# Decision Notice 056/2023

## Location of 25 buildings participating in cladding pilot scheme

**Authority: Scottish Ministers**
**Case Ref: 202101358**

### Summary

The Applicant asked the Authority for the location of the 25 residential buildings taking part in the Single Building Assessment cladding pilot scheme. The Authority withheld the information, arguing that disclosure would prejudice substantially the interests of the persons who had provided it with the information. The Commissioner investigated and found that the Authority had correctly withheld the information under regulation 10(5)(f) of the EIRs.

### Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 47(1) and (2) (Application for decision by Commissioner)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of "the Act", "the applicant" and "the Commissioner") (Interpretation); 5(1) (Duty to make environmental information available on request); 10(1), (2) and (5)(f) (Exceptions from duty to make environmental information available); 17(1), (2)(a) and (b) (Enforcement and appeal provisions)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

1. On 3 September 2021, the Applicant made a request for information to the Authority. The request was as follows:

   *I am writing to remind you that there are 85 tower blocks in Scotland that have combustable cladding with High Pressure Laminate Cladding and 23 tower blocks with combustable polyethylene ACM cladding(ACM-PE). You have £450 million to remediate all of these tower blocks with non combustable cladding to European Classification A1 or A2. This has to be done as there is no acceptable life risk to our tenants. In relation to reference number 202100231000, I am formally putting in an environmental information request to identify the locations of these 25 residential blocks of flats in Glasgow, Edinburgh and Aberdeen that are being examined under your pilot scheme in the interests of transparency and accountability.*

2. The Authority responded on 29 September 2021. It withheld the information under regulation 10(5)(f) of the EIRs, arguing that the information was provided voluntarily and disclosure would, or would be likely to, substantially prejudice the interests of the person who provided the information.

3. On 29 September 2021, the Applicant wrote to the Authority requesting a review of its decision. The Applicant argued that the public interest favoured disclosure of the information, and noted that representatives of Grenfell United, the survivors' group, had demanded that openness, transparency and accountability be given at all times regarding cladding.

4. The Authority notified the Applicant of the outcome of its review on 28 October 2021. It maintained its previous position, that the information was excepted from disclosure under regulation 10(5)(f) of the EIRs, with further reasoning on the public interest.

5. On 29 October 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. By virtue of regulation 17 of the EIRs, Part 4 of FOISA applies to the enforcement of the EIRs as it applies to the enforcement of FOISA, subject to specified modifications. The Applicant stated that it was dissatisfied with the outcome of the Authority's review because it denied the overwhelming public interest in disclosure of the information.

## Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.

7. On 2 December 2021, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information and the case was allocated to an investigating officer.

8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions. These related to its reasons for withholding information under regulation 10(5)(f) of the EIRs.

9. The Authority provided submissions in response. The Applicant was invited to provide, and provided, submissions on the public interest in making the information available.

## Commissioner's analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.

***Handling in terms of the EIRs***

11. The Authority processed and responded to the Applicant's request and requirement for review in accordance with the EIRs.

12. Where information falls within the scope of the definition of "environmental information" in regulation 2(1) of the EIRs, a person has a right to access it (and the public authority a corresponding obligation to respond) under the EIRs, subject to various restrictions and exceptions contained in the EIRs.

13. The Applicant has not challenged the Authority's decision to deal with the information as environmental information. The Commissioner is satisfied that the information does comprise environmental information (see in particular paragraphs (a), (b) and (c) of the definition in regulation 2(1) of the EIRs) and will consider the handling of the request in what follows solely in terms of the EIRs.

***Withheld information***

14. The Authority is withholding the addresses of the 25 buildings that are taking part in the cladding pilot.

***Regulation 10(5)(f) of the EIRs: third party interests***

15. In terms of regulation 10(5)(f) of the EIRs, a Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially the interests of the person who provided the information where that person:

    (i) was not under, and could not have been put under, any legal obligation to supply the information;

    (ii) did not supply it in circumstances such that it could, apart from the EIRs, be made available; and

    (iii) has not consented to its disclosure.

16. Regulation 10(2) of the EIRs provides that this exception must be interpreted in a restrictive way and that the public authority shall apply a presumption in favour of disclosure. The exception is also subject to the public interest test in regulation 10(1)(b).

17. In the Commissioner's guidance on regulation 10(5)(f)[1], he states that a number of factors should be addressed in considering whether this exception applies. These include:

    - Was the information provided by a third party?

[1] https://www.itspublicknowledge.info/sites/default/files/2022-04/EIRsGuidanceRegulation105fThirdpartyinterests.pdf

- Was the provider, or could the provider be, required by law to provide it?
- Is the information otherwise publicly available?
- Has the provider consented to disclosure?
- Would release of the information cause, or be likely to cause, substantial harm to the interests of the provider?

*The Applicant's views*

18. The Applicant submitted that 133 out of 774 residential tower blocks in Scotland have combustible cladding. It explained that this cladding is a mixture of High Pressure Laminate Cladding (HPL) and polyethylene Aluminium Composite Material (ACM-PE), which is similar to that found on the Grenfell Tower, and that a further 15 buildings are clad with other combustible material.

19. The Applicant submitted that it had warned the Scottish Government that a Scottish Grenfell would happen unless all combustible material was removed from these tower blocks. The Applicant claimed that the Scottish Government's response to this warning was to identify 25 tower blocks for a single building assessment pilot. The Applicant challenged the effectiveness of this pilot, and argued for disclosure of the locations of the buildings involved in the pilot.

*Was the information provided by a third party?*

20. The Commissioner has first of all to consider whether the information being withheld was provided by a third party. Where information was not provided by a third party, regulation 10(5)(f) of the EIRs cannot be engaged and the Commissioner is not required to consider the remaining factors, as outlined at paragraph 17 above.

21. The Authority referred the Commissioner to the Privacy Notice[2] that was part of the Single Building Assessment (SBA) expressions of interest form. It argued that the Privacy Notice made it clear that individuals that completed the form did so of their own accord and in circumstances where they could reasonably expect the information to remain confidential.

22. The Commissioner has considered the information that is being requested in this case, and he is satisfied that the location of the buildings was provided to the Authority by third parties. He accepts that the only reason the Authority holds this information is because third parties filled in the SBA form published by the Scottish Government.

*Was the provider, or could the provider be, required by law to provide it?*

23. The Authority argued that it had no legal powers to compel this information and it submitted that it only held this information because it was provided by a third party voluntarily.

24. As noted above, the Commissioner considers that the only reason that the Authority holds this information is because it was provided voluntarily, by third parties who wanted their building to participate in the SBA pilot.

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2 https://www.surveymonkey.com/r/Preview/?sm=lNV3qa24xCppMh9qMMK3DAQFy94TCF0ThTBp2cSmlQtTNSqKTiR7puD4YCgg9XVE

25. The Commissioner is not aware of any legislation that would have given the Authority legal powers to have compelled this information from those third parties, and he accepts the Authority's submissions on this point.

*Is the information otherwise publicly available?*

26. The Authority did not directly address this question, but by reiterating its views, and the views of the individuals who provided the information, that the location of the buildings should not be published, the Authority has strongly indicated that the information subject to this investigation was not publicly available.

27. Having considered the information, the Commissioner is satisfied that the withheld information is not (and has not been) otherwise available to the public.

*Has the provider consented to disclosure?*

28. The Aarhus Convention Implementation Guide[3] (at page 89) states:

"Not only must the information in question qualify as voluntarily supplied information, the person that provided it must have denied consent to have it released to the public."

29. In previous decisions, the Commissioner has found that specific refusal of consent is fundamental to the application of regulation 10(5)(f) and this is also covered in his guidance on the application of regulation 10(5)(f) of the EIRs, as referenced above.

30. During the investigation, the Authority was asked to confirm whether the third parties had explicitly refused consent to disclose the information to which it had applied regulation 10(5)(f) of the EIRs.

31. The Authority submitted that it contacted individual representatives, building managers and housing associations on the release of this information and received replies confirming that the individuals did not consent to the release of the information from 21 buildings; the other four were collected verbally and did not provide an email response. The Authority submitted that it had contacted these individuals, on the basis that they were designated as the point of contact in relation to each building. It argued that, as none of the participants wanted this information to be released, it considered that this met the relevant condition within 10(5)(f).

32. The Authority provided the Commissioner with copies of these 21 emails.

33. The Commissioner has read all of the 21 emails provided by the Authority, and while some simply state that they do not want the information to be disclosed, a good number go into details for reaching that decision. The third parties express many concerns about the risks of disclosure and it is clear that, while they may be content that information about their participation in the pilot will be disclosed once the SBA is complete, at this early stage they appear to be unanimous in contesting disclosure of their building's location.

34. The Commissioner notes the Authority's comment that four of the respondents only provided verbal responses, and that they have not given their views on consent in writing. However, he also notes that the third parties who have provided their views in writing, share similar concerns, and he considers it likely that the four persons who only provided verbal feedback would also share those views.

[3] http://www.unece.org/env/pp/implementation_guide.html

35. In the circumstances, and given that the overwhelming majority of third parties have provided written views that oppose disclosure, the Commissioner is willing to accept that none of the third parties who provided the information to the Authority are in favour of its release.

*Would release of the information cause, or be likely to cause, substantial harm to the interests of the provider?*

36. The Commissioner will now consider whether the disclosure of the information provided by the registered social landlords (RSLs) and private owners would, or would be likely to, cause substantial prejudice to those who provided the information.

37. As regulation 10(5)(f) is focused on substantial prejudice to the interests of the person who provided the information, the Authority was asked to explain fully how substantial prejudice would manifest itself should the information be disclosed.

38. The Commissioner's guidance on regulation 10(5)(f) of the EIRS explains that, while there is no definition in FOISA or the EIRs of what is deemed to be "substantial prejudice", the Commissioner considers the authority would have to identify harm of real and demonstrable significance. The harm would also have to be at least likely, and therefore more than simply a remote possibility.

39. The Authority explained that, of the 25 buildings taking part in the SBA pilot, 21 are in private ownership and the remaining four are owned by RSLs. It submitted that two of the four RSL properties have mixed tenure status and therefore contain homeowners impacted by mortgage-related cladding issues, while the other two are completely tenanted.

40. The Authority provided separate arguments that explained the substantial prejudice that would, or would be likely to be, caused to the person(s) who provided it with the information, if that person was an RSL or if they were a private owner.

Private owners

41. The Authority submitted that a flat suspected of being part of a building with unsafe cladding can cause a withdrawal of access to normal mortgage lending. This can mean an inability to sell or lead to enforced cash-only sales at 30-40% below normal valuations.

42. It noted that the above risk happens uniquely in Scotland, on a flat-by-flat basis, because of its tenure system. This means cladding problems are identified incrementally until sufficient information by sufficient lenders commissioning EWS1s (External wall fire review process forms) leads to whole buildings being seen as problematic. Whole blocks can then become locked out of mortgage lending.

43. The Authority explained that, in the rest of the UK, there are three types of home ownership tenureship: Freehold Property, Leasehold & Commonhold Property. Houses and individual properties are commonly classed as Freehold and flatted/multi-ownership properties are Leasehold i.e. the building is owned by a corporate entity and residents own a lease for their property.

44. However, in Scotland, the Authority submitted, leasehold is akin to being a tenant of a property and not an owner. All owners are classed as Freehold (named "feuhold" in Scots Law). The Authority explained that this means flatted properties in Scottish buildings are classed as buildings in multiple ownership and are therefore owned by all owners (while, in the rest of the UK, buildings are owned by single entities and individual flats are leased) and their terms of ownership are defined in the title deeds. The title deeds act as the contract of ownership and define the terms of co-owning the building.

45. The Authority noted that this system introduces challenges when conducting any wholescale activity on the entire building, as each flat owner must consent before any ”works” or inspections can begin. Homeowners wishing to buy or sell individual properties are impacted, as the cladding system connects to the whole building and problems should be addressed on a whole-building basis but, as flats are bought and sold on an individual basis, there is no compulsion from other affected flat owners to participate as they themselves are not buying or selling their properties. Therefore, the tenure system impacts on the ability for an individual homeowner to proceed when the whole building is impacted by cladding issues.

46. The Authority argued that any building with known external wall cladding problems is likely to face increased buildings insurance costs. It submitted that buildings with suspected high risk or banned materials can face costs increasing by 6-10 times original costs.

47. The Authority also argued that buildings with unsafe cladding are a target for wilful fire raising. It explained that there are no coordinated prevention systems in place, in part due to Scotland’s tenure system (which leaves fire safety responsibilities with homeowners collectively). The Authority argued that this system is ineffective at a time when its programme is only beginning to identify serious and, in some cases, urgent examples requiring intervention. The Authority argued that its work would be undermined if it published the details of any buildings suspected of having combustible cladding.

RSLs

48. In cases where the person who provided the information was an RSL, the Authority argued that disclosure would lead to RSLs experiencing similar problems to private owners, where the risk of losing access to lending (because the underlying security was deemed a high structural/fire risk) would mean an RSL facing a repayment request that was unaffordable.

49. The Authority submitted that the business models for RSLs are substantially debt-financed through commercial lending, which is calibrated to the suitability of the housing stock for lending purposes. If these properties were to be identified publicly, then the properties would have the same risk of substantial prejudice as a homeowner and this could jeopardise the financial viability of an RSL, if a lender terminated a loan based on diminished security.

50. The Authority argued that an alternative impact might be that interest on such lending is increased as an alternative remedy to withdrawal. The effect of this would be to increase the charges that need to be recovered by way of social rent from tenants. This could be punitive, and avoidable by not publishing the details of buildings within the programme.

51. The Authority also argued that the impact on the buildings owned by RSLs would be substantial as many residents would want to be placed in alternative housing and, with waiting lists being oversubscribed and housing stock limited, this would make it difficult to re-home residents.

*The Commissioner's view on substantial prejudice*

52. As noted above, when considering substantial prejudice, the Commissioner expects the authority to identify harm of real and demonstrable significance, which has to be at least likely, and more than simply a remote possibility.

53. The Commissioner asked the Authority for evidence to substantiate the harm claimed. In response, the Authority submitted that multiple properties have already been threatened with mortgage withdrawal, and a number have already had to remortgage with a different provider, as the original provider did not accept the financial risk.

54. The Authority submitted that residents of these buildings cannot sell their properties as the EWS1 rating of their building is B2. Therefore, they need an SBA to determine the building is low risk (i.e. a rating of A1, A2 or B1) or not. The Authority contended that, if these buildings were safe, then they would not have applied for an SBA. It argued that releasing the locations would cause further prejudice prematurely.

55. The Authority also submitted that one (very large, high risk) building in the pilot has no building insurance and currently homeowners have no coverage if their building is impacted by any type of building damage. The Authority provided the Commissioner with a copy of the notice refusing building insurance. It argued that multiple buildings involved in the SBA pilot have seen increases in building insurance premiums, between 6 and 10 times the original premium before Grenfell. The Authority noted that one of the comments in the consent emails stated; "some owners may be concerned that disclosure of this information could have a negative impact on the value or the insurability of their property."

56. The Authority referred to data from Right Move and ESPC, which confirmed that house price growth of "known buildings" with cladding is below or worse than for those in the wider housing stock of a comparable type. It submitted that flats with potentially problematic external wall systems, without an elevated profile, appear to trade relatively normally. The Authority submitted that this is currently verbal feedback, but it is in discussions with Right Move to access their data.

57. The Authority referred to comments provided in the SBA, highlighting the difficulties that the residents have faced in regard to their mental health and the struggles in obtaining insurance. The Authority provided the Commissioner with a copy of these comments, as well as a survey response form. It noted that the document with the survey also highlights that a number of residents have had no issue with obtaining insurance but, should the information be released, they would likely experience uncertainty from insurance companies.

58. The Authority submitted that concerns have been raised by multiple buildings in locations where there has been deliberate fire raising in the area. It referred to comments in one of the consent emails, which stated: "location of these vulnerable buildings being released would increase security concerns, could highlight potential buildings for attack or vandalism and would be extremely prejudice [sic] against the owners of these buildings."

59. The Authority also referred to the quotations received by the Scottish Government as part of the grant funding scheme, which showed the variability of quotations from surveyors. It noted that, for one building on the pilot, the quotes ranged from £14k to £167k for the same survey. The Authority provided the Commissioner with copies of two quotes which evidenced this view.

60. Having considered the arguments provided by both parties, along with the evidence submitted by the Authority and the information itself, the Commissioner is satisfied that disclosure of the location of the buildings in the SBA pilot would, or would be likely to, prejudice substantially the persons who provided the Authority with the information.

61. The Commissioner therefore finds that the Authority correctly applied the exception in regulation 10(5)(f) to the information under consideration. He must now go on to consider the balance of the public interest in relation to this information.

***The public interest test***

62. The exception in regulation 10(5)(f) is subject to the public interest test in regulation 10(1)(b) of the EIRs. Even if an exception has been judged to apply, a Scottish public authority may only refuse a request to make environmental information available if, in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception (that is, in withholding the information).

*The Authority's submissions about the public interest*

63. The Authority acknowledged there were a number of factors in favour of release, including the need for government to be open and transparent where possible and, specifically, the right of the public to know the location of these buildings in order for them to be aware of possible financial risks regarding where to buy a property. The Authority also recognised that potential tenants (of RSLs) would want to know the location of the buildings in the SBA pilot, in order to understand that there may be potential risks associated with residing in one of these buildings. The Authority referred to the Ministerial Working Group Q&A[4], which acknowledged that it was in public interest to know when each of these 25 buildings had been declared safe by a professional fire risk assessor. The Authority indicated that this information would be made public, once the buildings had been deemed safe.

64. However, against these factors in favour of disclosure, the Authority argued that there was a strong public interest in avoiding significant harm to the interests of homeowners as this would be likely to affect their future profits, home values and mental health, especially if the SBA concluded that the cladding was not dangerous but the prejudice would endure from the general public. The Authority submitted that publicly identifying all properties could see a distinct impact on these buildings, but also have a cascade effect on the property market as a whole.

65. The Authority argued that it was in the public interest to assure the market and homeowners that the issues with cladding could be resolved in partnership with the Authority and not to expose them to new risks. The Authority contended that disclosure of this information would only result in a loss of trust, not just in government but the property sector as a whole. If this occurred, it argued that participation in any future programme would evaporate and effectively end the programme of support.

66. Taking all of the above into account, the Authority argued that there was a greater public interest in protecting the homeowners and tenants, from further mental and financial decline, compared with the public interest in informing the general public about the location of these properties, so they could make informed decisions when it came to buying or renting in one of these buildings.

*The Applicant's submissions about the public interest*

67. The Applicant submitted that there was a material public interest in revealing the locations of the 25 tower blocks "that have had secret inspections" carried out on them for deadly flammable cladding and insulation. The Applicant submitted that the Scottish Government was allocated £97.1 million by the UK Government to deal with dangerous cladding and insulation on buildings in Scotland and, a year later, it had only spent £241,000 of that money. To the Applicant, this suggested that the Scottish Government had been dragging its feet on removing combustible cladding from buildings in Scotland. The Applicant stressed

[4] https://www.gov.scot/publications/ministerial-working-group-on-mortgage-lending-and-cladding-questions-answered/pages/single-building-assessments/

that there needs to be more transparency, accountability and openness, in order to ensure that tenants lived in safe tower blocks in Scotland.

68. The Applicant queried the Authority's submissions, particularly its view that disclosure of the locations of these buildings would risk them being set on fire by vandals. The Applicant discounted this argument and argued that it was not credible.

69. The Applicant argued that it was fundamental to a free society to have information in the public domain, as that ensures that proper scrutiny takes place. The Applicant argued that this was especially important in light of all the terrible events that came together to make the scandal and tragedy that befell the victims of the Grenfell fire, and which continued to cast a long shadow.

*The Commissioner's view on the public interest*

70. Paragraph 7 of the Commissioner's briefing on the public interest (under the EIRs)[5] states:

*The EIRs do not define the public interest, but it has been described elsewhere as "something which is of serious concern and benefit to the public", not merely something of individual interest. It has also been described as "something that is "in the interest of the public", not merely "of interest to the public." In other words, it serves the interests of the public.*

71. In considering the public interest in disclosure against that in maintaining the exception, the Commissioner acknowledges the general public interest in transparency in environmental matters, and the reasons the Applicant has given to show why it believes disclosure of the information would be in the public interest. There can be no doubt that there is increased public awareness of cladding systems used on residential tower blocks, following the Grenfell tragedy, and there is clearly a very considerable public interest in being satisfied that all reasonable steps are being taken in Scotland to address the considerable risks to public safety presented by such cladding. Steps being taken to address the lessons of a fire that cost 72 lives are inevitably matters of substantial public interest and, in that context, there would appear to be strong arguments for disclosing the location of blocks which have potentially dangerous cladding.

72. As acknowledged by the Authority, in addition to more general concerns regarding public safety and transparency in that connection, there is a public interest in the information being disclosed, to help individuals make informed decisions when they are considering taking up residence in a tower block that has cladding.

73. Against this, the Commissioner must balance the public interest in avoiding harm to the interests of the third parties.

74. It is clear, from the correspondence provided to him, that the third parties (the owners of these buildings) do not want their involvement in the SBA pilot to be known at this stage. The Q&A referenced by the Authority, makes it clear that "outputs" will be published as a result of the SBA pilot, and the Authority have explained that these "outputs" will be published only when remediation work has taken place to make a building safe. The Commissioner considers that the Authority's intention to publish outputs, once work has been done to address any fire risk, goes some way to meeting the public interest.

[5] https://www.itspublicknowledge.info/sites/default/files/2022-03/PublicInterestTestEIRs.pdf

75. The Commissioner has also reviewed, and acknowledges, the evidence provided to him by the Authority, in relation to building insurance and the increased in costs suffered by homeowners, as well as the case where no company was prepared to insure the building. There are also, undoubtedly, potential psychological risks, to occupiers, whether owners or tenants, which would not be in the public interest. While the Applicant may discount the Authority's position that wilful fire-raising is an argument against disclosure, the Commissioner must acknowledge that the potential impact from fire-raising, even if not a high risk, is considerable.

76. While none of the arguments against disclosure may appear compelling, in the face of a very strong public interest in making the information available, the Commissioner must bear in mind the actual information being sought here. Whatever the public interest in making information available on blocks with potentially dangerous cladding, on a comprehensive basis across Scotland, what is being sought here is that information for a relatively small sample of those blocks, and not necessarily a representative one at that. This must factor in the Commissioner's balancing of the public interest.

77. On balance, and having applied a presumption in favour of disclosure, the Commissioner has concluded that the public interest in maintaining the exception in regulation 10(5)(f) of the EIRs outweighs the public interest in making the requested information available. Therefore, he finds that the Authority was entitled to withhold the information under regulation 10(5)(f) of the EIRs.

## Decision

The Commissioner finds that the Authority complied with the Environmental Information (Scotland) Regulations 2004 in responding to the information request made by the Applicant.

## Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

**Margaret Keyse**
**Head of Enforcement**

**1 June 2023**

## Appendix 1: Relevant statutory provisions

### Freedom of Information (Scotland) Act 2002

### 47 Application for decision by Commissioner

(1) A person who is dissatisfied with -

(a) a notice under section 21(5) or (9); or

(b) the failure of a Scottish public authority to which a requirement for review was made to give such a notice.

may make application to the Commissioner for a decision whether, in any respect specified in that application, the request for information to which the requirement relates has been dealt with in accordance with Part 1 of this Act.

(2) An application under subsection (1) must -

(a) be in writing or in another form which, by reason of its having some permanency, is capable of being used for subsequent reference (as, for example, a recording made on audio or video tape);

(b) state the name of the applicant and an address for correspondence; and

(c) specify –

(i) the request for information to which the requirement for review relates;

(ii) the matter which was specified under sub-paragraph (ii) of section 20(3)(c); and

(iii_ the matter which gives rise to the dissatisfaction mentioned in subsection (1).

…

## The Environmental Information (Scotland) Regulations 2004

### 2 Interpretation

(1) In these Regulations –

"the Act" means the Freedom of Information (Scotland) Act 2002;

"applicant" means any person who requests that environmental information be made available;

"the Commissioner" means the Scottish Information Commissioner constituted by section 42 of the Act;

…

"environmental information" has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on -

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in paragraph (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in paragraphs (a) and (b) as well as measures or activities designed to protect those elements;

…

### 5 Duty to make available environmental information on request

(1) Subject to paragraph (2), a Scottish public authority that holds environmental information shall make it available when requested to do so by any applicant.

…

### 10 Exceptions from duty to make environmental information available

(1) A Scottish public authority may refuse a request to make environmental information available if-

(a) there is an exception to disclosure under paragraphs (4) or (5); and

(b) in all the circumstances, the public interest in making the information available is outweighed by that in maintaining the exception.

(2) In considering the application of the exceptions referred to in paragraphs (4) and (5), a Scottish public authority shall-

(a) interpret those paragraphs in a restrictive way; and

(b) apply a presumption in favour of disclosure.

…

(5) A Scottish public authority may refuse to make environmental information available to the extent that its disclosure would, or would be likely to, prejudice substantially-

…

(f) the interests of the person who provided the information where that person-

(i) was not under, and could not have been put under, any legal obligation to supply the information;

(ii) did not supply it in circumstances such that it could, apart from these Regulations, be made available; and

(iii) has not consented to its disclosure; or

…

## 17 Enforcement and appeal provisions

(1) The provisions of Part 4 of the Act (Enforcement) including schedule 3 (powers of entry and inspection), shall apply for the purposes of these Regulations as they apply for the purposes of the Act but with the modifications specified in paragraph (2).

(2) In the application of any provision of the Act by paragraph (1) any reference to -

(a) the Act is deemed to be a reference to these Regulations;

(b) the requirements of Part 1 of the Act is deemed to be a reference to the requirements of these Regulations;

…

(f) a notice under section 21(5) or (9) (review by a Scottish public authority) of the Act is deemed to be a reference to a notice under regulation 16(4); and

…