

## **REASONS FOR NOT PROVIDING INFORMATION**

### **10(4)(a) (Information not held)**

Regulation 10(4)(a) of the Environmental Information (Scotland) Regulations 2004 (the EIRs) allows public authorities to refuse to make environmental information available if they don't hold the information when the request is received.

"Held" is defined in regulation 2(2) of the EIRs. Environmental information is held by a Scottish public authority if it is –

- (i) in its possession and it has been produced or received by that authority; or
- (ii) held by another person on that authority's behalf.

The exception is subject to the public interest test in regulation 10(1).

This exception is subject to the 'public interest test'. Despite not holding this information, we have a statutory obligation to apply this 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. While we recognise that there may be some public interest in information about a fisheries survey in relation to the Whitslaid woodland creation scheme with reference (25FGS84879), as this information would not be requested by Scottish Forestry and established through searches as not received, clearly we cannot provide information that we do not hold.

### **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.

### **Personal data relating to third party**

An exception under regulation 11(2) of the EIRs (personal information) applies to some of 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.