour of disclosure. Even if it finds that the request is 'manifestly unreasonable', it is still required to make the information available unless, in all the circumstances, the public interest in doing so is outweighed by that in maintaining the exception.

ESS is a small organisation with 31 employees. Due to the specialist nature of the information requested, this information request can only be carried out by a member of our Investigations, Standards and Compliance Team. This is a small team of six staff and their work focuses on investigations, which is an important part of our statutory functions. While we recognise that responding to requests for information is also an important part of our statutory functions, our resources are limited and we have a duty to the public to ensure that they are allocated appropriately.

In order to support your request, we have asked you (including the original request ESS.IR.032) if you could narrow the scope of your request and have suggested ways in which that could be done. You have declined to do so. As your request remains broad, it has generated a large volume of material which requires review.

Having carried out an initial search for the information requested, we have identified more than 5,700 documents which would require a manual review in order to ascertain whether each item falls within scope. Thereafter, for each document which does fall within the scope

of your request, we would have to remove duplication and further consider whether any exceptions should be applied, which would result in the document being: withheld; disclosed with redactions applied; or disclosed in full.

Due to the time required to carry out this work, and the resulting delay this would cause to the progression of our ongoing investigatory work, we therefore consider your request to be 'manifestly unreasonable' and have applied this exception in regulation 10(4)(b) of the EIRs.

Having found that regulation 10(4)(b) is engaged, we have gone on to consider the public interest in regulation 10(1)(b) of the EIRs. This specifies that a public authority may only withhold information to which an exception applies where, in all the circumstances, the public interest in making the information available is outweighed by the public interest in maintaining the exception.

We recognise that there is a public interest in understanding how decisions are made and how we engage with third parties. We always strive to act in a transparent and accountable manner to benefit the public as a whole.

In some circumstances, responding to requests which require us to devote excessive or disproportionate amounts of time can only be at the expense of other areas of work. In this case, we consider that there is a greater public interest in maintaining the exception due to the resources involved in reviewing the documents identified for relevance to ascertain whether they fall within scope and, if they do, whether an exception should be applied.

Right to seek a review

While we believe we have complied with your information request in full, if you are unhappy with this response to your request under FOISA, you may ask us to carry out an internal review of the response by writing to:

Mark Roberts
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 issue a full response to your request for review within 20 working days of receiving it.

Yours sincerely,

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Freedom of Information Officer
Environmental Standards Scotland