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Kim Pratt  
[By Email: kpratt@foe.scot]

Our ref: 202400417634  
19 June 2024

Dear Ms Pratt

## **REQUEST UNDER THE ENVIRONMENTAL INFORMATION (SCOTLAND) REGULATIONS 2004 (EIRs)**

Thank you for your request of 5 June 2024 under the Environmental Information (Scotland) Regulations 2004 (EIRs).

### **Your request**

You asked for:

*“On 3<sup>rd</sup> May 2024, Mairi McAllan Cabinet Secretary wrote to Ben Christman at the Environmental rights Centre for Scotland (your reference: Request for SEPA direction - incineration overcapacity (05.0623)), and stated:*

*An additional capacity analysis was commissioned, through Zero Waste Scotland, as part of work to consider delivery of the ban on landfilling biodegradable municipal wastes. The outputs and recommendations of this work are currently under consideration by the Scottish Government.*

*Please send me (1) a copy of this report, (2) the terms of reference for it and (3) any correspondence held relating to the report.”*

### **Response to your request**

As the information you have requested is ‘environmental information’ for the Purposes of the Environmental Information (Scotland) Regulations 2004 (EIRs), we are required to deal with your request under those Regulations. We are applying the exemption at section 39(2) of the Freedom of Information (Scotland) Act 2002 (FOISA), so that we do not also have to deal with your request under FOISA.

This exemption 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 exemption. We have found that, on balance, the public interest lies in favour of upholding the exemption, because there is no public interest in dealing with the same request under two different regimes. This is essentially a technical point and has no material effect on the outcome of your request.

## **Questions 1 & 2**

An exception under regulation 10(4)(d) of the EIRs (material in the course of completion/unfinished information) applies to the information you have requested, namely for copies of the ban on Landfilling Biodegradable Municipal Waste (LBMW) report and associated terms of reference respectively because these are currently incomplete and are under final review by Zero Waste Scotland in advance of publication to ensure that no commercial and/or sensitive information is disclosed.

It may help if I explain that the LBMW report and associated terms of reference were commissioned by Zero Waste Scotland (ZWS). Whilst the Scottish Government have been provided with draft copies of these documents for consideration, as noted above these are currently incomplete and may provide an inaccurate representation of the reports final conclusions.

The Scottish Government has provided further information on the indicative timescale for ZWS to publish the finalised materials as part of our response to Parliamentary Question [S6W-27871](#) with publication intended to follow the UK General Election of 4 July 2024.

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. However, this is outweighed by the public interest in ensuring that unfinished and/or incomplete information which is still being worked on is not disclosed when it might misinform the public or give a misleading impression of the Scottish Government's position on the matter to which the information relates.

## **Question 3**

I have included copies of the information you have requested in [Annex B](#).

On reviewing materials within the scope of your request, exceptions have been applied in line with the EIRs. The exceptions applied can be found in [Annex A](#).

I would note that the document of 1 April 2024 included in Annex B makes reference to a final report provided by SLR Consulting, however, this was a draft version of the LBMW report provided to the Scottish Government for consideration as noted in my response to Questions 1 & 2 above and is therefore an incomplete version.

## **Your right to request a review**

If you are unhappy with this response to your EIR request, you may ask us to carry out an internal review of the response, by emailing David Signorini, Director of Environment and Forestry at [Director.Enfor@gov.scot](mailto:Director.Enfor@gov.scot).



Your review request should explain why you are dissatisfied with this response, and should be made within 40 working days from the date when you received this letter. We will complete the review and tell you the result, within 20 working days from the date when we receive your review request.

If you are not satisfied with the result of the review, you then have the right to appeal to the Scottish Information Commissioner. More detailed information on your appeal rights is available on the Commissioner's website [here](#).

Yours sincerely

Kirsteen Macleod  
Hub Manager



## ANNEX A

A small amount of information has been withheld under regulation 10(5)(f) (third party interests). 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 releasing the information as part of an open, transparent and accountable government. However, disclosure of this particular information would, or would be likely to, prejudice substantially the confidentiality of commercial information provided by private 3<sup>rd</sup> party companies and cause substantial harm to their commercial interests.

Additionally, a small amount of information has been withheld under Regulation 11(2) – Personal Data as it contains personal information and disclosing it would contravene the data protection principles in Article 5(1) of the General Data Protection Regulations (GDPR) and in Section 34(1) of the Data Protection Act 2018. This exception is not subject to the 'public interest test'.



**From:** [REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@SEPA.org.uk>  
**Sent:** Thu 18/01/2024 11:10  
**To:** [REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@zerowastescotland.org.uk>; [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@zerowastescotland.org.uk>; [REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@slrconsulting.com>; [REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@gov.scot>  
**Cc:** [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@entecsolutions.co.uk>; [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@slrconsulting.com>; [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@slrconsulting.com>  
**Subject:** RE: ZWS SG Bioban Infrastructure Capacity Assurance Study - SLR Inception Meeting 09 Jan Notes.

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Yes,

That's also my understanding – [REDACTED: REG 10(5)(f)]


Best thing is for [REDACTED: REG 11(2)] to get in touch with [REDACTED: REG 11(2)] directly.

Cheers,

[REDACTED: REG 11(2)]  
**[REDACTED: REG 11(2)] National Waste Team**  
Scottish Environment Protection Agency

 [REDACTED: REG 11(2)]

 [REDACTED: REG 11(2)]@sepa.org.uk

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**From:** [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@zerowastescotland.org.uk>  
**Sent:** Thursday, January 18, 2024 10:51 AM  
**To:** [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@SEPA.org.uk>; [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@zerowastescotland.org.uk>; [REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@slrconsulting.com>; [REDACTED: REG 11(2)]@gov.scot  
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REG 11(2)]<[REDACTED: REG 11(2)]@slrconsulting.com>

**Subject:** RE: ZWS SG Bioban Infrastructure Capacity Assurance Study - SLR Inception Meeting 09 Jan Notes.

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Thanks [REDACTED: REG 11(2)], that's really helpful. My understanding is that at [REDACTED: REG 10(5)(f)] are closed, or closing. I think we can assume that the four Island sites have capacity to 2026 [REDACTED: REG 10(5)(f)]. That leaves a more manageable number of sites on which we would like detailed capacity data. Are you able to check with your landfill team if any other sites are closed ([REDACTED: REG 10(5)(f)]) then we can discuss the best way to approach the remaining sites.

Thanks

[REDACTED: REG 11(2)]

[REDACTED: REG 11(2)] [REDACTED: REG 10(5)(f)] | Zero Waste Scotland

**Direct** [REDACTED: REG 11(2)] **Reception** [REDACTED: REG 11(2)]

**Email:** [REDACTED: REG 11(2)]@zerowastescotland.org.uk

**Zero Waste Scotland – leading Scotland to use products and resources responsibly**

Read our [corporate plan 2019-23](#)

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**From:** [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@SEPA.org.uk>

**Sent:** Thursday, January 11, 2024 7:05 PM

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**Subject:** RE: ZWS SG Bioban Infrastructure Capacity Assurance Study - SLR Inception Meeting 09 Jan Notes.

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Hi all,

Good to meet you the other day. Please find attached the first of the requested datasets.

This contains data for the 24 non-hazardous landfill sites which disposed of wastes from the BMW ban list. There is a summary page and a tab for each site. There are also tabs with total landfill waste broken down by code for 2021 and 2022.

As always, the uncertainty comes from trying to assign 19 12 12 waste one way or the other. The summary sheet presents a range between 40% and 60%.

I will forward the rest in due course.


Happy to discuss.

Best,

[REDACTED: REG 11(2)]  
**[REDACTED: REG 11(2)] National Waste Team**  
Scottish Environment Protection Agency

 [REDACTED: REG 11(2)]

 [REDACTED: REG 11(2)]@sepa.org.uk

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**From:** [REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@zerowastescotland.org.uk>

**Sent:** Wednesday, January 10, 2024 1:38 PM

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[REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@zerowastescotland.org.uk>;  
[REDACTED: REG 11(2)]@gov.scot; [REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@SEPA.org.uk>

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**Subject:** RE: ZWS SG Bioban Infrastructure Capacity Assurance Study - SLR Inception Meeting 09 Jan Notes.

Thanks for this [REDACTED: REG 11(2)], your notes match mine.

[REDACTED: REG 11(2)] – please let us know if there are issues with getting hold of any of the data we discussed yesterday, but otherwise I'll leave it to [REDACTED: REG 11(2)] and [REDACTED: REG 11(2)] to liaise with you directly, hope that works.

Thanks,

[REDACTED: REG 11(2)]

**From:** [REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@slrconsulting.com>

**Sent:** Wednesday, January 10, 2024 9:55 AM

**To:** [REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@zerowastescotland.org.uk>;  
[REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@zerowastescotland.org.uk>;  
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[REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@slrconsulting.com>; [REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@slrconsulting.com>



**Subject:** RE: ZWS SG Bioban Infrastructure Capacity Assurance Study - SLR Inception Meeting 09 Jan Notes.

Hi [REDACTED: REG 11(2)],

As promised, attached are our meeting notes from yesterday.

Hopefully these capture all the key issues discussed / agreed and also clarify the project data requirements from ZWS and SEPA.

We're aiming to circulate the draft EfW Operator questionnaire before our routine meeting next Monday.

Hope the SEPA data requirements for [REDACTED: REG 11(2)] are clear in attached. Suggest that he prioritises the modelling data for [REDACTED: REG 11(2)] and also that he and [REDACTED: REG 11(2)] liaise directly re the LF capacity data details.

Please advise if you think I have missed anything.

Thanks

[REDACTED: REG 11(2)]

**[REDACTED: REG 11(2)]**

[REDACTED: REG 10(5)(f)]

**O** [REDACTED: REG 11(2)]

**M** [REDACTED: REG 11(2)]

**E** [REDACTED: REG 11(2)]@slrconsulting.com

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**Subject:** ZWS SG Bioban Infrastructure Capacity Assurance Study - SLR Inception Meeting 09 Jan Notes.

Hi [REDACTED: REG 11(2)], [REDACTED: REG 11(2)], [REDACTED: REG 11(2)], [REDACTED: REG 11(2)],

Thank you for your time this morning and the helpful discussions re scope, data etc.

Will send out our meeting notes tomorrow am, with confirmation of the project data requirements and agreed milestone and reporting dates etc.

Regards





[REDACTED: REG 11(2)]

**[REDACTED: REG 11(2)]**

[REDACTED: REG 10(5)(f)]

O [REDACTED: REG 11(2)]

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Sent: Mon 25/03/2024 13:55

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Subject: RE: ZWS SG Bioban Assurance Study - DRAFT REPORT FOR REVIEW

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Hi [REDACTED: REG 11(2)],

Sorry for the delay – some notes from me added to [REDACTED: REG 11(2)].

Many Thanks,

[REDACTED: REG 11(2)]

**[REDACTED: REG 11(2)] National Waste Team**  
Scottish Environment Protection Agency

📞 [REDACTED: REG 11(2)]

@ [REDACTED: REG 11(2)]@sepa.org.uk

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**Sent:** Friday, March 22, 2024 6:48 PM  
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**Subject:** RE: ZWS SG Bioban Assurance Study - DRAFT REPORT FOR REVIEW

Hi [REDACTED: REG 11(2)],

Thanks very much for sharing that. I have attached comments from SG.

ZWS – apologies I haven't had the chance to collate any of your comments before running off on leave, so assume you will send separately or with SEPA's.

Thanks again,

[REDACTED: REG 11(2)]

**From:** [REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@slrconsulting.com>  
**Sent:** Friday, March 15, 2024 9:53 AM  
**To:** [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@gov.scot>; [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@SEPA.org.uk>; [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@zerowastescotland.org.uk>; [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@zerowastescotland.org.uk>  
**Cc:** [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@entecsolutions.co.uk>; [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@slrconsulting.com>; [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@slrconsulting.com>; [REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@slrconsulting.com>  
**Subject:** ZWS SG Bioban Assurance Study - DRAFT REPORT FOR REVIEW

Hi All,

Please see attached our draft report and Appendix B Questionnaire responses summary.

*NOTE: the completed questionnaires contain sensitive data, so please do not share outside this group.*

Have also sent a Word version for recording comments etc.

Look forward to discussing the key outcomes with you on Monday

Regards

[REDACTED: REG 11(2)]

**[REDACTED: REG 11(2)]**

[REDACTED: REG 10(5)(f)]



O [REDACTED: REG 11(2)]  
M [REDACTED: REG 11(2)]  
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**From:** [REDACTED: REG 11(2)] <[REDACTED: REG 11(2)]@slrconsulting.com>  
**Sent:** Mon 01/04/2024 13:06  
**To:** [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@gov.scot>; [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@zerowastescotland.org.uk>; [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@zerowastescotland.org.uk>; [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@SEPA.org.uk>  
**Cc:** [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@entecsolutions.co.uk>; [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@slrconsulting.com>; [REDACTED: REG 11(2)]<[REDACTED: REG 11(2)]@slrconsulting.com>  
**Subject:** ZWS SG Landfill Ban Assurance Study - SLR Final Report

Hi All,

Please see attached final version of our report.

Have attached a clean pdf version of the final report, and also a Word version with the tracked changes - documenting the changes from the draft.

Apologies – I had meant to issue this on Friday, but have kept the issue date as 29 March. Hope ok.

The final version takes account of your comments on the draft and also provides more emphasis on the capacity deficit forecast for the start of 2026.

Regards  
[REDACTED: REG 11(2)]

**[REDACTED: REG 11(2)]**  
[REDACTED: REG 10(5)(f)]

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