

Our Ref: F0189582

Ms A Tibbitt
request-521175-f68e8baf@whatdotheyknow.com

If telephoning ask for:
Cara Everitt

26 October 2018

Dear Ms A Tibbitt

REQUEST FOR INFORMATION – Initial Response

Thank you for your recent request, received by SEPA on 24 September 2018 in which you asked for the following information:

*I am interested in information from held by your organisation that relates to the process of planning and preparing for a possible future when the UK may not be a member of the European Union ("Brexit").
In particular:*

- 1. How much has been spent on external consultants or support to advise on the implications and consequences of Brexit, or recommend actions to mitigate any possible Brexit impacts? If spend has occurred, please confirm the name of the supplier or suppliers and copies of any material produced by this process.*
- 2. Please supply copies of any Brexit planning documentation held by the organisation or consumed by senior management. This may include, but should not be limited to, Risk Assessments, Action Plans, Meeting minutes, Reports and presentations.*
- 3. Please supply technical or advisory briefing documentation on Brexit that has been produced by the organisation and supplied to other government agencies or bodies.*
- 4. Please supply copies of any technical or advisory documentation that has been supplied to the agency from other public bodies that relates to Brexit contingency planning.*
- 5. Please supply details of any assessment that has been made of the financial impact on the organisation, either positive or negative, of the Brexit process. Has the organisation set-aside a contingency fund or invested as a direct consequence of the Brexit process? If so, please provide summary details.*

I can confirm that we have handled your request under the terms of the Freedom of Information (Scotland) Act 2002. (FOISA)

Please accept our apologies for the delay in issuing this response.

Response

1. SEPA has not spent on external consultants or support to advise on the implications and consequences of Brexit, or recommend actions to mitigate any possible Brexit impacts. Under the terms of Section 17(1)(b) of FOISA, we are required to formally give notice in writing that we do not hold the requested information. The relevant extract from the legislation is as reproduced below.

- (1) Where-*
- (b) the authority does not hold that information, it must, within the time allowed by or by virtue of section 10 for complying with the request, give the applicant notice in writing that it does not hold it.*

2. Under the terms of Section 25 (1) of FOISA, we confirm that the information is otherwise accessible. The relevant extract from the legislation is as reproduced below.

25 Information otherwise accessible

(1) Information which the applicant can reasonably obtain other than by requesting it under section 1(1) is exempt information.

As Section 25 of FOISA exempts information from disclosure where the information can be reasonably obtained, we advise that information relating to the following are available via SEPA's Disclosure Log (under ref F0189380) <http://apps.sepa.org.uk/disclosurelog/#>

- Agency Management Team and Board papers and presentations relating to EU Exit developments;
- Information on the work of SEPA's EU Exit Cross Portfolio Network;
- Internal communications to staff via specific intranet site.

Please note that personal information have been redacted from the available documents in accordance with Section 38(1)(b) of FOISA and the Data Protection Principles.

Additionally please note that minutes of Board Strategy meetings, where EU Exit is a standing item, can be found on SEPA's website

<https://www.sepa.org.uk/about-us/how-we-work/our-board/board-meetings-agendas-and-minutes/>

Please note that SEPA's Agency Management Team and SEPA's Agency Board have not held related discussions since the release of the information on 29 August 2018.

In addition to the previously released information, please refer to the attached;

- Email correspondence to the EU Exit Cross Portfolio Network
- Extract from the Introduction to SEPA's "Risk Management Half Year Review 2018-2019". This report summarises the risk management activities undertaken in the first half of 2018 and was provided to the Audit Committee on 25 September 2018.
- Agenda of the 5-Agencies Directors
- Agendas and papers of the Scottish Government's (SG's) Environment and Economy Leaders' Group (EELG) and EU Exit Network.

Please note that personal information have been redacted from the released documents in accordance with Section 38(1)(b) of FOISA and Data Protection Principles.

We confirm that one of the released documents (*EELG EU Exit Network - 11 July - agenda redacted.PDF*) contains embedded documents please note that these have not been provided. The terms of Section 3(2)(a)(ii) of FOISA applies. The relevant extract from the legislation is as reproduced below.

(2) For the purposes of this Act but subject to subsection (4), information is held by an authority if it is held—

(a) by the authority otherwise than—

(ii) in confidence, having been supplied by a Minister of the Crown or by a department of the Government of the United Kingdom;

We advise that you contact the DEFRA directly to make a request for the information.

<https://www.gov.uk/make-a-freedom-of-information-request>

One released document (*EELG - EU exit governance -25 April 2018 redacted.PDF*) has been redacted to reflect where information contained which falls outwith the scope of the request and also where information has been withheld. This withheld information is excepted under Section 30(b)(i) of the Freedom of Information (Scotland) Act 2002. The relevant extract from the legislation is as reproduced below;

30 Prejudice to effective conduct of public affairs; Information is exempt information if its disclosure under this Act:-

(b) would, or would be likely to, inhibit substantially:-

(i) *the free and frank provision of advice; or*

The Public Interest Test has been considered. We understand that to release the requested information would provide transparency, and there is a presumption in favour of release however on this occasion this is outweighed by the public interest in withholding the information at this time as it contains advice to Scottish Ministers in ongoing discussions. 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 at this time.

Two further documents have been withheld from release under Section 30(c) of the Freedom of Information (Scotland) Act 2002. The relevant extract from the legislation is as reproduced below;

30 Prejudice to effective conduct of public affairs; Information is exempt information if its disclosure under this Act:-

c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

The Public Interest Test has been considered. We understand that to release the requested information would provide transparency, and there is a presumption in favour of release however on this occasion this is outweighed by the public interest in withholding the information at this time as the information contains ongoing debate and decision making, the release of which would cause substantial prejudice to the conduct of public affairs at this time. The information contains ongoing debate and decision making and release at this time could impact on the discussion around considering and debating options. 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 at this time.

Please note that Annex A from one of the documents (*EE:G(10)04_03*) has been released.

We confirm that SEPA attended a Hydro Nation meeting on 14 September 2018. A copy of a short minute was supplied to SEPA on 17 September by a Third Party. **Please accept our apologies for providing a partial response at this time.** Where SEPA holds information which has been received from a third party, or in which a third party has direct involvement, we seek feedback from the third party before any decision to release the information is finalised. Therefore we are currently awaiting feedback from a third party. We anticipate providing you with the final response as soon as possible. Please note that it is SEPA's responsibility to make the final decision regarding the release or withholding of information that has been requested.

3. SEPA holds the following technical or advisory briefing documentation on brexit which has been produced by SEPA and supplied to other government agencies or bodies.

- SEPA response to proforma of questions from SG to inform the planning, prioritisation and coordination of the UK Statistical System's approach to exiting the EU (Jan 2017)
- SEPA response to SG summarising SEPA's involvement in European networks (July 2018) *(Please note that this document has been previously released in response to a previous request relating to SEPA's EU Exit cross portfolio group correspondence, as advised above in response to Q2 information is available through SEPA's disclosure log)*
- SEPA response to SG re implications of Brexit on Public Sector workforce (Aug 2018)
- SEPA response to SG re "Request for information: soft power" (Sept 2018)
- SEPA response to SG to help produce generic planning template for EELG members (Sept 2018)
- SEPA submission to SG following a request for input on "EU exit preparation funding" (June 2018)

Please note that personal information have been redacted from the released documents in accordance with Section 38(1)(b) of FOISA and Data Protection Principles.

4. SEPA does not hold any technical or advisory documentation that has been supplied to SEPA from other public bodies that relates specifically to Brexit contingency planning. Please note that the terms of Section 17(1)(b) of FOISA apply as SEPA does not hold the requested information.

Under the terms of Section 15(1) of FOISA, SEPA has a duty to provide advice and assist. We advise that SEPA, through membership of various working groups, has been sent a variety of technical or advisory documentation for information since the EU referendum. These are predominantly from academia or membership organisations such as Scotland Europa, which provides regular briefings for its members, and UKELA (UK Environmental Law Association). Notable reports are referred to in our internal briefings, as already available through our response to Q2 above.

Other examples otherwise accessible under the terms of Section 25 (1) of FOISA;

- The BSI, in its capacity as the UK's National Standards Body, has consulted its members and stakeholders about the possible implications of Brexit for standards. Following that, in Feb 2018, they published their Brexit and standards position statement, available at <https://www.bsigroup.com/globalassets/localfiles/en-gb/about-bsi/nsb/brexit/bsi-brexit-position-report-february-2018.pdf>
- SG's National Council of Rural Advisers published their interim report on the implications for rural Scotland of the UK leaving the EU <http://www.gov.scot/Publications/2017/11/6792>
- SEPA staff also refer to the Brexit Library: live table, produced by ENDS for its subscribers which is a regularly updated table of key Brexit-related policy, legislation and guidance documents published by the UK government, devolved administrations and the European Commission. We do not pay extra for access to this table, it is part of SEPA's wider subscription for ENDS. [https://www.endsreport.com/article/60516/brexit-library-live-table?DCMP=EMC-ENDSRPTBULLETIN&utm_medium=EMAIL&utm_campaign=eNews%20Bulletin&utm_source=20181017&utm_content=ENDS%20Report%20Daily%20Headlines%20-%20Daily%20\(161\)::www_endsreport_com_article_605&email_hash=](https://www.endsreport.com/article/60516/brexit-library-live-table?DCMP=EMC-ENDSRPTBULLETIN&utm_medium=EMAIL&utm_campaign=eNews%20Bulletin&utm_source=20181017&utm_content=ENDS%20Report%20Daily%20Headlines%20-%20Daily%20(161)::www_endsreport_com_article_605&email_hash=)

5. With the exception of the "EU exit preparation funding" document provided above in response to Q3 we confirm that SEPA has not undertaken any other assessments of financial impact of EU exit. SEPA has not set aside a contingency fund for EU exit and the agency is unable to carry forward any funding from one year to the next to do so. SEPA at this time has not invested as a direct consequence of EU Exit. Please note that the terms of Section 17(1)(b) of FOISA apply as SEPA do not hold the requested information.

If you are not satisfied with our response, you have up until 21 December 2018 to request a formal review from SEPA at:

Access to Information
SEPA
Strathallan House
Castle Business Park
Stirling
FK9 4TZ
Email: foi@sepa.org.uk

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

www.itspublicknowledge.info/appeal

Your unique reference number is F0189582. 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

A handwritten signature in cursive script, appearing to read 'cewing'.

Cara Everitt

Access to Information Co-ordinator

What to expect when making a Request for Information

Each request for information, under The Environmental Information (Scotland) Regulations 2004 or the Freedom of Information (Scotland) Act 2002, is formally logged by the authority. The request falls within a process that has two internal stages carried out by the authority; a right of appeal to the Scottish Information Commissioner followed by an appeal to the Court of Session on a point of law only.

- Stage 1 – Request for information
- Stage 2 – Formal Review
- Stage 3 – Appeal for decision by Scottish Information Commissioner (OSIC)
- Stage 4 – Appeal to the Court of Session on a point of law only.

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

How you will be kept informed

You will receive an acknowledgement for your request and Formal Review. We aim to reply to all enquiries promptly, within 20 working days. You will receive a response along with the requested information and/or an explanation regarding any withheld information. We may also contact you if we require clarification or if we are issuing a fees notice.

What happens once your enquiry has been responded to?

If you are not happy with the response or have failed to receive a response, you have the right to request a Formal Review from SEPA.

Guidance on your rights and how to ask for a review is on the Scottish Information Commissioner's website;

<http://itspublicknowledge.info/YourRights/Askingforareview.aspx>

We will ensure that all personal data is processed, recorded and retained in accordance with the requirements of the Data Protection Act 1998 throughout the handling of each request. 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 are unsatisfied with our Formal Review response or have failed to receive a response, you can then appeal to the Scottish Information Commissioner via the links below.

www.itspublicknowledge.info/appeal

<http://www.itspublicknowledge.info/home/ContactUs/ContactUs.aspx>

Should you wish to appeal against the Scottish Information Commissioner's decision, you have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of the decision.