

**Regulation 10(5)(b) – Course of justice**

An exception under regulation 10(5)(b) of the EIRs (substantial prejudice to course of justice) applies to a small amount of the information (redacted in document 4) you have requested because it is legal advice and disclosure would breach legal professional privilege.

This exception is subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception. We recognise that there is a public interest in disclosing information as part of open, transparent and accountable government, and to inform public debate. However, this is outweighed by the strong public interest in maintaining the right to confidentiality of communications between legal advisers and clients, to ensure that Ministers and officials are able to receive legal advice in confidence, like any other public or private organisation.

**Regulation 10(5)(e) – Confidentiality of commercial or industrial information**

An exception under regulation 10(5)(e) of the EIRs (substantial prejudice to confidentiality of commercial information) applies to a small amount of the information (redacted in documents 1 and 2) you have requested. This exception applies because disclosure of this particular information would, or would be likely to, prejudice substantially the confidentiality of commercial information provided by Biffa and thus cause substantial harm to their commercial interests. Disclosing this information would be likely to give Biffa’s competitors an advantage in future similar tendering exercises, which would substantially prejudice Biffa’s ability to submit competitive tenders and thus could significantly harm their commercial business.

This exception is subject to the ‘public interest test’. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception.

We recognise that there is a public interest in disclosing information as part of open and transparent government. However, there is a greater public interest in protecting the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

**Regulation 10(5)(f) – Interests of person who provided the information**

An exception under regulation 10(5)(f) of the EIRs (substantial prejudice to interests of person who provided the information) applies to a small amount of information (redacted in document 5). This exception applies because disclosure of this particular information would, or would be likely to, prejudice substantially the interests of Circularity Scotland Limited who provided that information to the Scottish Government. They:

- were not under any legal obligation to give us that information;
- did not supply it in circumstances in which it could, apart from the EIRs, be made available; and
- have not consented to disclosure.

This exception is subject to the 'public interest test'. Therefore, taking account of all the circumstances of this case, we have considered if the public interest in disclosing the information outweighs the public interest in applying the exception. We have found that, on balance, the public interest lies in favour of upholding the exception.

We recognise that there is a public interest in disclosing information as part of open and transparent government. However, there is a greater public interest in protecting the interests of anyone, such as Circularity Scotland Limited, who provides the Scottish Government with information on a confidential basis. Disclosing such information against the express wishes of the stakeholder is likely to undermine their trust in the Government and make them reluctant in future to share information with us on issues such as the Deposit Return Scheme. This would significantly impair the Scottish Government's ability to develop policies and make decisions on the basis of fully informed advice and evidence. This would not be in the public interest.