

REASONS FOR NOT PROVIDING INFORMATION

Regulation 11(2) Personal data relating to third party

An exception under regulation 11(2) of the EIRs (personal information) applies to some the information requested because it is personal data of a third party and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulation and in section 34(1) of the Data Protection Act 2018. This exception is not subject to the 'public interest test', so we are not required to consider if the public interest in disclosing the information outweighs the public interest in applying the exception.

Regulation 10(4)(e) – internal communications

An exception under regulation 10(4) (e) of the EIRs (internal communications) applies to some of the information you have requested because it is internal communication in the form of notes and emails between Scottish Forestry officials about the operational and media handling of the Stobo woodland creation case.

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 some public interest in release as part of open, transparent and accountable government, and to inform public debate. However, there is a greater public interest in high quality policy and decision-making, and in the properly considered implementation and development of policies and decisions. This means that Ministers and officials need to be able to consider all available options and to debate those rigorously, to fully understand their possible implications. Disclosing such discussions may undermine or constrain the Government's view on policies while they are still under discussion and development.

Regulation 10(5)(b)(i) (prejudice to the course of justice) – legal professional privilege

An exception under regulation 10(5)(b) of the EIRs (prejudice to the course of justice) applies to some of the information 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 officials, to ensure that Ministers and officials are able to receive legal advice in confidence, like any other public or private organisation.

Regulation 10(5)(b)(i) (prejudice to the course of justice) – ongoing legal proceedings

An exception under regulation 10(5)(b)(i) of the EIRs (prejudice to the course of justice) applies to some of the information you have requested because it relates to ongoing legal proceedings (the Stobo judicial review case).

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 officials, to ensure that Ministers and officials are able to receive legal advice in confidence, like any other public or private organisation.

Regulation 10(5)(g) – protection of the environment to which the information relates

An exception under regulation 10(5)(g) of the EIRs (protection of the environment) applies to some of the information requested because it would make public the locations of nesting and breeding sites of species protected under Schedule 1 of the Wildlife and Countryside Act 1981 and other protected species designations.

This exception is subject to the 'public interest test'. In this instance we consider that while there may be a public interest in disclosing this information as it may contribute to the transparency of decision making on the application in question, this interest is outweighed by the public interest arising from the protection of these protected species from the potential risk that would arise from publishing their exact nesting and breeding locations, for example from disturbance, egg collection, nest / sett destruction, etc.