



RESPONSE TO F0196590

Request Timeline

Date	Status
24/01/2024	EIR Request received [statutory deadline 21/02/2024]
15/02/2024	Clarification requested
05/03/2024	Clarification received [statutory deadline 03/04/2024]
03/07/2024	Email from applicant
03/07/2024	Reply sent to applicant
08/11/2024	EIR Response issued

Requested Information

[...] copies of any correspondence, emails, electronic messages or texts since 1 January 2023 between salmon farming companies or the industry body, Salmon Scotland, and senior officials relating to the regulation of salmon farms.

I am not interested in correspondence about the day-to-day regulation of individual salmon farms, rather any correspondence at a senior level dealing with substantive regulatory policy issues. I am also not interested in personal information, or purely administrative information.

Clarification Requested and Received

- After receiving staff feedback, we can confirm we will require some definition of 'senior level' to provide information within a reasonable timeframe.
 - Does your request include the SEPA board? beta.sepa.scot/about-sepa/who-we-are/our-board/board-members/ **No**

- Does your request include the Corporate Leadership Team (CLT)? beta.sepa.scot/about-sepa/who-we-are/management-team/ **Yes**
 - Does your request include the Senior Leadership Team (SLT). This is essentially the management level below CLT. **Yes**
 - Would you like us to limit the search to something different – for example, staff who our Aquaculture colleagues identify as having the most involvement in regulation? **It would also be helpful to include them.**
- Can you please define the ‘substantive regulatory policy issues’ of interest so we can provide relevant results? **I mean any discussion of proposed new regulatory controls on salmon farming.**

Response

SEPA has handled your request under the Environmental Information (Scotland) Regulations 2004 (EIRs).

We apologise for the significant delay in providing this response.

We are releasing 74 documents in total for your request, please refer to the attached Excel spreadsheet which contains details of the information released for this request: **F0196590 Document Schedule.**

Please note:

- the document numbers do not run concurrently as duplicates and documents deemed as out of scope (not relevant to the request) have been removed.
- documents 92, 92.0.1 and 97 relate to a draft Memorandum of Understanding (MoU) that was never taken forward.
- personal data has been redacted in line with Regulation 11(2) of the EIRs.

Some documents in scope of the request have been withheld under Regulation 10(5)(b) of the EIRs: The course of justice, ability to receive a fair trial, the ability of any public authority to conduct an inquiry of a criminal or disciplinary nature.

They are withheld as they are related to a current investigation into non-compliances with information notices we have served. A public interest test was carried out in relation to this exception. We acknowledge that there is a presumption in favour of disclosure under Regulation 10(2)(b) of the EIRs, that SEPA is a taxpayer funded public body with a duty to be open and transparent and there is a public interest in ensuring SEPA are regulating the fish farm industry to a high standard. However, releasing this information would cause substantial prejudice to our ability to conduct the inquiry. As Environmental Regulator for Scotland, there is a stronger public interest in SEPA completing its investigations successfully so it can protect Scotland's environment.

On balance therefore, we consider that the public interest in releasing the information is outweighed by the public interest in maintaining the exception and therefore the information is withheld under Regulation 10(5)(b) of the EIRs.

Further information regarding the regulations and any exceptions applied to this information can be found below.

Application of Regulations and Exceptions

Section 39(2)

The information you are requesting is environmental information. We have applied Section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA). We are therefore handling your request under the Environmental Information (Scotland) Regulations 2004 (EIRs).

Regulation 10(5)(b) – Justice and fair trial

Information related to an investigation into non-compliance with the requirements of information notices is withheld under Regulation 10(5)(b) of EIRs, the text of which is reproduced below..

10 (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.

A public interest test was carried out in relation to this exemption. We acknowledge that there is a presumption in favour of disclosure under Regulation 10(2)(b) of the EIRs and that SEPA is a taxpayer funded public body with a duty to be open and transparent. We also acknowledge that there is a public interest in ensuring SEPA are regulating the fish farm industry to a high standard.

However, release of this information would cause substantial prejudice to SEPA's ability to conduct an inquiry of a criminal or disciplinary nature. There is a strong public interest in SEPA completing its investigations successfully so it can protect Scotland's environment.

On balance, we consider that the public interest in releasing the information is outweighed by the public interest in maintaining the exception and therefore the information is withheld under Regulation 10(5)(b) of the EIRs.

Regulation 11(2) – Personal data

Personal data relating to SEPA staff and private individuals has been redacted from the released documents in accordance with Regulation 11(2) of the EIRs and Data Protection Principles. SEPA has not withheld complete documents which contain such personal data and have released all other information within the document.

What to expect when making a Request for Information

Each request for information, under The Environmental Information (Scotland) Regulations 2004 or the Freedom of Information (Scotland) Act 2002, is formally logged by the authority. The request falls within a process that has two internal stages carried out by the authority; a right of appeal to the Scottish Information Commissioner followed by an appeal to the Court of Session on a point of law only.

- Stage 1 – Request for information
- Stage 2 – Formal Review
- Stage 3 – Appeal for decision by Scottish Information Commissioner (OSIC)
- Stage 4 – Appeal to the Court of Session on a point of law only.

Each enquiry will have a unique Reference Number which should be quoted when you contact us.

How you will be kept informed

You will receive an acknowledgement for your request and Formal Review. We aim to reply to all enquiries promptly, within 20 working days. You will receive a response along with the requested information and/or an explanation regarding any withheld information. We may also contact you if we require clarification or if we are issuing a fees notice.

What happens once your enquiry has been responded to?

If you are not happy with the response or have failed to receive a response, you have the right to request a Formal Review from SEPA.

Guidance on your rights and how to ask for a review is on the Scottish Information Commissioner's website; www.foi.scot/asking-for-a-review

We will ensure that all personal data is processed, recorded and retained in accordance with the requirements of the Data Protection Act 2018 throughout the handling of each request. You have a right to see information about yourself via submitting a Subject Access Request under the Data Protection Act 2018.

What to do if you are not happy with how your enquiry and review were handled

If you are unsatisfied with our Formal Review response or have failed to receive a response, you can then appeal to the Scottish Information Commissioner via the links below.

www.foi.scot/appeal

www.foi.scot/contact-us

Should you wish to appeal against the Scottish Information Commissioner's decision, you 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 the decision.