



Decision Notice 125/2024

Fraud detection techniques

Authority: Scottish Environmental Protection Agency

Case Ref: 202200650

Summary

The Applicant asked the Authority for details of the techniques it used to detect fraud in aquaculture. The Authority withheld the information requested as it considered disclosure would prejudice its ability to conduct criminal inquiries. The Authority subsequently reassessed the information and disclosed some of it, but withheld the remainder for the same reason. The Commissioner investigated and found that the Authority was entitled to withhold the information it had continued to withhold on the basis that disclosure would prejudice its ability to conduct criminal inquiries, but that its response failed in other respects to comply with the EIRs.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1) (Effect of exemptions); 39(2) (Environmental information); 47(1) and (2) (Application for decision by Commissioner)

The Environmental Information (Scotland) Regulations 2004 (the EIRs) regulations 2(1) (definition of "the Act", "applicant", "the Commissioner" and "environmental information") (Interpretation); 5(1) and 5(2) (Duty to make environmental information available on request); 10(1) and 10(5)(b) (Exceptions from duty to make environmental information available); 16 (Review by a Scottish public authority); 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. The Authority published a [consultation](#)¹, which ran from 3 December 2021 to 14 March 2022, outlining its planned response to the risks posed by sea lice associated with aquaculture to wild fish populations. In the consultation, the Authority indicated that it had “sophisticated analytical methods” that can quality assure data from fish farms.
2. On 12 January 2022, the Applicant (a charity that campaigns on fisheries and water quality issues) made a request for information to the Authority as part of their response to the consultation. The Applicant asked for any information held on the sophisticated analytical methods alluded to in this consultation.
3. The Authority did not respond to the information request.
4. On 6 April 2022, the Applicant wrote to the Authority requiring a review in respect of its failure to respond.
5. The Authority provided a review outcome on 25 May 2022. The Authority applied section 39(2) (Environmental Information) of FOISA, and responded under the EIRs, withholding the information falling within the scope of the request by virtue of regulation 10(5)(b) of the EIRs. The Authority argued that disclosing information relating to its methods of fraud detection could suggest means by which these methods of fraud detection could be evaded, which would substantially prejudice its ability to conduct an inquiry of a criminal nature.
6. On 7 June 2022, 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 they were dissatisfied with the outcome of the Authority’s review because:
 - the Authority had not responded within the timescales permitted under the EIRs
 - they did not consider that the exception in regulation 10(5)(b) applied
 - even if it did apply, the public interest would favour disclosure.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 26 July 2022 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 subsequently allocated to an investigating officer.
9. 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 the searches carried out and its justification for applying the exception in regulation 10(5)(b) of the EIRs to withhold the information requested. The Authority provided its comments.

¹ [Proposals for a risk-based framework for managing interaction between sea lice from marine finfish farm developments and wild Atlantic salmon in Scotland - Scottish Environment Protection Agency - Citizen Space \(sepa.org.uk\)](#)

10. On 12 January 2024, the Authority notified the Commissioner that it had reassessed the sensitivity of some of the withheld information (which it subsequently disclosed to the Applicant). For some of the remaining withheld information, the Authority withdrew its reliance on the exception in 10(5)(b) of the EIRs and instead relied on the exception in regulation 11(2) (Personal data) of the EIRs. For the remainder of the withheld information, the Authority continued to rely on the exception in 10(5)(b).
11. The Commissioner wrote to the Authority and Applicant seeking comments on the application of the exception in regulation 11(2) of the EIRs. Both provided comments.
12. The Applicant confirmed that they had no interest in personal data except where the redactions applied under regulation 11(2) of the EIRs acted to mean the organisation involved in the disclosure cannot be identified or where the personal data related to senior staff who would not expect for their identity to be withheld.
13. Having reviewed the withheld information, the Commissioner is satisfied that none of it would satisfy the Applicant's criteria. The Commissioner will therefore not consider the application of regulation 11(2) of the EIRs any further in his decision notice.

Commissioner's analysis and findings

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

Handling in terms of the EIRs

15. The Authority considered the Applicant's request under the EIRs, having concluded that the information requested was environmental information as defined in regulation 2(1) of the EIRs.
16. Where information falls within the scope of this definition, a person has a right to access it (and the public authority has a corresponding obligation to respond) under the EIRs, subject to the various restrictions and exceptions contained in the EIRs.
17. The Applicant requested information related to measures taken to detect fraud in fish farms, and thus prevent the circumvention of measures taken to protect environmental standards in aquaculture.
18. The Commissioner has considered the terms of the request and the information captured by the request and he is satisfied that the information falls within the definition of environmental information set out in regulation 2(1) of the EIRs, in particular, paragraphs (a) and (c) of that definition.

Section 39(2) of FOISA – Environmental information

19. The exemption in section 39(2) of FOISA provides, in effect, that environmental information (as defined by regulation 2(1) of the EIRs) is exempt from disclosure under FOISA, thereby allowing any such information to be considered solely in terms of the EIRs. In this case, the Commissioner accepts that the Authority was entitled to apply this exemption to the information withheld under FOISA, given his conclusion that it is properly classified as environmental information.

20. As there is a statutory right of access to environmental information available to the Applicant in this case, the Commissioner accepts, in all the circumstances, that the public interest in maintaining this exemption (and responding to the request under the EIRs) outweighs any public interest in disclosing the information under FOISA. Both regimes are intended to promote public access to information and there would appear to be no reason why (in this particular case) disclosure of the information should be more likely under FOISA than under the EIRs.
21. The Commissioner therefore concludes that the Authority was correct to apply section 39(2) of FOISA and consider the Applicant's information request under the EIRs.

Regulation 5(1) of the EIRs

22. 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.
23. On receipt of a request for environmental information, therefore, the authority must ascertain what information it holds falling within the scope of the request. Having done so, regulation 5(1) requires the authority to provide that information to the requester, unless a qualification in regulations 6 to 12 applies (regulation 5(2)(b)).

Information outwith scope

24. The Commissioner notes that a small amount of the withheld information identified by the Authority (specifically Documents 14 and 15) was created after the request.
25. The Commissioner does not consider this information was held by the Authority when it received the request. He will therefore not consider this information further in his decision notice.

Information disclosed during the investigation

26. As rehearsed earlier, the Authority, during the investigation, reassessed the withheld information and subsequently disclosed some further information to the Applicant.
27. As the Authority disclosed information during the investigation and it did not adequately explain why it was withheld earlier, the Commissioner must find that the information was wrongly withheld from the Applicant and that, in this respect, the Authority failed to comply with regulation 5(1) of the EIRs.
28. The Commissioner will not consider this information any further in his decision notice.

Regulation 10(5)(b) of the EIRs

29. Under regulation 10(5)(b) 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 course of justice, the ability of an individual to receive a fair trial or the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature.
30. As with all exceptions in regulation 10, it is subject to the public interest test in regulation 10(1)(b) and, in line with regulation 10(1)(a), must be interpreted in a restrictive way with a presumption in favour of disclosure.

31. Although there is no definition of "substantial prejudice" in the EIRs, the standard to be met in applying the test is high. The word "substantial" is important here: the harm caused, or likely to be caused, by disclosure must be of real and demonstrable significance. The risk of harm must be real or very likely, not simply a remote or hypothetical possibility.

The Authority's submissions on the exception

32. The Authority submitted that it has a number of criminal investigatory roles, including under the Water Environment (Controlled Activities) (Scotland) Regulations 2011 (CAR).
33. As part of these activities, the Authority explained that it regulates discharges from finfish farms by issuing permits that limit the levels of pollutants that they discharge to the water environment. Under these permits, operators must submit accurate data returns to the Authority to demonstrate that permit conditions are being met. Breaching these permit conditions is an offence under CAR.
34. The Authority explained that it has a range of options, which it sets out in its [enforcement policy](#)², for addressing breaches of environmental legislation including both civil and criminal enforcement options.
35. The Authority considered that the withheld information contained information on how it detects instances of potential criminal fraud in data returns that would trigger an investigation into a particular site or operator. The Authority explained that this information would be of particular interest to operators wishing to breach, without being detected, the environmental conditions set out in their permit.
36. While this request specifically relates to aquaculture, the Authority submitted that disclosure of the investigative techniques referred to (thus prejudicing their application) would impact across a range of its enforcement activities, including its role supervising the transfer of waste and administering the Scottish Pollution Release Inventory.
37. As revealing the techniques by which it detects suspicious data would allow fraudsters across a range of licensed environmental activities to manipulate data in such a way as to evade these techniques, the Authority concluded that disclosure of the withheld information would substantially prejudice its ability to conduct criminal inquiries.
38. In terms of the substantial prejudice likely to be caused by disclosure of the withheld information, the Authority explained that disclosure would:
- give operators the opportunity to understand the techniques used and to take steps to evade them
 - result in less intelligence for it to work with when managing decisions about resource allocation, what sites and operators to investigate and where to gather evidence
 - not only affect the assessment of operator data relating to aquaculture, but it would impact a wide range of its regulatory activities
 - effectively provide a set of instructions on how to circumvent its fraud detection techniques.

² [Enforcement | Scottish Environment Protection Agency \(SEPA\)](#)

39. The Authority also specifically highlighted [Decision 024/2022](#)³ of the Commissioner. In this decision, the Commissioner agreed that “by revealing the nature of the investigation techniques being used, and the manner in which those techniques are applied” disclosure of the requested information would cause substantial prejudice to the Authority’s ability to carry out criminal inquiries.
40. The Authority submitted that regulation 10(5)(b) of the EIRs encompassed information which, if disclosed, would prejudice the prevention, investigation or detection of a crime or the apprehension or prosecution of offenders. In other words, regulation 10(5)(b) was not limited to information relating to an ongoing criminal inquiry or one that is likely to take place in the near future.
41. In summary, the Authority concluded that it was entitled to rely on the exception in regulation 10(5)(b) of the EIRs and confirmed that it wished to continue to rely on that exception to withhold the information requested.

The Applicant’s submissions on the exception

42. The Applicant queried whether the prejudice envisaged by the Authority was actually “substantial” and noted that the [Commissioner’s guidance](#)⁴ on regulation 10(5)(b) of the EIRs was clear on the importance of demonstrating such prejudice.
43. Given that the Authority only claimed that disclosure of the requested information *could* substantially prejudice the its ability to carry out criminal inquiries, the Applicant submitted that the Authority’s reliance on the exception in regulation 10(5)(b) of the EIRs was excessively speculative.
44. To support this point, the Applicant again referred to the Commissioner’s guidance on regulation 10(5)(b) of the EIRs which states that there must be “a genuine, demonstrable, link between disclosure and harm: it cannot simply be a remote or hypothetical possibility”.
45. The Applicant also referred to [Decision 001/2010](#)⁵ of the Commissioner, in which the Commissioner did not accept that the theoretical possibility of criminal prosecution was sufficient to justify the application of 10(5)(b) of the EIRs.
46. The Applicant submitted that the Authority had therefore inappropriately applied the exception in regulation 10(5)(b) of the EIRs to what was a purely hypothetical risk.
47. The Applicant also contended that, at the time of their application, the Authority did not have the power to undertake a criminal investigation as their request was made in the context of a [consultation](#)⁶ which proposed granting the Authority such a role. Therefore, any risk was inherently hypothetical.

The Commissioner’s view

48. The Commissioner has viewed the consultation document referred to in the Applicant’s submissions and notes that it does not propose any new legislation. The proposals in the

³ <https://www.foi.scot/decision-0242022>

⁴ <https://www.foi.scot/sites/default/files/2022-04/EIRsGuidanceRegulation105bCourseofJustice.pdf>

⁵ <https://www.foi.scot/decision-0012010>

⁶ [Proposals for a risk-based framework for managing interaction between sea lice from marine finfish farm developments and wild Atlantic salmon in Scotland - Scottish Environment Protection Agency - Citizen Space \(sepa.org.uk\)](#)

document are described as being “applied through the Water Environment (Controlled Activities) (Scotland) Regulations 2011” and embedded in an existing regulatory framework which has been in place since 2019.

49. In view of this, and the Authority’s other submissions regarding its powers, the Commissioner accepts that the Authority has, and had at the time of the request, power to conduct a criminal investigation.
50. Under regulation 10(5)(b) of the EIRs, an authority may withhold information if disclosure would prejudice substantially the ability of a public authority to carry out a criminal or disciplinary investigation (and the public interest does not favour disclosure).
51. In this case, the Commissioner is aware that explaining his reasoning with specific reference to the withheld information would inevitably disclose details of the withheld information. As the Court of Session recognised in [Scottish Ministers v Scottish Information Commissioner \[2006\] CSIH 8](#)⁷ (at [18]):

It is important, in our view ... to bear in mind that the [Commissioner], in giving reasons for his decision, is necessarily restrained by the need to avoid, deliberately or accidentally, disclosing information which ought not to be disclosed.
52. Having reviewed the withheld information, and the respective submissions of the Applicant and the Authority, the Commissioner accepts that the information, if disclosed, would, by highlighting how the Authority detects fraud and potential weaknesses in those approaches, likely be of assistance to those attempting to evade those detection techniques and to conceal fraud.
53. In the circumstances, the Commissioner is satisfied that there was a reasonable risk of substantial prejudice to the Authority’s ability to prevent, investigate and detect crime, and thus to future potential enforcement action, had the information been disclosed in response to the Applicant’s information request or their requirement for review. Disclosure would, therefore, have prejudiced substantially, or would have been likely to prejudice substantially, the Authority’s ability to conduct an inquiry of a criminal nature.
54. The Commissioner has considered whether, as with Decision 001/2010, the claimed prejudice was sufficiently remote from a criminal investigation that the exception cannot apply.
55. The Commissioner is not satisfied that a similar degree of remoteness exists. In Decision 001/2010, the information related to a civil investigation that could ultimately lead to criminal charges, but the Commissioner was not satisfied that there was a reasonable prospect of a criminal inquiry being carried out in that instance.
56. The information withheld in this instance does not relate to a specific ongoing criminal investigation, but instead to wider strategies for crime reduction and detection. In the specific circumstances of this case, the Commissioner agrees that the withheld information falls within the definition of regulation 10(5)(b) of the EIRs as it is directly relevant to the initiation of criminal inquiries by the Authority (and thus to its ability to conduct an inquiry of a criminal nature).

⁷ [SCOTTISH MINISTERS \(WITH SUMMARY\) v. SCOTTISH INFORMATION COMMISSIONERS ETC \(scotcourts.gov.uk\)](#)

57. Given that he has accepted that disclosure of the information requested would, or would be likely to, prejudice substantially the Authority's ability to conduct an inquiry of a criminal nature, the Commissioner finds that the withheld information was properly excepted from disclosure under regulation 10(5)(b) of the EIRs.

The public interest test

58. The Commissioner must now go on to consider the public interest test 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.

The Authority's submissions on the public interest

59. The Authority identified the following issues that it considered were in favour of disclosing the information:

- the Authority is a taxpayer funded public body with a duty to be open and transparent
- there is public interest in understanding the Authority's processes
- under regulation 10(2)(b) of the EIRs, there is a presumption in favour of disclosure of environmental information.

60. The Authority identified the following issues that it considered were in favour of maintaining the exception in regulation 10(5)(b) of the EIRs:

- release of the information would substantially prejudice the Authority's ability to conduct an inquiry of a criminal or disciplinary nature
- release of the information would give operators the opportunity to understand the Authority's fraud detection techniques and use this to their advantage
- if the Authority was unable to detect fraudulent behaviour, this would substantially prejudice its ability to effectively regulate those operators working in Scotland's environment
- it would fundamentally be contrary to the public interest so substantially prejudice the Authority's ability, as the relevant legal authority, to carry out inquiries of a criminal or disciplinary nature as this would prohibit it from taking appropriate regulatory action.

61. The Authority initially stated that release of the information would make the Authority "physically unable" to conduct an inquiry of a criminal or disciplinary nature as without effective detection methods it would be unaware that fraudulent returns were being submitted.

62. However, the Authority later clarified that disclosure of the withheld information would result in it having "less intelligence" to work with when deciding where to allocate resources, which sites and operators to investigate and where to gather evidence of damage to Scotland's environment. The Authority stated that this would result in a far less effective regulatory regime and reduce its ability to protect Scotland's environment.

63. In the circumstances, the Authority concluded that the information should be withheld as the public interest in maintaining the exception outweighed that in disclosure of the information.

The Applicant's submissions on the public interest

64. The Applicant argued that the Authority had not applied a presumption in favour of disclosure, as it is required to do under regulation 10(2)(b) of the EIRs. The Applicant expressed concern at this, given the Authority is likely to have received more requests for information under the EIRs than any other Scottish public authority.
65. The Applicant also submitted that the Authority failed to carry out a balancing exercise to assess whether the public interest favoured disclosure. The Applicant noted that the Commissioner's guidance on regulation 10(5)(b) of the EIRs (at paragraph 26) states that the authority "must identify the competing arguments" and "must carry out a balancing exercise to determine where the public interest lies".
66. The Applicant argued that the fullest possible public knowledge of the sophisticated analytical methods used by the Authority would strongly deter any hypothetical future fraudulent behaviour that the Authority says it fears.
67. The Applicant explained that in the same way that the location of speed cameras on roads is indicated clearly by warning signs – in order to deter speeding – prior knowledge of sophisticated analytical techniques would patently deter potential future fraudulent reporting by fish farmers.
68. The Applicant stated there was also a very strong public interest in the public being properly consulted, including on the detail of the proposed new system of managing interactions between farmed and wild salmon (i.e. the sophisticated analytical methods), which disclosure of the information requested would allow.
69. The Applicant also referred to the [Aarhus Implementation Guide](#)⁸, which offers guidance on the interpretation of convention from which the EIRs are derived, which states (on page 120) that:

“[P]ublic participation in decision-making is the second “pillar” of the Convention. Public participation cannot be effective without access to information, as provided under the first pillar... In its ideal form, public participation involves the activity of members of the public in partnership with public authorities to reach an optimal result in decision-making and policymaking”

The Commissioner's view on the public interest

70. The Commissioner recognises that there is a strong public interest in transparency, particularly regarding matters of environmental protection.
71. The Commissioner agrees that disclosure of the information requested would have the effect of enhancing understanding of the Authority's work, informing the public on environmental protection and facilitating informed debate, including through consultation responses.
72. However, the Commissioner must also bear in mind the relevance of the information to the Authority's ability to conduct inquiries of a criminal nature. There is a clear public interest in the Authority's ability to conduct such inquiries not being undermined by the information requested being disclosed under the EIRs.

⁸ [Aarhus Implementation Guide interactive eng.pdf \(unece.org\)](#)

73. The Commissioner has considered the Applicant's point that disclosing the information requested would, in fact, deter potential future fraudulent reporting by fish farmers. The Commissioner can envisage instances where that might be the case.
74. However, the Commissioner has already accepted that disclosure would suggest ways by which evasion of the Authority's enforcement work could be made. The Commissioner considers that it is more probable that an operator motivated to engage in fraudulent reporting would, were the information disclosed, use that information to inform further attempts to evade the Authority's enforcement work.
75. In all the circumstances, the Commissioner considers that there is a greater public interest in protecting the ability of the Authority to conduct inquiries of a criminal nature than in disclosure of the information requested.
76. Having carefully considered the public interest arguments put forward by both the Applicant and the Authority, the Commissioner has concluded that the public interest in making the information available is, on balance, outweighed by the public interest in maintaining the exception in regulation 10(5)(b) of the EIRs.
77. The Commissioner is therefore satisfied that the Authority was, and is, entitled to withhold the information under regulation 10(5)(b) of the EIRs.

Handling of request

78. Regulation 5(2) of the EIRs states that, subject to qualifications that are not relevant in this case, a Scottish Public Authority must comply with a request within 20 working days.
79. Regulation 16 of the EIRs states that, on receipt of a requirement to conduct a review, the authority shall review the matter and decide whether it has complied with the EIRs, within 20 working days (regulations 16(3) and (4)).
80. The Authority explained that there were several factors which contributed to their delay in responding, including a failure to recognise the initial request as a request under the EIRs, the impact of a cyber-attack and the effects of Covid-related office closures.
81. It is a matter of fact that the Authority failed to respond to the Applicant's request and requirement for review within the timescales laid down by the EIRs.
82. The Commissioner must therefore find that the Authority failed to meet the requirements of regulations 5(2) and 16(4) of the EIRs.

Decision

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

The Commissioner finds that the Authority was entitled to withhold the information it continued to withhold under the exception in regulation 10(5)(b) of the EIRs.

However, the Commissioner also finds that:

- by wrongly withholding some information under regulation 10(5)(b), the Authority failed to comply with regulation 5(1) of the EIRs
- the Authority failed to respond within the timescales allowed under regulations 5(2) and 16(4) of the EIRs.

As the Authority has provided to the Applicant information that it wrongly withheld, the Commissioner does not require the Authority to take any action.

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.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

David Hamilton
Scottish Information Commissioner

13 June 2024

Appendix 1: Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.
- (2) The person who makes such a request is in this Part and in Parts 2 and 7 referred to as the “applicant.”

...

- (6) This section is subject to sections 2, 9, 12 and 14.

...

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

39 Health, safety and the environment

...

- (2) Information is exempt information if a Scottish public authority-
 - (a) is obliged by regulations under section 62 to make it available to the public in accordance with the regulations; or
 - (b) would be so obliged but for any exemption contained in the regulations.

...

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;

...

(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.

(2) The duty under paragraph (1)-

(a) shall be complied with as soon as possible and in any event no later than 20 working days after the date of receipt of the request; and

(b) is subject to regulations 6 to 12.

...

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.

...

- (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-

...

- (b) the course of justice, the ability of a person to receive a fair trial or the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature;

...

16 Review by Scottish public authority

- (1) Subject to paragraph (2), an applicant may make representations to a Scottish public authority if it appears to the applicant that the authority has not complied with any requirement of these Regulations in relation to the applicant's request.
- (2) Representations under paragraph (1) shall be made in writing to the Scottish public authority no later than 40 working days after either the date that the applicant receives any decision or notification which the applicant believes does not comply with these Regulations or the date by which such a decision or notification should have been made, or any other action should have been taken, by the authority but was not made or taken.
- (3) The Scottish public authority shall on receipt of such representations-
 - (a) consider them and any supporting evidence produced by the applicant; and
 - (b) review the matter and decide whether it has complied with these Regulations.
- (4) The Scottish public authority shall as soon as possible and no later than 20 working days after the date of receipt of the representations notify the applicant of its decision.
- (5) Where the Scottish public authority decides that it has not complied with its duty under these Regulations, it shall immediately take steps to remedy the breach of duty.

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
- ...