

Our Ref: F0184165

If telephoning ask for:  
Cara Everitt

25 October 2013

## REQUEST FOR INFORMATION

Thank you for your recent email, received by SEPA on 14 October 2013, in which you asked for the following information:

*Could you provide me please with any information that SEPA holds in relation to activities on Ledgowan Estate, Achnasheen. In particular I am interested in the road that has been constructed and, for example, whether the estate has a CAR licence under the Water Environment (Controlled Activities) Regulations 2011 for the water crossings and works by Loch a Chroisg.*

We have applied the exemption under Section 39(2) of the Freedom of Information (Scotland) Act 2002 as we have determined that the information sought in your request is environmental information. We are therefore handling your request under the terms of the Environmental Information (Scotland) Regulations 2004. (EIRs)

We passed your enquiry to our colleagues in the local operations team who confirmed that SEPA received no information in relation to the construction of the new track, therefore we do not hold this information. This information is excepted under Regulation 10(4)(a) of the Environmental Information Regulations 2004. The text of which is reproduced below;

*(4) A Scottish public authority may refuse to make environmental information available to the extent that- (a) it does not hold that information when an applicant's request is received.*

Under SEPA's duty to advise and assist under the terms of The Environmental Information (Scotland) Regulations 2004 regulation 9, if the watercourse crossings had been done in accordance with General Binding Rule 6, then SEPA would not need to be involved.

Please note that SEPA is aware of engineering activities in Loch a Chroisg undertaken by Ledgowan Estate in June 2011 which resulted in the alteration of the watercourse. The work was carried out without a licence. SEPA holds information relating to this however the information has been withheld from release at this time under Regulation 10 (5) (b) of EIR which states:

*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.*

The Public Interest Test was carried out in relation to the information to be withheld under regulation 10(5)(b). To disclose evidence in a case prior to it being considered by the Procurator Fiscal, thus putting it in the public domain means the accused may not receive a fair trial. SEPA needs to be



Chairman  
David Sigsworth

Chief Executive  
James Curran

### Corporate Office

Erskine Court, Castle Business Park, Stirling FK9 4TR  
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able to gather its evidence, conduct its inquiries and make its decisions in relation to those inquiries in private. Requests for such information are considered by SEPA on a case by case basis. In this case, it was determined that the public interest would not be served by the release of the information.

If you are not satisfied with our response, you have up until 20 December 2013 to request a formal review from SEPA at:

Access to Information  
SEPA Corporate Office  
Erskine Court  
Castle Business Park  
STIRLING  
FK9 4TR  
Email: [foi@sepa.org.uk](mailto:foi@sepa.org.uk)

If you are still not satisfied, you can appeal to the Scottish Information Commissioner.

Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS  
Telephone: 01334 464610  
Fax: 01334 464611  
e-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

Your unique reference number is F0184165. Please quote this in any future contact with us about your request.

If you have any queries in the meantime, please contact me.

Yours sincerely

**Cara Everitt**  
Access to Information Co-ordinator

### **What to expect when making a Request for Information**

Each request for information, under either The Environmental Information (Scotland) Regulations 2004 or the Freedom of Information (Scotland) Act 2002, is formally logged within a process which has a two internal stages and a subsequent right of Appeal to the Scottish Information Commissioner.

- Stage 1 – Request for information
- Stage 2 – Formal Review
- Stage 3 – Appeal for decision by Scottish Information Commissioner (OSIC)

Every internal formal review will be fair, reasonable, transparent and proportionate and will have clear terms of reference.

### **How you will be kept informed**

You will receive a written acknowledgement for your enquiry. We aim to reply to all enquiries quickly and certainly within 20 working days. We will also contact you if we need further clarification regarding the request for information or if we need to issue a fees notice.

You will receive a response along with the requested information and/or an explanation regarding any withheld information.

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

### **What happens once your enquiry has been responded to?**

If you are not happy with the response (or have not had a response), you have the right to request a review from SEPA.

It is recognised that some enquiries may require the processing of personal data relating to customers, other external third parties and SEPA staff. We will ensure that such data is processed, recorded and retained in accordance with the requirements of the Data Protection Act 1998. (You have a right to see information about yourself via submitting a Subject Access Request under the Data Protection Act 1998.)

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

If you have already been through the two steps of making your request and requesting a review and are still not happy, you can appeal to the Scottish Information Commissioner. The Scottish Information Commissioner enforces Scotland's freedom of information laws and tells people about their rights to ask Scottish public authorities for information. The contact details are;

Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews

Fife

KY16 9DS

Telephone: 01334 464610

Fax: 01334 464611

e-mail: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)